

July 13, 2011

Regular Meeting

7:00 p.m. Land Use Meeting Room

MEMBERS PRESENT: Mr. Bedini, Mr. Bohan, Mrs. Hill, Mr. Wadelton

MEMBER ABSENT: Mr. LaMuniere

ALTERNATE PRESENT: Mr. Papsin

ALTERNATES ABSENT: Ms. Cheney, Mr. Martino

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

ALSO PRESENT: Mr. Neff, Mr. Sabin, Mr. Law, Mr. Organschi, Mr. Szymanski, Mr./Mrs. Frankland, Mr. Coleman, Ms. Purnell, Ms. Giampietro, Mr./Mrs. Solomon, residents, press

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

MOTION:

To add the following subsequent business to the agenda:

V. New Applications:

E. Kessler/ 105 West Mountain Road/#IW-11-23/Stone Wall and Hot Tub,

F. Schwartz/173 West Shore Road/ #IW-11-24/Patio and Retaining Wall:

VI. Other Business:

A. State Permit for the Use of Herbicides in Pond/Tagley/___ Sabbaday Lane,

B. Klauer/101 Wykeham Road/Request to Revise Permit #IW-08-31/School:

VII. Enforcement:

N. Howard/99 West Shore Road/ Unauthorized Patio,

O. Pond/153 West Shore Road/Unauthorized Stone Wall. By Mr. Wadelton, seconded by Mrs. Hill, and passed 5-0.

Consideration of the Minutes

The 6/8/11 Regular Meeting minutes were accepted as amended.

Page 2: next to the last paragraph: insert the word, "authorized" before "...pond maintenance is allowed."

Page 7: Under Lanyi: 12th line: Change "driveway" to "steps."

MOTION:

To accept the 6/8/11 Regular Meeting minutes as amended.

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

MOTION:

To accept the Lancaster-Fuchs 6/16/11 site inspection minutes as written.

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

MOTION:

To accept the 105 West Shore Road, LLC. 6/16/11 site inspection minutes as written.

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

MOTION:

To accept the 6/22/11 Special Meeting minutes as written.

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

MOTION:

To accept the 6/30/11 Special Meeting minutes as written.

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

Pending Applications

Lancaster-Fuchs/18 Sabbaday Lane/#IW-11-16/Dredge Pond:

Mr. Neff, engineer, said he had reviewed the plans presented at the last meeting, had inspected the property during heavy rains, and had revised the application. A review of the map, "Pond Cleanout Plan," by Mr. Neff, revised to 6/20/11 showed the addition of catch basins and a pipe north of the garage to direct runoff from the swale above the driveway to the pond. He noted that a 2 ft. deep silt basin was proposed at the pipe inlet to collect sediment from the swale. He also said that for final treatment, a 6 inch perforated pipe would be installed in a 30 ft. long, 1.5 ft. wide, 3 ft. deep stone trench to allow the water to infiltrate before reaching the pond. He noted the location of the proposed curtain drains. The unauthorized ditch that had been dug will be filled in. Mr. Neff also stated that no plantings were proposed on the slope; that natural vegetation would grow there as soon as the erosion was corrected. Mr. Bedini stated that the concerns raised at the last meeting had been addressed.

MOTION:

To approve Application #IW-11-16 submitted by Lancaster-Fuchs to dredge a pond and for drainage improvements at 18 Sabbaday Lane in accordance with the plan, "Pond Cleanout Plan," by Mr. Neff, dated 5/18/11 and revised to 6/20/11; 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. Wadeldon, seconded by Mr. Papsin, and passed 5-0.

Frankland/173 Litchfield Turnpike/#IW-11-18/Construct Barn:

Mr. and Mrs. Frankland presented a larger scale map with contours, "Site Analysis Plan," by Mr. Alex, dated June 2011, as had been requested at the last meeting. It was noted that the proposed location of the barn had been moved so that it was at least 50 ft. from all wetlands. Mrs. Frankland said that as long as the barn had no footing drains, the Health Dept. would allow it to be 18 ft. from the existing well, and she noted a more detailed construction sequence had been submitted. Mr. Frankland discussed the building plans for the proposed 40 ft. X 40 ft., 6 to 8 inch thick monolithic slab. Mr. Bedini asked if there would be any soil stockpiled on site. Mrs. Frankland said it would be hauled off the property. Mr. Frankland noted the total amount to be hauled away was 60 yards. It was noted the construction would take approximately 14 days. It was the consensus of the commissioners that no site inspection was necessary.

