

January 11, 2006

MEMBERS PRESENT: Mr. Bedini, Mrs. D. Hill, Mr. LaMuniere, Mr. Picton, Ms. Purnell

ALTERNATES PRESENT: Ms. Coe, Mr. Thomson

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

ALSO PRESENT: Atty. Zizka, Mr. Sears, Mr. Owens, Mr. Neff, Mr. Majewski, Mr. Jontos, Mr. Johnson, Mr. Papsin, Mr. Fenwick, Mr. Corbo, Mrs. Pullaro

Mr. Picton called the Executive Session to order at 5:40 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Purnell. Ms. Purnell noted First Selectman Sears and staff were invited to attend.

MOTION: To exit Executive Session. By Ms. Purnell, seconded by Mr. Picton, and passed 5-0.

Mr. Picton ended the Executive Session at 5:52 p.m.

SPECIAL MEETING WITH ATTY. ZIZKA

Mr. Picton noted two issues he would like to address were how to handle violations for activities the Commission would never have approved such as Reinhart, Gatto, and Carter and how the Commission can be clearer about its goals. Many questions were raised and included the following:

- Roxbury has successfully negotiated for large contributions to its open space fund in lieu of bringing violators to court. Why can't Washington operate this way? Atty. Zizka was not sure about all the facts in the Roxbury cases and cautioned that each case must be considered specifically.
- Identifying wetlands and watercourses was discussed. It was noted wetlands are delineated based on soil types and none of the Commissioners nor the EO is a soil scientist. The Commission also noted drainage and steep slopes are factors and asked if the Commission can issue enforcement orders regarding the cutting of vegetation on steep slopes above wetlands. Atty. Zizka said the courts have recently been more conservative regarding wetlands jurisdiction, but would uphold the right of the Commission to require flagging. He said cutting trees was not a regulated activity unless 1) they were located in a wetlands or watercourse or 2) they were located in the upland review area and it could be demonstrated that removing them would have adverse impacts on wetlands and/or watercourses. He suggested the Commission might consider drafting riparian zone regulations, which would be an overlay zone based on functional criteria and scientific data.
- Ms. Purnell asked if the Commission could claim jurisdiction based on adverse impacts from similar activities elsewhere in Town. Atty. Zizka said some courts were OK with this and some were not. He stressed in a site specific situation, it must be likely (not just possible) that the proposed activity will have adverse impacts.
- Mr. Bedini asked how thorough the Commission should be with enforcement; is a verbal order sufficient? Atty. Zizka advised that letters are always helpful. The courts like to see that a commission has made every effort to work with the property owner.
- The citation ordinance was briefly discussed. It was noted the fines are low and that the ordinance was not designed for major violations. Mr. Picton will research whether to increase the fines and levy them per day rather than per offense.

