

May 23, 2012

7:00 p.m. Land Use Meeting Room

MEMBERS PRESENT: Mr. Bedini, Mr. Bohan, Mr. LaMuniere, Mr. Papsin, Mr. Wadelton

ALTERNATES PRESENT: Ms. Cheney, Mr. Martino

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr. Clark, Mr. Lautier, Mr. Rosenfeld, Mr. Neff

Mr. Bedini called the meeting to order at 7:02 p.m. and seated Members Bedini, Bohan, LaMuniere, Papsin, and Wadelton.

MOTION:

To include the following subsequent business not already listed on the agenda:

III. Consideration of the Minutes: B. Sarjeant/28 Tinker Hill Road site inspection minutes,

VI. Other Business: D. Response from Atty. Olson re: Local IWC Jurisdiction Over Pesticide Permits.

By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

Consideration of the Minutes

MOTION:

To accept the 5/9/12 Regular Meeting minutes as written.

By Mr. LaMuniere, seconded by Mr. Wadelton, and passed 5-0.

MOTION:

To accept the 5/16/12 Sarjeant/28 Tinker Hill Road site inspection minutes as written.

By Mr. Papsin, seconded by Mr. Wadelton, and passed 5-0.

Pending Applications

Lautier/56 June Road/#W-12-07/Construct Garage and Retaining Walls:

Mr. Clark, engineer, and Mr. Lautier were present. Mr. Clark presented a revised map, "Site Plan," by Oakwood Environmental Associates, revised to 5/20/12. He reported that Milone and MacBroom had issued its report after meeting with him on site, he had responded, and there were no remaining major issues. It was noted letters dated 5/17/12 and 5/22/12 had been received from Milone and MacBroom. Mr. Clark reviewed some of the revisions, which included: 1) deletion from the plans of the proposed retaining wall above the existing septic system, 2) improved erosion controls around the stockpile areas, 3) more details about the proposed boulder retaining wall at the steep part of the driveway, and 4) making it clear that the runoff from the rill above the proposed garage will be connected to the existing drainage system. Regarding point C4A in the 5/22/12 letter, Mr. Clark said he would place flat stones on the exposed areas of the bank to stabilize them. Regarding C6A and the boulder retaining wall parallel to June Road, Mr. Clark agreed to fill the voids within the blasted rock, backfill with crushed stone, cover that with geotextile fabric, and then top that with a minimum of 6 inches of top soil to support a vegetative cover as recommended by Milone and MacBroom. He said he would add these revisions to the plan. Mr. Clark described how

the retaining wall would be stabilized. The bottom would be pushed out towards June Road and it would then be built back in steps. Mr. Bedini was concerned the 12 ft. high wall could topple. Mr. Clark said this would not happen because it would not be vertical. Mr. Bedini asked how far from the edge of June Road the wall would be. Mr. Clark said the bottom of the wall would be 3 feet from the June Road right of way. In response to a question from Mr. LaMuniere, Mr. Clark pointed out the locations where the geotextile fabric would be installed. Mr. Clark indicated that in some areas he would use $\frac{3}{4}$ inch crushed stone and debris from the blasting covered with 12 inches of top soil instead of the fabric. Mr. Ajello asked if the reduction in the size of the proposed garage would result in a reduction in the amount of blasted material. Mr. Clark said originally 2400 cubic yards of material would have been displaced and that amount had been reduced to 2100. Mr. Ajello asked why the amount of blasted material would still be so large when the building had been reduced in size by half and the connector had been eliminated. Mr. Clark stated that additional parking was needed. He noted the building had been moved forward 6 feet. Mr. LaMuniere reminded Mr. Clark that the connection of the runoff from the rill to the existing drainage system must be shown on the plan. Mr. Papsin asked if the Town should be notified about work so close to June Road. Mr. Bedini asked Mr. Ajello to notify the Town Highway Dept. Mr. Ajello pointed out a problem with cross sections B and C on the plans and Mr. Clark said he would correct this on the revised map. Discussion continued regarding C4A and C6A and Mr. Clark again said he would make the corresponding revisions to the plans. Mr. Ajello suggested that Mr. Clark consult with the Building Official about the construction of the 12 ft. high retaining wall prior to the next IWC meeting. He thought the Building Official, who has jurisdiction over retaining walls exceeding 4 ft. in height, might have concerns about the possibility of the wall sliding out and might require further revisions to the plans. Mr. Clark agreed to do so.

