

TOWN OF KENT INLAND WETLANDS COMMISSION

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RECEIVED

By Darlene Brady at 10:14 am, Feb 27, 2024

REGULAR MEETING MINUTES

The Inland Wetlands Commission held a regular meeting on Monday, February 26, 2024, beginning at 7:00 p.m. via zoom.

1. CALL TO ORDER

Ms. Werner called the meeting to order at 7:04 p.m.

2. ROLL CALL AND APPOINTMENT OF ALTERNATES, IF REQUIRED

Commissioners Present: Lynn Werner, Chairman; Jeff Galusha, Anthony Palumbo, Marge Smith, Paul Yagid

Staff Present: Tai Kern, Land Use Administrator
Donna Hayes, Assistant Land Use Administrator

Ms. Smith moved to elevate Mr. Galusha and Mr. Palumbo to voting status. Mr. Yagid seconded and the motion carried unanimously.

Mr. Yagid moved to add agenda items 5.B. and 5.C. to the agenda. Ms. Smith seconded and the motion carried unanimously.

3. READING OF MINUTES OF PREVIOUS MEETINGS

3.A. Regular Meeting Minutes January 22, 2024.

Mr. Yagid moved to approve the Regular Meeting Minutes of January 22, 2024 as presented. Ms. Smith seconded and the motion carried unanimously.

4. OLD BUSINESS

4.A. Application #1335-23, Steven Abbate, 99B Cobble Rd., Map 10, Block 22, Lot 2, new driveway bridge crossing.

Ms. Kern informed the Commission that the property owner, Northwest Connecticut Land Conservancy (NCLC), had withdrawn their permission for the work due to insufficient information to consent to the plan. She continued that a question was presented to Atty. Zizka regarding the situation as to whether or not the application is properly before the Commission without authorization from the owner of record. Based on Atty. Zizka's response, the

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Commission can act on the application. With regard to the DEEP (Army Corp of Eng) application, it is not tied into the IWC application and this would be the property owner's responsibility. Ms. Kern reported that the application before the IWC had been modified this afternoon.

Ms. Werner clarified that the application had been changed to just work within the 50' right of way; Ms. Kern agreed. Ms. Werner also stated that this would be the last meeting for this application without a request for an extension. Ms. Werner said that she felt that she was being rushed and that making a decision at this meeting would prevent her from truly understanding the changes and the letter from Atty. Zizka. Ms. Werner asked if the applicant would be willing to give an extension.

Ms. Werner asked Ms. Kern if she felt comfortable with the changes. Ms. Kern replied that she was not able to calculate the total area of disturbance and that the information that was presented by the engineer was lacking when compared to an application for a bridge that had been submitted a few years previously.

It was noted that there were questions about the changes. Mr. Abbate explained that all the work will be within the 50' ROW and not on property owned by NCLC; no boulders will be placed in the brook; no trees will be cut down; and a stockpile area had been added to drawing. In addition, there will be no temporary access from the adjoining neighbor.

Mr. Gawel, contractor for the project, explained that they would put in the south abutment first, slope it down to the existing pipe, put in the rip rap and repeat the process with the north abutment. The existing pipe will be the last thing to be removed. He did not think there was any more impact to the area with this new plan. The brook will return to its natural width because no new pipe will be added to the brook. Mr. Gawel said that he did not think a civil engineer is required.

Ms. Smith asked why a civil engineer would be needed and Ms. Kern said that documentation from one was required on a similar application and if the Commission looks at #6 of the application, it is a requirement that calculations of the areas of disturbance be provided as part of the application.

Mr. Palumbo asked what the current condition of the pipe was. Mr. Gawel said that the upstream ends of the pipe had folded in, was put in place circa 1985, beavers had built a dam in it and the pipe has started to loose its shape. Mr. Palumbo asked if this was the only entrance to the property and Mr. Gawel said it was.

Mr. Abbate said that every time the area washes out, they add tons of gravel to replace what has been washed out. He did not believe this was a good thing to continue doing to the brook.

Ms. Werner said that they have to take into consideration the impact to the stream and would like to take a better look at the changes and compare it to the preservation of the area.

Ms. Smith said that she agrees with what has been said and that this new submission was a vast improvement. Mr. Galusha agreed. Ms. Werner said that she understands but still feels that this is a major application and is not sure if this is really a better plan. She does not want to approve an unintended consequence. Ms. Werner said that she would like to contact someone else who can give her some feedback.

Mr. Galusha commented that, based on the new drawing, the work does appear to be flowing out of the ROW. Mr. Abbate said that when the deeds were drawn, they stated that the ROW is 25' from the center of the driveway; a driveway that had not been built yet and what is shown is an estimate.

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Mr. Palumbo asked if a firetruck could enter the property safely at this point in time. Mr. Abbate said that it could not but they have added some additional planking that provides minimal additional support.

Mr. Gawel asked what the unintended consequences could be. Ms. Werner said that she is wondering about the waterflows; impacts to anything downstream; and would like some additional review.

Mr. Archer, Mr. Abbate's structural engineer, said that the width of the bridge was determined from an actual site walk. When asked what flood level he calculated for, Mr. Archer said that he did not calculate that. Mr. Abbate said that they have complied with all of the requests that the Commission has asked for. He said that he does not know what more the Commission wants. Ms. Werner said that she would like more time to review the application and that she would like a review from the Town engineer. Ms. Kern agreed and said that the expense of the review would be the responsibility of the applicant.

Mr. Palumbo said that he understands but he is concerned that the fire trucks cannot respond. He feels that the change is less impactful. He believes there is an urgency. Mr. Yagid agreed on the safety point but he is looking at the pictures of downstream and feels that the issue needs to be corrected. Mr. Galusha feels the changes are less impactful; the need for safety access is paramount; agrees with Mr. Yagid; he does not think the unknowns are that strong for him. Ms. Smith said that once the stream is back to the original width the silt will settle down; she agrees with Mr. Palumbo, Mr. Galusha and Mr. Yagid that safety is the main issue and that the streambed will settle down with the help of Mother Nature.

Mr. Abbate said that he would be willing to pay for the town engineering, have them come out and review the area and provide a conditional approval. Ms. Kern believes that the town engineer will come back with items that will need to be added to the plan. Mr. Gawel asked if there could be a special meeting if he were to provide more information for the engineer. The Commission said that they would be willing to do that. Mr. Gawel advised that he would like the opportunity to revise the application and resubmit with calculations prior to submitting to the Town Engineer for review.

Mr. Abbate asked if Mr. Patel, Mr. Abbate's neighbor and other user of the bridge, is okay with the request for an extension; he said that he was okay with the proposed extension.

Mr. Yagid moved to accept the 30-day extension. Ms. Smith seconded and the motion carried unanimously.

Ms. Smith moved to table this application to the next meeting. Ms. Yagid seconded and the motion carried unanimously.

- 4.B.** Application #1335-24, Karen Pittelman (Michael Baczewski, Agent), 173 Cobble Rd., Map 10, Block 22, Lot 8, removal of invasives and replanting within wetland area. - **WITHDRAWN**

Ms. Kern advised that the application was withdrawn. The applicant has additional plans for the property and will submit an overall plan at a later date.

- 4.C.** Application 1336-24, John Slowik, 111 Geer Mountain Rd, Map 11, Block 40, Lot 60, After the fact driveway drainage within the wetland area. **REQUEST TO TABLE**

Ms. Kern said that the property owner spoke with Ms. Cynthia Rabinowitz who recommended a professional for the owner to contact who can help resolve their ongoing issue. They are in the process putting together a plan for next month's meeting.

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Mr. Yagid moved to table Application 1336-24, John Slowik, 111 Geer Mountain Rd, Map 11, Block 40, Lot 60, After the fact driveway drainage within the wetland area. Mr. Palumbo seconded and the motion carried unanimously.

Mr. Palumbo recused himself.

5.B. Application 1338-24, Joy Simbulan-Khuu, 71 Gorham Rd, Map 15, Block 22, Lot 24, Construction of Single-Family house with 2 car detached garage

Mr. Howard Khuu was present to address the Commission. The project is for the construction of a single-family dwelling on a 5+ acre lot. He advised the Commission that there is also a conservation easement on the property and the coverage of the wetland is a little less than 1 acre. Mr. Khuu said that they are in contact with the conservation holder.

Mr. Khuu said that the installation of the septic field is 85' from the wetland while the house itself is within 115' of the wetland regulated area. Ms. Werner asked if there were wetland plants on the property and Mr. Khuu said that the area is covered in ferns.

Ms. Werner asked for questions from the Commission. Mr. Yagid said that the mantis septic system is very compact and noted the location of test holes DT1 and DT2. He asked if the fields could be moved 15' towards them so that it would bring the septic out of the regulated area. Mr. Khuu said that he will ask the engineer. Ms. Kern said that a possible reason for the current location could be based on the radius of the well. The engineer will be consulted regarding that as well.

It was clarified that if the mantis system can be moved, the application would be withdrawn.

Mr. Yagid moved to continue Application 1338-24, Joy Simbulan-Khuu, 71 Gorham Rd, Map 15, Block 22, Lot 24, Construction of Single-Family house with 2 car detached garage. Ms. Smith seconded and the motion carried unanimously.

Mr. Palumbo returned to the meeting.

5.C. Application 1339-24, Andria Budd, 422 Kent Hollow Rd, Map 17, Block 32, Lot 27 & 28, After the fact for activity in wetland area to clean debris and tree cutting.

Ms. Kern explained that this application is a result of a violation and is considered an "after the fact" application. She explained that Ms. Hayes responded to a call from First Selectman Lindenmayer about a possible violation at the above address. Ms. Hayes explained what she saw and told the Commission that a follow up email was in the public meeting folder.

Ms. Smith excused herself from the meeting.

Ms. Budd explained that they had major flooding on their property from the stream that comes from the brewery and from the wet area on Tanguay. Ms. Budd said that one tree had been struck by lightning and that was removed. The other tree stumps were there when they purchased the property.

Ms. Hayes suggested that the Commission visit the site to determine whether or not any remediation is necessary since the property was snow covered when she responded to the complaint. Ms. Werner asked Ms. Hayes if she thought the site walk should be done sooner rather than later. Ms. Hayes suggested that they visit the site within

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the next 3 weeks. That will give the site an opportunity to be more stabilized after the snow. She said it was possible that some stream side remediation was required.

Mr. Yagid moved to continue Application 1339-24, Andria Budd, 422 Kent Hollow Rd, Map 17, Block 32, Lot 27 & 28, After the fact for activity in wetland area to clean debris and tree cutting. Mr. Galusha seconded and the motion carried unanimously.

6. COMMUNICATIONS TO THE COMMISSION

A. WRITTEN

1. Weigel- February 4, 2024 correspondence

Ms. Kern advised the Commission that the property on Highland has recently been sold to the Weigels and they had submitted an email stating that they want to remediate the property. She expects to see an application in the near future.

2. Aquatic Pesticide – Nodine Pasture Pond

Mr. Yagid said that he had reviewed the application and did not see anything that stood out.

B. VERBAL –

1. Citation Hearing Officer Recommendation

Mr. Galusha said that both Mr. Klingenbiel and Mr. Benjamin were interested. He said that they would be reaching out to Ms. Kern. Ms. Kern said that the BOS will appoint the officer. Ms. Werner said that Mr. Benjamin is involved with the Kent Land Trust and Mr. Klingenbiel is associated with the HRC. She asked that Ms. Kern ask them if they thought they would have any conflicts.

2. Housatonic Herbicide Working Group Request for Support- Legal opinion

Ms. Werner said that with a minor modification recommended by Atty. Zizka, the letter could be sent out. The Commission agreed.

3. 0/422 Kent Hollow Violation (ATF Application to Follow)

Previously discussed under agenda item

7. ADJOURNMENT

Ms. Yagid moved to adjourn at 9:14 p.m. Mr. Palumbo seconded and the motion carried unanimously.

Respectfully submitted,

Donna M. Hayes

Donna M. Hayes, CZEO
Assistant Land Use Administrator

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