- Atty. Zizka thought it was reasonable to go on site to inspect a property where a violation is occurring, although it should be a case by case assessment. He noted inspections for violations should be made by the EO or designated second EO and not by the chairman or another commissioner.
- The Commission's policy regarding new construction within 50 feet of wetlands and watercourses was discussed. Mr. Picton noted the Commission knew from experience it was likely to cause an adverse impact, but said he understood the Commission must be site specific. It was noted the state statutes regulate the area within 50 ft. of wetlands, they don't forbid all new construction there. Mr. Picton noted for proposed activities within 100 ft. of wetlands the Commission always asks that feasible and prudent alternatives be considered and the applicant is asked to move the activity if it is shown there is a possible alternative. He asked if the Commission could set standards for approval and non approval to be clear and firm about the Commission's objectives from the beginning of the application process. Atty. Zizka thought this was a risky approach due to the courts' conservative stand and again advised the Commission it would need scientific and technical proof that there would be adverse impacts. He suggested a general policy statement such as, structures within ___ feet of wetlands and watercourses have adverse impacts as evidenced ____, and therefore, these activities will be denied unless the applicant can demonstrate ____, ____, and ____. He noted due to lobbying by the Homebuilder's Assoc., the court has agreed the upland review area is not as important as the wetlands and watercourses. To regulate the upland review area, the Commission must be able to demonstrate there is a specific need in order to protect the wetlands and watercourses. For example, in the Reinhart case evidence of an increase in drainage problems is mounting from downhill neighbors and a report from a hydrogeologist would be helpful, the more site specific the better. Mr. Picton noted the Commission would work on a list of reasons to regulate the upland review area. Mr. Thomson noted the Zoning Comm. has a regulation prohibiting new construction within 50 ft. of wetlands and asked if this could be grounds for a Wetlands denial. Atty. Zizka said it would not.
- Mitigation was discussed. Atty. Zizka advised the Commission the mitigation should address the environmental impact of the specific proposed activity. He thought the smaller the potential impact, the more the judge would want specific information on that impact. He said mitigation should strive to replace the values being lost.
- Mr. Thomson asked how to deal with past violators. Atty. Zizka said their past violations should not be mentioned when considering a new application, but could be considered when deciding on a performance bond.
- Atty. Zizka told the Commission in cases where the permit work has not been completed according to the approved design, it should promptly issue an order to undo the work and rebuild it in accordance with the approved plan. In these cases the applicant should be asked for mitigation while the corrective work is being done and for a timetable for completion. He noted the show cause hearing was an important part of the enforcement process where the Commission would inform the applicant of all the reasons why it thinks the way the work was done has a greater potential to cause harm to the wetlands. He said the Commission should be prepared to continue the hearing to provide the applicant the opportunity to prove otherwise. Atty. Zizka did not think it was too late to issue an enforcement order for Carter, as the Commission had a year to develop specific concerns. He said the burden would be on the property owner to address those specific issues. He noted, too, it would be helpful if the Commission had scientific evidence to back up its concerns.

- The Commission noted it has had trouble with enforcement in cases where it can't establish the condition of the property prior to the violation. Atty. Zizka stated the order should specify the nature of the violation and the required corrective measures and at the show cause hearing, the owner would have the opportunity to provide reasons why he should not have to restore the property. It was noted, again, the burden was on the owner.
- Ms. Purnell asked about the landscaping exemption specified in the statutes since Washington has soil based zoning. Atty. Zizka said he would investigate because he was not convinced that exemption was as broad as some claim, plus the landscaping could not result in harm to the wetlands. Mr. Picton said the Commission would continue its current policy.
- The pros and cons of acting under an enforcement order vs. requiring an after the fact application were discussed. Atty. Zizka noted there is less burden on the Commission when an enforcement order has been issued.

Mr. Picton thanked Atty. Zizka for his advice and at 7:14 p.m. recessed the meeting.

REGULAR MEETING

Mr. Picton reconvened the meeting at 7:34 p.m. and seated Members Bedini, Hill, LaMunier, Picton, and Purnell.

MOTION: To add the following subsequent business not already posted on the agenda: New Applications: B. Hackney, Holiman/125 West Shore Road/#IW-06-02/Repair Boathouse- Studio, C. Corbo Assoc./23 Curtis Road/ #IW-06-03/Inground Pool and Other Business: Auchincloss/5 Kielwasser Road/Revision of Permit #IW-03-57, F. Town newsletter, G. Conservation Commission brochure. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

Pending Applications

Janowicz/51 Rabbit Hill Road/#IW-05-61/Driveway: Mr. Ajello reported there was nothing new in the file. It was noted the extension granted would be over prior to the next meeting.

MOTION: To deny without prejudice Application #IW-05-61 submitted by Mr. Janowicz to construct a driveway at 51 Rabbit Hill Road due to insufficient information. By Mrs. Hill seconded by Ms. Purnell, and passed 5-0.

Pasatieri/77 Findley Road/#IW-05-68ATF/Septic Repair: Mr. Ajello reported the property had been sold so he had not written to the owner to advise him the pending application was incomplete. The commissioners did not think that a transfer of ownership ended the matter of the violation and noted the buyer's attorney should have researched Town records prior to the sale. Mr. Ajello was directed to ask the new owner for an application for the repair work done without a permit.

Lewinter/84-86 Roxbury Road/#IW-05-69/Barn: There was no new information for this application.

