



Town of Warren
INLAND WETLANDS & CONSERVATION COMMISSION

Public Hearing and Regular Meeting Minutes

Thursday, January 28, 2021 – 7:00 pm

Via Zoom Video Conference (See link to full recording below)

Call to Order, Seating of Members, and Designation of Alternates

Chairman Favreau called the meeting to order at 7:04 p.m. PRESENT were Chairman John Favreau, Vice Chairwoman Cynthia Stilson Shook, Nancy Binns, Nora Hulton and Alternate Tara Tanner, who was seated for Thomas Caldwell. ABSENT were Thomas Caldwell and Alternate Darin Willenbrock. Joanne Tiedmann was present to begin the videoconference platform; at 7:00 p.m., she turned the monitor controls over to Richelle Hodža, Land Use Officer and left the meeting.

Nomination of and Voting on Officers

Current officers were reviewed and request for nomination was made by Chairman Favreau. Mrs. Binns made a MOTION that the officers remain for another year through December 31, 2021, with Mr. John Favreau as Chairman and Ms. Cynthia Stilson Shook as Vice Chairwoman. The MOTION was SECONDED by Nora Hulton; all in favor. The MOTION CARRIED.

Consideration of the Minutes

3A.) In regards to the minutes from the special meeting, held on December 17, 2020 Chairman Favreau asks the commission if they have any amendments or questions to address.

Ms. Binns made a MOTION to APPROVE the minutes from December 17, 2020 special meeting. Ms. Hulton SECONDED; all in favor. The MOTION CARRIED.

3B.) In regards to the minutes from the site walk (Curtiss & Hopkins Roads, Map 8, Lot 44) held on January 10th 2020. Chairman Favreau asks the commission if they have any amendments or questions to address. Ms. Hulton made a MOTION to approve the minutes; the motion was SECONDED by Ms. Binns; all in favor The MOTION CARRIED.

Pending Applications

4A.) IWA# 20-11-01/ Louis DiMarzo, P.E. of DiMarzo & Bereczky, Inc. on behalf of property owners AN Millworkers, Inc., Iljaz (“Sam”) Nocaj / 235 Kent Road, Assessors Map 21 Lot 17/ Construction of additions to existing structure, new basement, installation of new septic system, deposition of approximately 60 (sixty) yards of stone and fill with related grading; relocation and paving of driveway within the regulated area (*Date of receipt by Inland Wetlands Commission 12/17/2020*)

Chairman Favreau asks Ms. Hodža if additional information or modification of the plans have been presented since the date of the application. Ms. Hodža states she has no new information to add. Chairman Favreau acknowledges the applicant’s engineer Mr. Lou DiMarzo. Mr. DiMarzo states he has no further information or comments to add, but would be willing to answer any questions. Chairman Favreau asks the commission if they have any concerns with the application. The board has no concerns or questions with the application; Chairman Favreau refers back to Mrs. Hodža; she states she is comfortable with the application as it is thorough and has been discussed at length in the last meeting.

Ms. Hulton made a MOTION to approve the application, Ms. Binns SECONDED the motion; all in favor. The MOTION CARRIED. The application was approved.

4B.) IWA # 20-12-01/ Dennis McMorrow, P.E. of Berkshire Engineering & Surveying, LLC on behalf of property owners Laura and Paul Brown/ 60 Cornwall Road, Assessor's Map 51 Lot 2 / Construct 16' X 30' in-ground swimming pool, outdoor cold water shower, patio, pool equipment and propane tank, stone walls, grading and landscaping within the regulated area (*Date of receipt by Inland Wetlands Commission 12/17/20*)

Chairman Favreau acknowledges Mr. McMorrow and asks him to speak on the application. Mr. McMorrow addresses the commission to answer the questions presented at the last meeting. Mr. McMorrow reports that he has submitted revised plans to the Town Hall. Mr. McMorrow reports that the commission had asked if there was a water supply in the barn, he states there is not currently water in the barn, however there is a spigot south of the barn where they will run a water line for the outdoor shower. McMorrow states there is electricity in the barn. The landscape walls will be a internally mortared stone wall without a formal curtain drain. There will be additional stock pile on the west side for the excavation of the pool area. Mr. McMorrow states he submitted a copy of the Torrington Area Health letter of approval of the current plans. Chairman Favreau referred to a question from the previous meeting regarding trenching. Mr. McMorrow stated that the electric and water lines are shown on the plans. Chairman Favreau verifies with Mr. McMorrow that they are located behind the barn. Chairman Favreau asks the commission if they had any further questions or concerns for Mr. McMorrow and the applicant at this time. No other questions or comments were brought forth.

