

December 9, 2009

Regular Meeting

7:00 p.m., Land Use Meeting Room

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

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

ALSO PRESENT: Mrs. Solomon, Mr. Sonder, Mr. Szymanski, Mr. Charles, Mr. Delancy, Mr. Riefenhauser, Mr. Neff, Mr. Auth, Press

Mr. Bedini called the Meeting to order at 7:03 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton.

MOTION:

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

V. New Applications:

A. Steep Rock Assn./79 Carmel Hill Road/#IW-09-50E/WHIP Grant for Invasives Removal,

B. Auth/329 West Shore Road/#IW-09-51 Utility Trench,

VII. Other Business:

B. Donovan (Biddle)/53 Kinney Hill Road/Request to Amend Permit #IW-08-37/Add Deck,

VIII. Administrative Business:

A. Approval of 2010 Calendar,

B. Site Inspection Minutes Procedures.

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

Consideration of the Minutes

The 11/24/09 Public Hearing-Regular Meeting minutes were accepted as corrected.

P. 4: Under Straw Man, LLC. site inspection minutes: Mr. Wadelton should not have been listed as present because he had recused himself and was not there for the site inspection.

P. 4: Under Straw Man, LLC.: First sentence: Mr. Wadelton asked that it also state that he left the table.

P. 7: Under Walker Brook Subdivision: Line #2: Change "would" to "could."

P. 8: Under Slaymaker: It was noted that even though it was not said as part of the motion, it was the understanding of the Commission that the remainder of the bond would be returned to Mr. Slaymaker when the dead and failing trees are replaced. It was agreed it would not be proper to change the motion at this time.

MOTION:

To accept the 11/24/09 Public Hearing/Regular Meeting minutes as amended.

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

MOTION:

To accept the 12/2/09 Long site inspection minutes as written.

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

MOTION:

To accept the 12/2/09 Spring Hill Farm, LLC. site inspection minutes as written.

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

Pending Applications

Wykeham Rise, LLC./101 Wykeham Road/#IW-09-39/Affordable Housing:

Mr. Bedini explained that after the last meeting the Commission had sent several procedural questions to Atty. Zizka, who had only recently responded in his letter dated 12/8/09, so the commissioners had not yet had time to review his advice. Mr. Bedini said the Commission had the option to send Ms. Purnell's document to its consultant for review, but that the consultant could not bring up any new information in the review. He thought it would help the Commission if the consultant pointed out whether any of the issues raised by Ms. Purnell were relevant. He suggested a short Special Meeting be scheduled later in the month to give the Commission time to hear from its consultant and then act on the application. He also noted that one issue raised in Ms. Purnell's letter was that the application had not been referred to the local water company as required. Scheduling a Special Meeting would also give staff the opportunity to check on whether the state statute governing notification of water companies had been met.

Mrs. Hill agreed a Special Meeting should be scheduled. She noted that Land Tech, the commission's consultant, looks at both engineering and environmental issues. Mr. Ajello agreed this was so, noting that Land Tech has several wetland scientists on staff.

Mr. Bedini stated that although Ms. Purnell's document had been submitted to the file, the IWC could decide whether to consider it or not.

Mr. Szymanski asked if the Town would pay for the consulting review and Mr. Bedini said it would.

A Special Meeting was scheduled for Tuesday, December 22, 2009 at 5:00 p.m.

Mr. Bedini stated that under Administrative Business he would like to discuss "ground rules" for consultants.

Straw Man, LLC./135 Bee Brook Road (Juniper Meadow Road)/#IW-09-44 Driveway and Bridge:

Mr. Sonder voiced his concern that the comprehensive review to be done by Milone and McBroom would not be ready for the start of the public hearing. Mr. Bedini explained the staff would forward Mr. Trinkaus's response to its consulting engineer as soon as

- 1) it has been submitted to the Land Use Office and
- 2) the applicant has posted the consulting bond.

But if the report was not received in time for the start of the hearing, Mr. Bedini explained the options, which included

- 1) opening the hearing, immediately closing it, and denying the application based on insufficient information and
- 2) opening the hearing and continuing it.

He said the applicant may request extensions totaling up to 65 days.

Mr. Sonder circulated copies of the 11/22/09 Lenard Engineering review.

Mrs. Hill noted the Commission was not following its usual procedures because it was conducting a lot of pre hearing discussion on this application. She reminded the Commission to make sure that all of the comments made to date were made again for the record at the hearing.

Mr. Bedini noted the public hearing was scheduled for January 13, 2010 at 5:00 p.m.

