Inland Wetlands Commission

MINUTES

Regular Meeting

September 13, 2017

7:00 p.m. Main Level Meeting Room

MEMBERS PRESENT: Mr. Papsin, Mr. Wadelton

MEMBERS ABSENT: Mr. Davis, Mr. LaMuniere

ALTERNATES PRESENT: Mr. Bennett, Mr. Kassis

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Martinez, Mr. Rosiello, Atty. Kelly,

 Mr. Angell, Mr. and Mrs. Frank, Mr. Charles

 Mr. Hayden, Mr. Drubner, Mrs. Braverman,

 Mr. Szymanski, Mr. Criollo, residents

 Mr. Wadelton called the Meeting to order at 7:00 p.m. and

seated Members Papsin and Wadelton and Alternates Bennett and Kassis.

 Mr. Wadelton announced the resignation of long time member, Mr. Bedini, who had served as Commission chairman for nine years. He expressed his deepest thanks and appreciation for all of Mr. Bedini’s years of service and this was echoed by the commissioners and all members of the public present.

 Mr. Wadelton corrected the numbering of the Agenda.

MOTION: To include the follow subsequent business not

 already posted on the agenda: V. New Applications:

 E. Kyte/10 Barnes Road/#IW-17-42/Temporary Access,

 F. Bedrosian/33 Fenn Hill Road/#IW-17-43/Dredge Pond,

 Rebuild Stonewall, G. Hamilton/183 West Shore Road/

 #IW-17-44/Extend Driveway, Demolish, Reconstruct

 Dwelling, Construct Garage, VII. Other Business:

 C. Straw Man, LLC./135 Bee Brook Road/Request for

 Release of Bond. By Mr. Papsin, seconded by Mr.

 Bennett, and passed 4-0.

Consideration of the Minutes

MOTION: To accept the 8/23/17 Regular Meeting minutes as

 written. By Mr. Papsin, seconded by Mr. Kassis, and

 passed 4-0.

Pending Applications

Frank/157 West Shore Road/#IW-17-28/Replace Shed: It was noted an email dated 9/12/17 from Mr. and Mrs. Frank had been received and it detailed the final plans for the replacement of the shed. The existing shed would be removed and replaced with a new shed exactly the same size and on the same footprint. There would be no change. Mrs. Frank asked if a permit was needed to grind a stump and this was added to the application. Mr. Papsin asked if the ground material would be taken off site and Mrs. Frank responded it would be taken away the same day the work was done.

MOTION: To approve Application #IW-17-28 for Frank/157 West

 Shore Road to replace a shed and grind a stump; 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,

1. that the property owner give the contractor copies

of both the motion of approval and approved plans

prior to the commencement of work,

1. 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 feasible 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. Kassis, passed 4-0.

Mrs. Frank asked about the condition above pertaining to erosion controls, and Mr. Ajello responded that her application did not propose any because they were not necessary.

Collins/323 West Shore Road/#IW-17-31/Remove Trees, Rebuild Stone Shoreline: Mr. Rosiello, landscaper, and Mr. Martinez, agent, were present. Mr. Rosiello reported that Mr. Collins had applied for a zoning permit to add a 10’ X 12’ platform to his dock, but that he still wanted a seating area along the shoreline. Stone patios and stone stairs were proposed. The plan, “Landscape Concepts for Jay Collins,” by Rosiello Designs, dated 9/7/17 was reviewed. Mr. Rosiello explained the application had been revised since the last meeting. The trees marked on the plan would be cut, but the stumps would not be removed and the patio would not be built out into the lake. Mr. Papsin asked how much of the canopy would be lost and what size plants would replace the trees cut. Mr. Rosiello said the trees in two areas, 18’ X 12’ and 12’ X 6’, would be cut and two types of trees either 6 ft. tall or 10 to 15 ft. tall would be planted to replace them. He also noted the existing fence would be maintained and vines and a 2 ft. wide lawn area planted. Mr. Ajello asked how the surface of the patio would be finished. Mr. Rosiello said the rocks would be moved by hand and an existing boulder would support the patio. Mr. Ajello asked if material would be brought in to the site. Mr. Rosiello said, yes, it would be needed for the fieldstone sitting area and stairs. He again stated there would be no alternation of the shoreline and no work in the water. All of the work, he said, would be at least 2 ft. above the water level. A site inspection was scheduled for Wednesday, 9/20/17, at 4:30 p.m. Mr. Martinez submitted a written request for an extension.