Ms. Hulton made a MOTION to APPROVE the application. Ms. Binns SECONDED, all in favor; the MOTION CARRIED. The application was APPROVED.

4C.) IWA# 20-12-02 / Brian Baker, P.E. of Civil 1, Inc., on behalf of applicant Jessica Marullo and property owner Michael Dell'Aera, 15 Pike Hollow Road, Stratton ,VT/ Curtiss Road and Hopkins Road, Assessor's Map 8, Lot 44 / Proposed 3-lot subdivision of 16.7+ acres (*Date of Receipt by Inland Wetlands Commission 12/17/2020*)

Chairman Favreau stated the initial review and site walk has been conducted, that the commission has some additional questions and concerns at this point asks Ms. Hodža to report on her attempts to obtain a an independent soils scientist who would be able to review the delineation and an outside engineer to review the plans.

Ms. Hodža asks if the commission would like to hear from the applicants first. Chairman Favreau stated that they would like to hear from the applicants in regards to the submission of new materials. Ms. Hodža and Chairman Favreau agree that due to the activity, the public interest, the petition warrant a public meeting.

Mr. Brian Baker with Civil One is acknowledged by the commission. Mr. Baker presented to the commission via screen shared images the updated plans post site walk and after receiving a revised wetland soils delineation report from Mr. Cole and having been asked by Ms. Hodža to include the FEMA flood zone on the plans.

Mr. Baker pointed out the additional driveway pull-off on proposed lot 3. Mr. Baker pointed out the addition of the flood plain location at the southern end of lot 3. Mr. Baker reported that all activity is located greater than 150 feet away from this as well as well over 20 feet in elevation of the flood plain area. Mr. Baker pointed out the additional information for clarification purposes within the plans to show the location of the Hopkins water supply well. Mr. Baker reports that the State Health Department and Torrington Area Health District have approved the location of wells and septs on these subdivision lots as shown, and he has included confirmation of same with the application. Mr. Baker points out the eastern property line which at which had originally been identified an erosion feature, not a regulated water

course; however since then it has been flagged and included as a regulated wetland area. The plans have been updated to show the 100 foot distance from that regulated area, and accordingly, have shifted the driveway of proposed Lot 1 by 55 feet and the house location by 30 feet to ensure they remain outside of the regulated area. Mr. Baker reports there is a small section of the beginning of the driveway, the infiltration trench below, grading, storm drainage, and an infiltration trench which are in the regulated area. Mr. Baker stated 5 trees would be removed but the tree line would remain intact.

Chairman Favreau asks Mr. Baker if he will confirm that there were no other modifications made to proposed Lot 3, other than the pull off and no modifications to proposed Lot 2. Mr. Baker confirmed same and stated there were also no modifications made to septic or well location on any of the lots.

Ms. Hodža stated that she had a conversation with Mr. Richard Rossi of TAHD, regarding his letter supporting the septic and wells as presented by the engineered plans. After said conversation, she was convinced that the requirements for that department were met with regard to the proposed three lots. She explained what she understood from Mr. Rossi, namely, that what is presented in the plans is a ‘fallback’ plan, meaning that the lots can support, at the very least, a total of three dwellings of up to 4 bedrooms each, with septic, wells, and reserve areas in precisely the locations indicated. Any future changes to the proposed site development plan submitted for the subdivision would have to be specifically reviewed and approved. Mr. Rossi also explained that any concerns about the quality and quantity of water affected by the new wells and septic vis-a-vis the Hopkins Water Supply Co., were unfounded and that the aquifer is neither owned nor controlled by an individual or corporation.

Mr. Ian Cole was asked to discuss the changes he made to the soils delineation report. He explained the conditions under which the first report was written based on data collected in November and December versus the revised report. He defended the first report and explained the technical meaning of “seep,” areas of wetness observed by some people on the site walk. Mr. Cole explained that seeping water does not necessarily constitute wetlands. After going through his report, Mr. Cole advised that all of what he was reporting is memorialized in the updated report with pictures. Mr. Cole stated that he would welcome the opportunity for a peer review.