MOTION:

To approve Application #IW-11-18 submitted by Mr. and Mrs. Frankland to construct a barn at 173 Litchfield Turnpike in accordance with the map, "Site Analysis Plan," by Mr. Alex, dated June 2011 and the handwritten construction sequence signed by Mrs. Frankland, dated 7/13/2011; 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,

3. any change to the plans as approved must be submitted immediately to the Commission for reapproval, and

4. a second copy of the site plan must be submitted to the Land Use Office before the permit shall be issued.

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

New Applications

Naiokas-Kleinberg/10 and 18 Loomarwick Road/#IW-11-19/Driveway Drainage Swale:

Mr. Neff, engineer, presented his map, "Driveway Drainage Plan," dated 7/2/11 and noted the application involved two properties. Mr. Kleinberg gave Ms. Naiokas permission to undertake driveway repair work on his property as Ms. Naiokas' right of way agreement provided no details regarding maintenance. Mr. Neff explained that currently the runoff overflows the swale and erodes the driveway. He proposed a 3 ft. wide, 1 ft. deep rip rapped swale, which would empty into the intermittent watercourse near the end of the driveway. He said some of the material to be excavated for the swale would be taken off site. Mr. Neff also stated that the existing pipe along Loomarwick Road would be left as is and that the roots of any trees cut would also remain in place. Mr. Ajello described the sheet flow in this area. It was the consensus that no site inspection was needed.

Lyon-Gray/82 Old Litchfield Road/#IW-11-20/Gazebo and Landscaping:

Mr. Sabin, landscape architect, presented the map, "Site Plan," by Mr. Sabin, dated 5/1/11. He pointed out the wetlands setback and an area where some trees would be thinned out, noted a permit to remove invasive species had already been approved, and reported that some of that work had been completed. A 12 ft. diameter gazebo, which would result in 8 sq. ft. of soil disturbance is proposed. It would be accessed by a back terrace and the slope behind it would be restored with native plants. Slab steps are also proposed. Mr. Ajello noted the gazebo must be at least 50 feet from the wetlands to comply with the Zoning Regulations. In response to a question from Mrs. Hill, Mr. Sabin explained the differences between the activities approved in old permit and those proposed in the current application. Mr. Sabin noted the work would be done by hand or with a power auger. Mr. Bohan noted the existing stonewall would serve as a sediment barrier to protect the wetlands. A site inspection was scheduled for Wednesday, July 20, 2011 at 5:30 p.m. Mr. Sabin said he would stake out the wetlands setback line and mark the trees to be cut.

Steep Rock Assn./120 Bee Brook Road/#IW-11-21/Bridge:

Mr. Law, Director of Steep Rock, and Mr. Organschi, architect, represented Steep Rock Assn. The plans, "Pedestrian Bridge Crossing the Shepaug River at the Hidden Valley Reservation," 7 sheets, by Gray Organschi and TPA Design Group, dated July 11, 2011 were reviewed. Mr. Organschi stated the following were the design criteria for the bridge; minimum impact on the wetlands, clearance as required by the DEP, no work and no construction of a permanent structure within wetlands, and access for mobility impaired people. He stated the cable embedments and the sonotubes for the bridge would be installed within the 100 ft. regulated area. He noted the application includes two construction narratives, erosion control measures, best management practices, a set of civil engineering plans, and an architectural-structural set of plans. He said also that all construction information such as sizes of footings, explanation of phasing, type and size of machinery to be used, vehicular traffic, etc. are included. The phasing of the bridge construction was discussed. Phase I would be done quickly in the fall of 2011. Minimal clearing and excavation would be done and the concrete poured. The erosion controls would be left in place over the winter. The 12 days of construction for Phase II would begin in June 2012 when the ground had dried and the DOT was finishing its work on the Rt. 47 bridge. The bridge decks would be constructed off site. Mr. Organschi described the machinery to be used including