Kott/14 Wheaton Road/#IW-09-47/Addition to Existing Dwelling:

Mr. Neff, engineer, reviewed his revised plan, "Proposed Site Plan," revised to 12/4/09 to show a

smaller addition and a planted hedge buffer. He explained the size of the addition had been cut by 25% by cutting off 2 ft. from the back, which increased the distance from the wetlands to 27 feet. He also added a 40 ft. long buffer of native shrubs along the northwest side of the property nearest to the wetlands.

Mr. Ajello asked if there would be a gutter drain. Mr. Neff said there would not because the increase in runoff would only be from a 6 ft. section of the roof.

The proposed hedge was discussed in detail. Mr. Bedini recommended the plants be planted close together.

Mr. LaMuniere was concerned the hedge could not be established due to the location of large rocks in the area. Mr. Neff noted that the hedge did not have to be a straight line and said the plants could grow up between the rocks.

Mr. Bohan asked if the addition would be on piers. Mr. Neff said it would.

Mr. LaMuniere and Mrs. Hill said they had hoped the owners would propose shortening the length at the north end of the addition rather than its width. Mr. Neff said this had been discussed, but the owners did not see how they could reduce the area of the porch at the northeast corner.

Mr. LaMuniere noted the previous owner had not installed plantings as had been a condition of approval and asked how the Commission could be assured the proposed hedge would be planted. Mr. Neff said the hedge was included in both the erosion control plan and sequence of construction and the WEO would not sign off on the completion of the permit if it was not planted.

Mr. LaMuniere asked whether hay bales or silt fence was the better option for the erosion controls. Mr. Neff recommended silt fence.

Mr. LaMuniere suggested a bond be posted to guarantee the planting would be done. Mr. Ajello instead recommended that the Commission specify a minimum size of 2 to 3 ft. tall for the bushes to be planted.

Mr. Bedini noted that while the hedge would not stabilize the bank, it would create a barrier so that the disturbance would not extend closer to the wetlands.

MOTION:

To approve Application #IW-09-47 submitted by Mr. and Mrs. Kott for an addition to the existing dwelling at 14 Wheaton Road per the proposed site plan by Mr. Neff, revised to 12/4/09 with the condition that the shrubs for the required buffer be a minimum 2 ft. tall and planted sufficiently close to cause a retention hedge along the edge of the cliff.

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

Long/243 Bee Brook Road/#IW-09-47/Addition to Existing Dwelling:

Mr. Szymanski, engineer, represented the applicant. The plan, "Site Development Plan," 2 sheets, by Arthur H. Howland and Assoc., revised to 12/9/09 was reviewed. Mr. Szymanski described the revisions to the plan he had made based on the recommendations made during the site inspection:

- 1) a double line of erosion controls, silt fence backed by staked hay bales was now proposed,
- 2) any trees to be cut shall be approved by the WEO,
- 3) three hay bale check dams were added, and
- 4) #8 of the construction sequence now stated the clean up in the stream would be coordinated with the WEO and that all debris would be taken off site. Mr. Bedini noted that leaves should not be raked into the stream and Mr. Szymanski responded that the contractor would be told not to do that again.

MOTION:

To approve Application #IW-09-48 submitted by Mr. Long for an addition to the existing dwelling at 243 Bee Brook Road per the site plan by Arthur H. Howland and Assoc., revised to 12/9/09.

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

It was noted that all permits are now valid for two years unless otherwise specified by the Commission.

Spring Hill Farm, LLC./69 Whittlesey Road/#IW-09-49/Driveway, Drainage Improvements, Conduit, and Hillside Stabilization:

Mr. Riefenhauser, engineer, submitted revised plans based on the site inspection discussion. These included

- 1) permanent measures for the plunge pools,
- 2) a maintenance schedule,
- 3) landscape plans for the wetlands buffer, and
- 4) the addition of details for the stone headwall and outlet.

He noted an additional matter that had not been discussed was the installation of the underground utilities. He said an exact location had not yet been decided upon and presented the plan, "Site Plan – Electrical," Sheet E100, by Kohler Ronan, LLC., dated 7/24/09. This plan contained a note that it was "schematic only." The plan, "Cover Sheet, Overall Site Plan for Proposed Driveway," 5 Sheets, by Smith and Co., revised to 12/9/09 was reviewed. Mr. Riefenhauser said he did not want the utility conduit to cross to the east of the farm road due to concerns about the steep grade there and said he would try to keep it in the same regulated area as the driveway in order to limit the disturbance near the wetlands. He said he could not provide the exact location because he had not yet spoken with the electrician and he did not know which pole would be used.

Mrs. J. Hill pointed out two items missing in the application:

- 1) on the application form, P. 3, #2, the amount and type of materials to be deposited, and
- 2) a note on the construction sequence that the WEO will be notified at least 48 hours prior to the start of work so that the erosion control measures can be inspected and approved.

Mr. Riefenhauser said a well graded, granular material would be used for the driveway and that approximately 200 yards of material would be deposited. He then modified the construction sequence to state the WEO would be given 48 hours notice.

Mrs. J. Hill reminded him that the contractor must receive a copy of this amended plan.

Mr. Johnson asked how cutting trees fit in with the construction sequence. Mr. Ajello recommended that the trees be cut first so that this activity would not damage the silt fence, but to let him know beforehand when the tree cutting will begin.

Mr. LaMuniere commented that the construction sequence was a good one.

MOTION:

To approve Application #IW-09-49 submitted by Spring Hill Farm, LLC. for a driveway, drainage improvements, stabilization of the hillside, and installation of conduits at 69 Whittlesey Road per the documents prepared for Spring Hill Farm, LLC., 5 sheets, by Smith and Company, dated 11/19/09, and revised to 12/9/09 with the condition that the ultimate location of the conduit be submitted to the Commission for the record.

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

New Applications

Auth/329 West Shore Road/#IW-09-51/Utility Trench:

Mr. Auth explained his reasons for proposing electric service and a pedestal that would require a 14 foot long, 2.5 ft. deep service trench. He thought the proposed location near a stonewall would make it as inconspicuous as possible and not ruin the view of the lake. He asked for a quick approval or for the WEO to be authorized to sign off because the purpose of the service was to install a bubbler so the lake would not freeze near his dock. He noted that digging the trench and installing the service would take only one day and that he would seed and mulch all disturbed areas. His hand drawn sketch plan was reviewed.

Mrs. Hill asked if the property sloped towards the lake. Mr. Ajello said the slope was slight.

Mr. LaMuniere and Mrs. Hill did not think the proposed activity would threaten the lake if the trench was dug by hand.

Mrs. Hill and Mr. Wadelton thought the WEO could be authorized to sign off as the applicant would have to wait for at least 14 days if the Commission handled it as a regular application. Mrs. J. Hill, however, noted that the Town of Kent must be notified of the application per state statute.

MOTION:

Regarding the application submitted by Mr. Auth to install a utility trench at 329 West Shore Road, to authorize the Wetland Agent to act on the application.

By Mr. Wadelton, seconded by Mr. Bohan, and passed 4-0-1. Mr. LaMuniere abstained because he thought the Commission should work within the framework of its Regulations and he was concerned this might set a precedent.

Mr. Ajello noted that different paperwork is required for an agent sign off, and left the Meeting with Mr. Auth to begin processing the new application form. Mrs. Hill said she appreciated Mr. Ajello's efforts to carefully control activities around Lake Waramaug.

Steep Rock Assn./79 Carmel Hill Road/#IW-09-50E/Remove Invasives:

Mr. Bedini read the 12/8/09 letter from Mrs. Branson, in which she proposed to remove invasives from 7.4 acres of the 73 acre property. The plants would be cut by hand and their cut surfaces treated with an herbicide and the work would be done before the end of the year. He reviewed the application form.

Mrs. J. Hill asked if this was the proper time of year to apply the herbicide now that the plants were dormant.

Mrs. Hill asked if there were any wetlands near the invasives to be removed. Mr. Bedini responded this was a conservation activity and no wetlands or watercourses would be impacted.

Mr. LaMuniere read from page 12 of the Regulations regarding uses as of right and non regulated activities.

Mr. Ajello noted there were two vernal pools located within 40 feet of the road, but said all of the work would be done by hand.

Mr. LaMuniere stated the removal of invasives was a legitimate activity that the Commission should support, but noted the plants were now frozen, and so he also questioned whether this was the time of year to carry out this project.

Mr. Bedini noted that if the Commission approves the activity as an exemption, it can not place conditions on that approval. Instead, it was the consensus to approve the application as an exemption, but to formally question the applicant as to whether it was the proper time of year to apply the

herbicide.

MOTION:

To approve Application #IW-09-50E submitted by Steep Rock Assn. for the removal of invasives at 79 Carmel Hill Road and to ask Steep Rock whether this is the right time of year to conduct this work. By Mr. Bedini, seconded by Mr. Wadelton, and passed 5-0.

Donovan/53 Kinney Hill Road/Request to Amend Permit #IW-08-37/Add Deck to New Dwelling:

Mr. Bedini read the letter from Mr. Zook dated 12/8/09 and the map on sheet #A0.01 was reviewed. It was noted the proposed deck was located 75 feet from wetlands at its closest point and that two decks, not one, were described in the letter. Mr. LaMuniere noted the plans called for a single line of 4 ft. posts placed 8 ft. apart and he saw no problem with the proposal.

MOTION:

To approve the request by Donovan-Biddle to amend Permit #IW-08-37 to add a deck to the house under construction at 53 Kinney Hill Road with the condition that the fee is paid. By Mr. Bedini, seconded by Mr. Wadelton, and passed 5-0.

Delancy/79 Litchfield Turnpike/#IW-08-V6:

Mr. Delancy presented a hand drawn site plan, two application forms, and a conservation easement form. He asked for a declaratory ruling under Section 7.06 for his proposed activities, said he believed that he did not need a permit as he qualified for an agricultural exemption under Section 22a-40 of the state statutes, and asked for clarification on whether a permit was required for the firewood work he proposed.

Mr. Wadelton noted for an exemption to apply, the firewood had to be from the Delancy property, not from off site. Mr. Ajello said that firewood operations differ from timber harvesting and that an agricultural exemption might apply for future activities planned by Mr. Delancy, but not for those done to date.

Mr. Delancy stated that the statutes do not require him to have a working farm to qualify for an agricultural exemption; that a hobby qualifies. He reviewed his site plan, pointing out the areas where he would remove invasives, plant a blueberry garden, and do a general clean up on the east side of the driveway. He noted he would not clear the non invasive vegetation near the stream, but would take down the damaged trees. He also noted he had already reinforced an eroded bank near the driveway with stones and would do no additional work with vehicles in the wetlands.

Mr. Bedini asked if he had a written proposal. Mr. Delancy said he had filled out the application form and had provided notes on the map. Mr. Bedini asked how the invasives would be removed and when this work would begin. Mr. Delancy said he would either cut them down or yank them out by hand in the spring. However, he had no immediate plans to cut down the damaged pine trees.

The commissioners questioned whether a garden could be established under the existing canopy.

Mr. LaMuniere referred to a paper by Atty. Brooks, who wrote that applicants have the burden to prove to the commission's satisfaction that they qualify for an agricultural exemption.

Mr. Delancy said that blueberries will grow in shade and acid soil and that he planned to fence a 50' X 50' area and put in the plants this spring.

Mr. Bedini asked for a written proposal, which would include an operational sequence especially for any work proposed near the stream, timeline, how the work will be done, how many plants will be

planted, etc. Mr. Delancy thought this request was beyond the Commission's jurisdiction, but Mr. LaMuniere explained the Commission must be sure that he proposes a serious and significant agricultural operation; planting three bushes would not qualify.

Mr. Bedini also asked for written information on erosion controls and a more specific, detailed site plan delineating the various work areas, labeling which trees will remain, etc.

Mr. Delancy said he would propose gardening rather than an agricultural operation. He asked if wild grass could be used for stabilization. Mr. Bedini explained that if plants were pulled out by their roots and the soil was disturbed, the erosion control measures would have to be adequate to prevent sedimentation into the stream.

Mr. Bedini asked for a complete application by the next meeting.

Other Business

Possible Impact of Rt. 109, New Milford, Walker Brook Subdivision on Walker Brook:

Mr. Ajello reported he had contacted two environmental labs; Aqua Environmental that estimated it would cost \$794 each time tests for water quality of Walker Brook were conducted and Hydro Technologies that advised him that Mr. Coleman had already paid for base line tests conducted on 11/3/09 at four locations along the brook. Hydro Technologies recommended one additional upstream test. It was noted the lab had picked the sample sites and that it would cost approximately \$200 to test for seven categories at each location.

The following questions were raised:

1) Should the IWC pursue continued testing?

Who would pay for the tests?

How much would it cost?

How often should the samples be taken?

It was the consensus that long term testing should be done.

Mr. Wadelton noted that if the IWC decided to periodically monitor the brook, a professional would have to draft a comprehensive plan for the long term. Mr. LaMuniere recommended Mr. Bernard for this work.

Mrs. J. Hill will contact the Conservation Commission to find out whether it handles water quality monitoring in Town, and if so, if it would be willing to add Walker Brook to its list.

The IWC will wait for this information before deciding on a course of action.

Enforcement

Brose/213 Roxbury Road/#IW-08-V5/Unauthorized Clearcutting, Patio, Stairs, Wall:

Mr. Ajello had met with Ms. Brose since the last meeting to discuss removal of the patio and stairs and restoration of the clearcut and disturbed areas and he reported on the results of that meeting. The colored map, "Proposed Wetland Restoration (Presentation)," by Land-Tech Consultants, Inc., dated 6/9/09 was used to facilitate the discussion. Mr. Ajello said he had asked Ms. Brose to focus on plans to restore the wetlands areas, not the upland sections, and to submit a written proposal that would retain basic components from her originally proposed remediation plan such as the planting guidelines and grass seed mix.

The written proposal had not been submitted, but Mr. Ajello detailed what he understood Ms. Brose had agreed to do.

- 1) The patio would be completely removed, all materials to be taken off site, and the disturbed area restored to meadow using the seed mix from the original plan.
- 2) The wall at the north corner of the house and the semi circular stone planters would remain.
- 3) The stairs down to the patio would be removed to the point where the wall begins. This would leave some stone stairs at the top of the hill.
- 4) She would not plant trees or bushes in the upland hillside planting area or upland transition area, but would sow the seed mix in both areas.
- 5) In the wetland/brookside area she would plant fewer trees and shrubs than originally proposed.

Mrs. J. Hill asked what percentage of the cut trees and plants would be replanted and said she was concerned about whether there would be sufficient density of replanting in the wetland corridor. Mr. Ajello noted the list of the number and types of trees and plants to be planted there.

It was noted there would be approximately 46 fewer trees and shrubs planted in the combined upland and transition areas and that she proposed to cut the replanting plan in half.

Mr. Bedini asked if the grass seed mix would be sufficient.

Mr. LaMuniere was concerned that the disturbed areas would be taken over by invasives if not enough trees were replanted. He requested that Ms. Brose also submit an invasive control plan for the upland review areas.

Mr. Ajello suggested the Commission could require a bond for the invasives control.

Mr. Bedini asked if the Commission would be willing to give up some of the original restoration plan in return for Ms. Brose's agreement to remove the patio and stairs.

Mr. Wadelton said he was willing to be reasonable in the upland areas, but said the Commission had to be assured the proposed replanting would sufficiently restore the disturbed areas.

Mrs. Hill was not sure Ms. Brose's proposal would provide enough cover in the stream corridor.

Mr. LaMuniere compared this violation with that on the DiBenedetto property, and noted how well the DiBenedetto replanting was progressing.

It was the consensus that

- 1) the grass seed mix alone would be OK for the upland areas,
- 2) an invasives control plan was required,
- 3) the number of trees and shrubs to be replanted in the wetland and brookside corridor area should not be reduced from the number originally proposed,
- 4) the patio area should be restored to meadow,
- 5) a bond would be required and the restoration work monitored for a three year period,
- 6) any replanted plants that die must be replaced, and
- 7) the restored areas should not be mowed, but there should be selective cutting of invasives.

Mr. Ajello will discuss this again with Ms. Brose.

Weaver/176 East Shore Road/Clearcutting Along Shore:

Mr. Ajello said he had sent a notice of violation, but the property owner had not yet had a chance to respond.

Molinari/59 South Fenn Hill Road/Encroachment in Conservation Easement Area:

In response to the notice of violation sent, Mr. Molinari said his contractor had not been aware of the deed restrictions and that he would submit a maintenance plan for the Commission's review.

Lodsin/78 Litchfield Turnpike/#IW-07-V12/Unauthorized Excavation:

Mr. Ajello said Mr. Lodsin will be served by a marshal and any new equipment on site will be confiscated for taxes.

Moriniere/22 Wheaton Road:

Reconstruction of the house has begun, but the exact locations of the septic tank and service lines are still unknown.

Administrative Business

The 2010 Calendar was discussed. The normal meeting date in September would have fallen on Rosh Hashanah, so that date was changed to the first Wednesday of the month, 9/1/10. It was the consensus to approve the calendar with that one change.

Site inspections procedures were discussed. Mrs. Hill said that draft minutes should not be circulated. She also asked commissioners to pass out minutes prior to the meeting so that the members would have time to review them beforehand.

Mr. Bedini noted that he had spoken with several attorneys regarding the receipt of material near the close of the public hearing. He said that most of those consulted said that the Commission must accept material while the hearing is still open, but that whether to use the material or not was at the Commission's discretion. Several commissioners noted that the state grants the Commission the authority to adopt its own Regulations and thought it was the local regulations that should be adhered to over the state statutes, especially since the Commission's attorney had reviewed Washington's Regulations and said they were OK. Others thought the Town Regs should be based on the state statutes and revised accordingly. There was no decision about whether to amend the local Regulations.

MOTION:

To adjourn the Meeting. By Mr. Wadelton.

Mr. Bedini adjourned the Meeting at 11:04 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,
By Janet M. Hill
Land Use Administrator