Inland Wetlands Commission

MINUTES August 22, 2018 Regular Meeting

7:00 p.m. main level meeting room

MEMBERS PRESENT: Mr. Davis, Mr. LaMuniere, Mr. Papsin, Mr. Wadelton

MEMBER ABSENT: Mr. Bennett

ALTERNATE PRESENT: Mr. Matthews

ALTERNATE ABSENT: Mr. Kassis

ALSO PRESENT: Atty. Fisher, Mr. Sherratt, Mr. Szymanski, Mr./Mrs. Howard, Mr. Giapponi

Mr. Wadelton called the meeting to order at 7:00 p.m. and seated Members Davis, LaMuniere, Papsin, and Wadelton and Alternate Matthews for Mr. Bennett.

MOTION: To add the following subsequent business to the agenda: V. New Application: A. Howard/99 West Shore Road/#IW-18-39/Rebuild Boathouse. By Mr. Papsin, seconded by Mr. Davis, and passed 5-0.

Consideration of the Minutes

MOTION: To accept the 8/8/18 Regular Meeting minutes as written. By Mr. Papsin, seconded by Mr. Davis, and passed 5-0.

MOTION: To accept the 8/15/18 Kassis site inspection minutes as written. By Mr. Davis, seconded by Mr. LaMuniere, and passed 5-0.

It was noted the 8/14/18 Special Meeting minutes would be considered at the next meeting.

Pending Applications

West Mt. Farm, LLC./6 West Mt. Road/#IW-18-22/Application for Exemption/Tree Clearing for Farm: Mr. Szymanski, engineer, and Atty. Fisher represented Mr. Kassis. Atty. Fisher submitted a letter of authorization. Mr. Szymanski presented the map, “Farm Development Plan, by Arthur H. Howland and Assoc., dated 8/22/18 and pointed out the area where trees had been cut, the location of the stump pile, the trees that remain, etc. He submitted an undated guidance document from the DEEP regarding agricultural exemptions under CGS 22a-40. He read the uses permitted by right and the definition of farming per CGS 1-1(q) because it was not defined in the Wetlands and Watercourses Act. Atty. Fisher circulated the 2006 “Memorandum of Decision” for Sackler vs Inland Wetlands, which he stated had not been reversed or overruled. Mr. Szymanski read several highlighted paragraphs, which, he said, addressed matters similar to those being considered under the current violation on the Kassis property. These included the question regarding whether preparatory activities qualify for a farming exemption, whether grazing is included in farming, whether farming uses are permitted in the wetlands themselves, etc. Mr. Szymanski stated that not every tree in the Kassis wetlands had been cut. Mr. Matthews, however, noted the trees that had been cut were not shown on map and asked for a written description of what Mr. Kassis proposed to do. Mr. Szymanski said he proposed to raise livestock and Atty. Fisher explained he offered to provide farmland for cows, goats, and chickens for use in the AgSTEM program. Mr. Matthews asked if that offer was in writing. Mr. LaMuniere noted that even if the land were to be used for farming, Mr. Kassis was in violation because he had cut in wetlands without first applying to the Commission. Mr. Szymanski disagreed saying it was an agricultural activity, which was exempt. Mr. Matthews and Mr. LaMuniere thought some replanting or restoration should be required. Mr. Matthews asked what guarantee the Commission had that there would, indeed, be farming conducted on the premises and again asked for a detailed written plan including what would be done, what would be raised, how would the land be cultivated, how would produce be sold, etc. Atty. Fisher said this was not under Mr. Kassis’ control because AgSTEM would develop the specific program. Mr. Szymanski referred Mr. Matthews to page 3 of the DEEP guide on how to proceed with the determination of an exemption. Plans for work in the area were noted. Mr. Szymanski said there would be no water lines installed, meadow mix grass seed would be sowed, no filling or excavation was proposed, the trees that had been cut down would be removed, and the existing stump pile would remain. Mr. LaMuniere said the wetlands and stream had been totally denuded; 20 to 30 trees had been cut beyond the proposed paddock area, and this would have a significant impact on the wetlands. He asked if Mr. Kassis could cut down all that protects the wetlands. Mr. Szymanski said he could per state statute. Mr. Papsin agreed with Mr. Matthews that a detailed description of the operation and management for the proposed farm should be submitted. It was noted the hoofed animals would not stay out of the wetlands and that damage to them could result. Mr. Szymanski said the AgSTEM personnel would not want to be involved with a property in violation and so probably would not submit a specific farm plan. Mr. Wadelton noted if the school would not supply this written plan, Mr. Kassis could provide it. Mr. Davis asked if any buildings were proposed. Mr. Szymanski said one was proposed and if any more were planned Mr. Kassis would have to come back to the Commission for approval. There was further discussion regarding whether the work done was a violation (yes - because Mr. Kassis had not applied to the Commission for an exemption before doing the work or no - because farming is exempt.) Atty. Fisher conceded that Mr. Kassis should have come to the Commission first, but said the work that had been done was not in violation if done in preparation for a farm. Mr. Szymanski referred to Fairfield vs DiMara. Mr. Matthews noted that just because there will be a farm on one portion of a property does not give the property owner the right to clear cut the entire property. He again asked for a credible and specific written description of the proposed farm and alao for a plan on how the wetlands in the portion of the property that would not be farmed would be restored. Mr. Szymanski said the fence shown on the map encompassed the entire area of the violation. Mr. Wadelton stated it was understood the farm was proposed for the fenced area only, and if any expansion was proposed, Mr. Kassis would have to return to the Commission. Mr. LaMuniere asked what would happen with the pile of debris. Mr. Szymanski said it would be left where it is for wildlife habitat. Ms. Hodza asked for an overall site plan with property lines indicated. Mr. Szymanski said he would submit a Class D map. Atty. Fisher submitted a request for an extension so consideration of the application may be continued to the next meeting. Mr. Wadelton stated that based on the information presented tonight, the application to correct the violation was no longer valid and should be withdrawn.