Kessler/103-105 West Mountain Road/#IW-05-70/Two New Dwellings, Driveway, Etc.: Mr. Jontos and Ms. Sahl from Land Tech Consultants, Inc. and Mr. Owens, architect, were present. Ms. Sahl reviewed the revisions to the plans, "Wetland Mitigation Plan," 3 sheets, by Land Tech, revised to 1/10/06. Mr. Jontos compared the footprint of the existing "cottage" and hard landscaping to the proposed footprint and found there was a 1324 sq. ft. reduction overall. Mr. Owen noted the new house would be smaller in heated area than the existing and the patio shown was the worst case scenario; the garden had not yet been designed. Mr. Picton noted a small portion of the proposed work was within 50 ft. of the wetlands, but that the applicant contends that it would not increase the adverse impact to the wetlands. He asked if the proposed construction activities were under control. Ms. Coe noted heavy equipment would be used. Mr. LaMunier noted all work would be within the regulated area and that

the existing foundation would be removed and rebuilt. Ms. Purnell thought the proposed activities could have a significant impact on the wetlands and watercourses and asked for feasible and prudent alternatives. Mr. Jontos responded there was no other appropriate location and asked, assuming the proposed erosion controls were in place and the activities stayed within the approved limits, what would the significant impact be? Ms. Purnell said there could be potential failures. Mr. Jontos thought it was not reasonable to assume the erosion controls would fail and referred to the definition of significant impact. He said the Commission had to evaluate each application on its own merits. Mr. Owens read his 1/11/06 letter to Mr. Picton regarding feasible and prudent alternatives. He stated the location chosen for the new dwelling was on a level section where there would be the least encroachment on the steepest slopes around it. Mr. Picton suggested it could be moved back farther from the edge of the slope. Mr. Owens said he did not want to do so because the gradient across the building increases as it is moved further away and the building would have to be elevated to get the same view. Mrs. D. Hill thought there should be two separate applications, one for each property. Mr. Picton thought it would be better to address the activities as a whole. There was a lengthy discussion about whether there was the potential for a significant adverse impact and whether to conduct a public hearing.

MOTION: To hold a public hearing to consider Application #IW-05-50 submitted by Mr. Kessler for two new dwellings, driveway crossing, pond cleaning, etc. at 103-105 West Mountain Road. By Mrs. Hill, seconded by Ms. Purnell, and denied 2-3. Mr. Bedini, Mr. LaMunier, and Mrs. Hill voted No because they did not think the proposed activities would cause significant adverse impacts to the wetlands and watercourses.

It was noted the application had been referred to Fuss and O'Neill and that an estimate of \$5500 had been received. Mr. Owens questioned the Commission' authority to make the applicant pay for the consultant's review. He argued the Inland Wetlands Comm. was not covered by Town Ordinance #711, stated his client had provided sufficient technical information so a review should not be necessary, and said his client had already paid a large sum for the expert work submitted. Mrs. D. Hill noted the Commission is authorized in its Regulations to require the applicant to pay for the consultant's review and Ms. Purnell referred to Section 20, Appendix C. Mr. Picton explained the Commission was not qualified to analyze a detailed plan like this one. Mr. Owens said the copy of the Regulations he purchased did not contain this section and Mrs. J. Hill will correct this omission when future copies are made.

Brighenti/49 Calhoun Street/#IW-05-71/Tennis Court: Mr. Ajello noted Mr. Brighenti had paid the estimated consultant's fee and said Land Tech would try to have its report ready for the next meeting.

Upper Church Hill, LLC./72 Upper Church Hill Road/#IW-05-73/3 Lot Subdivision: The 1/6/06 report from the Conservation Commission, which listed five points of concern, was noted. Mr. Ajello said the draft language for the conservation easement had been submitted earlier in the day. Ms. Purnell asked that in the future copies of such reports be sent to the Commissioners in advance of the meeting and that the draft easement be circulated so there can be a productive discussion at the next meeting.

Spring Hill Farm, LLC./69 Whittlesey Road/#IW-05-74/New Dwelling:

Mr. Neff, engineer, noted he had revised both maps; "Septic System Repair Plan" to 1/5/06 and "Soil Erosion and Sediment Control Plan" to 1/6/06. Changes to the proposed activities included shortening the driveway to reduce coverage, installing an underground infiltration system with an emergent overflow design for an inch of rain to handle the roof drainage, and shortening the proposed wall on the NW side of the house. It was proposed to enlarge the planting area near the swale using a wetland variety mix. He said this would be mitigation for the construction of the stone wall and the loss of other wetlands. Also, invasives would be removed from the pond by hand and no herbicides used and native

wetlands vegetation planted. The report, "Inland Wetland Review," dated January 2006 by ESM Assoc., Inc. was submitted and a brief overview given. Mr. Majewski, soil scientist, noted the Commission had questioned whether there was an additional watercourse on the property, but said after review he had found the ditch met only one of three criteria for designation as a watercourse so his original assessment was correct. He said the ditch would be relocated to the north and the swale shaped and widened at its west end. The cross section on the erosion control plan was reviewed. Mr. Picton asked why all the wetlands had not been delineated. Atty. Kelly explained the reason was because the soil scientist had been asked to do so only in the "study area." Mr. Picton thought it was always a good idea to look at the land within 200 feet of a work site to get a complete picture of the area and so asked the soil scientist to identify any wetlands within 200 feet of the proposed activities and the septic system. Mr. Majewski noted, however, that the wetlands within 200 feet of the driveway were upgradient. Atty. Kelly noted that area is farmed so said it was exempt. Mrs. D. Hill stated the proposed activity might affect the wetlands whether they are farmed or not. Mr. Majewski asked, if there are wetlands in this area, and if they have been tilled, how would resurfacing the driveway cause more of an impact than the current farming operation. Ms. Purnell explained farming is an as of right activity but that there are best management practices and techniques to use to minimize the impact on adjacent wetlands and watercourses even though the land is farmed. Mr. LaMunier noted the how close the proposed new dwelling was to the wetlands and urged the applicant to work within the existing footprint. Ms. Purnell asked for feasible and prudent alternatives. Mr. Owens, architect, noted whether a new dwelling is built or not, excavation would be required to repair the existing foundation. He briefly described the plans for the foundation work and said he thought it made sense to install it as far as possible from the more significant wetlands. Regarding feasible and prudent alternatives, he stated 99% of the property was conserved and so the area in which a building could be located was very restricted. He said the proposal was for a 12' X 12' addition, a porch, and relocation of the building and said these activities would not harm the wetlands. Mr. Picton asked whether the parcel was an approved building lot. Atty. Kelly stated it was "not in and of itself an approved building lot," but said it had always been conveyed separately. Mr. Picton asked for documentation that a legal building lot exists and for a map showing the entire parcel, saying the Commission would not approve a structure so close to the wetlands if the parcel is not an approved building lot. Mr. Picton asked Mrs. J. Hill to refer the application to Land Tech. The plan, "Site Section Development Area Diagrams," by Halper Owens Architects, revised to 1/4/06 was reviewed to compare what exists with what is proposed. It was noted the parking area and a section of the existing driveway would be eliminated to offset the increase in the size of the house. Mr. Owen noted the Commission saw the proposed work as a more intense use of the property, but said it wasn't. Ms. Purnell noted the foundation work would be an extensive change, Mr. LaMunier said that approval would set a precedent, and Mr. Picton questioned whether the Commission would have permitted a dwelling in this location if it were new. The footing drains for the basement were discussed. Mr. Picton said footing drains would tend to lower the water table in and near the wetlands. Mr. Neff did not think this would happen because the house would be in upland soils. Ms. Coe asked how deep the soil test holes were. Mr. Majewski said he would supply this information for the file. Mr. Picton advised the applicant the Commission would develop a list of site specific concerns regarding the proposal to build so close to the wetlands. Mr. Owens asked that the list refer to aspects of the proposal that could harm the wetlands. Ms. Coe noted the use of the property would intensify as the original building was not winterized, but Mr. Majewski said the septic system for a year round house would work better and so have less potential to harm the wetlands. He also advised the Commission not to make the mistake of considering the upland review area to be synonymous with the wetlands and cautioned against making blanket statements regarding activities that it does not allow.