Ms. Hodža stated that she had spoken with the Ms. Cynthia Rabinowitz of the Northwest Conservation District. She would be able to do a review free of charge to the applicant because the Town of Warren is a member.

Ms. Shook made a MOTION engage Cynthia Rabinowitz to do a peer review and submit

Mr. Favreau asked if the Lake Waramaug Task Force’s Sean Hayden had been heard from. Ms. Hodža stated that she had not heard but knew he had been on the site walk on January 10.

Mr. Favreau stated for the record that he is a member of the Lake Waramaug Task Force, but that he has recused himself from any discussions in that capacity to remove the possible appearance of having, or of actually having, a conflict of interests.

Ms. Hulton SECONDED the MOTION. The MOTION CARRIED. Ms. Rabinowitz would be contacted to perform a review of the soils reports submitted by Mr. Cole.

Ms. Hodža asked who is proposed to own the open space. Mr. James Strub, of the firm Secor, Cassidy, & McPartland, PC introduced himself as the attorney for the applicant. He stated that this was more of a zoning commission issue than of a wetlands commission issue so they had not noted it in their submission to this commission. The preference would be to have it restricted in some way and attached to Lot 3. So the ownership would remain in Lot 3, but it would be subject to a conservation restriction governing

usage or otherwise. If there was an entity in Warren that was interested, that would certainly be something the applicant would be willing to discuss, but it is more of a subdivision application issue than it is a wetlands issue, so we hadn't really addressed that yet.

Ms. Hodža asked for one of the applicant's representatives to speak about the flood zone that she had asked to be added to the site plans and to explain the significance of the FEMA designation. Mr. Baker, P.E. stated that the proposed activities were well away from the flood plain and that the riparian buffer and vegetated area within 150 feet of the flood plain would remain in place.

Mr. Favreau asked if Ms. Hodža had had any conversations with an independent engineer. Ms. Hodža stated that she had spoken with Mr. David Battista of Lenard Engineering, a company with which the Town has worked in the past. The last time the company was engaged was in 2018 in regard to 10 North Shore Road. Ms. Hodža stated that Lenard had contracted Mr. Ian Cole for certain work, but felt that if the Northwest Conservation District did the soils review, no conflict of interests would arise. In addition, the soils review must occur before the engineering review. Ms. Hodža stated that if the Town were to engage Lenard, it would ask for a proposal and estimate. The applicant would be responsible for the cost of the third-party review and any funds not used would be returned to the applicant.

Attorney Strub wanted to confirm on behalf of the applicant that the various reviews would also be used by the Planning and Zoning Commission as well. He reiterated that he wanted to confirm that if an engineer reviews the project, said review would be used for both commissions.

Ms. Hodža hesitated.

Ms. Hulton interjected a question about Lot 1's driveway is now in the regulated area and wanted to know why it needed to stay in the regulated area. Mr. Baker stated that it did because of slope. Although the current position begins in the regulated area, it then allows the driveway to point away from the regulated area, rather than vice versa; starting the driveway outside the regulated area would require a switch-back making runoff head toward the regulated area. Other considerations were the existence of a utility pole. He determined that the solution presented on the current maps dated 1-15-2021 allowed the least amount of disturbance to the watercourse and wetlands.

Ms. Binns asked if it would make the most sense for the Warren Land Trust to hold the open space in a conservation easement.

Ms. Hodža offered to repeat what she understood Mr. Strub to say, that this was more of a Zoning matter. She said she would ask that Commission to consider the open-space ownership as part of their work. Ms. Hodža went on to say that this was an example of an issue that was outside the purview of the wetlands commission. Therefore, she recommended to the Commission that it not lock itself into promising that the independent reviews of the work of the soils scientist and engineer will suffice to cover both commissions' concerns.