Block and Guernsey/10 Perkins Road/#IW-17-35/Renovations and Addition to Existing Dwelling, Construct New Garage: Mr. Szymanski, engineer, noted at the last meeting he had advised the Commission the proposed construction footprint would be reduced, and he submitted the plan, “Site Development Plan,” by Arthur H. Howland and Assoc., revised to 9/7/17 to show this had been done. He stated the original plan had proposed 11,700 sq. ft. of coverage, which had now been reduced by 3100 sq. ft. due to a decrease in the size of the proposed additions. He also noted the existing garage would be demolished and a new one constructed further from the regulated area. He said no activities were proposed in the regulated area. It was noted the size of the proposed rain garden had not been revised since the last meeting. Mr. Kassis asked why the garage would be moved. Mr. Szymanski said the new location met the zoning setback requirements, while the old garage did not comply.

MOTION: To approve Application #IW-17-35 for Block and

 Guernsey/10 Perkins Road for renovations, addition

 to existing dwelling and to construct a garage per

the “Site Development Plan,” by Arthur H. Howland and Assoc. revised to 9/7/17; 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,

1. that the property owner give the contractor copies

of both the motion of approval and approved plans

prior to the commencement of work,

1. 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 feasible 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. Kassis, passed 4-0.

48 Barnes Road, LLC./48 Barnes Road/#IW-17-37/Revise Permit

#IW-16-17/Cut Trees, Add Wet Meadow, Pond, Stormwater Management System: Mr. Szymanski, engineer, submitted his revised plan,

“Proposed Site Development Plan,” revised on 8/24/17 and 9/8/17. He noted the revisions that had been made including: 1) English names of the proposed plants had been added, 2) it was clarified that the application does include the installation of a pond, 3) a note was added to #6 of the construction sequence that the work will be done during the dry site conditions with dry weather forecast, 4) the list of the equipment to be used was added to #5a, and 5) the limit of disturbance line was added to the map. Mr. Szymanski read #6 in his 9/13/17 letter, which was in response to Mrs. Hill’s 8/23/17 review and addressed the reasons for the proposed revisions and an assessment of the potential diminished impact to the wetlands. Mr. Kassis asked how the driveway runoff would be handled. Mr. Szymanski explained how the runoff would be directed into the sand filter system, but said a temporary system with staked hay bales was currently in use. Mr. Szymanski said he had addressed the runoff issues with Mr. Smith of the Town Highway Dept.

 Mr. Drubner, a neighbor, asked if the public could speak. Mr. Wadelton said, no, because this was not a public hearing. Mr. Drubner asked why a hearing had not been held to consider this significant project and Mr. Wadelton responded that the Commission had not thought it necessary and no one had petitioned for one. Mr. Drubner asked if the Commission had hired its own consultant to review the proposed plans and if the commissioners were qualified to review them themselves. He noted the recent serious drainage problems on Barnes Road. Mrs. Braverman asked what recourse the neighbors would have for drainage not handled by the proposed pond. Mr. Ajello responded that was a drainage issue, not a wetlands issue. Mr. Drubner stated that if the Commission did not hire its own consultant and schedule a public hearing the neighbors would “go to a different forum.” Mr. Wadelton stated that if the Commission had received a petition signed by 25 residents, a hearing would have been held. He also noted the neighbors could have filed for intervenor status. Mr. Lyon, First Selectman, assured Mr. Drubner that the Town Highway Director was working on the Barnes Road problems. Mr. Drubner expressed his opinion that the drainage problems on Barnes Road were a direct result of the ongoing project at 48 Barnes Road and said the neighbors need assurance that those problems would be corrected. Mr. Szymanski explained the current application was a modification of the previously approved permit and that the revised plan would no longer allow drainage to flow from 48 Barnes Road to Barnes Road.