a crane, which would operate from the south trail bank, and how a small loader would shuttle back and forth from the staging area in the existing parking lot. The number of vehicles allowed in the construction site would be limited. Mr. Organschi noted that all of the wetlands had been flagged by a soil scientist and that a natural diversity database study had been preliminarily OK'd by the DEP. He noted, too, that the bridge had been designed to DEP standards. In response to a question from Mr. Bedini, Mr. Law said Steep Rock had not yet decided whether it would close the parking lot north of the river. If it were to be closed, the removal of the existing truss bridge would be a separate application. Mr. Bedini said the Commission would normally hold a public hearing to consider the application because the bridge was on the Shepaug River and there was much public interest. He also stated that the application would be sent to a consultant for review. Mr. Organschi again stated there would be no construction in the wetlands and no impacts to the wetlands. He pointed out the 100 year flood elevation and spoke about the construction sequence. The material to be used for the walkway is glued laminated timber like the material used by the National Park Service and the cables would be weather resistant galvanized steel. Mr. Bohan asked if a DEP engineer was reviewing the plans. Mr. Organschi said he was and that the project was considered to have low impact in the flood plain. Mrs. Hill asked what the distance was between the proposed bridge and the road and the proposed bridge and the Reich bridge. Mr. Organschi did not know, but said he would provide this information. As there had been no objection to holding a public hearing, Mr. Bedini said the Commission would pick a hearing date at the next meeting. It was hoped that by that time it would know how long the consultant would take to review the application. It was the consensus that the consultant would be Milone and MacBroom. Mr. Organschi noted the final engineering specs had not yet been completed.

Brown/127 West Shore Road/#IW-11-22/Application to Correct a Violation:

Atty. Kelly and Mr. Sabin, landscape architect, represented the applicant. Atty. Kelly explained the application was part of a settlement order and pending litigation and was not an application for an exemption. The map, "Proposed Shoreline Improvements and Buffer," by Mr. Sabin, dated 7/11/11 was reviewed. Mr. Sabin noted the goal of the Commission is to encourage buffers and natural shoreline around the lake, and to discourage sea walls. He proposed to maintain a portion of the existing sea wall and to install filter fabric behind it. To the east of the existing dock he proposed to demolish some of the wall, to line the shore with boulders, and to add a planted buffer of native plants. Mr. Bedini noted that originally Mr. Brown had been issued a permit for three sections of wall with a total length of 30 ft., but had built a 130 ft. long wall. He said a notice of violation and a cease and desist order had been issued and Mr. Brown had been ordered to remove the 100 ft. of unauthorized wall. He said this matter had not yet been resolved. Atty. Kelly stated that Mr. Brown's original application had been to rebuild the entire wall, but the approval had been for only 30 ft.; 10 ft. around both of the dock anchors and 10 ft. along the stairs. He noted the original application had included crushed stone and filter fabric behind the entire wall, but said these had not been installed when the work was done. He presented several photos of the shoreline taken in 2006 before any work was done and compared them to photos taken in 2007 after the wall was built. Atty. Kelly pointed out that one section of the wall had been deconstructed. He also stated that Mr. Brown had the right to maintain the wall as an as of right activity. Atty. Kelly stated that the current application proposed significant improvements and the enhancement of the shoreline and was an offer of settlement. Mr. Sabin explained that about half the shoreline would have a planted buffer that did not exist before the work was done. He added that 13 ft. of the wall to the east of the dock would be removed. In summary it was noted that 30 ft. of wall had been approved, 150 ft. had been constructed, then 50 ft. had been removed, currently 76 ft. of wall was proposed to remain, and so the difference actually being applied for was 46 ft. Atty. Kelly stated that the WEO did not think the disturbance that would result from the installation of crushed stone and filter fabric behind the existing wall would be "worth it," and so said it would only be done if the Commission wanted it. Mr. Bedini said the Commission would want a consultant to review the

proposal, noting that a major concern was how the construction of sea walls impacts the health of the lake, especially now that so many property owners were attempting to wall in Lake Waramaug. Mr. Sabin thought this was a simple matter that did not require a consultant as only 76 ft. of wall was proposed along the shore where there had always been a wall. He reminded the commissioners that half of the shoreline would be returned to natural vegetation and saw the proposal as a “workable solution.” Atty. Kelly encouraged the Commission to defer a decision until after a site inspection had been conducted so the commissioners could view this property in relation to the others in the area. Mr. Bedini asked what would be the point of the Commission settling by approving a section of wall it had previously denied. Atty. Kelly voiced his frustration that the Commission’s attorney was not present to advise it. Mr. Ajello thought it would be helpful if he read the enforcement order, but Atty. Kelly objected because Mr. Ajello was named as a party in the suit. Mr. Bedini informed Atty. Kelly the Commission’s job was to protect the lake and so it would consult with an expert about the impact of shoreline walls. He said this was not punitive, but was necessary for the Commission to do its job properly. A site inspection was scheduled for Wednesday, August 3, 2011 at 5:30 p.m. It was noted that all commissioners should review the complete file. Mr. Sabin said he would fill out the remaining sections of the DEP form.

Kessler/105 West Mountain Road/#IW-11-23/Stone Wall and Hot Tub:

Mr. Neff, engineer, presented his plan, “Stone Wall and Hot Tub Plan,” dated 7/11/11. A dry laid 2 ft. wide, 3 ft. high stone wall and a hot tub were proposed on the existing lawn area on the south side of the house. Both the wall and the tub would be located in the upland review area. Mr. Neff noted it was a straightforward application as the area was pretty level and only a little backfill would be needed. A site inspection was scheduled for Wednesday, July 20, 2011 at 6:00 p.m.

Schwartz/173 West Shore Road/#IW-11-24/Patio and Retaining Wall:

Mr. Neff, engineer, presented his plan, “Sediment and Erosion Control Plan,” dated 7/11/11. He explained this landscaping plan supplemented the garage construction that had been previously approved. Retaining walls were proposed around the patio area and at the corners of the garage and the driveway would be paved. Mr. Neff pointed out the limit of disturbance line and said both erosion controls and a construction sequence had been submitted. The distance from the proposed patio to the closest wetlands flag was 34 feet. A site inspection was scheduled for August 3, 2011 at 6:15 p.m. Mr. Neff said the patio area would be leveled and the excavated material would be temporarily deposited on the driveway. Mr. Bedini noted that asphalt would be installed very close to the wetlands making what had been a pervious gravel area an impervious surface. Mr. Neff responded that compacted gravel has a runoff coefficient close to that of pavement.

Other Business

Tagley/___Sabbaday Lane/State Permit for Application of Herbicide in Pond:

It was noted that although the state DEP had approved the application, an Inland Wetlands permit was also required. Mr. Ajello will send a letter to Mr. Tagley to inform him.

Klauer/101 Wykeham Road/Request to Revise Permit #IW-08-31/School:

Mr. Szymanski, engineer, said the owners were applying to modify the university design, which would result in a net decrease in impervious surface area. He said he was in the process of finalizing the plans and would prepare an overlay map that would show the improvements proposed. He briefly reviewed his 7/12/11 letter to Mrs. Hill, which described eleven proposed revisions. He said he anticipated that the Commission would send this out to Land Tech for review and asked that this be done as soon as possible. Mrs. Hill noted that normally the Commission would not consider this a revision because of the number of changes proposed, but said because they were all positive for the wetlands, she was prepared to consider it as a revision. Mr. Szymanski noted an error on the plans and said no spa was

proposed. Mr. Bedini did not think a public hearing would be needed for the proposed downsized revisions. A site inspection will be scheduled at the next meeting. Hopefully by that time the consultant's review will have been received. Mr. Wadelton asked if construction would begin this year. Mr. Szymanski said it would possibly begin this fall or in the spring.

Enforcement

Rosen/304 Nettleton Hollow Rd./Unauthorized Stream Work, Clearing/ #IW-08-V2 and #IW-10-V3:

Mr. Sabin, landscape architect, submitted a letter stating that all restoration work had been completed per the approved plans. Mr. Papsin asked if the invasives had been removed and the level spreader installed. Mr. Sabin said they had. Mr. Sabin informed the Commission that 80% of the lawn would be converted to meadow. Mr. Ajello said he had inspected the site and was satisfied with the work done.

MOTION:

Regarding Rosen/304 Nettleton Hollow Road/ Unauthorized Stream Work and Clearing/#IW-08-V2 and #IW-10-V3; to approve the completed restoration and to release the notice of violation filed on the Town Land Records.

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

Bennett/27 West Shore Road/Unauthorized Drainage Work:

A notice of violation has been sent to the estate's attorney, but there has been no response. Mr. Ajello said this was a serious violation because the drainage had been installed on top of the septic system.

MOTION:

Regarding Bennett/27 West Shore Road/ Unauthorized Drainage Work; to file the notice of violation on the Town Land Records.

By Mr. Wadelton, seconded by Mr. Bohan, passed 5-0.

Chatfield-Schellerer/19 Tinker Hill Road/#IW-10-V01/Unauthorized Clearing:

Neither a site development plan nor a restoration plan has been submitted as requested and it was noted the owners had not met the terms of the enforcement order. Mr. Ajello was asked to send another citation.

Gordon/180 West Shore Road/Landscaping and Drainage Work:

Mr. Ajello said the work was completed and the file would be closed.

Hochberg/15 Couch Road/Unauthorized Excavation of Pond and Deposition of Material:

Mr. Hochberg had informed the Commission that he would appeal his citation. However, a hearing date has not yet been set nor a judge selected by the Selectmen's Office. It was noted that Mr. Hochberg had offered to pay half of the fine, but that the fine was set by Town ordinance and could not be negotiated by the Commission.

Howard/99 West Shore Road/Unauthorized Patio:

Mr. Ajello said he had told the worker on site to stop work and had mailed a notice of violation. An enforcement order will be sent and a show cause hearing conducted on August 10, 2011 at 6:00 p.m.

Leary/164 West Shore Road/Reconstruct Dwelling:

This project is nearing completion.

Pond/153 West Shore Road/Unauthorized Construction of Stone Wall:

Mr. Ajello circulated photos of the recent work done. He said he would send a notice of violation and a citation to Mrs. Pond and a citation to the contractor. He thought the work had been done in the flood plain. An enforcement order will be sent and a show cause will be held on August 10, 2011 at 6:30 p.m.

Wang/110 Blackville Road/#IW-09-V7/Unauthorized Clearcutting and Driveway:
The required trees have been planted.

Administrative Business

Shoreline Policies:

A public hearing to consider proposed Section 11A to the Washington Inland Wetlands and Watercourses Regulations, Special Criteria for Applications Involving Regulated Activities around Lake Waramaug and Other Major Water Bodies and Watercourses, was scheduled for Wednesday, July 27, 2011 at 7:00 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall. There will be a special meeting immediately following the hearing to vote on the proposed regulations.

Work in the State Right of Way:

Mr. Ajello noted possible problems with the work the state is allowing in the Rt. 45 right of way by the Geurts property. Staff will contact Atty. Olson for advice on how to handle this matter and other situations that frequently occur around the lake in the right of way. Other suggestions included having the Commission's attorney write to the state DEP to inform it of the ongoing activity and getting the Lake Waramaug Association involved.

MOTION:

To enter into executive session at 10:15 p.m. to discuss pending litigation:
Brown/127 West Shore Road.

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

MOTION:

To end executive session at 10:50 p.m.
By Mrs. Hill, seconded by Mr. Bedini, passed 5-0.

MOTION:

To adjourn the meeting.
By Mrs. Hill.

Mr. Bedini adjourned the Meeting at 10:52 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
Janet M. Hill
Land Use Administrator