

**COVENTRY INLAND WETLANDS AGENCY
MINUTES
REGULAR MEETING OF WEDNESDAY, MAY 22, 2019**

1. CALL TO ORDER:

By: Mathieu

Time: 7:00 p.m.

Place: Town Hall Annex

2. ROLL CALL:

		PRESENT	ABSENT
REGULAR MEMBERS:	Martin Briggs	X	
	Lori Mathieu, Chairperson	X	
	Open		X
	Sam Norman, Treasurer		X
	Thomas Woolf, Vice Chairman	X	
ALTERNATE MEMBERS:	Patricia Laramee	X	
	Mike Powers	X	
STAFF:	Todd Penney, Wetlands Agent	X	

Powers and Laramee were seated.

3. AUDIENCE OF CITIZENS:

None

4. OLD BUSINESS:

Public Hearing:

**1. 19-03W – Proposed Text Amendments to Inland Wetlands and Watercourses
Regulations for the Town of Coventry**

Mathieu read the legal notice into the record. Mathieu ascertained there was no one in the audience wishing to speak about this matter. The matter was tabled until after the non-public hearings.

This item was returned to at 8:37 p.m.

Staff explained that these amendments were previously discussed and detailed by Ken Slater at the Special Meeting held in March. These amendments are updating our regulations to reflect statute changes. Staff added date information about when updates were made. This provides a record of when the regulations were amended. The document was updated with spacing and font making it easier to read. Hyperlinks were also added to make it web friendly.

Motion: I move that the Inland Wetlands Agency close the public hearing.

By: Woolf

Seconded: Briggs

Discussion:

Powers brought up the issue that the definition section listed the title of the Commissioner of DEEP incorrectly. He also had issues with Section 6.2 (page 13) about the wording.

Staff suggested the title as being State of Connecticut's Commissioner of Energy and Environmental Protection. Mathieu agreed with this. Staff agrees Section 6.2 reads awkwardly and does not have an issue with making the suggested edits. Mathieu feels that the wording, if coming from the model regulations and reviewed by the Town Attorney, should not be changed. Some meaning or reason it is worded as such may not be apparent to Staff or IWA.

Motion: I move that the Inland Wetlands Agency approve the proposed text amendments as amended.

By: Woolf

Seconded: Powers

Discussion:

Mathieu disagrees with making wording changes to Section 6.2. The wording as is should follow the model regulations that Ken Slater reviewed and suggested in the text amendment. She would like Staff to speak to the Town Attorney before making changes. A hearing decision does not have to be made at this meeting.

Woolf withdrew his motion. Staff will go to DEEP website and see if that language is there, as well as speaking to Town Attorney.

B. Non Public Hearings:

1. 19-04W – Matt Cordner Applicant; Todd Henderson Owner; Proposed Activity: Phragmites Management and Sand Installation at 311 Woodland Road.

Matt Cordner and Todd Henderson were present.

Staff had some correspondence today from Mr. Henderson. Staff has a copy of a legal decision (Seppa v. Lonabaugh; 2010 Ct. Sup. 11034; Decided May 20, 2010) from Mr. Henderson regarding littoral rights on the lake. Staff added that one concern of Dr. Kortman was the ownership of the area in question who wondered if the property line was at the high-water mark; in other words, who owns or has access to the lakebed area where the phragmites are. The legal decision seems to indicate that property owners fronting a lake have rights to the lakebed itself.

Also, it was proven in case law that it is common for lake front owners to have rights to the thread line. Staff has forwarded the case law to the Town Attorney for review and feedback.

Mr. Henderson was trying to make the point by providing the case law that, although he does not own the entire area where the phragmites are, he does have rights to the area. Certainly, the phragmites hinder his use of the area. Staff added that the Town or the State may own the lake land. He assured the IWA the Town does not want ownership, although some people say the Town does own the lake as deeded from an Indian chief. The outlet to the damn is owned by the Town which is responsible for the lake level. The DEEP has water rights and water usage rights. However, this case law does make a good point about lake rights. There is the unwritten right of enjoying the water without preventing others from its enjoyment also. The phragmites are hindering the use and enjoyment of the Lake for the applicant. Dr. Kortman's point is that the applicant does not have legal ownership to Coventry Lake. The Town Manager was not willing to sign an application, but the Town would be favorable to having the phragmites removed. The question Staff is waiting for an answer from the Town Attorney is – Is the applicant illegally doing work on what is not his property? Could this not be considered an as-of-right maintenance?

Woolf commented that Dr. Kortman did suggest the best methodology for removing the invasive. Briggs recalled that Kortman was in favor of using pesticides, although the applicant is against this method.

A document from Todd Henderson, dated May 20, 2019, titled Plan for Lakefront Improvements and Phragmites Removal detailing the new scope of work and the work sequence was distributed by Cordner. This work plan was modified to work in the Spring and Summer months. The plan is to cut the stalks and cover the remaining root mass with heavy mil plastic until the winter lake level draw down. Their research indicates having the root mass covered for three to six months is the most effective in helping to kill the remaining plant. This plan does not use chemicals. The stalks may be hauled to an incinerator. When the lake level is down the plan calls for pulling out the root mass. A silt fence can be staked to the lakebed, causing very little disturbance, with 6"-8" being above the water level to capture any plant matter than may float during the cutting. Typically, lake draw down will expose the phragmites root mass for the applicant to be able to mechanically rake back the mass starting at lakeside and working backwards. Dr. Kortman did advocate for the use of a grapple rake rather than an excavator. The owner does know that ongoing maintenance will be required to continue to try to eradicate, or at least control, the invasive. Cordner estimates the root mass to be approximately 80 yards of material.

Staff feels the Spring and Summer work tasks detailed in the plan are as-of-right maintenance that can be done prior to hearing the opinion of the Town Attorney. However, the application is at the statutory time limits and the IWA would require an extension by the owner and applicant in order to have time to get a legal basis from Attorney Slater if this case law is applicable or not. If it is not, the IWA will have to digest the ruling at the June meeting. The applicant and owner granted an extension for a total of 58 days on this application to get to the June 26, 2019 meeting date.

Mathieu is in favor of the owner using his time and money to cut down this invasive as a maintenance issue. Permittable activity is not suggested per the plan until the winter months.

Staff reiterated that the removal of the phragmites, and the placing of the mil and silt fence for collections of pieces is not invasive to the Lake and does not require a permit. Staff commented that the IWA could decide they do not agree with the Town Attorney's decision should it be against the owner.

For the record - bullet number one in the plan is permitted as of right by the method described. A grapple rake may be used to rake back the cut canes. This activity does not need a permit. Staff will want to be on site when this activity takes place. Staff and IWA agree with this. This activity by the owner provides enjoyment for all people using the lake.

2. 19-27W – David Epstein Applicant/Owner; Proposed Activity: House Addition 50 feet from Coventry Lake at 117 Standish Road

Staff commented that he religiously follows the permit threshold given. This activity is outside of the 50 foot area that could be deemed minimal impact and permitted by the Inland Wetlands Agent. This activity is at 51+ feet and what he feels is minimal impact, but because it is so close to the threshold, he wants the IWA to hear of the activity to see if the Members agree. He does not feel there is any other location for this proposed home addition.

Suzanne Choate, of Design Professionals, and David Epstein were present. Ms. Choate presented the plans for the home addition. This property is not too far from Daly Road. A portion of the one-story house will be removed, and the addition put on. The addition is 56' away from the high-water mark making it a bit farther than the existing structure. Rain barrels and a rain garden will be added to capture storm water and drain it away from the house. Hay bales and erosion matting will be in place as requested by Staff. The disturbance for the addition is 420 sq. feet; the entire ground disturbance is 1,300 sq. feet.

Staff has been working with Choate; she has addressed all his concerns. Grading has been scaled back to minimize land disturbance. He is comfortable about the addition being in this proposed location because if it was to the rear of the property the flow inside of the house would not be conducive to the living space. The rain garden and barrels are needed for the impervious surface coverage. The rain garden will function by collecting sheet flow from the paved surface allowing it to infiltrate into the soil.

The IWA deems this a minimal impact permit.

3. 19-12W – Town of Coventry Applicant; Marian Popek, Owner; Proposed Activity: Minor Agricultural Bridge at Clark's Brook

Staff suggested this item be discussed after the Cumberland Farms discussion.

When this item was returned to, Powers recused himself since he is an abutter.

Todd Penney presented. He reported that Jones Crossing is going out of service on June 17, 2019 and remain closed until October 2019. Mr. Popek has two agricultural (blueberry) fields consisting of 50 acres that are planted on either side of Clark's Brook. The field on the westerly side of Clark's Brook has frontage on Jones Crossing; the field on the easterly side of the brook will be stranded for the time Jones Crossing Road is closed to traffic. To eliminate Mr. Popek

from having to drive his ATV or tractor along the detour route, Staff has conceived of this plan to provide field access. The plan is to construct an 8' x 4' foundation for a 20' span across Clark's Brook. Popek has 8" x 22' steel I-beams that can be used; he will sandblast and paint the beams prior to placement and construct the decking of the bridge of wood for a 6.5' wide structure. The Town will construct the foundation and move the I-beams into place for this project. The bridge will then allow the owner access to his fields without using Town roads. The proposed foundation will utilize 2' x 2' x 4' concrete blocks with excavation one foot back from the top of the slope and be embedded about 1'-1.5' in the ground. This is a very simplistic approach and will not impede the water flow. Fill will be within a 10' x 3' area. The footprint will have 64 sq. feet of disturbance and minor grading. Grading will be of 120 sq. feet on the westerly side and 80 sq. feet on the easterly side. The total disturbance for the project will be 270 sq. feet. This is in the flood plain of Clark's Brook, but Staff is not worried about the flow overtopping the bridge unless there is a major flood event.

Staff will stake out the work area for the contractor. The Town's contractor will use a mini excavator for this project. The contractor will form up the pads and bring in a concrete truck to pour the pads. This should not take any more than two hours for each side of the bridge. Total installation time is two days. This is strictly an agricultural bridge; it cannot be used as a driveway. This work is slated to be done in the next couple of weeks so an IWA decision is needed tonight. The application was received the day before the April meeting and can be voted on this evening unless the IWA feels it is of significant impact and requires a public hearing.

Upon questioning, Staff feels the agricultural permitted activities does not directly fit for a bridge. The owner's rights are being taken away temporarily with the closing of the road. The bridge will be higher than the top of the bank so water can flow around it in a high-water event. Railings are not being proposed at this time; railings could capture debris in a flood event. These are well established grassy areas. If the Jones Crossing road activity were not taking place, Staff does not feel he would approach this project any differently. The owner is allowing access by the Town for the Jones Crossing bridge project for the moving of the aerals.

Motion: I move that the Inland Wetlands Agency approves 19-12W – Town of Coventry Applicant; Marian Popek, Owner; Proposed Activity: Minor Agricultural Bridge at Clark's Brook with the provisions of oversight by the Town Engineer and a preconstruction meeting to ensure conditions are optimal for the construction period.

By: Mathieu

Seconded: Woolf

Voting:

For: Briggs, Laramée, Mathieu, Woolf

Against: None

Abstain: None

5. NEW BUSINESS:

None

6. ADOPTION OF MINUTES:

A. March 27, 2019

Motion: I move that the Inland Wetlands Agency approves the minutes of the March 27, 2019 meeting.

By: Briggs

Seconded: Powers

Voting:

For: Briggs, Powers, Woolf, Laramée

Against: None

Abstain: Mathieu

7. DISCUSSION ITEMS:

A. Cumberland Farms Possible Site Plan Modification

Andrea Gomes, Attorney, Matt Lidener, Engineer, and the real estate representative were present.

Ms. Gomes began by stating that they are here about a potential site plan change for the Cumberland Farms building. This change will reduce the size of the building from 5,275 sq. feet to 4,384 sq. feet. The reason for this is a general shift in the approach of developing their stores based on customer wants and needs. The building will be smaller, but because of the site layout it requires moving it closer to the wetlands. The limits of the grading work does not change and it is a reduction in impervious surface.

Matt Lidener reiterated what Ms. Gomes stated while showing the changes on a site plan. The overall limit of work would remain the same. Grades will be tweaked around the building. The patio will be removed. The rain garden will be reshaped; the volume of water that can be treated will remain the same and provide the same treatment to storm water. The impervious area is being reduced.

Staff heard from Attorney Joe Williams about this proposed change. Staff feels this is a minor modification; if it did not involve Cumberland Farms it would not have come before the IWA. The IWA is less concerned about the construction and more about the operations and how the wetlands will be protected and maintained by Cumberland Farms. This proposed change will also be heard by the PZC.

Mathieu is seeing this proposed change as an increase of just under 500 sq. feet of impervious surface within 75' of the wetlands. She does not feel this is insignificant. The increase within the 75' line is about the size of two to three parking spaces. Mathieu asked why not consider moving the building toward the front? Lidener replied there are a number of factors in moving the building back, including minimizing the overall changes to the site plan, being pinned from moving forward by the fueling canopy, and the grading requirements for the parcel. A different building size and shape were looked at. This site has a very big piece of wetlands on it that drains to Ash Brook. It is unusual for Cumberland Farms to own such a large wetlands complex. During the initial permitting process, the building was moved forward and away from the

wetlands as much as possible. This necessitated a single row of pumps and sidewalks that were less wide. Lidener feels this is the only reasonable option.

Staff commented that the berm that is on the site plan will remain and deflects storm water runoff from the wetlands. A less defined berm than the construction will create has been there for some time. The water from the rear half of the building will shed off in front of the berm into the swale. The shape of the rain garden does not affect its function since the same volume and surface area will be maintained.

Gomes does not feel the proposed change is outside of the scope of the original permitted plan. Mathieu replied that this will increase the amount of impervious area within the regulated area the IWA is tasked to protect. This is increasing the impact to the regulated area. It does have an impact on the wetlands.

Gomes countered that the proposal will not impact the wetlands any more than was previously approved. The limit of site work is not changing. The overall impervious area will decrease because the size of the roof will decrease. Storm water will flow into the rain garden and toward the berm. The storm water contributing within the 75' upland review area will decrease. Mathieu commented that statement is how this proposed change should be couched.

Staff asked Mr. Lidener if he has the quantity of reduction of impervious surface? That is just under 700 sq. feet. In essence, the impact is being reduced by about 100 sq. feet in the upland review area. The patio area goes away, and the sidewalks are changing.

Mathieu added that since this is an informal review, she suggests making the building look like Nathan Hale's Home and paint it red. We are an historic town and the building should fit that view.

Staff commented that Cumberland Farms will have to submit an application for modification. The site and grading plans should accompany the application. Also, a one-page outline of tonight's conversation should be submitted.

The real estate representative informed the IWA that the property was closed on last month. Construction is being targeted to begin as soon as possible with hopes that groundbreaking begins in late summer. The applicant has been working with the Town on the demolition of the existing structures.

Staff added that the realignment of Swamp Road with Bread and Milk Street will lag about a year behind the Cumberland Farms construction schedule.

8. CORRESPONDENCE:

None

9. ADJOURNMENT:

Mathieu adjourned the meeting at 9:45 p.m.

Respectfully Submitted,

Yvonne B. Filip

Yvonne B. Filip, IWA Clerk

PLEASE NOTE: The minutes are not official until approved by the Inland Wetland Agency at the next Agency meeting. Please see the next Agency meeting minutes for approval or changes to these minutes.