

# April 24, 2013

6:43 p.m., Upper Level Meeting Room

**MEMBERS PRESENT:** Mr. Bedini, Ms. Cheney, Mr. LaMuniere, Mr. Papsin, Mr. Wadelton

**ALTERNATES ABSENT:** Mr. Davis, Mr. Martino

**STAFF PRESENT:** Mr. Ajello, Mrs. Hill

## **SHOW CAUSE HEARING**

Heyman/175 Calhoun Street/Enforcement Order for Unauthorized Clearing and Soil Disturbance:

Mr. Bedini called the hearing to order at 6:43 p.m. and seated Members Bedini, Cheney, LaMuniere, Papsin, and Wadelton.

He noted that an application to correct the violation had been received and that the property owner was not going to object to the order and so the show cause hearing was not necessary.

### **MOTION:**

To close the show cause hearing to consider whether the 4/17/13 enforcement order issued to Mr. Heyman for unauthorized clearing and soil disturbance at 175 Calhoun Street should be upheld.

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

Mr. Bedini closed the hearing at 6:44 p.m.

**7:00 p.m.**

## **REGULAR MEETING**

**ALTERNATE PRESENT:** Mr. Davis

**ALSO PRESENT:** Mr. Astin, Mr. Smith, Mr. Showalter, Mr. Rosiello, Mr. Szymanski, Atty. Coploff, Mr. Angiola, Mr. Sabin, Mr. Hayden, Press

Mr. Bedini called the Meeting to order at 7:00 p.m. and seated Members Bedini, Cheney, LaMuniere, Papsin, and Wadelton.

### **MOTION:**

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

V. New Applications:

B. Whitney/31 Plumb Hill Road/ #IW-13-08/Install Septic System and Play Area,

C. Karabell/112 River Road/#IW-13-09/Temporary Construction Access.

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

## **Consideration of the Minutes**

The 3/27/13 Regular Meeting minutes were accepted as corrected. In the third line down on page 3, "#323" should be "#321."

### **MOTION:**

To accept the 3/27/13 Regular Meeting minutes as corrected.  
By Mr. Wadelton, seconded by Ms. Cheney, and passed 5-0.

The 4/10/13 Regular Meeting minutes were accepted as corrected. On page 5, in the seventh line under Heyman, "of" should be "if."

MOTION:

To accept the 4/10/13 Regular Meeting minutes as corrected.  
By Ms. Cheney, seconded by Mr. Wadelton, and passed 5-0.

## **Pending Applications**

Collins/321 and 323 West Shore Road/#IW-13-05/Cut Trees, Remove Invasives, Install Paths through Wetlands:

Mr. Rosiello, landscape designer, submitted the revised plan, "Landscape Concepts for N.W. Jay Collins," by Mr. Rosiello, no revision date, but marked received on 4/24/13. The revisions included 1) a small plank crossing over the swale near wetlands flag #11 on #323, the #323 boardwalk was moved to enter the wetlands between wetlands flags #9 and #10, and notes were added regarding restoration of the eroded area on #323 and limiting the mowing of the steep slopes on both lots to 2 to 4 times per year. Mr. Rosiello described the wetlands violation by Mr. Collins' workers that had been reported on April 18 and said he had prepared an extensive mitigation plan to compensate for those plants that had been improperly removed from the wetlands. Mr. Ajello reported there had been a second violation today and a photo of the workers doing further unauthorized work was circulated. Mr. Rosiello said he now proposed to plant a taller understory canopy, said there were a lot of native plants coming up and these would be monitored for three years so that invasives don't take over, said any invasives would be hand pulled after consulting with the Commission, and reported that in the future Mr. Collins would not hire any workers who had not been OK'd by Mr. Rosiello. Mr. Ajello read Mr. Collins' 4/24/13 email and said he had also called after learning of the second violation. Mr. LaMuniere thought the mitigation plan was a good one, but said this was a major violation, which required a fine under Section E of Ordinance #720. There was a brief discussion regarding whether a fine should be levied. Mr. Rosiello specified the types and number of plants he had added to the planting plan. Mr. Wadelton said fines should be reserved for intentional violations and pointed out that the improved mitigation plan would place considerable additional financial burden on the property owner. Ms. Cheney agreed. Mr. Bedini noted that in the past, a violation had been considered a violation whether or not it had been intentional. He asked what the fine would be in this case. Mr. Ajello noted that because this was the second violation in a ten year period and it had taken place in the wetlands and had a direct impact on the wetlands, the fine would be \$1000. He said the disturbed area was only a quarter acre, he thought Mr. Collins would invest a lot in the restoration work, and although the property owner is ultimately responsible for violations on his property, he would not like to see the mitigation derailed due to a fine. Mr. Rosiello said the cost of the plantings would be \$5000 without the fine. Mr. Papsin thought if the owner would restore the damaged area, if a monitoring system was in place for at least three years, and if only knowledgeable people worked on site a fine would not be necessary. Mr. LaMuniere disagreed, saying the previous verbal agreement to allow the removal of invasives by hand had failed and so the Commission should require a precisely written agreement regarding the control of the proposed operation before making any decision. Mr. Rosiello thought this could be handled as a condition of approval. Instead of the Commission trying to craft conditions on the spot, Mr. Bedini asked Mr. Rosiello to draft a detailed description of the terms agreed upon. Mr.