Auth/329 West Shore Road/#IW-18-27/Place Boulders, Install Stone Seating Area: Ms. Hodza read the 8/22/18 email from Mr. Martinez, contractor, requesting discussion be postponed until the next meeting.

Meyer/106 Shearer Road/#IW-18-35/Dredge Pond, Repair Dam, Repair Dock, Footbridge, Fireplace, Relocate Irrigation Pump: It was noted that Mr. Sonnichsen, engineer, had been told he did not have to attend this meeting. Mr. LaMuniere reviewed the 8/8/18 minutes and it was noted a letter of approval had been received from Steep Rock Assn., the holder of the conservation easement on the property.

MOTION: To approve Application #IW-18-35 submitted for Meyer/106 Shearer Road to dredge the pond, repair the dam, repair the dock, fireplace, and footbridge, and relocate the irrigation pump per the plan, “Proposed Pond Bottom Excavation Plan, Clunde Pond Dam Repair,” by Waldo and Associates, LLC., dated 8/23/16 and revised to 7/27/18; the permit shall be valid for two years and is subject to the following conditions: 1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and 3. any changes to the plans as approved must be submitted immediately to the Commission for review; in considering this application, the Commission has determined that no reasonable and prudent alternatives exist, and believes that there is no reasonable probability of significant adverse impact on any wetlands or watercourses. By Mr. Papsin, seconded by Mr. LaMuniere, passed 5-0.

Steep Rock Assn./124 Christian Street/#IW-18-36/Remove Invasives, Herbicide Application: Mr. Giapponi, Steep Rock Trails and Preserve Coordinator, reported that he had received his applicator certification. The map, “Invasive Plant Removal and Management,” dated 7/26/18 was circulated and he pointed out the areas in the southeast portion of the property where treatment was proposed. Mr. Giapponi stated the herbicide would not be applied in Bee Brook. In response to a question from Mr. Matthews, Mr. Giapponi said most of the plants would be cut by hand and the cut stems treated with a spray bottle applicator. He added this was necessary because cutting alone would not prevent the aggressive root system from growing back. He said best management practices would be used and that a two year permit was adequate.

MOTION: To approve Application #IW-18-36 for Steep Rock Assn./ 124 Christian Street for removal of invasives and herbicide application per the “Invasive Plant Removal and Management Plan,” by Mr. Giapponi, dated 7/26/18 and 7/26/18 project summary by Mr. Giapponi; the permit shall be valid for two years and is subject to the following conditions: 1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the Wetlands Enforcement Officer can inspect and approve the erosion control measures, 2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and 3. any changes to the plans as approved must be submitted immediately to the Commission for review; in considering this application, the Commission has determined that no reasonable and prudent alternatives exist, and believes that there is no reasonable probability of significant adverse impact on any wetlands or watercourses. By Mr. Papsin, seconded by Mr. LaMuniere, passed 5-0.

New Applications

John Dorr Nature Lab-Horace Mann School/220 Nettleton Hollow Road/#IW-18-38/ATF Construct Play Gym: Mr. Sherratt, director, explained an existing ropes course had been dismantled and reinstalled within 100 feet of wetlands. He said the 978 sq. ft. area had been selected because it was flat and would not have to be dug out to level it. He pointed out the location on the map, “Overall Map,” by Arthur H. Howland and Assoc., dated 2/1/07 and revised to 10/11/07. Mr. Davis noted that using drilling machinery to install the poles would not cause much soil disturbance. Ms. Hodza pointed out that spreading gravel on and extending a farm road was included in the application. Mr. Sherratt said this work would not involve crossing any wetlands; the closest wetlands being a pond 167 feet away. Mr. Wadelton advised the applicant that the Commission had to wait until the next meeting to act and that he was not required to attend the next meeting.

Howard/99 West Shore Road/#IW-18-39/Rebuild Boathouse: Mr. Howard explained the 50 year old boathouse and steel frame were rotting. He proposed to replace it on the same footprint and on the same concrete foundation, but with a pitched rather than flat roof. He also proposed to enclose the existing porch to increase the size of the interior of the building. Mr. Howard noted there were no modifications proposed for the dock, which was a separate structure. It was noted the application review, sent to Mr. Howard earlier in the day, requested additional information and the submission of the Statewide Inland Wetlands and Watercourses Activity Reporting Form. He was asked to supply the missing information. Mr. Papsin asked how the area would be protected. Mr. Howard responded a boom would be installed to surround the area and that debris would be hauled off site each day. Building materials and supplies would be stored across the street. Mr. Howard stated the work would not depend on the water level in the lake and that he hoped to begin the project now and continue work through the winter. Mr. Davis asked if there would be staging in the lake. Mr. Howard said, no. He also said he planned to use siding so painting would be kept to a minimum. Mr. Davis suggested a condition of approval that if any of the work would be done from staging in the lake, the Commission must be notified. Mr. Howard said if staging was needed, he would use his docks. It was the consensus that a site inspection was not needed and Mr. Howard did not have to attend the next meeting.

Enforcement

Collins/323 West Shore Road/Noncompliance with Permit #IW-17-31: Ms. Hodza reported that Atty. Ebersol would be representing Mr. Collins and that he realized his client over stepped the terms of his approval.

Haddad/141 West Shore Road/Unauthorized Clearing and Work Not Per Permit #IW-16-06: Mr. Haddad sent an email dated 8/14/18 to report that the wetlands delineation on the property had been revised and that he has hired an engineer to work on a new plan.

West Mt. Farm, LLC./6 West Mt. Road/Unauthorized Clearing in Wetlands: Mr. LaMuniere and Mr. Papsin noted that the case law cited by Mr. Szymanski earlier in the meeting was from 2006 and he asked if the Commission should ask Atty. Olson whether there was anything more recent. Mr. Wadelton said that Atty. Fisher said the cases cited had not been appealed and so were still valid. Mr. Matthews questioned whether both sides were operating with the same set of “facts.” Mr. Wadelton said he would consult with Atty. Brooks and Atty. Branse on the matter of farming exemptions and would suggest this as a topic for a future CACIWC meeting. He added that he did not think an opinion from Atty. Olson was needed at this time. Mr. Davis thought it had been reasonable for the Commission to have asked the applicant for a written statement to detail the proposed farming operation. Mr. Wadelton did not think this could be required from the AgSTEM program, but could be required of Mr. Kassis. Ms. Hodza expressed her concern that no proof of the farming business had been submitted, but Mr. Wadelton noted that even agriculture as a hobby qualified for an exemption.

Erben Partners, LLC./169 West Shore Road/Application to Revise Permit #IW-17-26: Mr. Matthews said he had reviewed the file and he found it impossible to determine exactly what had been applied for and approved. He noted Mr. Szymanski’s cover letter referred to “minor” changes, but he considered them to be “massive,” including major excavation of the lake shore. Therefore, he recommended for future applications the Commission require a more detailed description of proposed activities. He said the burden of describing the work to be done should be on the applicant, not on the Commission. Ms. Hodza agreed and pointed out some of the work that had been approved that had not been specified on the application form. Mr. LaMuniere agreed that in past applications for this property, the Commission had been focused on proposed septic system work and not everything that had been included on the plan. He noted it is the plan, which the Commission approves. He recommended a detailed description of all work to be done be included in the sequence of construction. Ms. Hodza noted that the Commission already has the mechanism in place to get the details needed for each application and that she would make sure this was done in the future. She said both detailed plans and a detailed narrative are needed. Mr. Wadelton said that most of the activities proposed for 169 West Shore Road had been approved before Mr. Matthews and Ms. Hodza were involved with the Commission and it was clear to all who had been involved from the start what had been proposed and approved. Ms. Hodza noted, too, that she had checked the minutes and that Mr. Bedini was the only commissioner who had attended the site inspection for the first application and had attended both subsequent meetings when applications had been approved. Mr. LaMuniere stressed the importance of a thorough review of any proposed plan, pointing out, for example, information that had been missing from Sheet SEQ.4 for 101 Wykeham Road. Mr. Wadelton agreed, but with the caveat that the IWC has jurisdiction only over wetlands and watercourses, the regulated area, and on activities that will impact the wetlands.

The meeting was adjourned at 9:00 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator