

Town of Warren Inland Wetlands & Conservation Commission
Regular Meeting – Minutes
Thursday, July 23, 2015 - 7:00PM
Warren Town Hall – 50 Cemetery Road

PRESENT: Chairman Keith Jewell, Cindy Shook; Alternates Tom Caldwell and Darin Willenbrock; Stacey Sefcik, Inland Wetlands Enforcement Officer.
EXCUSED: Nancy Binns, Nora Hulton.
ABSENT: Dawn Blocker.

1. CALL TO ORDER AND DESIGNATION OF ALTERNATES.

Chairman Keith Jewell called the regular meeting to order at 7:00PM. The proceedings were recorded digitally, and copies are available in the Land Use Office. Alternate Darin Willenbrock was seated for Nora Hulton, and Alternate Tom Caldwell was seated for Nancy Binns.

2. PUBLIC HEARINGS:

A. Richard & Josephine Kaicher, 33 Arrow Point Road – AFTER-THE-FACT Replacement of Concrete Boat Launch and Reclamation & Placement of Sand at Shoreline, & Replacement of Drainage Piping Outletting into Lake Waramaug.

Ms. Sefcik read into the record the legal notice for this matter. She also explained that, in addition to the legal noticing in the newspaper, the Inland Wetlands Regulations only required noticing to the holders of conservation restrictions on the subject property, to adjoining towns if the property was within 500 feet of the Town line, and to water companies if the property was part of the public water supply watershed. None of these applied to 33 Arrow Point Road. Since the regulations did not specify a requirement to notice abutting property owners, the Kaichers had therefore met their noticing requirement. Mr. Jewell asked Ms. Sefcik if these noticing requirements were typical. She explained that the requirements listed aligned with the State's requirements for noticing. Towns were permitted to require additional noticing to abutting neighbors subject to certain specifications; however, this was not required by the State. She explained that the Planning and Zoning Commission and the Zoning Board of Appeals did require noticing to abutting neighbors as well as the posting of signage. In her experience, all of a town's land use commissions usually had the same noticing requirements; this might be something the Commission would want to look into at a later time.

Attorney Bill Manasse then addressed the Commission on behalf of the Kaichers. Mr. Manasse stated that the issues on the Kaichers' property began with work done on an adjoining property the previous spring. Mr. Manasse submitted pictures to the commission, and he stated that runoff from the neighboring property comes down the Kaichers' driveway toward the lake. Mr. Manasse first submitted a picture labeled as 1491. Ms. Sefcik asked for the date the picture was taken, and after confirming with David Kaicher, Mr. Manasse stated that the picture was taken last year. He then submitted a picture labeled 1529, which he said depicted water pooling on the neighboring property before coming onto the Kaichers' property and entering their drainage system. Mr. Manasse submitted additional pictures labeled 1577 and 1502, which he said showed water coming down the drainage swale on the neighboring property, silt fencing which said was not functioning correctly, and water again entering on the Kaichers' property. Mr. Manasse asserted that the silt fence failed and the hay bales were not properly staked, so water was channelized onto his clients' property. He then submitted additional pictures labeled 1519, 1540, 1535, and 1534 which he stated showed water coming from the neighboring property onto the Kaichers' property. Mr. Manasse said that all of the water that came from the neighboring property damaged the Kaichers' property as the water froze into a huge block and damaged the Kaichers' boat launch; hence, the need for the repairs.

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Mr. Manasse alleged that all of the improvements now on the site were permitted items at the time the Kaichers' built their home in 1993. He stated that, as far as he knew, this was not a situation where anything was done "after-the-fact." Mr. Manasse stated that this was a repair of the apron to the boat dock, not of anything within the water. Mr. Jewell clarified that it was not in fact the dock onsite, but actually the boat launch. Ms. Sefcik noted that the work was done right at the shoreline. Mr. Jewell stated that the problem before the Commission was that the work was done, and the launch was torn out and replaced, without any permits. Mr. Manasse stated that he was not entirely sure that the Town's Inland Wetlands Regulations required a permit for this work to be done, since the regulations address maintenance of existing structures and reference significant amounts of disturbance, as if some level of disturbance was anticipated. He said that, if the Kaichers had asked him whether a permit would be required for this work, he would have said no based on Section 4.1D since maintenance is permitted as of right. He then read Section 4.1D aloud, including the portion that stated that this section did not apply to the removal or deposition of significant amounts of material. Ms. Sefcik observed that material was removed in order to pour concrete at the shoreline. Mr. Manasse reiterated that the regulation called out "significant amounts" of material, and this was the repair of an existing structure. Ms. Sefcik stated that, even if the applicant had wished to perform this work claiming the exemption in Section 4.1D, they would first have been required to come before the Commission prior to completing the work, as it is the Commission's purview to determine their jurisdiction. Ms. Shook then observed that the complete removal and replacement of the launch is not truly maintenance. Russell Posthauer, PE, of CCA, LLC then addressed the Commission on behalf of the Kaichers. Mr. Posthauer stated that concrete crumbles over time, and the only way to maintain a concrete structure is to replace it, which is what the Kaichers did. Mr. Manasse reiterated that the reason the work was done was to repair damage caused by events on the adjoining property.

Mr. Jewell and Ms. Sefcik both stated that, however the situation was caused, the issue now is to look at what was done on the Kaichers property and how best to address it going forward. Mr. Jewell pointed out that there was some confusion as to whether or not the new concrete launch that was installed was of the same size and shape as that which was there previously. Mr. Posthauer stated that there was no way to know that; a 4 foot by 15 foot strip was simply too small to make a determination on from aerial mapping. He stated that when he had first looked at Google maps, it looked like a large concrete pad area, but that the stone area in his opinion had not been altered, only the concrete work had been done. Mr. Posthauer said that, regarding the drainage pipes, a 4-inch and a 6-inch pipe had been installed next to each other; however, the 4-inch pipe was installed above the sand, which he believed was likely causing erosion. Due to the fact that they had become clogged with mud, the other pipes in the ground would have to be removed and cleared. He said that the 4-inch pipe should be cut back, elbowed down, and discharged over rock; the 6-inch does discharge onto rock. Mr. Posthauer stated that he did not see any signs of erosion, but he expected that water dropping four feet over sand would create scour. Rather than adding rock, which would be adding material to a wetland area, Mr. Posthauer stated that he believed the 4-inch pipe could be dropped down so it discharged similarly to the 6-inch pipe.

Ms. Sefcik questioned whether a plan would be put together to reflect Mr. Posthauer's suggestions. He questioned what exactly the Commission wanted to see. He noted that the boat ramp is there and done. The western edge of the boat ramp, from what he could see, appeared to match up with what was there before by the grate, which hadn't changed. He said that the elevation does not appear to have changed, but he cannot say for sure. He said that he could do sketch of the drainage proposal, but since they were only doing maintenance work, he was unclear what was needed. Ms. Sefcik reminded Mr. Posthauer that in their phone conversation, he had mentioned the possibility of putting together a landscaping plan at the beachfront. Mr. Posthauer said that he had not mentioned landscaping as he had not seen the site yet at that time. He said that they had a low, wooden retaining wall with grass behind it.

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There was a gazebo and some catch basins there, but that area had not been touched. Ms. Sefcik explained that Mr. Kaicher had informed the Commission at their previous meeting that water comes down the lawn into the sand area, erodes the sand, and frequently needs to be raked out of the lake. Mr. Jewell concurred. Mr. Posthauer stated that he did not see any evidence of water going over the wooden retaining wall and creating scour. Mr. Posthauer stated that he did not imagine there would be a great deal of erosion around the boat launch area unless there was a major rain event, more than a typical thunderstorm. Since there was stone in the boat launch area, it would help water infiltrate; a torrential downpour might result in very slight erosion.

Mr. Posthauer then said that he believed there was strong potential for another major erosion event due to the drainage swale the neighbors installed along the property line. He said that it was a good idea and installed well except for one location at the end of the swale where there was a big tree and root; at this location the water was to round a curve over a tree root to go into the neighbor's back yard. He stated that with a torrential downpour and debris over time, water would be directed back onto the Kaichers' property.

Mr. Jewell expressed a desire for a site walk of the property. Mr. Manasse questioned what the Commission would like to receive, a designed plan for review or a plan engineered and installed with after-the-fact as-built. Ms. Sefcik explained that currently the Commission had no information whatsoever about what has been built, what work was done, and what worked was proposed to be done. She explained that after her conversation with Mr. Posthauer, she had been expected additional items to be provided as well; however, the Commission had no information at this time.

Ms. Sefcik also observed that not everything present onsite was permitted. She questioned under what permit the boat launch had been approved. Mr. Manasse stated that, to the best of his knowledge, that was permitted on the Inland Wetlands permit issued in 1991. He noted that the permitting process in 1991 was not quite as detailed as it is today and the language was very general. Ms. Sefcik showed the Commission the 1991 permit, which approved 5 cubic yards of beach sand, removal of fallen trees, and preparing the dock area. She noted that there was a zoning permit authorized in 1993 which included a sketch of the property. The sketch depicted the dock and the sand area at the beachfront, but did not show the boat launch area.

Members then discussed the site walk. It was agreed to schedule a site walk on Thursday, July 30, 2015 at 6PM. The Commission requested that the applicant's engineer be present for the site walk.

Mr. Jewell then opened the floor to public comment.

Michael Guadagno, 31 Arrow Point Road, addressed the Commission. Mr. Guadagno questioned whether this would be the only public hearing on this project. Ms. Sefcik explained that the public hearing would be continued to the date of the site walk and then from there, likely to the August regular meeting date. There would be additional time for public comment at that meeting. Mr. Guadagno expressed a desire to see whatever plans were prepared as the French drain was located right along the property line abutting his property. He was concerned how this work would be done without affecting his property and the root systems of trees along the property line. If any damage was done during construction, he would like to ensure it was repaired and survey stakes to be replaced in their proper location.

Regarding comments made about the reasons the pipes on the Kaichers needed to be repaired, Mr. Guadagno stated that the drainage system on the Kaichers' property was 25 years old, and he had no idea whether it was working or not. He said he has still seen water coming out of the pipe and into the lake. He reiterated his desire to see any plans submitted.

MOTION Ms. Shook, second Mr. Willenbrock, to schedule a site walk to be held at 33 Arrow Point Road at 6:00PM on Thursday, July 30, 2015 and to continue the public hearing in the matter of **Richard & Josephine Kaicher, 33 Arrow Point Road – AFTER-THE-FACT Replacement of Concrete Boat Launch and Reclamation & Placement of Sand at Shoreline, & Replacement of Drainage Piping Outletting into Lake Waramaug** to the August 27, 2015 regular meeting; unanimously approved.

3. APPROVAL OF MINUTES:

A. June 8, 2015 special meeting.

MOTION Mr. Jewell, second Mr. Willenbrock, to approve the minutes of the June 8, 2015 special meeting as written; unanimously approved.

B. June 25, 2015 regular meeting.

MOTION Mr. Willenbrock, second Ms. Shook, to approve the minutes of the June 25, 2015 regular meeting; unanimously approved.

4. PENDING APPLICATIONS:

A. Rebecca Holmes, 1 Hopkins Road, and Hopkins Brothers, LLC, Assessor's Map 3 Lot 2-1 - AFTER-THE-FACT Removal of Trees and Shrubbery along Streambank.

Rebecca Holmes addressed the Commission regarding this matter. Ms. Holmes submitted pictures to show that the requested hay mat had been installed as per the Commission's request at the last meeting. Ms. Holmes explained that the plants on the slope had not been removed but had been cut down. Ms. Shook asked if any trees had been taken down; Ms. Holmes explained that dead trees had been taken down on the far side of the stream. She noted that the water level was way down at this time of year.

Ms. Holmes stated that she had contacted Kent Greenhouses, and they had come out to take a look. She had recommended planting 4 Betula nigra Heritage birch trees, three centimeters around, which is a native species that does well along streams and rivers. Since the area is quite wet, she believed these trees would be beneficial. Additionally, 8 Ninebark would be planted in clusters as they do well in wet, stream bank areas. The recommendation was to plant the trees first and then reevaluate once they had taken root whether any perennials were also necessary. Mr. Jewell clarified with Ms. Holmes that the trees were not of the silver birch variety, per the comments of commission member Nora Hulton, who has training in plants and landscaping.

Ms. Sefcik noted that there was still one area remaining where material deposited in the stream needed to be removed. Ms. Holmes stated that she would make sure this was done.

MOTION Ms. Shook, second Mr. Willenbrock, to approve the application in the matter of **Rebecca Holmes, 1 Hopkins Road, and Hopkins Brothers, LLC, Assessor's Map 3 Lot 2-1 - AFTER-THE-FACT Removal of Dead Trees and Overgrown Shrubbery along Streambank** as per the planting plan prepared by Kent Greenhouse, subject to the condition that any remaining cuttings and other material laying within the watercourse are to be removed; unanimously approved.

B. Berkshire Engineering & Surveying, LLC for John Durschinger, 381 Brick School Road – Replace Culverts, Expand Driveway & Construct Garage with Associated Drainage in the Upland Review Area.

Ms. Sefcik explained that both Mr. Durschinger and his engineer, Dennis McMorrow, PE, had indicated they would not be able to be at this meeting. She explained that she had been requested to get comments from the Town's Highway Supervisor regarding the proposed drainage improvements under the driveway by the road. Josh Tanner reviewed the plans and visited the site; he had no concerns with the proposal. Ms. Sefcik stated she had visited the site and agreed that the pipes were in need of replacement. Silt fencing was proposed at the outlet of the new culvert pipes.

The garage site was in fact at a lower elevation than the wetlands adjacent. Additionally, there was a small rise that created a natural berm between the wetlands area and the proposed garage location. She explained that while this wetlands area was close the land actually sloped down from this wetlands across the property to a wetland at the far side away from the garage area. An old paved patio area and deck were also proposed to be removed, and the parking area at the front of the new garage would be enlarged. The new parking area would be gravel. It too was located at a slightly lower elevation than the adjacent wetlands. Ms. Sefcik stated that she had no issues with the proposal based on her site visit.

MOTION Ms. Shook, second Mr. Caldwell, to approve the application in the matter of **Berkshire Engineering & Surveying, LLC for John Durschinger, 381 Brick School Road – Replace Culverts, Expand Driveway & Construct Garage with Associated Drainage in the Upland Review Area**; unanimously approved.

C. Richard & Josephine Kaicher, 33 Arrow Point Road – AFTER-THE-FACT Replacement of Concrete Boat Launch and Reclamation & Placement of Sand at Shoreline, & Replacement of Drainage Piping Outletting into Lake Waramaug.

The Commission agreed to table discussion of this matter to the August 27, 2015 regular meeting.

5. NEW APPLICATIONS:

No business was discussed.

6. INLAND WETLANDS ENFORCEMENT OFFICER'S REPORT:

Ms. Sefcik briefly reviewed her enforcement activities for the period from June 26, 2015 through July 23, 2015. She explained that the Town of Goshen, where she also was employed, had recently adopted Beach Maintenance Best Management Practices to use as guidelines for Inland Wetlands applicants. The document provided information regarding how to maintain existing beaches as well as links to information about how to conduct a shoreline stabilization project. She questioned whether the Commission might want to review this document and see if this was something they wished to implement here in Warren. Members expressed interest in reviewing this document.

7. CORRESPONDENCE:

No business was discussed.

8. OTHER BUSINESS PROPER TO COME BEFORE THE COMMISSION:

No business was discussed.

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MOTION Mr. Willenbrock, second Ms. Shook, to adjourn the meeting at 8:04PM; unanimously approved.

Respectfully submitted,

**Stacey M. Sefcik
Inland Wetlands Enforcement Officer**