MOTION: To approve Application #IW-17-37: Request to amend

 Permit #IW-16-17 issued to 48 Barnes Road, LLC./48

 Barnes Road to cut trees and install a wet meadow,

 pond, and stormwater management system per the

 “Proposed Site Development Plan,” sheets PND.1 and

 PND.2, by Arthur H. Howland and Assoc., revised

 8/24/17 and 9/8/17; all previous conditions apply.

 By Mr. Papsin, seconded by Mr. Kassis, passed 4-0.

Other Business

Town of Washington/Walker Brook Road/Request for Extension of Permit #IW-15-25/Replace Bridge #3: Mr. Lyon, First Selectman, said work was ready to begin and there were no revisions to the originally approved plan. He noted it had taken longer than expected for the DEEP Fisheries Dept. to sign off and for the DOT to issue its load rating approval. It was the consensus it would be prudent to grant a two year extension.

MOTION: To approve the request for a two year extension

 of Permit #IW-15-25 issued to the Town of Washington

 to replace bridge #3 on Walker Brook Road. By Mr.

 Papsin, seconded by Mr. Bennett, and passed 4-0.

Angell/47 West Shore Road/Request for Extension of Permit

#IW-17-11 to Correct a Violation: Atty. Kelly summarized that in May the Commission had told the applicant work to correct the violation had to be done by 9/15/17 and if not done, Mr. Angell could return to ask the Commission to reconsider the date set. He noted it was best to do the work during low water and circulated photos to show the water level was still high. He asked the Commission to extend the deadline and let the terrace remain in place until it makes a decision on the two new applications submitted. He noted there was no need to create a disturbance in the lake now if one of the new applications might be approved later and that approval of one of those applications would make this current request moot. He also said there is a state statute that no Wetlands permit may be granted for a period of less than two years, and so since the Commission had issued the permit to correct the violation rather than issuing a restoration order, Mr. Angell had two years to complete the corrective measures. Mr. Ajello noted there were now only 2 inches of water at the shoreline. Mr. Papsin said the lake is now receding and the photos presented did not clearly show this. Mr. Angell stated when the terrace was installed, the water was 8 feet further out than it is now, but Mr. Papsin said that was due to last year’s draught. Atty. Kelly said when the application to correct the violation had been submitted, the applicant had asked that the work wait until low water conditions and there still haven’t been low water conditions. Atty. Kelly then advised the Commission that the terrace had been built entirely on the Angell property and not out into the lake as he said Mr. Ajello had incorrectly assumed. Mr. Wadelton noted the terrace had been built out and had a lake side vertical wall, neither which were permitted under Section 11A. Atty. Kelly responded that he had a surveyor confirm that all the work done was above elevation 694, which is the definition of the Lake Waramaug shoreline in the Zoning Regulations. Atty. Kelly noted there would be a low water event sometime within the two year period of the permit when the corrective work could be done and so asked why the extension should not be granted. Mr. Bennett said the reason was that there had been a violation that must be removed. Atty. Kelly responded that Mr. Angell had done what the Commission had required in November; he had paid a fine, had been issued a permit to correct the violation, and had now submitted two after the fact (ATF) applications, which the Commission was required to review without prejudice. He again asked, why not delay the removal of the terrace due to the chance the Commission might approve one of the ATF applications. Mr. Ajello stated that Mr. Angell had paid the fine and so had admitted the work was a violation, but Atty. Kelly disagreed.