Papin asked him to include a detailed work sequence and 5 year monitoring plan. Regarding the revised plan presented, Mr. LaMuniere said he would have preferred to have the boardwalk on #323 enter the wetlands nearer to wetland flag #9. A vote on this application is expected at the next meeting.

The Gunnery, Inc./100 Green Hill Road/#IW-13-06/Renovate Soccer Field:

Mr. Smith, surveyor, submitted a revised cover sheet and sheets 4 and 5, "Turf Renovation Plan," and "Sedimentation and Erosion Control," both by Buck and Buck, LLC, revised to 4/16/13. Mr. Astin said the applicant had responded to Mrs. Hill's 4/8/13 request for additional information by adding the following notes to the plans; 1) the design engineer will be responsible for inspecting the erosion and sedimentation controls, 2) the Land Use Office will be notified at least 48 hours prior to the commencement of work, and 3) the location of the limit of disturbance line. The commissioners thought it would be OK to designate the school as the party responsible for inspecting the erosion controls. Also, Mr. Smith corrected the address on the application form and noted a statement regarding the typical earthwork equipment to be used had been submitted. He said the school planned to begin work on May 15.

**MOTION:**

To approve Application #IW-13-06 submitted by The Gunnery, Inc. to renovate the soccer field at 100 Green Hill Road per the plans submitted on 4/3/13 and revised to 4/16/13; 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. LaMuniere, seconded by Mr. Wadelton and passed 5-0.

**New Applications**

Heyman/175 Calhoun Street/#IW-13-07/Application to Correct Violation

Mr. Szymanski, engineer, presented the map, "Existing Conditions Map," by Arthur H. Howland & Assoc., dated 4/18/13 on which all the trees greater than 6 inches in diameter within 100 feet of the wetlands and adjoining property had been shown. He said the only direct impact to wetlands had been the installation of the 4 inch pipe adjacent to the pond, which would require the restoration of a 150 ft. X 15 ft. disturbed area with native plants and New England wetland mix. He noted another very small area would also be restored. He did agree that a violation had occurred because there had been clearing and soil disturbance within 100 ft. of wetlands. The location of ledge and wetlands on the property was briefly noted. Mr. Ajello asked what the long term maintenance plan should be. Mr. Szymanski said the disturbed areas would be fully planted and that more would be planted than was actually required. Mr. Ajello asked for precautions so that the plants would not be mowed down and Mr. Szymanski said the corners of the non mow area could be marked with poles. Mr. Szymanski said he would add hand removal of yellow iris from around the pond to the application if it is determined that this invasive plant is growing there. Mr. LaMuniere asked for a sequence of construction. Mr. Szymanski said he would provide this and the other documentation requested by Mrs. Hill for the next meeting. After reviewing the wetlands flagging, Mr. Ajello noted

the extent of the unauthorized work was not as much as originally thought and that the owner had been cooperative in addressing the problem. Mr. Bedini noted that the enforcement order would remain in effect.

Whitney/31 Plumb Hill Road/#IW-13-08/Installation of Septic System and Play Area:

*Mr. Papsin and Ms. Cheney recused themselves. Alternate Davis was seated.*

Mr. Sabin, landscape architect, described the area where the work would be done as being steeply sloped, dropping down to a wet meadow. The plan, "Chaterjee Residence, Final Preliminary Concept," by Mr. Sabin, dated 3/20/13 was reviewed. Mr. Sabin pointed out the proposed location for the new septic system and said a boulder wall would be built and the hillside cut and filled to create a level play area. All proposed work would be done in the existing lawn area. Although the work would be in the regulated area, he said it would have no direct impact on the wetlands. Mr. Sabin said the Health Dept. had already approved the septic system. Mr. Ajello asked if the Health Dept. had been aware of the presence of wetlands. Mr. Bedini and Mr. Wadelton did not think flagging of the wetlands was necessary and it was the consensus that a site inspection was not needed, either. Mr. Sabin pointed out the temporary construction access and the location of silt fencing. Mr. Sabin said that work beyond the 100 ft. setback had begun and would continue and that he would provide the information requested by Mrs. Hill for the next meeting. Mr. Ajello said he would inspect the site and take photos for review at the next meeting.

*Mr. Papsin and Ms. Cheney were reseated.*

Karabell/112 River Road/#IW-13-09/Temporary Construction Access:

Mr. Sabin, landscape architect, presented the plan, "Pool Area Permit Plan #1," by Mr. Sabin, dated 3/15/13. He pointed out the location of an old roadway to be used as temporary access to the pool construction site and of wetlands adjacent to this "road" and said the area drains away from the wetlands. Gravel and crushed stone would be spread and an anti tracking pad installed and all disturbed areas restored to lawn by the end of spring. Mr. LaMuniere noted that the Commission had allowed temporary construction access for projects on other properties in the past. Mr. Sabin explained that once the pool construction was completed, the existing driveway would be used for normal maintenance activities. Mr. Sabin will submit additional information to complete the application by the next meeting.