Mr. Strub stated that Ms. Hodža misrepresented what he had said. He "was not trying to lock the commission into anything." He stated that a conversation with the Warren Land Trust could be started soon – that it sounded like a great opportunity. The involvement of the NWCD's in this application is appropriate as would be comments by Mr. Hayden of the Lake Waramaug Task Force should he have any. Mr. Strub stated that he, Ms. Rabinowitz, Mr. Hayden, Mr. Cole, and Mr. Baker – all working in the Northwest Corner [of Connecticut] have worked in tandem on matters before, both as reviewers of each other's work and as ones whose work was being reviewed. Mr. Strub thanked the Commission and the interested public and the well-run site walk. He also appreciated the fact that another commissioner [Cynthia Shook, Vice Chair] and the Richelle [Land Use Officer] were able to visit the site with the

engineer [Brian Baker] the following weekend. Mr. Strub asked, noting the substantial number of people at the site walk, notwithstanding the petition, if further questions could be held until the public hearing.

Ms. Hodža added that the applicant had suggested that questions be emailed to the Wetlands Officer [at landuse@warrenct.org] in advance of the public hearing so that duplicates could be culled and disseminated and answers could be prepared and read at the hearing. Ms. Hodža thought this a good idea as did Chairman Favreau and Ms. Binns.

Chairman Favreau returned to the issue of the preservation of the proposed open space. In the present case, the proposed open space is itself wetlands. The question of ownership of the wetlands is, therefore, directly a concern to this commission, because whoever owns that open will be responsible for any maintenance and care of the wetlands contained therein. While no activity or storm water control systems are proposed within the open space designated on the plan, ownership needs to be considered.

Mr. Favreau sought a motion for a review by an independent engineer. Ms. Binns made a MOTION to have an engineer's review after receipt of the soils scientist peer review. Ms. Holton SECONDED. All were in favor. The MOTION CARRIED.

Mr. Favreau prepared to set the public hearing. Ms. Hodža explained that the governor's executive order 7I was still in effect, which gives the commission an additional 90 days extension for the proceedings. Ms. Hodža stated that the Commission would have to ask the applicant for a 5 day extension to hold the public hearing on February 25 at the next regular meeting since the 65-day deadline was on February 20. Mr. Favreau thought that the 90-day extension was automatic. Ms. Hodža stated that the Commission still needed to ask the applicant for a 5-day extension. Mr. Strub agreed to the extension of 5 days stating that he would provide the Commission with same in writing, noting that he assumed that the December meeting was move up a week because of the holiday, not an unusual occurrence. .

Ms. Shook made a MOTION to set a Public Hearing for the matter at the next regular meeting of February 25, 2021. Ms. Binns SECONDED.

The applicant Ms. Marullo asked for confirmation that the public hearing of her application would be held on the same night as the regular meeting of February 25. Ms. Hodža affirmed, adding that the public hearing of her application would be the first matter on the agenda. She asked for the time frames to be explained.

Ms. Binns voted aye, Ms. Stilson Shook voted aye, Mr. Favreau voted aye, and Ms. Tanner voted aye. The MOTION to SET THE PUBLIC HEARING on February, 25 at 7:00 pm via Zoom CARRIED.

New Applications

A) IWP#: 20-10-02.1 / Dennis McMorrow, P.E. of Berkshire Engineering & Surveying, LLC on behalf of Roger Hedman of Riga Construction LLC for property owner Maria Marshall/ **53 Curtiss Road**, Assessor's Map 8 Lot 23/ First modification for permit approved on December 17, 2020 to include installation of generator and related trenching. *(Date of Receipt by Inland Wetlands Commission 1/28/2021)*

Mr. McMorrow is acknowledged by Chairman Favreau and stated that at the time of the site walk and initial approval of the application the location for the generator and underground propane tank had not yet been determined. The modification of this application is to include the location of same. Mr. McMorrow clarified due to a potential of ledge in the area of the proposed propane tank, there is an addition of a

small retaining wall in the proposal in order to avoid having to blast for the burial of the tank. Mr. McMorrow reported the tank is 37 feet from, and perpendicular to the watercourse.

Chairman Favreau asked if there are two propane tanks. Mr. McMorrow clarified that the applicants' preferred location of tank to be at the curve of the drive leading to the house. Chairman Favreau asked Mr. McMorrow if the purpose of the tank was to be for use by the pool, pool house and the generator. Chairman Favreau asked where the trenching would then go, to which Mr. McMorrow explained that the existing trenches in the proposal will be utilized and will deviate to the generator and to the pool house. Chairman Favreau asked where the existing tank is located or if the house is currently all electric. Mr. McMorrow was unsure of either and stated that the new tank may even be used for the main house as conduit locations will go up to the house.