 Mr. Wadelton asked the commissioners whether the 9/15/17 deadline should be enforced or whether it should be extended to consider the ATF applications. Mr. Bennett stated as much as he disagreed with letting the violation continue, he preferred to make a final decision when all requests and applications had been considered. Mr. Papsin said he considered the terrace to be a build out into the lake with a flush wall and asked if granting an extension would set a precedent. Mr. Wadelton noted the two ATF applications might propose ways to correct the violation. Mr. Bennett said the sandy beach should not have been made a reference point; the motion should have stated the work was to be done when water level conditions permit. He noted a turbidity curtain could be installed to get the work done now. Mr. Papsin thought according to the photo, the terrace had been built out on the rocks along the old lakeside, which was building out into the lake and so said the terrace should be removed now. Atty. Kelly said ten that Mr. Papsin had prejudged the two ATF applications without having heard his evidence that the terrace was built on Mr. Angell’s land above the shoreline. Mr. Bennett stated the terrace should be removed due to the physical character of the structure; that Mr. Papsin was explaining that the vertical face of the terrace is not permissible on the lake. Atty. Kelly said one of the applications submitted proposes to remove part of the lake side of the terrace to address Mr. Papsin’s concerns. Mr. Ajello stated that neither ATF application satisfies the enforcement order. Atty. Kelly responded that the permit to correct the violation and restore the area satisfied the enforcement order. Atty. Kelly then complained about the bias he perceived. He again asked for the opportunity to present the two ATF applications, one of which he thought was likely to be approved, before having to remove the terrace. Mr. Ajello again said the terms of the enforcement order had not been met and he read the portion regarding the restoration to pre disturbance conditions. Atty. Kelly said this was all addressed in the restoration permit and that any objections should have been raised in May before it was approved. Mr. Ajello stated the enforcement order had been upheld after a show cause hearing and asked what the impact to the lake would be if the terrace was removed now.

 Mr. Wadelton again asked for comments from the commissioners. Mr. Kassis asked why Atty. Kelly was confident the Commission would approve one of the new applications. Atty. Kelly said the Commission would have to have an open mind when considering the evidence provided by surveyors, historical evidence, and the definition of the shoreline. He noted, too, that the area where the water laps can vary by as much as 12 feet. Mr. Kassis asked if the Commission had the authority to decide the location of the shoreline, when it had no definition in its Regulations. Atty. Kelly said the Commission could seek the advice of consultants. It was the consensus to consider the two ATF applications first and to vote on all matters at the same time.

MOTION: To grant a 65 day extension of Permit #IW-17-11

 issued to Mr. Angell to correct a violation at 47

 West Shore Road to allow time for the Commission to

 make decisions on his other two pending applications.

 By Mr. Papsin, seconded by Mr. Kassis, passed 4-0.

New Applications

Collins/113 Bee Brook Road/#IW-17-40/Addition to Existing Dwelling: Mrs. Hill explained Ms. Collins would like the Commission to review the engineered plans and to raise questions so that she would be able to respond at the next meeting. The commissioners said they would not review the application because no one was present to make a presentation.

 Mrs. Hill noted the following new applications had been submitted late and had not been reviewed for completeness.

Smith/23 Rabbit Hill Road/#IW-17-41/Remove Invasives, Manage Forest, Establish Meadow: A representative from Earth Tones, LLC., a nursery and landscaping company was present. The plan, “Proposed Restoration Smith Residence,” by Earth Tones, LLC., dated 9/8/17 was reviewed. The representative said the owners propose to increase the size of the meadow area on the property, restore the 2000 sq. ft. of disturbed area noted in the 8/10/17 notice of violation, remove non native invasive plants, cut small saplings, retain notable trees, pull back the mound of excavated material to the original grade and seed it and spread leaf debris, and selectively manage the forest area. The list of proposed plant material submitted with the application was noted. A mini excavator will be used for the regrading and the small road it would use to access the work site was pointed out. Mr. Bennett asked if the wetland boundary had been accurately flagged. The representative responded that Earth Tones did not have authorization to enter the adjoining property, but that a wetlands scientist had observed the wetlands from the Smith property. Mr. Bennett asked if any of the mounded earth would be taken off site and was told there was no need to do so. Mr. Ajello asked if there was a long term maintenance plan proposed and was told the forest would be selectively managed and the meadow brush hogged once every two years. Mr. Papsin asked if the proposed planting would be done this year. The representative said the saplings and invasives would be pulled out this year, that native plants were already growing in the disturbed areas, and that plant plugs would be put in the section of lawn to be converted to meadow. Mr. Ajello asked how long it would take to complete the work planned and was told it would take continual maintenance and at least one year to control the invasives. Mr. Ajello and Mr. Papsin questioned whether a two year permit would be adequate.

Kyte/10 Barnes Road/#IW-17-42/Temporary Access: There was no one in attendance to present the application. Mr. Ajello said it was the reapplication of an expired permit.

Bedrosian/33 Fenn Hill Road/#IW-17-43/Dredge Pond, Rebuild Stonewall: The contractor, Mr. Criollo, explained that the water would be pumped out of the pond in order to dredge it. The excavated material would be dewatered in a nearby staging area before it would be trucked off site. Mr. Ajello noted the pond was very small and had been previously treated with herbicides. Mr. Papsin wanted to make sure the dewatering area would be large enough to accommodate the excavated material. Mr. Criollo said he would install silt fence and staked hay bales around the dewatering area. He explained that once the pond had been drained there would be room to work on the stonewall. Machinery would be used to dismantle the wall, which would be rebuilt to a height of approximately 3 to 5 feet. Mr. Bennett asked if the pond would be enlarged. Mr. Criollo said it would not. The commissioners were asked to send any questions they might have to the land use staff who would relay them to Mr. Criollo prior to the next meeting.

Hamilton/183 West Shore Road/#IW-17-44/Extend Driveway. Demolish and Rebuild Dwelling, Construct Garage: Mr. Szymanski, engineer, proposed a more circuitous driveway route to allow for greater infiltration and “leak offs.” Two rain gardens were proposed; one with a high level overflow that would drain to a catch basin on West Shore Road. The map, “Proposed Site Development Plan,” by Arthur H. Howland and Assoc., revised to 9/11/17 was studied. Mr. Ajello asked what work was proposed in the regulated area. Mr. Szymanski pointed out the line indicating the 100 ft. regulated area. It was noted all of the activities proposed along West Shore Road except the two rain gardens were approved under a previous permit. A site inspection was scheduled for 5:00 p.m. on Wednesday, September 20, 2017.

Straw Man, LLC./135 Bee Brook Road/Request to Release Bond: Mr. Wadelton recused himself and Mr. Papsin chaired this part of the meeting. The commissioners read the 9/13/17 letter from Atty. Ebersol requesting the release of the bond. Mr. Papsin noted the two Alternates seated were both new to the Commission and asked if they were up to date with the Straw Man, LLC. applications or whether they thought a decision should be delayed until the two absent members were present. Mr. Kassis thought a decision should be made at the next meeting.

 Mr. Charles asked if there were any issues he should address prior to the next meeting. Mr. Papsin noted per #9 in the sequence of construction an engineer was supposed to made regular inspections of the site and he asked if this had been done. Mr. Charles said, yes, the work had been routinely monitored and photos taken of the site. Mr. Ajello also stated he had made inspections twice a week for at least the last month.

 Mr. Ajello noted several items were not yet completed. 1) The boulder retaining wall along the lead-in driveway had not been built. Mr. Charles pointed out the location of the wall on the plan, “Wetland Crossing for Access Driveway,” by Trinkaus Engineering, LLC., revised to 7/21/16 and said the only portion of that wall that might be needed now was out of the regulated area.

 Mr. Kassis asked if the bond was to cover the parts of the job that remain open. Mr. Ajello said the bond was posted for the more comprehensive first application, but that both applications work in concert. Mr. Charles explained his client had wanted to revise the original application but said the Commission had required a second new application for the installation of the box culvert. He said the $20,000 bond had been required only for the bridge related activity covering the installation of the bridge and for work extending out 25 feet from both sides of the stream under the first permit as defined by Atty. Olson and Mr. Bedini. Mr. Ajello disagreed, saying the bond was for the whole project and the bridge related activity was referenced to address the work allowed from June 30 to Sept. 30.

 Mr. Ajello continued to list items not yet completed. 2) He said soil had been spread earlier in the day and had not yet been stabilized. 3) He noted there was another proposed boulder wall on the opposite side of the stream, 50 ft. of which is in the regulated area, and which had not been built. He thought Mr. Szymanski, engineer, should advise the Commission whether it should be required and Mr. Papsin agreed. 4) He also stated that construction materials are still stacked on site.

 Mr. Kassis asked if it made sense to return the bond in stages. Mr. Ajello noted that usually driveways are not completed until the construction work they access is completed. He thought maybe a small bond could be retained until that work was done, but said that now the area was still a construction site.

 Mr. Ajello said another concern was 5) that on the left side at the foot of the wing wall there is an area of mud that should be rip rapped so it does not erode. Again, he said Mr. Szymanski’s opinion was needed. 6) Mr. Ajello said the upper end of the driveway had not been completed per the approved plans; that there was still 75 to 100 feet to complete.

 Mr. Kassis asked if there was anything major left to be done. Mr. Ajello said, no.

 Mr. Bennett noted Atty. Ebersol’s letter stated that the six conditions of approval had been met. Mr. Ajello said he would have to check that out. Mr. Charles stated the six conditions had been done. Mr. Ajello then said 7) that the railings along the crossing had not yet been installed. Mr. Charles responded that their installation would not impact the wetlands, it was a safety issue, not a wetlands issue, and that the Commission had not required railings for similar work on Walker Brook Road. He also stated that the stacked materials had no impact on the wetlands and that Mr. LaMuniere and Mr. Bedini had stated at a previous meeting that the bond would be released when the temporary bridge had been removed, and it had been removed as required. He also noted that if the boulder wall was required, it would not be constructed within the regulated area. He said he wanted to remove the staw wattles so the lawn could be maintained and explained how the disturbed areas had been spread with top soil, straw blankets put in place, the area seeded, and that grass was now growing. Mr. Charles added that the two areas where slight erosion had occurred on the west side of the downstream bank would be addressed with the addition of boulders.

 Regarding the completion of the upper end of the driveway, Mr. Charles said he was waiting for the engineer to complete the plans, but added it was well beyond the regulated area.

 Mr. Kassis asked if the bond was for the entire project or for that portion within the regulated area. Mr. Papsin and Mr. Ajello said the bond was not connected to anything not shown on the plan and Mr. Ajello said the project must be completed and the disturbed areas reasonably vegetated in order for the bond to be returned. Mr. Charles responded that the bond was associated with the potential harmful impacts to the watercourse and that it was unusual for the Commission to bond normal driveway activities. He again described the area Atty. Olson and Mr. Bedini had described as the area of bridge related activity, again stated that Mr. LaMuniere and Mr. Bedini had stated the bond would be returned when the temporary bridge had been removed, and said the stacked materials have no impact on the wetlands.

 Mr. Papsin asked Mr. Charles to address Mr. Ajello’s points by the next meeting. Discussion was tabled until the next meeting.

 Mr. Wadelton was reseated.

Activity Report: Mr. Ajello briefly reviewed his 9/13/17 report.

Beck/3 Perkins Road: Mr. Ajello asked the Commission to inspect the work site to see two large trees that were now proposed to be removed. He thought a third tree, a moderately sized maple, would provide adequate canopy should the other two trees be cut and said smaller trees such as river birch would be planted. He noted that on the opposite side it would be necessary to cut back the brushy growth to access the work site. Also the current permit included the replacement of a concrete pier with a floating dock. However, the owners would now like to resurface the pier without enlarging it. The inspection of this property will be added to the inspections scheduled for September 20.

Administrative Business

 Registration forms for the annual CACIWC seminar were distributed. Also the commissioners discussed CACIWC’s annual dues and it was the consensus to renew the IWC’s membership at the sustaining member level.

 Mr. Wadelton advised the Commission that the election of officers would take place at the next meeting.

 The meeting was adjourned at 9:40 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

By\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Janet M. Hill

 Land Use Administrator