

INLAND WETLANDS AND WATERCOURSES COMMISSION
MONDAY, APRIL 1, 2019
TOWN HALL 7:00 P.M.

Present: Chairman Bruce Burnett, Susan Ryan, Eric Rahn, Merrill French, Alternate Member Robert Orciari, Alternate Member Leah Blake, Land Use Coordinator Polly Redmond and Inland Wetlands Enforcement Officer Troy LaMere

Absent: Robert Wesneski and Timothy Bobroske

1. OPEN MEETING – ESTABLISH QUORUM.

Chairman Burnett called the meeting to order at 7:00 p.m. All regular members present are seated. Alternate R. Orciari is seated for R. Wesneski and Alternate L. Blake is seated for the vacant member position.

2. APPROVE MINUTES OF PREVIOUS MEETING: 3/4/19

M. French **motioned** to approve the minutes with amendment to page 1, item 3, paragraph 2, line e, to include the following plans that were included with the application: Title Sheet, Existing Conditions (Sheet EX), dated 12/22/17, Site Plan – Layout and Landscaping (Sheet LA), 12/22/17, Site Plan – Grading and Utilities (Sheet GU), dated 12/22/17, Sediment and Erosion Control Plan & Detail (Sheets SE and SED), dated 12/22/17, and Site Details (Sheets SD1 & 2), dated 12/22/17. S. Ryan seconded the motion and it passed unanimously with L. Blake refraining from vote due to her absence at the 3/4/19 meeting.

3. CITY OF TORRINGTON – DISCUSSION/POSSIBLE DECISION - ANIMAL CONTROL FACILITY UPGRADE, 252 BOGUE ROAD.

This item will be taken up for discussion at the end of the meeting.

4. MICHAEL & DEBORAH MILLUM – SEPTIC REPAIR FOR EXISTING DWELLING, 116 MANSFIELD ROAD.

Dennis McMorow, P.E., Berkshire Engineering, is present for the applicant. Plans by Berkshire Engineering titled Septic System Repair Design, dated 3/13/19 are reviewed. Present leaching fields are 40 feet from a watercourse and the new leaching fields will be 90 feet from the watercourse. A water treatment system needs to come out of the basement and needs to be in its own housing. Mr. McMorow states that the line for the water treatment system will come out of the building and be picked up by a 4" pipe. He explains that the septic repair is not an emergency but the house is on the market and the owners are trying to close quickly and are hoping to get an approval tonight. R. Orciari **motioned** to approve the application as a Zoning signoff, seconded by S. Ryan. Motion passed unanimously.

5. INFORMAL DISCUSSION – W.M.C. CONSULTING ENGINEERS – REVIEW PRACTICES.

Steve McDonnell, W.M.C. Consulting Engineers (Harwinton's consultant engineers), is present for discussion. Chairman Burnett informs Commissioners that he and LUC Redmond met with Steve McDonnell at the town hall a few months ago regarding the turnaround time of W.M.C. reports requested by the Commission for applications requiring their review. S. McDonnell states that W.M.C. would typically get plans in from the applicant and then give an estimate on review time as well as fees. If the review will take more time than expected, the applicant would be notified. He understands the time constraints for Commissions to make their decisions on the applications and states that he will make sure that future reports are delivered in a timely fashion.

6. DISCUSSION – OUTSTANDING W.M.C. CONSULTING ENGINEERS OUTSTANDING INVOICES IN CONNECTION WITH REVIEWS FOR BUMPER BROOK ESTATES, LLC.

Steve McDonnell, W.M.C. Consulting Engineers, remains present for discussion. Also present are Atty. William Tracy and Scott Bayne, S&W Custom Home Builders. Atty. Tracy states that had the process just described by Steve McDonnell been instituted there would be clarity and they wouldn't be in the position they are in now but no estimate was received from W.M.C. for their wetlands review. The applicant, Scott Bayne, found that W.M.C. spent sixty (60) hours reviewing the project with \$6,000.00 worth of billing that is his responsibility to pay but believes to be unreasonable and excessive.

Review time is discussed with Atty. Tracy stating that the application was brought before the Wetlands Commission in March and W.M.C. didn't provide their final report until May. At the May IWWC meeting the Commission was unaware that the W.M.C. report had been sent to the Land Use office at 6:00 p.m. via email and that report was not available to IWWC until the June meeting. Twenty-one (21) hours was logged for that review resulting in the May report. Atty. Tracy states that an additional twenty-six (26) hours was logged by W.M.C. after that report came in and he believes it shouldn't have required that much time at that point. He agrees that there were follow-ups and there seemed to be nothing less than an hour charge each time.

The night the IWWC approved the application, on November 5, 2018, a motion was made to approve the application with the condition that all W.M.C. Consulting Engineer invoices be paid by the applicant. It was at that meeting that Atty. Tracy expressed concerns of his client who believed that the amount billed by W.M.C. was excessive and that the hours spent on the plan also seemed excessive. At that time the IWWC didn't think it was in their purview to address and suggested that the Board of Selectmen be contacted to try and resolve. At this point, Atty. Tracy states, he is not sure where to turn to resolve this matter. He states that he would hate to see the Inland Wetlands permit invalidated at this point because that would involve the Superior Court. Chairman Burnett questions if there is a way for the applicant to pay the invoices and then appeal the condition with Atty. Tracy likening that to paying the IRS and then trying to get your money back on an appeal. Atty. Tracy notes that his client has already paid \$2500.00 and now the question is how to get the \$4000.00 paid.

Steve McDonnell, W.M.C. Consulting Engineers, states that this was not a simple project to review and that it was reviewed with the protection not only for Harwinton but for the City of Torrington as well. He notes that he himself spent time on the project without billing for his time. Atty. Tracy states that the application is now in front of the Zoning Commission for their approval and that commission has already held two public hearings to which he had to give an extension in order for the hearing to remain open because W.M.C. Engineering comments have not yet been received. S. McDonnell states that a thorough review was done for the Wetlands Commission so the Zoning review will be done quickly. E. Rahn questions if the Zoning Commission is responsible for making sure a fee is paid or whether it is a civil matter between the two parties, W.M.C. and S&W Custom Home Builders. Atty. Tracy states that his client has no contractual relationship with W.M.C., that it is the town that contracts with W.M.C., therefore there is no way for discussion with W.M.C. since they answer to the Commissions and the town.

Scott Bayne, S&W Customer Home Builders, addresses the history of his application from the time the Wetlands Commission asked to have W.M.C. review the plans, even though no work was being done in the wetlands. That was in March/April and W.M.C. billing went on to December. He states that he has looked at applications that have come before the Harwinton Wetlands Commission in which W.M.C. Consulting Engineers have reviewed, applications involving road construction and work within vernal pools, and W.M.C.'s fees were not as much as his. He had discussions with his engineer, R.R. Hiltbrand, who relayed to him that there wasn't that much back and forth with W.M.C. Scott Bayne also notes that the time it took for W.M.C. to review plans delayed his project over six months so not only is the invoicing unreasonable, the timing is also. He states that now the Zoning Commission is saying that an approval from them won't be received without these invoices being paid.

Steve McDonnell states that there were comments back and forth with the applicant's engineer and there were delays getting responses back. W.M.C. has documented the time spent on this project very well and can come back with more detail on that time spent.

~~R. Oreiari notes that with a proposed elderly housing complex, he believes this takes some review time with~~ E. Rahn stating that there were a couple of IWWC meetings where Commissioners didn't like something and asked for a change. Atty. Tracy breaks down the timeframe of the application stating that the first Wetlands meeting was in March, they came back before the Commission in April with no review from W.M.C. who, according to Atty. Tracy, didn't start their review until April. At the May IWWC meeting, the W.M.C. report

came in but it came in after business hours and wasn't provided at the meeting. June and July there was still no resolution and at the August meeting more comments and revisions were requested by W.M.C. In October, W.M.C. had additional comments along with three new comments. At the November IWWC meeting, W.M.C. reported everything was resolved. Scott Bayne reports that new issues were brought up after revisions were made with Steve McDonnell stating that they reserve the right if something is picked up on after a previous review, they can make comment, that it's not unusual.

S. Ryan states that nobody wants to go to court over this with Chairman Burnett stating he isn't sure what this Commission can do. S. Ryan states that she understand the lag but this is an expensive project to review and she questions what is "reasonable" in regards to engineering fees. R. Orciari states that he has no idea what is reasonable or what the cost is for an engineer. He believes something should be done about holding up a decision in front of the Zoning Commission but perhaps it's a civil matter. Atty. Tracy states that perhaps the Wetlands Commission could modify their approval. E. Rahn states that if this Commission hired W.M.C. they have to stand with them. That it is W.M.C. who guides the Commission through projects.

Atty. Tracy refers to the timing of the reports being submitted with Steve McDonnell stating that it's common in the industry. This project did take longer than it should have but he will not take all the blame. R. Orciari states that there were some big changes made to the plans that were required to be reviewed by W.M.C., especially with the slope on the property. Chairman Burnett states that this Commission has assurance from Steve McDonnell, as a result of his conversation with him and LUC Redmond, over concerns of timely reports.

M. French states she is unsure this Commission is in charge of what's reasonable because they don't have a clue as to what's reasonable. Chairman Burnett states that maybe the answer is to take action against the town and take it to court to determine if the fee is unreasonable.

IWZEO Troy LaMere states that he heard of this happening in another town and what it comes down to is, the Wetlands Commission doesn't have the authority to cut the engineer's prices. In the particular town he's referring to, the applicant went to the Selectmen and it was under their authority on whether to take on half of the responsibility of the engineering bill. If the engineer isn't willing to cut his bill, and the Selectmen won't agree to share the cost, the applicant pays it. Chairman Burnett agrees with T. LaMere's comment.

Steve McDonnell is willing to write a summary of the project and detail the complexity of it and bring it back to the Commission at the next meeting.

The item will be placed on the next IWWC meeting agenda for further discussion.

7. INFORMAL DISCUSSION – SCOTT KENNISTON – USE OF PROPERTY, 122 LITCHFIELD ROAD, POST OFFICE PLAZA.

No one is present to represent.

Item 3 is taken up for business at this time.

CITY OF TORRINGTON – DISCUSSION/POSSIBLE DECISION - ANIMAL CONTROL FACILITY UPGRADE, 252 BOGUE ROAD.

R. Orciari ~~motioned to approve the application for upgrades to the animal control facility that includes~~ construction of a storm water management basin and a new animal shelter to be located at 252 Bogue Road as a regulated non-significant activity. M. French seconded the motion and it passed unanimously.

8. CONTINUED DISCUSSION – COMMISSIONER SITE VISIT AT BREAK MAIDEN LANE FOR TREE PLANTING AND VERNAL POOL VIEWING IN RESPONSE TO C. WEBB & ASSOCIATES, LLC 2/27/19 REPORT.

Jared Braddock, Project Manager, Pickett Brook Properties, LLC, has written a letter to the IWWC dated March 19, 2019 that refers to the failed plantings on Break Maiden Lane noted in Clinton Webb's report. He writes that the applicant will replace the plantings with like or similar species during the coming spring planting season. The letter goes on to state that the applicant will coordinate pre and post planting meetings with the wetlands enforcement officer at the appropriate time. Commissioners ask LUC Redmond to contact Jared Braddock to set up a date for a site visit. Once the date is confirmed, a Special Meeting notice will be filed and sent out to Commissioners.

Atty. Tracy, legal counsel for the applicant, Pickett Brook Properties, is in the audience stating that he just reached out to Jared Braddock informing him that a site visit will be conducted by the Wetlands Commission. Mr. Braddock will try to coordinate a date and time for the visit with Clinton Webb accompanying him and the Commissioners.

*A date for the site visit has been set for **Friday, April 26, 2019 at 5:00 p.m.** with the location being at the intersection of Break Maiden Lane and Plymouth Road.

9. ANY OTHER BUSINESS.

LUC Redmond reports an agent signoff for:

Nathan Sornborger, 261 Woodchuck Lane, 16' x 24' shed – non regulated activity.

Commissioner R. Rahn addresses clearing of brush and trees along Catlin Road and questions whether this work is part of a permit the Lake Association has applied for. Cindy Banack, Treasurer and Tax Collector of the Lake Harwinton Association, is present in the audience. She will be sitting in on IWWC meetings every once in a while taking the place of Jay Buss. She asks that the Wetlands Commission issue permits for work in the Lake Association before the Association does. She mentions a future application for construction of a home at the corner of Catlin Road and Davis Road that will soon appear before the IWWC under the applicant's name of McGivern. She cautions that there are wetlands in the area and asks the Commission to ask the applicant not to cut down/clear cut all of the trees on his property.

IWZEO Troy LaMere informs the Commission that he conducted an inspection at the Torrington WPCA plant in connection with their approval for upgrades. He reports that there are unprotected piles of earth material on the site that have been there for twelve years (he has this knowledge as a past City of Torrington Public Works employee) and he has seen these piles affected only once during a heavy rainstorm. He questions the Commission on whether they would want erosion control measures put in place. There's no present runoff on the property now but they are unprotected. He also mentions that there's a berm on the property that has been disturbed. Chairman Burnett states that perhaps IWZEO LaMere should just keep an eye on it at this time with IWZEO LaMere stating he will inspect the property after heavy rains.

10. COMPLAINTS/ENFORCEMENT ACTIONS/REPORTS.

Complaint against Michael Audet, 70 Locust Road by Robert Orciari, 47 Wilson Pond Road, President, Harwinton Land Trust. Farm manure and sediment creating water quality issues to Bull Pond, Locust Road.

Atty. William Tracy remains present as a member of the Land Trust.

IWZEO Troy LaMere updates the Commission on the complaint. He states that he sent a certified letter to Mr. Audet and that Mr. Audet reached out to him with a phone call and they met at the Locust Road farm. He reports that the manure pile is actually silage and that the manure from the cows is actually taken off site and spread on nearby fields. Where the cows congregate, to the east of the town highway garage, is not Mr. Audet's property but land he uses for the cows to graze on. IWZEO LaMere states that he suggested to Mr. Audet to keep the cows out of this area, which is directly across from Bull Pond, with Mr. Audet explaining that he doesn't have any room elsewhere for the cows to graze. Together they visited Bull Pond where they

found several hundred geese on the pond with IWZEO LaMere pointing out that the geese can cause nutrient issues. He spoke with Joe Witherman (DEEP) regarding the complaint of cow manure entering Bull Pond and Mr. Witherman also gave him the name of a good expert on geese who he will be contacting. IWZEO LaMere states that Mr. Audet is not willing to come before this Commission and doesn't have the funds for eco-friendly measures to be taken. R. Orciari states that the manure pile in the past was located in front of the Audet barn and was removed after he wrote to Mr. Audet. R. Orciari visited the site with Cynthia Rabinowitz, Northwest Conservation District, and her main concern was the pile of manure and that her comment was that it should be contained with concrete barriers. He also notes that the cows congregate by the highway garage because of salt runoff from the piles stored there and that's what's attracting them to this area. R. Orciari questions whether this area could be roped off. IWZEO LaMere states that he informed Mr. Audet that he would get back to him after discussion at tonight's meeting. Mr. Audet has relayed to IWZEO LaMere that he is willing to work with the Commission and that he does want to do the best he can but some things are not economical to him even with grants. Chairman Burnett suggests that the Land Trust approach the owner of the property where the cows are grazing, east of the town highway garage, to find out if the cows can be fenced away from this area. R. Orciari questions if Mr. Audet would be willing to contain the manure pile with IWZEO LaMere stating he didn't see a manure pile but if in the future there is, he will suggest the use of hay bales. William Tracy states that the manure is no longer there because that's the cycle of a farm with cows, the manure is accumulated until spring and then spread on fields.

11. CORRESPONDENCE.

A copy of a letter from LUC Redmond, dated 3/20/19, to William Tracy, legal counsel for Pickett Brook Properties, LLC, is received. The letter informs Atty. Tracy of Clinton Webb's report and instruction that further inspections are due on the property off Break Maiden Lane and replanting of trees should take place.

CT Wildlife Magazine is received.

12. INVOICES.

IWZEO Invoice for 3.5 hours is presented. S. Ryan **motioned** to approve the invoice, seconded by M. French. Motion passed unanimously.

13. ADJOURN.

S. Ryan **motioned** to adjourn the meeting at 8:45 p.m., seconded by L. Blake. Motion passed unanimously.

Respectfully submitted,

Polly Redmond
Land Use Coordinator

RECEIVED FOR RECORD AT HARWINTON CT
ON 4-9-19 AT 9:15am
ATTEST TOWN CLERK *James Bryan*