**Other Business**

Ficalora/10 Sunrise Lane/Request for 5 Year Extension of Permit #IW-03-55/Construct Single Family Dwelling:

In response to questions raised at the last meeting, Mr. Ajello researched the state statutes and found that permits may not be valid or extended for more than 10 years. This permit has already been extended once, which brought it to the 10 year maximum. Mr. Ficalora will be advised that he must submit a new application and his renewal fee will be returned.

Canal/142 Sabbaday Lane/Request to Renew Permit #IW-11/14/ Application of Herbicide to Pond:

Mr. Ajello reported this permit will expire at the end of May, but treatment is proposed for June/July 2013. No changes were proposed to the DEEP permit and the criteria of the original local approval will remain in effect.

## **MOTION:**

To grant a 2 year extension of Permit

#IW-11-14 issued to Mr. Canal for the application of pesticides to his pond at 142 Sabbaday Lane.

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

## Town of Washington/Intersection of Walker Brook and Shinar Mt. Roads/Request to Revise Permit #IW-12-22/Replace Culvert:

Minor changes to the work approved are required by the Army Corps of Engineers and the DEEP. Mr. Lyon will be ready with the request at the next meeting.

## **Enforcement**

### Stiles/15 Tinker Hill Road/Violation: Unauthorized Clearing and Soil Disturbance:

Mr. Angiola, Atty. Coploff, and Mr. Szymanski, engineer, were present. Mr. Ajello reported that a notice of violation had been issued on 4/18/13 for unauthorized clearing, soil disturbance, and installation of an irrigation system and he circulated photos of the disturbed area and a 2010 photo of the area before it was disturbed. Mr. Angiola said that storm damaged trees and poison ivy had been removed and in their place over 400 plants had been planted. Mr. Szymanski confirmed that he had inspected the property today and the 400 sage plants were coming up. He also stated that heavy mulching of the slopes had been done. Mr. Ajello and Mr. Papsin were concerned that the fine sweet peat mulch and/or its nutrients would migrate into the lake. Mr. Szymanski responded that the mulch is organic and its impact to the lake would be similar to decomposing leaves. He said a buffer could be added at the edge of the lake to alleviate that concern. In addition to the irrigation system, Mr. Ajello said that curbing had been installed along the Town road and this would concentrate the runoff at both ends. Mr. Angiola said they had extended the curbing that was there when they purchased the property and that there was no cement between the blocks so the water could flow through. The commissioners informed Mr. Angiola that he should have come in for a permit before beginning any work. Mr. Szymanski said he would draw up a planting plan, although Mr. Angiola stated that much of the area had already been replanted. A site inspection was scheduled for Friday, May 3, 2013 at 5:30 p.m.

### Hayden/11 Loomarwick Road/Violation: Unauthorized Construction and Soil Disturbance:

Mr. Hayden was present and said he did not dispute that there was a violation. Photos of the unauthorized work that had begun were circulated. The commissioners reviewed the entry in Mr. Ajello's 4/24/13 enforcement report. Mr. Hayden said he removed the wooden stairs that had been in need of repair and had dug out part of the bank and had pushed the stone wall back 5 feet, which had increased the size of the level area near the shoreline. He apologized that he had not contacted the Land Use Office and said he would submit an application at the next meeting. He said he had already installed silt fencing. Mr. Ajello said he had not yet issued a notice of violation, but said he would do so at the request of the Commission. A site inspection was scheduled for Friday, May 3, 2013 at 6:00 p.m.

## **Administrative Business**

Regarding Stiles and Hayden above, Mr. Ajello said he had intended to issue first level fines for both of these violations. Mr. LaMuniere stated that notices of violation should also be issued. Mr.

Ajello pointed out that the plants such as poison ivy, which had stabilized the bank had been removed and had been replaced with garden-like planting, which did not resemble the sample buffer area planting further down the lake shore. Mr. Wadelton thought these two violations merited fines as the property owners had been directly involved. Mr. LaMunier said the Commission must abide by its Regulations and treat violators in a consistent manner. Mr. Wadelton suggested then that the Regulations be amended to state that the Commission does not have the authority to waive fines. Mr. Ajello noted that fines are governed by Town ordinance, not the Regulations. Mr. Bedini stated that the Enforcement Officer is authorized to issue notices of violation and impose fines without the approval of the Commission, but did think the WEO could be flexible when a property owner was cooperating.

Regarding the legal procedure for site inspections, Mr. Wadelton stated that a commissioner may make a drive by inspection but may not walk on the property by himself. The reason for this is that all commissioners must have the same information upon which to base their decision and so should walk the property at one time with the group staying together on site.

Mr. Ajello briefly reviewed his 4/24/13 enforcement report.

MOTION:

To adjourn the meeting. By Mr. Wadelton.

Mr. Bedini adjourned the Meeting at 9:15 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator