

# October 23, 2013

7:00 p.m. Upper Level Meeting Room

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

**MEMBER ABSENT:** Ms. Cheney

**ALTERNATE PRESENT:** Mr. Davis

**ALTERNATE ABSENT:** Mr. Martino

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

**ALSO PRESENT:** Mr. Baker, Mr. Neff, Atty. Ebersol, Mr. Towne, Mr. Charles, Atty. Fisher, Mr. Talbot, Residents, Press

Mr. Bedini called the meeting to order at 7:00 p.m. and seated Members Bedini, LaMuniere, Papsin, and Wadelton and Alternate Davis for Ms. Cheney.

**MOTION:**

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

VI. Other Business

D. 175 Calhoun Street, LLC./175 Calhoun Street/Request to Modify Permit #IW-13-29/Change Size and Location of Pool;

E. Notice of Ct. Siting Council Public Hearing.

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

## **Consideration of the Minutes**

The 10/9/13 Regular Meeting minutes were accepted as corrected. The correct spelling of Trinkaus was noted throughout.

**MOTION:**

To accept the October 9, 2013 Regular Meeting minutes as corrected.

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

## **Pending Applications**

Herrmann/92 East Street/#IW-13-33/Dredge Pond:

Mr. Ajello reported that written approval from Steep Rock Assn. had been received. He also noted this pond requires cleaning every five years.

**MOTION:**

To approve Application #IW-13-33 submitted by Mr. Herrmann to dredge the pond at 92 East Street per the old documents in the original file; the permit shall be valid for 5 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. Papsin, passed 5-0.

*(The approved plan referred to was "Pond Cleanout Plan," by Mr. Neff, dated 9/15/05.)*

223 Litchfield Turnpike, LLC./223 Litchfield Turnpike/#IW-13-36/ Addition to Building:

No one was present. Discussion was tabled to later in the meeting.

### **New Application**

Gaggini/213 Roxbury Road/#IW-13-37/Pool, Patio, Addtion to Dwelling, Stonewall:

Mr. Baker, engineer, represented the applicant. He presented revised plans, "Site Plan, Grading Plan, Erosion Control Plan, Proposed Pool," by Civil 1, dated 9/18/13 and revised to 10/22/13, which addressed concerns raised in Mrs. Hill's review. He discussed the three components of the application: 1) He said the pool and patio were at least 50 feet from the flagged wetlands and pointed out the temporary access, limit of disturbance line, stockpile area, and the code compliant septic area. 2) An addition to connect the house with the existing garage was partially within 100 ft. of wetlands. 3) The stonewall proposed along the front boundary line had been shortened so that there would be no activity within 50 feet of the wetlands. He also pointed out where new trees would be planted to replace those that would have to be cut down and the pool equipment location, which was about 75-80 feet from the wetlands and adjacent to the pool area.

Mr. Bedini asked if the equipment would have a self contained filter. Mr. Baker said he would provide this information later. Mr. Ajello asked if there would be propane on site. Mr. Baker thought so, but again, said he would get this information for the next meeting. In addition, Mr. Bedini asked him to indicate where the electrical conduit would be located. Mrs. Hill's review and the corresponding revisions to the plans were noted. Grading and the proposed construction of two retaining walls were discussed. Mr. Papsin asked if the patio would be pervious. Mr. Baker said it would not, but noted it would cover a small area, which would result in only a small increase in runoff. He pointed out the pipe exit that would drain at the tree line. A site inspection will be scheduled, possibly for Wednesday, October 30.

### **Pending Application**

223 Litchfield Turnpike, LLC./223 Litchfield Turnpike/#IW-13-36/ Addition to Building:

Mr. Neff, engineer, and Mr. Talbot, architect, represented the property owners. The revised plan, "Soil Erosion and Sediment Control Plan," by Mr. Neff, revised to 10/23/13 was reviewed. Mr. Neff explained the deck had been relocated to the recess area behind the building to bring it more than 5 feet from the wetlands. It had previously been 3 ft. 2 inches away at the closest point. Mr. Davis asked if they had considered expanding to the east instead of in back of the building. Mr. Talbot said, no, because that was the existing driveway and parking area. Mr. Bedini asked if there would be a walkway outside the deck. Mr. Talbot said that area would be lawn and that there would be no access to the deck from the outside. Mr. LaMuniere thought the plans had been improved since the last meeting.