Ms. Shook asked for clarification on the shared screen images of the location of the propane tank. Chairman Favreau asked if either the propane tank or the generator had approval from Torrington Area Health. Mr. McMorrow explained that the contractor is only obligated to obtain a permit to install a propane tank. A discussion is held on what the regulation requirements are regarding the distance between the propane tank and the well and septic, Mr. McMorrow stated that oil tanks have specific requirements for radius however propane tanks do not. A discussion was held on whether Torrington Area Health is required to approve the placement of the generator. Ms. Hodža stated that for zoning purposes, an approval from Torrington Area Health is required.

Chairman Favreau stated in review of disturbance of the wetlands, the issue at hand was already covered by Zoning's requirement of a bond for any potential erosion or sedimentation into the brook. Chairman Favreau stated that in looking at the modifications to add the generator, the application is to add trenching into existing or proposed electrical trenching and the spurring of that into the propane tank. Chairman Favreau asked Mr. McMorrow if this activity required additional protection or potential mitigation of any runoff or disturbance into the wetlands.

Mr. McMorrow referred to his plan stating he had modified the E&S plan for both the propane tank -- adding the silt fence below the retaining wall and existing garage -- and for the generator pad. Mr. McMorrow stated he felt it was a minor adjustment in the work already approved for the project. Chairman Favreau stated he was not overly concerned with the generator pad or the piping; however he stated he would appreciate the declaration of no blasting given the volume of disturbance for the burying of the tank.

Ms. Shook clarified the location of the propane tank and its accessibility for service. Chairman Favreau asked Ms. Hodža for her perspective on the application. Ms. Hodža stated that she felt the position of the generator is minor, and upon receiving the expected bond the Town would be protected from erosion and sediment in the event the work has any adverse impact on neighboring properties, water supply, or wetlands and she was of the opinion that the modifications being sought will not have a significant impact on the wetlands. Chairman Favreau asked if the bond would be sufficient to cover any possible damage. Ms. Hodža believed that the performance bond already asked for should by Zoning should cover lapses in erosion control.

Ms. Shook made a MOTION to APPROVE the modifications to the existing plan. Ms. Binns SECONDED the motion; all were in favor. The MOTION CARRIED. The modifications are APPROVED.

Ms. Shook made a MOTION to add the modification request for application IWP# 20-10-01 to the agenda. Ms. Binns SECONDED the motion; all were in favor. The MOTION CARRIED.

The Agenda was amended to add the request for a first modification of IWP#20-10-01.

IWP #20-10-01.1 Chairman Favreau read aloud the letter from Mr. Tittmann of Tittmann Design and Consulting LLC dated January 28, 2021 for the record.

Chairman Favreau acknowledged Mr. Andy Schell, construction manager for Tittmann design on behalf of Peter and Meredith Kosann, the effective owners of the property held by A5MK 21 Arrowpoint Road LLC. Mr. Schell stated that in preparation for construction he felt it would be beneficial to take advantage of the room available to address the concerns the applicants and construction team had regarding certain trees.

Chairman Favreau asked what percentage of the trees those requested to be removed represents on the property. Mr. Schell stated that he was unsure, however he believed there to be 20 remaining trees.

Chairman Favreau referred to the trees along the property line and asked if the neighbors had been spoken to regarding the tree removal. Mr. Schell was not sure if neighbors had been notified and Ms. Hodža stated that she did not believe that was a necessary step.

Mr. Schell reviewed on-screen photos of the trees with the commission. Chairman Favreau asked the process for the tree removal; grinding or full stump removal. Mr. Schell stated he would defer to the commission and Ms. Hodža on what was permitted.

Ms. Hulton asked if there were any plans to replace any of the trees removed. Mr. Schell stated that the owners do have plans to develop a landscaping plan that will offset those removed. Ms. Hulton stated that she believed the selected trees are actually not native maples and she hoped they could be replaced with a native tree. A discussion is held on the ash trees on the property being removed, which suffer from the ash borer beetle.

Ms. Hodža reminded the commission that if they chose to accept the modification they may include stipulations for the landscaping. Chairman Favreau stated that the stipulation of not allowing stumping would be beneficial as well as consideration for those trees at the shoreline to be replaced. A discussion is held on the differences between stumping and stump grinding. It is determined that stumping, or pulling the entire stump from the ground is most detrimental to the land, however the location of the trees planned to be removed would not require stumping. Ms. Binns asked if it could be included to stipulate native trees be put in place of those removed. Ms. Hodža noted that due to the fact there does not yet exist a landscaping plan, it would be difficult to enforce; however a stipulation on stumping could be effective. Chairman Favreau stated that the commission could state with clarity that they would allow the modification with the contingency that the trees are cut and stumps ground, but root systems are not extracted.

Ms. Shook made a MOTION to approve the modification for the removal of the trees with the stipulation that the stumps are ground and root systems not removed, Ms. Binns SECONDED; all were in favor. The MOTION CARRIED. The first modification to the permit for cutting certain trees was approved

Inland Wetland Officers Report

Ms. Hodža reported that on January 26, 2021 Mr. Tanner, Foreman of Warren Public Works Department notified her of activity in the wetlands at 38 Strawberry Ridge Road. Witnessed was brush that had been chipped and thrown into the shoulder of the road to act as fill; however the location is clearly in wetlands.

Ms. Hodža stated that she had sent a letter of possible violation to the resident and is currently awaiting their response of either requesting a permit or more ideally, removal of the chips.

Other Business Proper

Ms. Hulton reported concerns of 120 Tanner Hill Road and run off from the driveway. Ms. Hodža stated that she was also aware of that issue and had contacted the contractor Sean Woodward and that it had been addressed and fixed for some time, however it appears to need further work as the runoff is spilling out into the road. Chairman Favreau asked if this location is the violation that had been granted for once the house had been sold. Ms. Hodža confirmed. Chairman Favreau asked if the rain gardens had been designed for paved or permeable drive and if the issue is that the drive had been newly paved. Ms. Hulton stated that the commission approved the pavement of it after assurance from the applicant that storm water management was effective and in place. Ms. Hodža stated she would contact the contractor again.

Communications Received

Ms. Hodža reported having received communication from Mr. And Mrs. Tammen of 50 Curtiss Road, received January 7, 2021. Ms. Hodža read aloud the letter as requested by the letter-writers.

Opportunity for Public Comment

Chairman Favreau acknowledged Mrs. Tammen, 50 Curtiss Road. Mrs. Tammen stated her concerns that the distance between the water course and the planned driveway on Lot 1 of the Curtiss and Hopkins Road proposed subdivision still did not meet the IWC regulations as it did not take into account significant slope. Mrs. Tammen stated she was in favor of independent experts being hired to examine Mr. Cole's reports. Mrs. Tammen was dissatisfied that the public hearing was set for February 25th due to concern that the soil scientists and engineer's reports may not yet be submitted. Mrs. Tammen wanted to address the applicant Ms. Marullo's question on the length of the public hearing by stating that she believed this extended time was to accommodate the possibility that individuals may have follow up questions or concerns after the secondary reports are submitted. Mrs. Tammen suggested that meetings begin earlier in the evening.

Chairman Favreau acknowledged Mr. Tammen, 50 Curtiss Road. Mr. Tammen suggested the commission change the process for the timing of acceptance of applications. Mr. Tammen reviewed the Covid 19 procedural adjustments for processing applications and encouraged the commission to utilize all the time now allotted for reviews. Mr. Tammen stated that he had reported the concerns of 38 Strawberry Ridge to the Land Use Officer several weeks ago and he was dissatisfied with the response. Mr. Tammen stated he is dissatisfied with the enforcement of the commission on non-compliant residents.

There are no further public comments.

Adjournment

Ms. Shook made a MOTION to adjourn to the next regular meeting on February 25, 2021 immediately following the public hearing; Ms. Binns SECONDED. All were in favor. The MOTION PASSED.

Respectfully Submitted,

Melissa Woodward
Recording Secretary

Dated: 2/4/2021 3:47 p.m.

Video Recording of Proceedings:

https://zoom.us/rec/share/8bGY0mP8OTW1uwDxCG1GSh9j_BPgdKwC_15DaF_QSBmpQTWZlQPmkzLLxAO2EKkom.jGpStZaU6ylu4VF0