



Town of Warren
INLAND WETLANDS & CONSERVATION COMMISSION
50 Cemetery Road, Warren, Connecticut 06754
860 868 7881 x 117 or landuse@warrenct.org

Public Hearing and Regular Meeting Minutes
Thursday, September 23, 2021

Link to recording below

PUBLIC HEARING

1. Call to Order, Roll Call, Seating of Alternates

Chairman John Favreau called the meeting to order at 7:01 p.m. **PRESENT** Including the Chairman, Nancy Binns, Thomas Caldwell, Vice Chairwoman Cynthia Stilson- Shook, and Alternate Tara Tanner (seated for Nora Hulton). **ABSENT** were Nora Hulton and Alternate Darin Willenbrock. Others present were members of the public in the meeting room and via zoom.

2. IWA #21-06-01 / 85 Curtiss Road, Assessor's Map 7, Lot 19 / Paul Szymanski, P.E. of Arthur H. Howland & Associates, P.C. for Davidson and Elizabeth Goldin / Proposed construction of a single-family home with related appurtenances including driveway, pool, spa, pergola septic well, demolition of existing house and capping of existing well. (*Received by Commission 6/24/2021, Special Meeting/Site Walk 7/12; Public Hearing opened 7/22, Continued 8/26 (35); applicant granted written extension of 30 days from and including 8/27 through 9/25; (35 days possible days remain to close hearing, i.e., through and including next regular meeting of 10/28).*)

The Public Hearing was tabled to the next meeting October 28, 2021, at the request of the applicant, who granted the Commission the remainder of all allowed extensions. The engineer's report will be made available online. In any event, anyone who wants this report can come to Town Hall or request that it be emailed to them.

REGULAR MEETING

1. Call to Order, Roll Call, Seating of Alternates

Chairman John Favreau called the meeting to order at 7:04 p.m. **PRESENT** Including the Chairman, Nancy Binns, Thomas Caldwell, Vice Chairwoman Cynthia Stilson- Shook, and Alternate Tara Tanner (seated for Nora Hulton). **ABSENT** were Nora Hulton and Alternate Darin Willenbrock. Others present were members of the public in the meeting room and via zoom.

2. Additions to the Agenda (*Includes applications received by Land Use Office by 4:00 pm, September 22, two-thirds vote required*)

IWA #21-09-03 / 21 Arrow Point Rd, Assessor's Map 45, Lor 29 / A5MK 21 Arrow Point Rd LLC / Removal of (2) storm damaged trees that have fallen into the lake. (Received by Lake Use Officer 9/22/2021, to be received by IWC 9/23/2021).

Chairman Favreau asked for a Motion to add this application to the agenda. Ms. Binna made a **MOTION** to add this application to the agenda, Ms. Tanner **SECONDED, MOTION CARRIED.**

3. Consideration of the Minutes

a. Minutes of the Regular Meeting of August 26, 2021

Ms. Hodza stated given some of the errors in the minutes and having spoken to the Freedom of Information Act expert, Mr. Tom Hennick, she would suggest tabling these minutes until next month because it may be the case that they would be revised substantially. Ms. Hodza said she would review them this month, and possibly present an amended version.

Chairman Favreau asked for a motion to table the minutes until next meeting, Ms. Tanner made a **MOTION** to table the minutes to the next meeting, Ms. Binns **SECONDED, MOTION CARRIED.**

4. Pending Applications

a. **IWA #21-06-03** / 37 Brick School Road, Assessor's Map 21, Lot 24-02 / Dennis McMorrow, P.E. for Terry Shook and Cynthia J. Stilson-Shook of 236 Brick School Road / Construction of a proposed single-family dwelling and barn. *(Received by Commission 6/24/21, Public Hearing opened 7/22/21; Special Meeting, Site Walk 8/15/21. Public Hearing Closed 8/26/21; must make decision by 9/20 or ask for extension)*

Vice Chairwoman Ms. Shook recused herself and joined the public. Mr. Caldwell stated that he had not listened to the previous meetings regarding the matter and would therefore not be able to participate in deliberations or voting.

Chairman Favreau stated that the Commission members had familiarized themselves with the proposed barn and interior dwelling, construction, the modification to include the manure collection container, within the wetlands review area, and the various erosion control features. Further edification from both the site walk and the public hearing and input from the applicant and the public. He suggested the Commission consider specifically the proposed use – namely, farming - which under the statutes is a permitted use. He explained that the potential effects on the wetlands from the construction of the septic system, widening of the driveway, and the building, which included a dwelling unit, as well as the erosion controls and the stormwater runoff needed to be considered. Chairman Favreau asked Ms. Hodza for her comments and concerns.

Ms. Hodza stated that this application is in the proper jurisdiction of this Commission despite the intended agricultural use. Also, because there is a proposed dwelling and septic system, which are not directly related to the operation of the farm, the application sits squarely in the Commission's oversight. As a reminder, it is never the case that the applicant him- or herself can decide whether a project is an as-of-right activity. It is always the Commission, or its duly authorized agent, who decides. Finally, because of the size of the building and its proximity to the surrounding wetlands, it was deemed a significant activity. Approximately 1.25 acres of established review area being disturbed, and that, of course, is a significant activity.

Ms. Hodza then announced that the Town has an ordinance called the "Right to Farm," which was adopted verbatim from the state statutes. She also stated horses are not considered pets, but livestock. Ms. Hodza re-read a portion of the statutory definition of farming or agriculture which includes "the raising or harvesting of any agricultural commodity, including the raising, feeding, caring for, training and management of livestock, including horses." In addition, "the term 'farm' includes farm buildings and accessory buildings that are used primarily for, and as incident to ordinary farming operations..." and finally, "nothing herein shall restrict the power of a local zoning authority under Chapter 124.

Ms. Hodza stated that the word commodity can be confusing because people think the item has to be for sale. That is, either the horses must be for sale or riding lessons have to be given – that is, some kind of economic activity needs to be derived from the “agricultural commodity”, but it is not the case. Simply raising or caring for those animals is considered an as-of-right activity.

Ms. Hodza stated that, having reviewed the relevant statutes, letters from the public, the testimony given by the Shook Family, and by Mr. McMorrow and the public it seemed that the greatest concern is the possible effect the horses may have on drinking water.

Ms. Hodza suggested that if the Commission does decide to approve this application, a condition requiring the use of best management practices, according to the Department of Agriculture and the Department of Energy and Environmental Protection, to protect drinking water proximate to agricultural uses.

She reminded the Commission that if it approves the application, it must state that there is no prudent and feasible alternative to the plans that were presented.

Ms. Binns asked is there fencing all around? And can we make that a stipulation?

Chairman Favreau stated, I think that fencing has been discussed. If it is not indicated on this plan, we can propose fencing that we would want for the containment, and in particular fencing off the brook. A condition can be fencing to limit the circulation of the animals outside the boarder lines from the water and active water course.

Ms. Hodza added, regarding the idea of fencing, that she was concerned about the maintenance of the existing vegetative buffer which both (a) would offer privacy screening for the neighbors; and (b) it would allow the roots of the plants to help filter any runoff. To prevent the horses from using the buffer, she would recommend a stipulation that a fence be installed 20 or 25 feet inside the perimeter of the property.

Chairman Favreau stated that not allowing the horses into those sensitive areas would mitigate any impact to the wetlands and would offer a filtration buffer. The condition of the perimeter fence would assuage any concerns about certain runoff or disturbance to the areas. Allowing the established buffer to remain in place would act almost like a retaining wall.

Ms. Hodza brought up rotational grazing, or a best management practice that allows certain parts of the grazing area to rest and regrow while others are being used. Ms. Hodza acknowledged that the public has seen the Shooks’ horses grazing there for years. Grazing is a protected, as-of right activity. Now that the property is being developed, perhaps some kind of rotational grazing system can be stipulated, based on best management practices. Possibly the USDA has suggestions or documents that guide those kinds of things.

Ms. Tanner asked if the pond would need fencing to keep the horses out of it. Ms. Binns wondered if the horses would have to drink out of the pond; and stated that her biggest concern was the stream that runs along the adjoining land owned by the Shooks. It was that brook that she felt needed to be fenced off because it is a water source.

Ms. Tanner suggested that if there is a fence around the property and keeping the animals out of the water courses, the impact of the animals would be decreased.

Chairman Favreau conjectured that a perimeter fence installed perhaps 30 feet inside the property line would provide a sufficient buffer.

Ms. Binns suggested fencing no less than 30 feet in, depending on the terrain, to go around the whole property?

Chairman Favreau stated that the fencing along the entire perimeter would mitigate any potential effect on the water. A buffer zone would be created for the entire property and provide a courtesy to the neighbors, particularly with respect to much of the public's concern voiced in their comments and letters.

Ms. Hodza asked to see a drainage system implemented around the manure storage area.

Ms. Binns added that the letter from Mike Ajello raised the concern that, when it was being lifted and hauled, the dumpster would drain liquids onto the ground.

Ms. Hodza stated that the issue of drainage from the dumpster and/or around the manure pad would need to be addressed, or perhaps would fall under the best management practices she proposed.

Ms. Binns asked about the runoff from the roof.

Chairman Favreau felt that in terms of construction, the proposed erosion controls were adequate, including the hay bales. The level spreaders that had been added to the plans since the first version seemed to be adequate for the runoff. He further stated that he believed that the pitch of the barn was changed to address concerns.

Ms. Hodza asked to identify the roof leaders on the map again. Chairman Favreau pointed to the map and noted the 6-inch pipes outletting to the level spreaders.

Chairman Favreau asked for clarification on the DEEP's right-to-farm statute.

Ms. Hodza quoted the statute [CGS §19a-341] "(a) Notwithstanding any general statute or municipal ordinance or regulation pertaining to nuisances to the contrary, no agricultural or farming operation, place, establishment or facility, or any of its appurtenances, or the operation thereof, shall be deemed to constitute a nuisance, either public or private, due to alleged objectionable (1) odor from livestock, manure, fertilizer or feed, (2) noise from livestock or farm equipment used in normal, generally acceptable farming procedures, (3) dust created during plowing or cultivation operations, (4) use of chemicals, provided such chemicals and the method of their application conform to practices approved by the commissioner of environmental protection or, where applicable, the commissioner of public health and addiction services, or (5) water pollution from livestock or crop production activities" – she interjected, reiterating that the DEEP is here saying that pollution of water from livestock or crop is acceptable – "except the pollution of public or private drinking water supplies, provided such activities conformed to acceptable management practices pollution control."

Ms. Hodza stated that the language is taken directly from the Connecticut general statute and reprinted and adopted by the Town as an ordinance. She established that the CT DEP did publish a document called "Manual of Best Management Practices for Agriculture: Guidelines for Protecting Connecticut's Water Resource", in 1993 (Revised 1996).

Chairman Favreau stated that the issue is that regulated areas are determined by distances from wetlands. Non-regulated areas are deemed to be an acceptable distance from the wetlands. As such, Mr. Favreau asked whether the location of the manure dumpster could be made acceptable if it is further than 100 feet away from the wetlands. He noted that the entire manure management system could be moved outside of the regulated area according to the plans.

Chairman Favreau reiterated what the Commission had addressed during their discussion and that there should be conditions if a permit was to be issued. Above and beyond the usual erosion controls to mitigate stormwater runoff during construction and, afterward, from impervious surfaces, the following conditions should be included: (a) the use of Best Management Practices according to the DEEP manual cited, (b) perimeter fencing at least 25 feet inside the property lines, and (c) moving the manure containment area to sit completely within the non-regulated area.

A **MOTION** was made by Ms. Binns to **APPROVE** the application with all the stipulations that Chairman Favreau just enumerated. Ms. Tanner **SECONDED**; all three voting members (Mr. Favreau, Ms. Binns, and Ms. Tanner) voted “aye”; the **MOTION CARRIED**; the application was **APPROVED SUBJECT TO CONDITIONS**.

Ms. Shook has returned to the table, taking her seat as a Commission member.

b. **IWA #21-06-04** / 47 Rabbit Hill Road, Assessor’s Map 9, Lot 27 / Nora Hulton / Proposed addition to single family dwelling. (Received by Commission 6/24/2021, cont’d to 7/22, cont’d to 8/26, applicant granted extension of 28 days to 9/23/2021).

Ms. Hodza read a letter from Nora and Jean Holton stating that Mr. Daniel Lamb, AIA, is authorized to act as her agent. Ms. Hodza stated that she believed the plan had changed substantially from what the Commission was first introduced to, including a basement now. Mr. Lamb stated that it had, that it is now a 22 x 25 ft proposed addition. Chairman Favreau asked what portions of the activity will create disturbances within the review area and how far the activity is from the wetlands. Mr. Lamb stated that from the very small man-made pond, the activity is 69 feet, and that the existing house is 78 feet, 3 inches away. It would be 50 feet from the proposed deck. Ms. Hodza stated she had inspected the site and that there is a retaining wall, a stone wall shown on the plan, past which, the land is higher than where the activity is proposed. In other words, any runoff would have to jump up and over the stone retaining wall before entering the pond. A Commission member asked what would happen if ledge was hit while digging a basement. Mr. Lamb said it was unlikely.

Ms. Binns **MOVED** to approve this application; Ms. Tanner **SECONDED**; the **MOTION CARRIED**.

c. **IWA #21-08-01** / Brick School Road, Assessor’s Map 27 Lot 02-02 / Alistair J. Carr of 184 Brick School Road / Installation of a 176-sf dock on private pond (Received by Commission 8/26/21).