### **MOTION:**

To approve Application #IW-13-36 submitted by 223 Litchfield Turnpike, LLC. for an addition to

the building at 223 Litchfield Turnpike per the "Soil Erosion and Sediment Control Plan," by Mr. Neff, dated 10/2/13 and revised to 10/23/13; 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. Papsin, seconded by Mr. LaMuniere, passed 5-0.

## **Other Business**

Straw Man, LLC./135 Bee Brook Road/#IW-09-44/Request for Extension of Time for Bridge Work Related Activities:

*Mr. Wadelton recused himself and left the table.*

Representing Straw Man, LLC. Atty. Ebersol said he had thought about the discussion that had taken place at the last meeting and still did not think a new application should be required. He noted that at the last meeting the Commission had approved two more substantive revision requests for other property owners without new applications, and pointed out the similarities of the three requests. He then reviewed the 10/23/13 letter from Mr. Trinkaus, engineer, which, he said, addressed the concerns previously raised by the Commission. He stated that the additional purpose requested for the temporary bridge might be different from the original purpose given, but that did not go to the substance of protecting the wetlands. He read from the 4/8/2010 IWC minutes. Atty. Ebersol noted although the approval for the bridge work had been conditioned to require that the work be done during the dry time of year, June through September, this year those months had been very wet, while it was now dry in October. He advised the Commission that Mr. Towne, contractor, could have the temporary bridge installed in dry weather with no problems in 2 to 4 days. He also noted that at the last meeting Mr. Bedini had stated that the Commission did not think that either the temporary or the permanent bridge would impact the wetlands. Regarding the safety issues the Commission had raised, Atty. Ebersol stated that even though safety was not the job of the Inland Wetlands Commission, the property owner would block off the bridge.

Mr. Bedini agreed that safety was not the jurisdiction of the Commission. He noted that Mrs. Hill had consulted the Commission's attorney who had advised that an application would be necessary if the Commission determined that the changes requested would potentially result in greater impact to the wetlands, but if this was not the case, no application was required.

Mr. Davis noted the longer the temporary bridge was up, the more potential there could be for adverse impacts. Atty. Ebersol responded that the ends of the poles supporting the temporary bridge would be far beyond the wetland area. Mr. Towne stated the bridge would be used infrequently, there would not be any more erosion whether the bridge was up for 2 months or for 9 months, and the main purpose for the bridge was to construct the permanent bridge.

Mr. Davis stated that one end of the bridge would be in fill. Mr. Towne responded that the fill had been deposited long ago and was fairly compact. He said if he found it was not adequately

compacted, he would extend the poles out farther or put concrete blocks in place to set the poles on if the Commission was really concerned. Mr. Bedini said the Commission would not engineer the plans, but wanted to make sure the area would remain as stable as possible.

Mr. LaMuniere noted the public hearing to consider the permanent bridge had been contentious and that when the plans for the bridge had finally been settled on, the approval had not been challenged. He said that had been for a bridge with no development issues because only a draft development plan had been submitted at that time. Mr. LaMuniere reviewed what the Commission had originally approved and then noted that any additional activities also had to be approved by the Commission. Atty. Ebersol said that was what the applicant was now doing.

Mr. LaMuniere said it would be fine to go forward with what Straw Man was proposing, except that the Commission did not know how the installation of the poles would impact the stabilization of the bank. He said the applicant had not shown how the degradation of the bank would be avoided nor how the wetland seepage sleeve above the bridge would be installed. He thought crushed stone would have to be trucked in for the sleeve and asked if this was still the plan. He asked if there would be a difference in the abutments required for the temporary bridge and for that bridge if it remained up for a longer time and if so, what was the difference. He said the Commission had to know exactly how the temporary bridge would be constructed because its use differed from what had originally been approved. He noted again that the public hearing had been long and protracted. He asked that all of this information be put in writing so the Commission could review it.

Atty. Ebersol stated that ultimately the Commission must make its decision based on facts, and the opinions voiced at the hearing were not relevant.

Mr. Bedini said the Commission had asked for a detailed narrative of what would be done, would study it, and would then determine whether there would be more intensive impact than what had already been approved. If yes, an application would be required and if not, an application would not be needed. He said he did not think whether the temporary bridge was constructed with 3 poles or 5 poles it would make a difference in the potential impact to the wetlands.