New Applications

Private Mortgage Fund, LLC./59 South Fenn Hill Road/#IW-06-01/ Revisions to Original

Permit/Driveway, Generator, Retaining Wall, Etc.: Mr. Fenwick represented the applicant. The map, "Modified Site Plan," by Stuart Somers Co., LLC., dated 12/28/05 was reviewed. Mr. Picton said he would like to compare it with the previous layout. Mr. Fenwick noted the proposed changes to the site plan; construction of a stone retaining wall near the wetlands to decrease the grade and a stone wall at the top of the hill, installation of a generator pad and an underground propane tank, relocation of the driveway, and realignment of the house. Mr. Picton asked how stable the 2:1 slope was and the maximum height and depth of the fill for the retaining wall. Mr. Fenwick stated it was 20 ft. Mr. Picton noted the deed restricted area on the map and pointed out the area to be preserved as a natural wetlands vegetative buffer. Ms. Purnell was concerned about the amount of fill proposed in an area that the original application had indicated would be undisturbed and thought a retaining wall with 20 feet of fill was a significant wall. Mr. Fenwick said he had already installed a double row of silt fence. Ms. Coe noted the reason for the fill was to provide lawn and landscaping around the house. Mr. LaMunier asked why the hillside could not be left undisturbed. Mr. Picton thought it critical that the work area be properly managed since it was at the top of a steep slope above wetlands. He said the engineered plans would be referred to Land Tech. Mr. Fenwick objected to the referral. Ms. Purnell reminded the applicant that there is a spring house on site and that runoff from herbicides should not be directed towards it. Mrs. D. Hill advised the applicant that he should have applied to the Commission for revisions prior to doing any of the work.

Corbo Associates, Inc./23 Curtis Road/#IW-06-03/Inground Pool: Mr. Corbo reviewed the terms of his original permit for construction of the house and detailed the measures taken to protect the wetlands on the property. The map, "Proposed Site Plan," by Mr. Neff, revised to 12/31/05 showing the proposed pool 73 ft. from the wetlands was reviewed. Mr. Corbo said the pool was proposed directly off the patio to the rear of the house and that a landscape architect would be hired to enhance the property between the retaining wall and the wetlands. He proposed to plant upland plants. Ms. Purnell asked if additional fill would be required. Mr. Corbo said the excavated material would be trucked off site and replaced with fine gravel for drainage purposes. He explained a cartridge filter system would be installed so there would be no water discharged. Mr. Ajello noted the 2004 limit of disturbance line had been delineated with conservation markers. Ms. Purnell remarked she was on the board of the Instit. for American Indian Studies, a nearby property owner, but did not think she had a conflict of interest. No one on the Commission thought there was a conflict. Specifications for the retaining wall were discussed. Mr. Corbo said it would be a 4 ft. high block wall, which would be constructed by hand. No heavy equipment would be used and it would be backfilled as work progressed. He said the work area would be large enough for one man to work in. No stockpile areas were proposed. Mr. Corbo will provide a planting plan and information on the cartridge filter system for the next meeting.

Other Business

Pullaro/23 Calhoun Street/Request for Revision of Permit #IW-02-48/

Handicapped Ramp: Mrs. Pullaro presented the sketch plan, "Pullaro Residence," by Stephen Lasar Architects, revised to 12/27/05. She explained the ramp would be installed as far from the wetlands as possible, would be built on existing footings, and would require only minor regrading - 6 inches at the highest point. She noted both the ramp and the new parking area near the ramp would be an impervious surface to accommodate the wheelchair. It was noted the ramp would be 3 ft. wide, 5 ft. wide at the turns. Ms. Purnell stated there would be no short term or long term impacts to the watercourse resulting from the proposed activity.

MOTION: To approve the request by Mrs. Pullaro to revise Permit #IW-02-48 with the addition of a handicapped ramp at 23 Calhoun Street. By Mr. Picton, seconded by Mrs. Hill, and passed 5-0.

New Application

Hackney-Holiman/125 West Shore Road/#IW-06-02/Reconstruct Existing Building: Mr. Ajello stated the owners did not propose to add on to or expand the existing structure. He noted there was a second application to replace and extend the existing dock, but would return it because no further work on shore would be required. Ms. Purnell thought the Commission should review the application because it was being lengthened and the cumulative impacts to the lake should be considered. Mr. Picton suggested the Wetlands Regulations could be revised to limit the size of docks permitted by right. Mr. Ajello said he would confirm there will be no changes at the shoreline. Ms. Purnell asked for photos to document the existing conditions.

Consideration of the Minutes

The 12/14/05 Regular Meeting minutes were accepted as corrected.

Page 4: 19th line: Change: "this proposed construction" to: the proposed bridge construction.

Page 5: 14th line: Insert a semicolon after "plan."

19th line under Upper Church Hill, LLC: Insert after "perpetual:" and not as protective.

Page 6: 3rd line under Spring Hill Farm: Change: "...add the wetlands to the north of the house to the map" to: check for wetlands to the north of the house. Wetlands were found and added to the map.

6th line under Spring Hill Farm: Change: "wetlands" to ditch and insert a period after "watercourse."

Page 8: 24th line: Change: "...a planting plan was required" to: the submitted planting plan would be followed.

4th line under Carter: Insert: now before "stable."

8th line under Carter: Change: "emergency overflow" to: high stream flow.

9th line under Carter: Delete: the rest of the sentence after "and" and insert in its place: material had been deposited in the stream itself.

Page 9: 3rd line from bottom: Should state: Mrs. J. Hill.

Page 10: 7th line from bottom: Change: "no" to not.

MOTION: To accept the 12/14/05 Regular Meeting minutes as corrected. By Mr. LaMuniere, seconded by Mrs. Hill, and passed 5-0.

Enforcement

Fowler/138 Nichols Hill Road/IW-04-V5/Excavation in Wetlands and Watercourse: Mr. Ajello asked what Mr. Fowler had to do to reapply for a permit to correct the unauthorized work and if the application fee would be waived. Ms. Purnell asked why an application was required when the restoration work could be done under the enforcement order. Mr. Ajello explained the process to restore the property had begun when the Commission still required after the fact applications for such activities. It was the consensus to waive the fee.

Other Business

Auchincloss/5 Kielwasser Road/Request to Revise Permit #IW-03-57: Mr. Ajello explained the owners want to cut down 12 more trees. Ms. Purnell noted the more trees that are taken down, the wetter the area will become. The Commissioners will inspect the property on their own prior to the next meeting.

Enforcement

Gatto/155 Woodbury Road: Mrs. D. Hill asked where this matter stood in court, but it was not

known. It was the consensus that a continuously vegetated buffer area between the stream and the walkway should be planted with indigenous riparian plants to settle this dispute. Mr. Ajello will work on a draft motion to be forwarded to Atty. Zizka for review before the next meeting.

Mello/Woodbury Road/Unauthorized Clearing and Construction of Stone Wall: The owners had promised an application for this meeting, but did not submit one.

Taylor/11 Sunset Lane/Unauthorized Excavation in Wetlands: It was noted an enforcement order had been issued, a show cause hearing held, and the order was upheld. The owners had agreed to submit a restoration plan for the December meeting, but they have not yet done so. It was the consensus to send the Taylors one more letter before issuing a citation or filing the violation on the Land Records.

Pending Application

Upper Church Hill, LLC./72 Upper Church Hill Road/#IW-05-73/3 Lot Subdivision: Mr. Ajello was requested to email the commissioners the latest information from Mr. Szymanski, engineer, and the draft conservation easement language. Mr. Picton asked for a detailed analysis of the application.

Enforcement

Carter/292 Walker Brook Road (141 Shinar Mt. Rd.)/#IW-04-V8/Repair of Retaining Wall: It was noted at the last meeting the Commission had voted to accept Mr. Neff's assertion that the wall as constructed was stable, but noted it had not been built as designed. Ms. Purnell did not think Mr. Neff had been impartial and recommended the matter be referred to a consulting firm for review. She was concerned about the encroachment into the floodway, especially during high water flows, and the potential for downstream erosion. Mr. Ajello was asked to draft a letter to be discussed at the next meeting asking Mr. Carter to rebuild the wall according to the approved specifications. It was the consensus the Commission should not have waited so long for Mr. Neff's report before taking action.

Nine Main, LLC./9 Main Street/Unauthorized Construction of Stone Wall: Mr. Johnson is working on a planting plan to be submitted for the next meeting.

Other Business

Depot Study: Mr. Thomson noted the Inland Wetlands Commission is a regulatory body with jurisdiction over most of the parcels in the Depot, but the study did not point this out. He suggested the Town work in conjunction with the property owners to delineate the wetlands and watercourses on the Depot properties. Mr. Thomson offered to draft a statement from Wetlands to the Planning Commission. The commissioners were asked to get their comments to him by 1/16 and the resulting draft will be discussed at the next meeting.

2006 Budget: It was noted the Wetlands Commission is already \$11,000 over budget in legal fees. Ms. Purnell hoped the Commission would get back the court costs for frivolous appeals such as Reinhardt-Cremona and Stiteler-Giddins. It was thought the Commission should put in a request for \$20,000 legal fees in the 2006 budget. Many thought it would be helpful to have an attorney present at meetings. Mr. Picton will ask Atty. Zizka how much it would cost to have any attorney on retainer.

Town Newsletter: Mr. Picton said anyone interested could contribute a wetlands article for the next newsletter.

Conservation Commission Subcommittee: Mr. Picton noted the Conservation Commission is setting up a subcommittee to work on a brochure on best management practices. Interested commissioners should contact the Conservation Commission.

Feola/84 Carmel Hill Road/Show Cause Hearing/1/3/06 Enforcement Order for Unauthorized Excavation

Mr. Picton called the Show Cause Hearing to order at 11:15 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Purnell. He noted the purpose for the hearing was to give Mr. Feola an opportunity to show why the 1/3/06 enforcement order should not stand. It was noted this was the second hearing on this matter and it was being held because there had been a deficiency in meeting the notice requirements. Mr. Ajello noted Mr. Feola had been ordered to restore a vernal pool he had filled and was not contesting the order. A basic restoration plan had been submitted earlier in the day. Mr. Picton asked if any information had been submitted to show that the order should not remain in effect. Mr. Ajello stated that although the Feolas disputed comments made by their neighbor, they were not disputing the order. Mr. Picton read the 1/11/06 letter to Mr. Ajello from Mr. and Mrs. Feola, a statement about abandoned wells, and the 6/18/05 letter from Mr. Poluhowich.

MOTION: To close the Show Cause Hearing to consider the 1/3/06 Enforcement Order issued to Mr. Feola for unauthorized excavation at 84 Carmel Hill Road. By Mrs. Hill, seconded by Mr. Bedini, and passed 5-0.

MOTION: To uphold the Show Cause Order issued to Mr. Feola for unauthorized excavation at 84 Carmel Hill Road. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

Mr. Ajello was asked to notify Mr. Feola within ten days of the outcome of the hearing.

Administrative Issues:

- **Kessler and Spring Hill Farm Applications:** The Commissioners will study these applications on their own and come up with site specific reasons the Commission should be concerned about new construction within 50 feet of wetlands.
- **Spring Hill Farm:** Mr. Thomson thought conflicting information had been provided about whether there were wetlands in the disturbed areas. Ms. Purnell noted the applicant had been asked to submit the soil scientist's sketch map and information about how deep the test holes had been dug. Mr. Picton noted, too, that the soil scientist would check all areas within 200 feet of the proposed activities. Ms. Coe asked whether the location of the easement on a large portion of the property and the owners having restricted themselves with the easement should affect the Commission's decision. The Commission will continue to consider whether there are feasible and prudent alternatives.

MOTION: To adjourn the meeting. By Mrs. Hill.

Mr. Picton adjourned the meeting at 11:36 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator

Dated 1/11/06

Janet M. Hill

Land Use Coordinator