Lilac Hill, LLC./156 East Shore Road/#IW-12-14/Slope Stabilization and Remediation:

Mr. Rosenfeld presented the map, "Slope Stabilization and Remediation Plan," by Wolff Engineering, revised to 5/9/12. Mr. LaMuniere noted that the proposed wall was not at the edge of the lake and would be well beyond the shoreline and the wave action and that it would have weep holes for drainage. Mr. Papsin and Mr. Wadelton agreed there were no problems with the proposal.

MOTION: To approve Application #IW-12-14 submitted by Lilac Hill, LLC. for slope stabilization and remediation at 156 East Shore Road according to the plans entitled, "Slope Stabilization and Remediation Plan, by Wolff Engineering, revised to 5/9/12; the permit shall be valid for two years and is subject to the following conditions:

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,
2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
3. any change to the plans as approved must be submitted immediately to the Commission for reapproval.

By Mr. Wadelton, seconded by Mr. LaMuniere, and passed 5-0.

Sarjeant/28 Tinker Hill Road/#IW-12-15/Repair Stonewalls Along Shoreline and Dock Foundation:

Mr. Bedini noted a site inspection had been conducted. Mr. LaMuniere reported that Mr. Sarjeant had said he would investigate how best to handle the erosion at the end of the dock and would come back to the Commission with more detailed plans. Mr. Ajello said a revised plan was expected, but nothing new had come in since the last meeting.

Distel and Comer/191 Roxbury Rd./#IW-12-17/Pond Site Improvements:

Mr. Neff, engineer, stated there had been no revisions since the last meeting. He briefly summarized the proposal to: 1) replace the curtain drain, 2) build a stone patio, 3) install an aerator and compressor, and 4) replace the existing dock with a floating dock. The map, "Proposed Pond Site Improvements," by Mr. Neff, dated 4/5/12 was reviewed. Mr. LaMunier noted the application had been discussed in detail at the last meeting.

MOTION:

To approve Application #IW-12-17 submitted by Mr. Distel and Mr. Comer for pond site improvements at 191 Roxbury Road per the plan, "Proposed Pond Site Improvements," by Mr. Neff, dated 4/5/12; the permit shall be valid for 2 years and is subject to the following conditions:

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,
2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
3. any change to the plans as approved must be submitted immediately to the Commission for reapproval.

By Mr. Waderton, seconded by Mr. Bohan, and passed 5-0.

Other Business

Estate of E. Bennett/27 West Shore Road/Request to Revise Permit #IW-12-05/Drainage Repair:

Mr. Neff, engineer, presented his map, "Drainage Repair Plan," revised to 4/30/12. He explained that when the DOT had reviewed the plans, it had required a double catch basin next to West Shore Road. He noted the pipes and limit of disturbance had not changed. The commissioners voiced no concerns about the proposed revision.

MOTION:

To approve the request to amend Permit

#IW-12-05 issued to the Estate of E. Bennett for drainage repairs at 27 West Shore Road per the plans, "Drainage Repair Plan," by Mr. Neff, revised to 4/30/13 with the understanding that any condition placed on the original permit will continue to apply.

By Mr. Waderton, seconded by Mr. LaMunier, and passed 5-0.

Mnuchin/218 Nettleton Hollow Road/Request to Renew Permit #IW-10-16/Pesticide Application:

Mr. Gambino, contractor, submitted a letter to the Commission dated 5/23/12 and the \$25 fee. He presented a copy of the original permit and photos of the pond. He noted the pond had been treated two years ago, but said watershield was a difficult weed to control and the treatment must be done early in the season. He proposed to install a sleeve over the outflow pipe to ensure there would be no outflow during the application process or the period for which the chemicals would be active. He also said he would wait for the pond level to go down before applying the pesticide. Mr. Gambino advised the Commission the DEEP had approved the application for the use of Clearcast in addition to Glyphosate. He submitted a label and a safety data sheet on Clearcast and its properties were briefly reviewed. He also noted that the DEEP had determined that if the treatment was confined to the pond, it should not adversely impact the wood turtle or Jefferson salamanders, which are species listed on the state's Natural Diversity Data Map. Mr. LaMunier asked how long the Clearcast would remain active. Mr. Gambino stated you could swim within 24

hours, but the problem was using the water for irrigation. He said as a condition of approval the Commission could require that the pond not be used for irrigation for 14 days. Mr. LaMuniere thought Clearcast was better than Rodeo and copper sulphate, and noted the outflow would be capped to diminish the potential for negative impacts. It was the consensus that capping the outflow was an important protective measure. Mr. Gambino agreed to keep the cap on for two weeks. Mr. Ajello suggested that over irrigating just prior to the treatment could help lower the water level.

MOTION:

To approve the request for a two year extension of Permit #IW-10-16 issued to Mr. Mnuchin for pesticide application at 218 Nettleton Hollow Road subject to the following conditions:

1. that the cap over the outflow remain in place for 14 days during and after application and
2. that there be no irrigation during that time.

By Mr. Bedini, seconded by Mr. LaMuniere, and passed 5-0.

DEEP Permitting Process for Pesticide Application:

Mr. Gambino noted that permitting must now be done per the federal Clean Water Act. He reviewed the new DEEP application form, noting that state oversight had increased. Of particular concern now are 1) aquifer protection, 2) species of concern, and 3) conservation restrictions and preservation. He also noted there is now a contact person, Ms. Bodner, who catches application errors and then contacts the contractor by email.

Pending Application

McAdam/231 Romford Road/#IW-12-16/Pesticide Application:

It was noted the application was incomplete. Page 7 was missing and only a partial payment of the application fee had been received. Mrs. Hill asked if water flowed through the pond. Mr. Ajello responded this information had not been provided. Mr. Bedini asked Mr. Ajello to contact the contractor to advise him about what documentation to submit to complete the application.

Other Business

Response from Atty. Olson re: Local IWC Jurisdiction Over Pesticide Permits:

In her 5/23/12 Memo to the Commission, Mrs. Hill reported her discussion with Atty. Olson. Atty. Olson advised that as long the Commission is referring to the use of pesticides directly in a wetlands or watercourse, the Regulations do provide for local jurisdiction because the chemicals used are potential pollutants. She said that based on the language in Washington's Regulations and because she found nothing in the state statutes that specifies otherwise, the Commission has concurrent jurisdiction over pesticide applications and the right to require local applications. Mr. Wadelton said the Commission should follow its attorney's advice, but said he considered this to be an open issue and would continue to investigate.

Mr. Bohan asked about agricultural exemptions. Based on information given at a recent commissioners training course, Mr. Wadelton explained the burden of proof is on the applicant to prove he has a bona fide agricultural operation. He said that filling in the wetlands is not an exempt as of right activity for a farm; that a permit must be obtained. He also said in addition to proving it is an agricultural use, the applicant must prove the proposed activity is essential to the farming

operation and that there is no alternate location available before he is granted an exemption.

Enforcement

Brown/127 West Shore Road:

Mr. Ajello showed photos of the completed restoration work and said he would check to make sure it had been done according to the approved plan. He noted the reimbursement check that is part of the settlement had not yet been received.

Additional enforcement matters were covered in Mr. Ajello's 5/23/12 report.

There was no administrative business or communications to discuss and no need for an Executive Session.

MOTION:

To adjourn the meeting. By Mr. Wadelton.

Mr. Bedini adjourned the meeting at 8:53 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill
Land Use Administrator