Mr. LaMuniere noted the permanent bridge had been approved with measures to protect the wetlands and asked what measures would be taken for protection during the construction of the temporary bridge. Mr. Towne responded the erosion control measures approved for the permanent bridge had already been installed.

Atty. Ebersol noted the Commission had already approved both the temporary and the permanent bridges. Mr. Towne agreed, saying the one difference was that the temporary bridge would be used for additional testing.

Mr. LaMuniere said he expected since it would be used for an additional purpose, the applicant would have to abut the temporary bridge in a different fashion. Mr. Towne responded that would not be necessary.

Mr. LaMuniere said the Commission had not adequately "pursued" the temporary bridge previously because it had been so temporary, but because it was now proposed to be up 9 months in all kinds of weather the Commission wanted to know what the exact plans were. Mr. Towne questioned why Mr. LaMuniere thought there would be more chance for erosion during the winter months.

The weight and number of trips of the hydraulic equipment to be used for the additional soil testing was reviewed. Mr. Towne said there would be 6 to 12 trips by medium sized equipment.

Mr. Towne then explained how blocks could be used as a retaining wall if it was determined they were necessary to keep the bank stable and how the poles would be set in. He noted the poles would be set on top of the bank, almost as far out as for the permanent bridge. He then described the work to be done on the roadway, saying it would flare out at the approach to the temporary bridge and would be filled back in later when that bridge was taken out. Mr. LaMuniere said the friable soil in that area was eroding and he wanted assurance there would be no damage to the bank. Mr. Bedini noted the poles would be cut into the bank and was concerned about the impact that would have. Mr. Towne said that 12 to 18 inches must be cut for the road so the bank would be disturbed anyway and that only 6 additional inches would be cut to set the poles. He added that the soil type would not be known until he actually dug into the bank. Mr. Papsin said he wanted to see a written description of the work to be done. Mr. Davis asked what would be done in a worst case scenario. Mr. Towne said he could put it all in writing, but it could all change depending on what soil conditions were found when the bank was dug into. He said a test hole could be done, but did not think this was a good idea because it would make the area unstable for the 3 week period before the next meeting and also because he recommended doing all the work at once so there would be less chance of erosion. He added that use of the concrete blocks could make the bank more stable and if it was found that the soil was very unstable, it would be removed and more suitable material brought in.

Mr. LaMuniere said the applicant did not have the factual information needed for the temporary bridge plan or for the construction of the sleeve on the opposite side of the brook. He noted the approved plan called for a swale and a series of small dams, which he assumed would not be constructed now.

Mr. Bedini stated the temporary bridge had been approved and that if the applicant had not changed his mind about how it would be used, the request for a revision would not be necessary. He noted the Commission had originally approved it without knowing the soil conditions in the bank. He again stated the Commission must determine whether the change proposed could result in more impact to the wetlands.

Mr. LaMuniere said the temporary bridge would not only be used for additional testing, but also for the construction equipment needed for the seepage swale.

Mr. Towne asked if the approval had limited use of the temporary bridge to only one month. Mr. LaMuniere said that no time frame had been specified. Mr. Bedini said the approval said use of the temporary bridge was for bridge associated activities. Mr. Towne said there would be no change in the construction approved for the temporary bridge; the only change would be using it for access for additional soil testing. Mr. Bedini asked Mr. Towne to clarify whether material would be hauled across the temporary bridge for construction of the seepage envelope. Mr. Towne asked if the seepage envelope had been previously approved. Mr. LaMuniere said it had and that it must be constructed before the property owner may access the property. To respond to Mr. Bedini, Mr. Towne said that excavation and backfill for the temporary bridge would take only 2.5 yards of material and he asked why the temporary bridge could not be used to build the seepage envelope. Mr. LaMuniere said it could not be used because it was a different use than the temporary bridge had been approved for. Mr. Towne asked, since the temporary bridge would be strong enough to be used for the construction equipment needed to build the permanent bridge, what would be the

impact to the wetlands if it was also used by smaller equipment for soil testing. He noted the Commission had already approved access to the property. Mr. Bedini agreed that was so, but said the "road" had been included in that approval and so since the approved work would be done in a different sequence, the Commission wanted to have the work plan in writing. Mr. Bedini asked Mr. Towne if the work further into the property would be done exactly as had originally been approved. Mr. Towne said, yes. Mr. Bedini asked if the temporary bridge would be strong enough for all equipment. Mr. Towne said, yes.

