

INLAND WETLANDS AND WATERCOURSES COMMISSION

MONDAY, JULY 1, 2019

TOWN HALL 7:00 P.M.

Present: Chairman Bruce Burnett, Susan Ryan, Todd Werner, Timothy Bobroske, Eric Rahn, Robert Wesneski, Merrill French, Alternate Member Robert Orciari, Alternate Member Leah Blake, IWZEO Troy LaMere and LUC Polly Redmond

Also Present: Town Counsel Michael D. Rybak and First Selectman Michael R. Criss

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Burnett called the meeting to order at 7:00 p.m. All regular members present are seated.

2. APPROVE MINUTES OF PREVIOUS MEETING: 6/3/19

T. Bobroske **motioned** to approve the minutes of the previous meeting with the following amendments:

Page 3, Item 6, Line 15: “Mr. Orciari states that Mr. Gagne (the person who illegally clear cut **without** owner permission)...” and to Page 4, Item 8, Line 2: “He **planned** (omit “*was in contact*”) to contact

Steven Camp because...” S. Ryan seconded the motion and it passed unanimously with R. Wesneski and E. Rahn refraining from vote due to their absence at the 6/3/19 meeting.

3. KEVIN & KATHLEEN MCGIVERN – DISCUSSION/POSSIBLE DECISION - APPLICATION FOR SINGLE FAMILY DWELLING, 91 CATLIN ROAD.

Dennis McMorrow, P.E., Berkshire Engineering and Mr. McGivern are present. Mr. McMorrow states the plans have been revised to 7/1/19 based on a letter received from the Northwest Conservation District upon the request of IWWC to review and give their thoughts on the location of the proposed retaining wall and its proximity/impact to wetlands. Cynthia Rabinowitz, Executive Director, NWCD, Professional Soil Scientist, wrote to the Commission on 6/24/19 stating that with the variance granted to this application by the Harwinton ZBA, there is only a small amount of remaining permeable land to build on that includes areas that are very steep. With this in mind, she writes, that these limited areas will create increased stormwater runoff and less infiltration than could be obtained with more permeable surfaces. She recommends Low Impact Design techniques to mitigate the effects of creating impervious surfaces. Also upon request by the IWWC, a Soil Report dated 6/4/19 prepared by George Malia, Certified Soil Scientist, is provided by Mr. McMorrow. Mr. McMorrow states that with the request for investigating LID techniques he looked at the area uphill of the well location and sized a water quality basin with the details of the basin shown on Sheet 2 Details and Notes. He explains that the top soil in this area will be stripped and replaced with mixed soil keeping the basin shallow and the backside of the basin will be 18 inches deep. A berm will be created and a 6 inch vertical solid PVC pipe with slotted cap on top of pipe will be provided in the basin. Site plans note that the “proposed retaining wall and safety fence to be designed by others.” and not by Berkshire Engineering. Mr. McMorrow notes that the plans provided are now Septic System Design plans, not Site Plans, and that the plans will go to Torrington Area Health District for approval. T. Bobroske states that the plan is a good one and it was good to take NWCD’s advice and apply LID but he still has concerns with the wall being built in the wetlands because of the work involved building it so close to the wetlands. Mr. McMorrow states that the wall selected is ideal for this scenario and will require an 18” deep trench with the wall being built up a couple of feet at a time, being compacted after each layer. The wall will be made of interlocking block with no work to be done on the side facing the wetlands. T. Bobroske asks the applicant to be fully aware that he is to stay out of the wetlands to which Mr. McGivern states he understands. T. Bobroske notes that the IWZEO will have to conduct multiple inspections because of the proximity of the construction of the wall and the house to the wetlands and would the applicant be willing to pay for those additional inspections. Mr. McGivern states that he isn’t sure what that fee would be so he can’t answer. Mr. McMorrow offers that the area could be staked and that orange construction fence could be installed to be certain the wetlands will be untouched. R. Orciari notes that the previous plan had a retaining wall with a piping system for the ports. Mr. McMorrow states that the segmental block wall doesn’t need a footing drain. R. Orciari states his belief that the standard plan, the manufacturing plan, should require a footing drain. Also, with the sand being

placed down, there will be leaf litter and he questions whether there is any plan for the owner to clean out the basin. Mr. McMorrow states that the mix to be planted will be grass and will be maintained by the owner. T. Bobroske **motioned** to approve the application with the stipulation that \$300 be collected from the applicant to cover the cost of IWZEO inspection fees that go above and beyond the normal inspections. R. Wesneski seconded the motion. LUC Redmond refers to Wetlands Regulation 19.5i Monitoring Compliance Fee and that the \$300 additional inspections fee is noted as “high level of inspections (9+) required during the course of the project. M. French states that she believes this application to be a low-level inspection need with 1-2 inspections and calling for a \$35.00 Monitoring Compliance Fee. Mr. McGivern states he believes the activity calls for a medium level of inspections (3-8). T. Bobroske **withdraws his motion** at this time. S. Ryan **motioned** to approve the application as a regulated activity with the condition that Wetlands Regulation 19.5i be applied charging the applicant \$100.00 for the anticipated 3-8 inspections during the course of the project, seconded by M. French. Motion passed unanimously with T. Bobroske opposed.

4. DAVID NADEAU – APPLICATION FOR DRIVEWAY CONSTRUCTION/EXTENSION, 211 BLUEBERRY HILL ROAD.

Mr. Nadeau is present and Site Development Plans from a 1992 subdivision showing Mr. Nadeau’s property, house and driveway layout are reviewed. The extended driveway will be 500 feet long and will exit out onto Warren Glen, Burlington. The Town of Burlington Public Works Department has issued a driveway opening permit for this proposal. E. Rahn **motioned** to accept the application as a regulated activity, with a low-level inspection (1-2), with the condition that the Town of Burlington be notified of this application in compliance with Inland Wetlands Regulation 8.2a and § 22a-42b and 22a-42c, seconded by S. Ryan. Motion passed unanimously. LUC Redmond will send notice by certified mail to the Town Clerk of Burlington.

5. SHOW CAUSE HEARING PERTAINING TO CEASE AND DESIST ORDER ISSUED BY IWZEO TROY LAMERE ON JUNE 20, 2019 TO MICHAEL AUDET FOR IMPROPER MANURE MANAGEMENT/MANURE RUNOFF TO BULL POND, LOCUST ROAD, FROM 70 LOCUST ROAD.

Commissioner R. Orciari recuses himself as Commissioner at this time as he is Harwinton Land Trust President and initiator of the complaint.

Michael Audet is present. Chairman Burnett states that the last thing this Commission wants to do is interfere with farms in town but there is concern on the cow manure entering Bull Pond and would appreciate discussion with Mr. Audet on Best Management Practices for manure management. Mr. Audet suggests that the Commission read the Right to Farm Law to be informed on permitted uses for farming. He provides a copy of NCRS (National Resources Conservation Service)/USDA letter dated 6/28/19, signed by Vivian Felten, Acting District Conservationist, giving him notice that they (NCRS) will be visiting the Audet farm on 7/17/19 at 9:30 a.m. to assess manure management practices. Chairman Burnett states that this is exactly what the Commission wanted done. For the record, Chairman Burnett reads an opinion letter from Town Counsel Michael D. Rybak which states, “The CT Right to Farm Act provides farmers with protection from nuisance laws for noise, odor, and even water pollution/runoff in some circumstances. The Act does not preempt local Planning, Zoning or Wetlands regulations and does not prevent a municipality from enforcing those regulations. The local version of the law, Ordinance 140, specifically provides exemptions to the right to farm where the conduct violates applicable “health, “safety”, “wetlands”, and “environmental” regulations. Even when the Right to Farm Act was at issue, in order to gain those protections the farmer must (1) comply with accepted agricultural practices established by the Commissioner of Agriculture and (2) not act in a negligent, grossly negligent, or reckless manner.”

E. Rahn asks Mr. Audet how many cows he has on his property with Mr. Audet answering, 40 cows. E. Rahn **motioned** that discussion will continue during the next IWWC meeting on 8/5/19 seconded by R. Wesneski. Motion passed unanimously.

IWZEO Troy LaMere is to ask the USDA Representative for results of the 7/17/19 meeting at the Audet farm. E. Rahn states that he would like the USDA to be involved and give guidance in this matter. He knows Mr. Audet has the right to pollute (as a farm) but he is not sure he has the right to pollute off his property. T. Bobroske asks for the possibility of a meeting to be setup for the representative of USDA to meet with IWZEO Troy LaMere and Robert Orciari, Land Trust President. E. Rahn states that he would like to see the report of the 7/17/19 meeting at the Audet Farm and that he would like that representative to attend the next IWWC meeting on 8/5/19. IWZEO T. LaMere will coordinate this.

Chairman Burnett asks Atty. Rybak if the town's engineer, W.M.C. Consulting Engineers, could conduct a water sampling with First Selectman Michael Criss replying that W.M.C. conducts water sampling twice a year for the town garage. He provides a letter from W.M.C. dated 7/2/19 that reports on the 2019 Permit Year Stormwater Discharge Sampling (5/28/19 Sample) Harwinton Town Garage. Stormwater Monitoring Reports are attached to the letter. Chairman Burnett is curious as to whether W.M.C. can test Bull Pond for nitrogen or coliform. First Selectman Criss states that if there is nitrogen or coliform, it has to be determined that it is from the cows and not the geese that gather on the pond, unless of course NCRS says the Audets are not using best management practices for manure management. IWZEO LaMere states that the town needs to prove there is a water quality problem at Bull Pond and should know this before stating there is a problem. He states that when he went out to Bull Pond he saw no contaminants and only saw geese on the pond. R. Orciari states that Cynthia Rabinowitz' inspection report stated that she saw sludge and she felt that it was contaminants from the Audet farm. IWZEO LaMere states that the Commission has no report stating there's a problem with the pond. E. Rahn states that if the Commission has a concern, it is a right of the Commission to ask for an inspection. M. French **motioned** that IWZEO T. LaMere is to contact NCRS and ask their representative to visit Bull Pond with him on the same day of their Audet farm inspection on 7/17/19 and that the Commission requests a copy of their inspection report of Audets property. R. Wesneski seconded the motion and it passed unanimously with Eric Rahn abstaining from vote as he is a member of the Land Trust and steward of Bull Pond.

R. Orciari is reseated at this time.

S. Ryan **motioned** to amend the agenda and take up **Item 7 and 8** at this time, seconded by R. Wesneski. Motion passed unanimously.

7. EXECUTIVE SESSION – PENDING LITIGATION.

E. Rahn **motioned** to enter into Executive Session at 8:12 p.m., seconded by R. Wesneski. Motion passed unanimously. Town Counsel Michael D. Rybak and First Selectman Michael R. Criss are invited to remain. S. Ryan **motioned** to exit out of Executive Session at 8:25 p.m., seconded by R. Wesneski. Motion passed unanimously.

6. BUMPER BROOK ESTATES, LLC – LITIGATION. DISCUSSION AND POSSIBLE DECISION WITH RESPECT TO PERMIT ISSUED 11/5/18 AND REVOKED 5/6/19.

R. Wesneski **motioned** to reinstate the Harwinton Inland Wetlands and Watercourses regulated non-significant activities permit of Bumper Brook Estates, LLC for grading, storm drainage facilities and construction of elderly housing units, Twenty-four Bumper Road, Assessors Map Nos. A8-03-0003, A8-03-0004 and A8-03-0006, including the original condition that payment of WMC Engineers invoices [not to exceed \$5000.00] be paid by the applicant, granted on November 5, 2018 and revoked on May 6, 2019, in order to settle Count One of the pending litigation entitled Bumper Brook Estates LLC v. Inland Wetlands and Watercourses Commission of the Town of Harwinton, et al, originally filed in the Superior Court for the Judicial District of Litchfield at Torrington on May 24, 2019, and subsequently removed to the United States District Court on June 18, 2019. No admission of liability as to Counts Two and Three of the Complaint is implied by this decision. E. Rahn seconded the motion and it passed unanimously.

7. ERIC RAHN – APPLICATION FOR 12' X 12' TRAPPER'S CABIN, BIRGE PARK ROAD, ASSESSORS MAP NO. C7-05-0026.

Mr. Rahn recuses himself as a seated Commissioner at this time.

Mr. Rahn explains that he recently purchased the 30 acre parcel and would like to put up a 12' x 12' cabin, with no electricity and no water, to use when he is there. He explains that he is working with the USDA on the invasive plants that the property is riddled with. There is also an old apple orchard there that he will be getting back to producing. The property is in 490 Farm and Forest and that through the USDA he has a farm number. The Zoning Commission gave approval of this proposal as an agricultural use of the property as defined under Section 2 Rules and Definitions, Agriculture, of the Zoning Regulations. After review of the Flood Map it is determined the activity is not being conducted in the Flood Zone. S. Ryan **motioned** to approve the application as a use of right, property management, seconded by R. Wesneski and passed unanimously.

8. EXECUTIVE SESSION – PENDING LITIGATION.

See above.

9. BUMPER BROOK ESTATES, LLC – LITIGATION. DISCUSSION AND POSSIBLE DECISION WITH RESPECT TO PERMIT ISSUED 11/5/18 AND REVOKED 5/6/19.

See above.

9. COMPLAINTS/ENFORCEMENT ACTIONS/REPORTS.

None.

10. ANY OTHER BUSINESS.

LUC Redmond reports signing off on the following applications:

Christopher Brunner, 54 Silano Drive – 16' x 32' inground pool – non-regulated activity

Ronald Visini, 81 Orchard Hill Road – construction of single family dwelling – no wetlands.

LUC Redmond informs the Commission that the Planning Commission is asking Commissions, Boards and Organizations for updates to sections within the Plan of Conservation and Development that pertain to them. Commissioners have reviewed the information they received in their agenda mailing and the only change they request is that on page 36, paragraph 3 to read as follows:

“Because of Harwinton’s many streams and vernal pools and its dependence on underwater aquifers...”

11. CORRESPONDENCE.

None.

12. INVOICES.

S. Ryan **motioned** to approve the May 2019 invoice of the IWZEO for \$91.46, seconded by R. Wesneski. Motion passed unanimously.

13. ADJOURN.

S. Ryan **motioned** to adjourn the meeting at 8:47 p.m., seconded by R. Wesneski. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 7-9-19 AT 12:55pm
ATTEST TOWN CLERK
Janet Byan