Inland Wetlands Commission

MINUTES Regular Meeting September 12, 2018

7:00 p.m. Main Level Meeting Room

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

MEMBER ABSENT: Mr. LaMuniere

ALTERNATES ABSENT: Mr. Kassis, Mr. Matthews

STAFF PRESENT: Mrs. Hill, Ms. Hodza

ALSO PRESENT: Mr. Angiolo, Mr. DuBois, Atty. Fisher, Mr./Mrs. Howard, Mr. Szymanski

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

Consideration of the Minutes

MOTION: To accept the 8/14/18 Special Meeting minutes as written. By Mr. Papsin, seconded by Mr. Bennett, and passed 4-0.

 A spelling error was corrected on page 3 of the 8/22/18 Regular Meeting minutes.

MOTION: To accept the 8/22/18 Regular Meeting minutes as corrected. By Mr. Davis, seconded by Mr. Papsin, and passed 4-0.

MOTION: To include the following subsequent business not already posted on the agenda: V. New Applications B. De Leseleuc/15 Tinker Hill Road/#IW-18-41/ Addition to Dwelling, C. Philips/27 West Shore Road/#IW-18-42/Single Family Dwelling, Associated Appurtenances. By Mr. Papsin, seconded by Mr. Bennett, and passed 4-0.

Pending Applications

West Mt. Farm, LLC./6 West Mt. Road/#IW-18-22/Application for Exemption/Tree Clearing for Farm: Mr. Szymanski presented the plan, “Farm Development Plan,” by Arthur H. Howland and Assoc., dated 8/22/18 and revised to 9/12/18. He said due to a review of the boundary lines, he had shifted the location of the proposed farm building two feet and had moved fencing out of a triangular area on a neighboring property. He said the applicant proposed grazing and farming, construction of a farm building, and tree removal, adding there would be no road construction, erection of buildings, or excavation or deposition within the wetlands or watercourse. He reviewed Section 4 of the Regulations. In response to questions raised at the last meeting, Atty. Fisher explained that Mr. Kassis had planned to engage the AgSTEM program in the operation, but said AgSTEM was not yet organized and had no farming plan at this time. Therefore, he said, Shepaug was not now involved with the farm; Mr. Kassis would do the farming and hire workers. Mr. Szymanski said he had researched the IWC minutes and had found no other instance where the Commission had required the identification of a farmer. Mr. Wadelton stated the Commission had no authority to request approval or a statement from a third party. Mr. Szymanski noted Mr. Kassis intends to begin putting up fencing this fall and to construct the building this fall or next spring. There was a general discussion regarding what was permitted under as of right farming. Mr. Szymanski explained that farming operations could not relocate watercourses with continual flow or fill in or excavate wetlands without a permit, but agricultural activities were allowed as of right in wetlands with confirmation by the Inland Wetlands Commission. Mr. Wadelton noted that agricultural exemptions and procedures are clearly described in the Inland Wetlands and Watercourses Act (the Act). Mr. Davis asked if the type of agricultural activity had to be specified in an application for an exemption. Mr. Wadelton said it did so the Commission would be able to make a determination re: whether the proposed activity qualified for an exemption under the Act. Mr. Davis asked if the Commission should be concerned about soil disturbance in an agricultural area. Mr. Szymanski said this was not an Inland Wetlands concern unless there was filling or excavation in or draining of the wetlands. Mr. Wadelton explained those types of activities would require a permit. Atty. Fisher noted Mr. Kassis had conceded he should have consulted the Commission first before cutting the trees in the wetlands. It was noted he had stopped work as soon as he had been contacted by the WEO. Ms. Hodza noted her concern that Mr. Kassis had cut trees directly in wetlands although he was a Commission member who was supposed to uphold the Act. Mr. Szymanski stated cutting of trees is allowed as of right for the expansion of agricultural crop land, that it was not illegal if afterwards the Commission confirmed it was an as of right activity, and he referred to the DEEP guidelines circulated at the last meeting. It was noted Mr. Kassis had paid a citation because he had not come to the Commission for a decision before undertaking the clearing. Ms. Hodza asked what the recourse would be should there be no farming implemented on the property within a certain time frame. Atty. Fisher said she would then have the right to issue a cease and desist order if no farm had been established within a reasonable length of time, possibly by next summer. He noted the area had to be used for agricultural purposes or else the violation must be remedied. Mr. Wadelton stated that if the Commission ruled this is an as of right activity, it would then have no jurisdiction to set any time limits. Atty. Fisher noted if someone complains to the Commission that non farm activities have taken place in the wetlands, the IWC would then have the authority to address this.

MOTION: Regarding West Mt. Farm, LLC./6 West Mt. Road/ #IW-18-22/Application for Exemption for Tree Cutting for Farm; to rule the proposed activity qualifies for an agricultural exemption for farming as of right per the plan, “Farm Development Plan,” by Arthur H. Howland and Assoc., dated 8/22/18 and revised to 9/12/18. By Mr. Papsin, seconded by Mr. Davis, and passed 4-0.

Kassis/6 West Mt. Road/#IWE-18-37/Application to Correct a Violation/Tree Cutting: Given that the Commission had ruled the proposed farming activities qualified for an agricultural exemption, Atty. Fisher withdrew this application and the applicant’s application fee was returned.

Auth/329 West Shore Road/#IW-18-27/Place Boulders, Install Stone Seating Area: It was noted the time limit for acting on the application had expired and there had not been another request for an extension.

MOTION: To deny Application #IW-18-27 for Auth, 329 West Shore Road, to place boulders and install a stone seating area due to lack of information. By Mr. Papsin, seconded by Mr. Bennett, passed 4-0.

John Dorr Nature Lab – Horace Mann School/220 Nettleton Hollow Road/#IW-18-38/ATF-Construct Play Gym: It was noted Mr. Sherratt had been advised he did not have to attend this meeting. Mr. Szymanski explained that no certification had been required for the site plan submitted, and so it had been labeled a copy.

MOTION: To approve Application #IW-18-38 for the John Dorr Nature Lab-Horace Mann School, 220 Nettleton Hollow Road to construct a play gym per the plan for John Dorr Nature Lab, by Arthur H. Howland and Assoc., dated 2/1/07 and revised to 10/11/07; 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, 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. Davis, passed 4-0.

Howard/99 West Shore Road/#IW-18-39/Rebuild Boathouse: It was noted this application had been thoroughly discussed at the last meeting. Mr. Davis asked if a turbidity float would be installed to protect the lake. Mr. Howard said it would.

MOTION: To approve Application #IW-18-39 for Howard/99 West Shore Road to rebuild the boathouse per the information in the file; 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, 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. Davis, passed 4-0.

New Applications

Hochberg/15 Couch Road/#IW-18-40/Tree Cutting, Silviculture: Mr. DuBois, forester, represented the applicant. He reported that Mr. Hochberg had received a grant from the US Dept. of Agriculture to improve his forest and wildlife habitat, which he thought qualified for a jurisdictional ruling. Using his sketch plan, “Vegetation Type Map,” Mr. DuBois pointed out the location of Stand II, where he said the proposed activity would occur. He stated that the existing driveway would serve as the access and log loading area, all the trees to be cut had been marked, the trees would be cut by chain saw, a cable skidder would be used to move logs because it would cause little ground impact, the 50 cords of wood to be removed was not considered commercial activity by the federal government, although per Town ordinance it is, the project would take about a week, and the work would be done between November 1 and the end of April to protect the habitat of the long eared bat. He noted no wetlands crossings were proposed and the work area had been pulled back to avoid endangered species habitat. Mr. Papsin asked if the work would be done when the ground was frozen. Mr. DuBois said that would be ideal, but he might have to delay the start of work due to wet weather. Mr. Wadelton noted that silviculture would fall under the agricultural exemption if the Commission agreed that silviculture was proposed. It was the consensus that the proposed activity qualified for an exemption. Mr. Wadelton also noted a Timber Harvest permit issued by the Selectmen’s Office was required.

MOTION: Regarding Hochberg/15 Couch Road/#IW-18-40: to rule the proposed activity qualifies for an agricultural exemption for silviculture as of right. By Mr. Papsin, seconded by Mr. Davis, and passed 4-0.

The application fee was returned. It was noted that applications for exemptions should use the exemption form.

De Leseleuc/15 Tinker Hill Road/#IW-18-41/Addition to Dwelling: Mr. Szymanski, engineer, presented the plan, “Proposed B100a Sanitary Code Complying Area Plan, by Arthur H. Howland and Assoc., dated 10/19/2017 and revised to 9/11/18. An addition to the rear of the existing house was proposed. Mr. Szymanski noted the elevations on the property and said the owners planned to work with the existing landscape. To preserve an existing area of sloping ledge, the addition would be elevated so that a portion of the building would be suspended in air creating no land disturbance. He noted there would be no activity within 100 feet of wetlands, that the only area to be disturbed would be for the excavation of four footings, there would be no stockpiles because any excavated material would be hauled off site immediately, a small rain garden to handle roof runoff was proposed, and trees to be cut were noted on the plan. He said although he had submitted a formal application, he asked if this was actually a regulated activity. He read about as of right activities from the Inland Wetlands and Watercourses Regulations. He pointed out the 100 ft. setback and said the closest activity would be 140 feet from the wetlands. Mr. Szymanski explained the septic plan was for feasibility only; it would not be installed at this time. Mr. Wadelton noted the IWC has authority over activities further than 100 ft. from wetlands if they are on steep slopes and are reasonably likely to impact the wetlands. Mr. Szymanski provided details about the slopes on the property, saying the areas where the frost walls and rain garden would be located were level. Ms. Hodza asked if there were wetlands or watercourses on adjoining properties. Mr. Szymanski said there was only a drainage swale that does not meet the criteria for an intermittent stream. Ms. Hodza asked if plantings were proposed as cutting in steep areas around the lake has resulted in runoff problems on other properties. Mr. Szymanski said the trees to be cut were 160 ft. from wetlands. Ms. Hodza asked how the work site would be accessed. Mr. Szymanski said a mini excavator would drive up the ledge and cut down trees as it progressed. Ms. Hodza recommended a site inspection. Mr. Bennett thought the site plan was adequate and Mr. Wadelton said he was familiar with the site. Mr. Wadelton stated the Commission had no jurisdiction because the proposed activity was not in the upland review area and no case had been made that there would be an adverse impact to the wetlands or watercourse. He returned the application fee.

Philips/27 West Shore Road/#IW-18-42/Single Family Dwelling and Associated Appurtenances: Mr. Szymanski, engineer, described the proposal to demolish the existing nonconforming house and cottage, build a new dwelling, and install a septic system and stormwater management system. He proposed a meadow on an area with steep slopes and a two level rain garden to handle roof runoff. Mr. Papsin asked if excavated material would be stockpiled on site. Mr. Szymanski responded that per the construction sequence, it would be taken off site. Ms. Hodza asked if trees would be cut down. Mr. Szymanski said he would try to save the four major trees on the property and that he would note on the plan the birch to be taken down. The location of erosion controls was noted. Mr. Szymanski said ledge near the driveway entrance would be removed due to sight line concerns. The drainage plan was briefly reviewed. Mr. Szymanski said the water flowing from the footing drains would be clean and so could be directed to the nearby catch basin. Ms. Hodza asked about #13 in the construction sequence and Mr. Szymanski responded that a retaining wall would be built for the proposed stairs. A site inspection was scheduled for 5:00 p.m. on Wednesday, September 19.

Enforcement

Haddad/141 West Shore Road/Unauthorized Clearing and Work not per Permit #IW-16-06: Ms. Hodza stated she had been in contact with Mr. Haddad, who said his engineer needs more time to draft remediation plans.

Collins/323 West Shore Road/Noncompliance with Permit #IW-17-31: Ms. Hodza said the plans she had requested were due by 9/26/18 and that Mr. Collins had hired both an attorney and an engineer.

“The Rocks”/48 Barnes Road: Ms. Hodza reported she had received complaints from both nearby residents and Mr. Smith, Highway Dept. director, about the work in progress at 48 Barnes Road. Mr. Smith said he redirects the runoff, but the owner keeps undoing the Town’s work and redirecting runoff onto Barnes Road. The silt laden runoff is impacting the edge of the newly installed road and silting in the catch basins. She will inspect the site with Mr. Smith. Mr. Wadelton recommended she check to make sure the work is being done per the approved permit.

Auth/329 West Shore Road/Removal of Wisteria: Ms. Hodza asked if pruning and pulling out the wisteria required a permit. Mr. Papsin asked if there would be any soil disturbance and noted once the wisteria was gone, there would not be much ground cover left. Mr. Wadelton said more information was needed.

23 Church Hill Road/Putting Brush in “Watercourse”: Ms. Hodza had received a complaint that someone was filling in a watercourse with brush. Mr. Wadelton advised to her determine whether this was a drainage ditch or an intermittent watercourse by checking to see whether it met the criteria listed in the Act for an intermittent watercourse. She will follow up on the complaint if it is determined this is a watercourse.

101 Wykeham Road, LLC/101 Wykeham Road/Citation: Ms. Hodza reported she had issued a Zoning citation for the unsafe conditions and buildings on the property. In response, a contractor had discussed using a brush hog to cut down overgrowth, including in areas along Kirby Brook. She asked if this was considered routine maintenance. Mr. Wadelton stated the owner has a valid IWC permit, which would cover this work.

Executive Session

MOTION: To enter executive session at 8:23 p.m. to discuss a personnel matter. By Mr. Davis, seconded by Mr. Bennett, and passed 4-0.

MOTION: To end the executive session at 8:46 p.m. By Mr. Davis, seconded by Mr. Bennett, and passed 4-0.

 The meeting was adjourned at 8:47 p.m.

FILED SUBJECT TO APPROVAL Respectfully submitted,