Mr. LaMuniere said that at the site inspection, Mr. Charles, agent, had agreed there would be no problem if the Commission wanted the seepage sleeve. He said plans for the sleeve were needed in writing and that the Commission had to make sure the work would be secure and would not result in additional impact to the wetlands.

Mr. Bedini said he saw no reason the temporary bridge and roadway leading up to it could not be installed as long as the work stayed at least 25 feet from the stream. Mr. LaMuniere again said he wanted to see specific plans because there was significant erosion in the area that could erode further during the winter. Mr. Davis noted there was an element of risk if the temporary bridge were put in now and suggested over engineering might decrease that risk and assuage the Commission.

Mr. LaMuniere again noted the public hearing had been contentious. Mr. Bedini said that was not a factor to be considered; that whether or not the impact to the wetlands would be greater was what was to be considered.

Mr. Towne asked if the temporary bridge could be installed but used for nothing other than what had originally been approved. Mr. Davis said that was all that could be done until additional information was submitted to the Commission. Mr. Ajello asked if Mr. Davis was saying that the installation of the temporary bridge was not a bridge work related activity referred to in the motion of approval.

Atty. Ebersol said they would request permission to install the temporary bridge now during low flow months and to use it for the purpose previously approved and for nothing else until they could present additional information at the next meeting. Mr. Bedini explained that since the work had been originally approved for June through July, this would be an approval of an extension of time in which to work. Atty. Ebersol agreed that was what was being requested. Mr. Bedini asked the Commission if it wanted to extend the work period beyond September 30. Mr. LaMuniere said he had no problem with that, but needed "financial and developmental parameters." Mr. Papsin said he had no problem with the work being done now in the dry time, but wanted a) a written description of what work would be done, b) submission of a revised sequence of construction, and c) asked if they planned to go farther than just installing the bridge. He said the applicant only had the right to put in the temporary bridge for the purpose as approved. Mr. LaMuniere said he tended to agree, but said if it were approved, it could be questioned by the condo residents. Mr. Towne said again the temporary bridge had already been approved and that what the neighbors might think was irrelevant because it would have no greater impact on the wetlands.

Mr. Bedini again asked if the Commission wanted to approve the request for an extension of time, noting that for any additional use beyond what had previously been approved, the applicant would have to submit detailed information in writing, which would then be reviewed to determine whether there would be additional impacts to the wetlands. Mr. LaMuniere said there should be no

extension until the Commission saw plans for the temporary bridge. Mr. Towne stressed the Commission had already approved the bridge. Mr. LaMuniere responded that the additional testing could not be carried out unless the wetland sleeve was installed. Mr. Bedini explained the approval of an extension would not include approval of additional uses. Mr. Davis explained the applicant needed an extension in order to install the temporary bridge and that if this was approved, then they could go no further without the Commission's OK. Mr. Towne stated they were not asking for anything different than what had originally been approved except for the time extension. Mr. LaMuniere and Mr. Papsin said they wanted more information before they approved an extension of time. Atty. Ebersol responded they were asking only for an extension of what had already been approved and that to do anything further they would have to convince the Commission there would be no significant impacts to the wetlands.

Mr. Towne asked what was the problem that would be created and what was the substantial impact to wetlands that could result. Mr. Ebersol said if there was no traffic over the bridge during the winter, there would be no erosion problem. Mr. LaMuniere said the number of poles to be used and the increase in time from 3 weeks to 9 months could cause problems and the friable soils could contribute to negative impacts. Atty. Ebersol argued that the bridge could have been installed in September as approved and there would have been no negative impacts. Mr. LaMuniere stated the temporary bridge was approved for use when construction of the permanent bridge was eminent. Atty. Ebersol said that was not stated in the approval. Mr. Towne agreed that no time frame had been specified. Mr. LaMuniere reviewed the construction sequence, said in his view the temporary bridge would be installed for the immediate construction of the permanent bridge, and asked that the applicant show how the temporary bridge would not just sit on the friable bank and cause negative impacts. He read part of the approved construction sequence and asked if they would still do what was approved or would they do additional activities, too.