Mr. Carr was not present. Chairman Favreau reviewed the application received last month, stating that this was a fairly standard dock installation on a manmade pond, without an active water course and the dock is going to be removed in the winter.

Ms. Shook **MOTIONED** to approve this application; Ms. Binns **SECONDED**; **MOTION CARRIED**.

d. **IWA #21-08-02** / 37 Arrow Point Road, Assessor’s Map 41 Lot 03 / Laurie Mead McGrory for the Estate of John A. Mead / Installation of a 190-sf dock on Lake Waramaug (Received by Commission 8/26/21)

Ms. Hodza stated that this application was reviewed at the last meeting, but more information is needed to make a decision. Table this application to the next meeting October 21, 2021.

Ms. Shook **MOTIONED** to table this application until the next meeting, Ms. Binns **SECONDED**, **MOTION CARRIED**.

e. **IWA #21-08-06** / 65 Mountain Lake Road / Dean Gregory on behalf of Jessica Masters by permission of Scott Thyberg, Executor of the Estate of Alfred C. Thyberg / Construction of a driveway and roof drain splash pad within the regulated. (Received by Commission 8/26/2021) IWC Regular Meeting and Public Hearing September 23, 2021.

Mr. Gregory stated for the most part we are utilizing the existing wood road. We are cleaning it up and putting in an entrance.

Ms. Binns **MOTIONED** to approve this application, Mr. Caldwell **SECONDED, MOTION CARRIED**

5. New Applications *(Receive and determine significance)*

a. **IWA 21-09-01** / 28 Reed Road / Demetrio Meduri for Star Marie Meduri / Construction of well, septic, and house partially within the regulated area (Received by Land Use Officer 9/14/2021, to be received by IWC 9/23/2021)

Mr. Meduri stated that the house, septic and well are all within 75 ft from wetlands. The TAHD has approved the locations. Chairman Favreau stated what the Commission needed a construction sequence and plans for erosion and sediment controls. Ms. Hodza asked where the stockpiles will be and whether there would be excavation for a basement. Mr. Meduri stated he's not sure where the ledge will be so it may just be a crawl space. Chairman Favreau stated there needs to be an indication of where the stockpile will be on the property, erosion controls for them, a construction sequence, and what the proposed mitigation for run off will be. Ms. Hodza stated that hay bales and silt fence needed to be installed upgradient of the wetlands. Footing drains and their locations of discharge needed to be shown. Mr. Meduri said he

Ms. Binns made a **MOTION** to receive and accept this application, Mr. Caldwell **SECONDED, MOTION CARRIED**

b. **IWA 21-09-02** / 110 Rabbit Hill Road, Assessor's Map 5 Lot 4 / Brian E. Neff, P.E. for Amy L. Walsh and William A. Walker, 147 Congress Street, Brooklyn, N.Y. / Replacement of septic system within the regulated area (Received by Land Use Officer 9/15/21, to be received by IWC 9/23/2021)

Mr. Neff, there's an existing five-bedroom house on site. They'd like to demolish that building new house a little further back. There is a wetland area on the property, which has been flagged out, it's not a big wetland area. No tree cutting in the Wetlands and very minimal disturbance in the regulated area. Still awaiting approval from TAHD, when received will send to the Land Use Office. Erosion control is all included on the supplied map.

Ms. Shook made a **MOTION** to accept and receive this application, Mr. Caldwell **SECONDED, MOTION CARRIED.**

c. **IWA #21-09-03** / 21 Arrow Point Rd, Assessor's Map 45, Lor 29 / A5MK 21 Arrow Point Rd LLC / Removal of (2) storm damaged trees that have fallen into the lake. *(Received by Land Use Officer 9/22/2021, to be received by IWC 9/23/2021).*

Ms. Hodza visited the site and showed the Commission photographs. An enormous 30-inch maple tree had fallen into the lake, took down another small tree, and knocked a couple of branches off another tree, which itself was badly decaying. Ms. Hodza was concerned about how the trees would be removed. Mr. Andrew Schell of Tittmann Design, the contractor working on the construction of the new home at that location, was attending the meeting via Zoom. He stated that the tree needed to be lifted by an excavator and brought on land for cutting and chipping. The uprooted portion of the fallen tree was to be completely

removed from site and native soil from the property would fill in the cavity it left. The area would be seeded and covered with hay. The smaller 10-inch maple that had split and partly partially fallen into the lake would be flush cut, but the roots would remain intact. Ms. Hodza's concern was that when the chainsaws started cutting in or near the water, lots of big chunks of sawdust would be flying into the lake. She wanted to understand the process to protect the lake from this debris.

Mr. Schell explained the intention was to bring everything onto the property and take care of it within the limit of disturbance currently set up. He said that the intention at this point is to have one cut on the tree that's been damaged, and then half in the lake now. Our plan is not to cut anything in the water. And we've actually discussed with another contractor that came in today is pulling it out with a crane to keep us farther away from that bank. If there's any suggestions or requests for how to collect or gather the saw clippings from the chainsaw, I am welcome to those.

Mr. Caldwell was concerned with the balance points of the crane. Mr. Schell stated that the crane operator would move slowly and if need be, readjust the crane when necessary for safety and balance points. At the time of cutting the tree near the water there would be workers who would be there to gather the chips that fall into the lake with a pond net or pool net.

Ms. Hodza asked for Mr. Schell to have the crane operator write up an explanation of the job.

Ms. Binns made a **MOTION** to accept and receive this application, Mr. Caldwell **SECONDED, MOTION CARRIED.**

6. Other Business Proper: None

7. Inland Wetlands Officer's Report (August 26 – September 22)

a. 21 Arrow Point Road – Storm-downed trees at shoreline in lake

Ms. Hodza noted that the issue at 21 Arrow Point Road had been properly addressed by submitting an application for the trees' removal.

b. Discussion of need to (a) revise Inland Wetlands Regulations and correct grammatical, typographical, and referential errors, (b) write by-laws, and (c) in conjunction with a review of Town Ordinances and the Plan of Conservation and Development, propose a unified, revised ordinance

Ms. Hodza informed the Commission that it would behoove them to consider the following:

(a) **Revise Inland Wetlands Regulations and correct grammatical, typographical, and referential errors:** Ms. Hodza feels that the Commission should revisit the regulations and make sure that they're consistent with current case law and, any changes that have come through Connecticut General Statutes or by way of Public Acts.

(b) **Write by-laws:** Ms. Hodza explained what by-laws should be and why they are essential to the functioning of the Commission. They establish quorum and other protocols. Presently, the Conservation Commission and Inland Wetlands Commission are mentioned throughout the Town Ordinances but leave spotty and inconsistent many of the guidelines and administrative rules underlying the Commission's *raison d'être*. According to the ordinances, the Conservation Commission subsumed the duties of an Inland Wetlands Commission and effectively became a combined conservation and inland wetlands commission, whose official name is the Conservation and Inland Wetlands Commission. No rules on what our purpose is, how non-showing members are removed, how and when the officers are elected, and how long should

they be allowed to serve consecutively, etc.

(c) In conjunction with a review of the existing relevant ordinances, and a revising of the regulations, the Plan of Conservation and Development should be reviewed and consulted in order to be certain that the Commission is helping to carry out the goals of the POCD. Ms. Hodza proposed a unified, revised ordinance.

Ms. Binns asked whether the by-laws could be the same as those for Zoning. Ms. Hodza stated they can be similar in format; however, the responsibilities of the Inland Wetlands Commission are governed by the State, not by municipal police powers.

There was a general interest among Commissioners in pursuing these matters further. Ms. Hodza stated that she could have a sample draft of by-laws for the Commission to review.

8. Communications Received- None

9. Public Comment

Hermann Tammen- 50 Curtiss Rd: Mr. Tammen stated that the Commission received a letter from Leonard Engineering regarding the 85 Curtiss Road proposal, and he would like to see the letter posted on the Town's Website. [Ms. Hodza had already noted that ALL FILES ARE AVAILABLE FOR PUBLIC PERUSAL AT TOWN HALL DURING REGULAR BUSINESS HOURS OR BY REQUESTING THAT THEY BE EMAILED] Mr. Tammen continued, stating that at the Town meeting in May, it was approved that the Parks & Rec Department will lease winter storage spaces for docks on the Town Beach. Mr. Tammen questioned whether or not this proposal should have sought approval by the IWC and by Planning and Zoning.

10. Adjournment (Next Regular Meeting October 28, 2021)

MOTION made by Ms. Shook to adjourn the meeting at 8:42 p.m., Mr. Caldwell **SECONDED; MOTION CARRIED**. The next regular meeting is scheduled for October 28, 2021 at 7:00 p.m.

Respectfully Submitted,

Robin Tanner Hoskinson,
Recording Secretary

Link to recording: https://us06web.zoom.us/rec/share/SVVzCPfdNQLV2nLW8MzzGshLigrttxgk-iyMApPS1-nnRK25PB9eTncZSgo8x-Gg.hsl8_8jmyyeyssnU