

John Favreau, Chair  
Cynthia Shook, Vice Chair  
Nancy Binns, Member  
Thomas Caldwell, Member  
Tara Tanner, Member  
Kit Lundberg, Alternate

TOWN OF WARREN  
Inland Wetlands & Conservation Commission  
50 Cemetery Road  
Warren, Connecticut 06754  
(860) 868 - 7881  
[landuse@warrenct.org](mailto:landuse@warrenct.org)



Regular Meeting Minutes  
Thursday, June 15<sup>th</sup>, 2023

The Town of Warren Inland Wetlands & Conservation (IWC) Commission meeting was called to order at 6:02 pm by Chairman John Favreau on Thursday, June 15<sup>th</sup>, 2023. Members present were Vice-Chair Cynthia Shook as well as members Tara Tanner and Nancy Binns. Tom Caldwell, member, was absent as was Kit Lundberg, alternate. Janell Mullen was present as the Town's wetlands agent. Other individuals present were Terry Shook, Robert Nicholas, and John Durschinger, applicants; and members of the public Jim Meyer and Tricia Brown, of 73 Brick School Road, and Lisa Fischer, of 55 Brick School Road.

Item #2 on the agenda was the Consideration of the Minutes- Regular Meeting Minutes of May 18, 2023. Cynthia Shook moved to approve the minutes as written. Tara Tanner seconded the approval of the minutes. The motion passed unanimously. Chairman John Favreau moved to add a second set of minutes to the agenda for consideration. Cynthia Shook seconded the motion to review the minutes from the Site Walk of May 22, 2023. The motion passed. Tara Tanner moved to approve the minutes from the site walk as written. Cynthia Shook seconded the motion. Nancy Binns abstained from the vote having not been present at the field trip. Chairman John Favreau, Tara Tanner, and Cynthia Shook voted to approve them as written. The motion to approve the minutes from the Site Walk on May 22, 2023 passed.

Item #3 on the agenda under "Pending Applications" included IWA#23-3-02. Bob Nicholas and property owner John Durschinger were present to explain the proposal for 381 Brick School Road (Map 33, Lot 06). The proposal involved the installation of a garage and pool in the upland review area. The plan had been amended to include two (2) after-the-fact sheds that were in the upland review area and which had been observed by the Commission during the site walk.

The applicant provided the Commission with an updated application form and paid an additional fee for the "after-the-fact" sheds. Other additional information on the amended site plan dated (6/6/2023) included notes indicating the trees to be removed given their health and close location to the proposed garage, an update to the overall impervious surface calculations, a notation indicating the riprap stones to be located where the drains outlet near wetlands in the woods. Torrington Area Health District had reviewed and approved the updated site plan on 6/6/2023. That documentation had been provided to the Town as a part of the application file.

Nancy Binns moved to receive and accept the updated site plan and application for IWA #23-3-02., Tara Tanner seconded the motion to receive and accept the amended application. The motion passed unanimously.

Upon acceptance of the revised application and its associated site plan, Tara Tanner moved to approve the proposal at 381 Brick School Road. Nancy Binns seconded the motion to approve. The motion passed unanimously.

The next item on the agenda #4A under "New Applications" was IWA #23-05-01. The property owner, James Schullery, was not present at the meeting. His application involved after-the-fact disturbance to the

wetlands & a garage proposal at 183 Lake Road (Map 13, Lot 31). The Commission had yet to deem the application complete. Janell Mullen had checked in with the applicant/property owner on the status of the application. James Schullery is waiting on a soil scientist to delineate the wetlands on the property. The item was tabled until the next meeting.

The next item on the agenda #4B under “New Applications” was IWA #23-06-01 - 37 Brick School Road (Map 21, Lot 24-02) Request for a Jurisdictional Ruling regarding agricultural activity. Cynthia Shook recused herself from the IWC at 6:15 pm and left the table to sit in the audience. Terry Shook of 268 Brick School Road approached the Commission to represent the application. He introduced himself and stated that he had been farming for years. He stated that the proposal for 37 & 39 Brick School Road was agricultural in nature and should, therefore, be exempt from the purview of the IWC in accordance with Connecticut General Statutes.

Upon the applicant’s presentation, Janell Mullen, wetlands agent, brought to the attention of the Commission the items of “Correspondence Received” since they were germane to the discussion at hand (although listed later on the agenda). Chairman John Favreau conferred that it would be an appropriate time to discuss those items. Janell Mullen paraphrased two (2) email chains, one received from Kay & Peter Willcox of 71 Brick School Road, another received from Jim Meyer of 73 Brick School Road and read into the record (verbatim as requested) an email dated June 14, 2023 received via email from Hermann Tammen.

Janell Mullen further stated that 2 of the 3 items had been posted to Town’s IWC website. The third letter had come in when the Town Clerk was unavailable to post any items to the website. She also stated that the application form from the applicant, the Memorandum of Decision on Administrative Appeal dated March 3, 2023, as well as an opinion from Cynthia Rabinowitz, soil and wetlands scientist, addressed to Mr and Mrs T. Shook dated May 26, 2023 had also been posted to the IWC webpage.

The letter from Cynthia Rabinowitz was read into the record verbatim by Janell Mullen, WEO.

Chairman John Favreau stated that this was a very difficult situation provided the application’s past approval as significant activity, its subsequent appeal, and the details of the court’s ruling. Nancy Binns revisited the concerns from the public hearing in 2021. She recalled concerns with the low water table and concerns for water quality in nearby wells.

Chairman John Favreau stated that if the Commission felt that it could not make a decision on the application, it could be referred to CT DEEP.

Nancy Binns asked what DEEP’s involvement would mean for the timeline of the application. Chairman Favreau stated that the cost of their review would be incurred by the Town and the time of DEEP making a determination was unknown since this was unprecedented in the Town of Warren.

Tara Tanner stated that asking CT DEEP for an opinion on the application seemed unfavorable given the situation and the differing opinions on the “right to farm”. Chairman Favreau asked Tara Tanner if she had a positive experience working with CT DEEP in her experience. She stated that they had been a little over bearing at the time, but they had ruled and acted fairly in the end.

Terry Shook, applicant, stated that as far as the state is concerned, agriculture is a use-by-right. John Favreau stated that he was in full understanding of what activities are exempt. However, the application had previously been applied for and the Commission had deemed the activity as “significant”. At this juncture, it didn’t seem appropriate to now deem the proposal as exempt from the wetland’s regulations.

Cynthia Shook asked if she could speak as applicant and stated that horses had been on the property grazing

for over twenty (20) years. She stated that she could put two (2) houses at this location currently.

Chairman John Favreau stated that he felt most comfortable with asking DEEP to make a determination on the application provided the legal history of the court overturning the approval, the record of the previous approval, and the general sense of uncertainty of the Commissioners about how to address the request.

Nancy Binns stated that she felt that they should action the application tonight. Tara Tanner asked if the applicant were to produce a soil scientist report regarding the property in question if that would provide the Commission with enough information to make a decision.

A member of the public, Jim Meyer, interjected to make a statement. Chairman Favreau stated that it was not yet time for public comments.

Chairman Favreau returned to the discussion and framed the Commissions' options. He stated that they could:

1. They receive the application as a Jurisdictional Ruling
2. They could cite the court case ruling and request that the applicant come back with a new application for activity in the wetlands and the upland review area.
3. They could send the application to CT DEEP to make a determination in their stead.

Janell Mullen made statements to clarify what exactly is meant by a "Jurisdictional Ruling". She also asked if the concept of "Jurisdictional Ruling" had been presented at the time of the original application in 2021.

Nancy Binns stated that a ruling from DEEP could be the best solution. John Favreau stated that, in his opinion, the Commission had done their job to the best of their ability and that he would be most comfortable with sending the application to DEEP. He added that he felt that DEEP would make balanced decision as the authority of the State's wetlands regulations.

Nancy Binns moved to refer the application to CT DEEP to make a determination since The Town of Warren Inland Wetlands and Conservation Commission was at an impasse when it came to ruling on the request for a "Jurisdictional Ruling". Tara Tanner seconded the motion. The motion passed unanimously.

Chairman Favreau asked Janell Mullen what they could expect as next steps. She stated that she would get Attorney Willis involved as well as reach out to CT DEEP in order to be better informed about what to expect with this process.

Cynthia Shook rejoined the meeting as vice-Chair at 7:26 pm. Chairman Favreau asked Janell Mullen if there was anything to add to #5 Any Other Business to come before the Commission. She stated that she would mention a few items during her presentation of the Agent's Report.

Item #6 "Communication Received", Janell Mullen stated that the three (3) official items received has been previously discussed. Chairman John Favreau stated that there should be a cut-off when it comes to receiving communication in advance of the meeting. Janell Mullen concurred and stated that should be add a notation to the agenda that stated "Communication Received within 24 hours of the meeting would be considered."

The next item on the agenda was Item #7 "Agent's Report". Janell Mullen added that she had come across indication of projects that had bonds associated with their wetlands' approval (such as 21 Arrowpoint with a \$10,000 bond). She would be compiling a list of those properties to ensure that a protocol is established for follow-up and release of those bonds. She also mentioned that it has a busy time in the field and asked if any Commissioners had questions regarding her report. She was asked about 213 Lake Road- the after-the-fact fence posts that had been installed in the wetlands. The Commission had discussed this item at the May meeting since an extension was never granted and an update application was never received. The proposal had

been denied. Chairman Favreau asked if the remediation proposal at 39 Arrowpoint had been completed as presented. Janell Mullen stated that she had been to the site twice to follow-up and that the extent of the driveway to the shoreline had been reduced and that the disturbed land had been seeded and hayed. She stated that she had reviewed some items in the field to follow yesterday's heavy rain.

Chairman John Favreau then turned to the public for comment. The three members of the public did not have anything to state on the record at that time. Janell Mullen asked their names for record keeping purposes.

Vice-chair Cynthia Shook moved to adjourn the meeting. Tara Tanner seconded the motion to adjourn. The motion passed and the meeting adjourned at 7:38 pm.

Respectfully submitted,

Janell Mullen  
Town of Warren  
Wetlands Agent  
Friday, June 16, 2023 at 7:57 am.