Mr. Bedini advised the applicant's representatives that a lot of time could have been saved if they had submitted the information requested at the last meeting, which would have enabled the Commission to determine whether the proposed activity would have a greater impact on the wetlands.

Atty. Fisher said he represented the neighbors and asked if he could speak. Mr. Bedini said he could not speak because it would be improper as the meeting had not been noticed as a public hearing. Atty. Fisher made his statement anyway. Atty. Ebersol objected.

Mr. Bedini said it was the consensus of the Commission that no new application was needed, but that additional written information must be submitted before the Commission would act on the request for the extension. Mr. LaMuniere asked how long that would take. Atty. Ebersol said they would try to get it in before the next meeting.

Mr. Ajello stated there was time to delay action on this application for a revision. Mrs. Hill noted this was a request for a revision and there was a letter accompanied by the \$25 fee in the file.

Mr. Bedini noted the Commission's attorney would be asked to attend the next meeting when this matter would be discussed.

*Mr. Wadeldon was reseated.*

#### Berg/22 Foullois Road/Preliminary Discussion/Unauthorized Drainage Work

Ms. Whitney, landscaper, submitted an undated letter from the property owners asking that the Commission allow the unauthorized drainage work to remain as installed. Mr. Ajello circulated photos of the property. He said when he had inspected the work done to dredge the pond, he found that a curtain drain had been installed through the wetlands. He pointed out the wetlands on the map, "Site Analysis Plan," by Mr. Alex, revised to 1/17/07 was reviewed and noted there were wetlands soils in this area although it has been mowed for some time. It was also noted there are extensive wetlands on the property. The photos were compared with the map. Mr. Ajello noted the curtain drain goes to a collection system and through a pipe that empties into the pond. He said this accelerates the overland flow so the wetland does not perform its function. Ms. Whitney apologized for the unauthorized work. She said the owners wanted to drain the area so their children could play there; without the curtain drain it gets "mucky," has some standing water, and is difficult to mow. She noted the previous owner had maintained the area as mowed fields. Mr. Ajello noted at this time the owners were not challenging the notice of violation, nor were they proposing mitigation. When asked what he thought about the request, Mr. Ajello said there were three options; 1) doing extensive planting, which he did not think would work as the drain dries out the area, 2) removing the drain and restoring the area to its previous condition, or 3) hiring a soil scientist to reflag the wetlands, although he thought the current mapping was accurate as it had been done by Mr. Temple in 2006. He thought the only credible option was for the owners to pay the fine and to remove the drain. Ms. Whitney said it had been their plan to replant a natural border around the pond. Several commissioners pointed out there were other areas on the property where the children could play. Mr. Temple's soils report was briefly discussed. Ms. Whitney asked if it would be advantageous to do additional soil testing in the newly drained area. Mr. Ajello said the tests would show it was still wetlands soil with wetland functions. It was the consensus of the commissioners that draining wetlands is not permitted and the curtain drain must be removed. Ms. Whitney asked if the owners could hire an engineer to apply to keep the curtain drain. She was advised that if a wetland scientist came up with a solution, the Commission would consider an application, but the scientist would most likely agree that the drain must be removed.

#### Update re: state spraying of herbicides near wetlands and watercourses:

There was nothing new to report. After a brief discussion it was noted that no one had written to the First Selectman to ask him to consult with Kent and Warren about this problem, nor had anyone contacted CACIWC as it had been agreed would be done. Mr. Papsin and Mr. Bedini will work on letters.

#### 175 Calhoun Street, LLC./175 Calhoun Street/Request to Modify Permit #IW-13-29/Change Size and Location of Pool:

Mr. Bedini read the 10/21/13 letter from Ms. Castagnetta explaining the proposed revisions were for a smaller pool that would result in less site disturbance. The map, "Proposed Site Plan," by Folia Gardens, revised to 10/21/13 was reviewed. It was noted the proposed pool location did not meet the setback requires in Section 12.1.1 of the Zoning Regulations so the plan would either have to be further revised or go to ZBA. It was the consensus to table further discussion.

#### **Enforcement Report**

The 10/23/13 Enforcement Report by Mr. Ajello was circulated.



MOTION:

To adjourn the Meeting. By Mr. Davis.

Mr. Bedini adjourned the meeting at 9:36 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator