

March 26, 2008

MEMBERS PRESENT: Mr. Bedini, Mrs. Hill, Mr. LaMuniere, Mr. Picton, Mr. Thomson

ALTERNATES PRESENT: Mr. Bohan, Mr. Wadelton

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Ms. Barbieri, Atty. Malley, Mr. McMorrow, Mr. Guliano, Mr. Gruson, Mr. Nadeau, Mr. Ebner Mrs. Branson, Mr. Stafford, Mr. McGowan, Mr. Lancaster, Atty. Kelly, Mr. Pollock, Mr. Washington, Mr. Wilson

Mr. Picton called the meeting to order at 7:03 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson.

MOTION: To add subsequent business not already posted on the agenda: New Application: B. Hock-Fiedorowicz/49 Mt. Tom Road/#IW-08-15/Driveway Crossing, Other Business: Ficalora/10 Sunrise Lane/Request to Extend Permit #IW-03-05, Enforcement: R. Lancaster/244 West Shore Rd./ #IW-07-V16/Unauthorized Shoreline Clearing. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

Consideration of the Minutes

The 3/12/08 Regular Meeting minutes were accepted as corrected.

P. 7: 8th line under Slaymaker: Add: "...and clearing in front of wetlands."

MOTION: To accept the 3/12/08 Regular Meeting minutes as corrected. By Mr. LaMuniere, seconded by Mr. Bedini, and passed 4-0-1. Mr. Picton abstained because he had not attended the meeting.

MOTION: To add the consideration of the 3/26/08 DiBenedetto site inspection minutes to the agenda. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

MOTION: To accept the 3/26/08 DiBenedetto site inspection minutes as written. By Mrs. Hill, seconded by Mr. Bedini, and passed 5-0.

Pending Applications

Fleishmann/219 Roxbury Road/#IW-08-05/Construct House and Barn, Remove Shed, Move

Caboose: Mr. Fleishmann had submitted a new map showing improved erosion and sedimentation controls, but did not yet have a report from a soil scientist. Mr. Thomson noted he would soon inspect the fire pond to determine whether it shows signs of functioning as a vernal pool.

Gruson/62 Frisbie Road/#IW-08-10/Pond Maintenance: Mr. Ajello said he had inspected the site with Mr. Gruson and had found the proposed deposition area between the two wetlands was located at least 75 ft. from both. He noted one wetland area was an intermittent stream and the other was a mowed meadow. A site inspection was scheduled for Tuesday, April 1, 2008 at 4:00 p.m. Mr. Picton said he wanted to make sure the spoils area was not too close to the wetlands and would not become an erosion problem. Mr. Gruson stated that there was a stone wall and woods that would trap sediment downgrade of the deposition site. Mrs. D. Hill asked if there was a planting plan. Mr. Gruson said that plantings were not part of the pond maintenance being applied for, but that he would investigate the possibility. Mrs. Hill pointed out that plantings would be beneficial to the pond and Mr. Ajello noted that they would help to stabilize the disturbed soils and so could be included as part of the maintenance plan.

Slaymaker/17 Sunset Lane/#IW-08-13/Repair Septic System, Construct Addition: The map, "Wetlands Mitigation Plan," by Ms. Barbieri, dated 2/7/08 was reviewed. Mr. Bedini asked several

questions. 1. Did the septic system fail in the 1990's? Mr. McMorrow, engineer, showed a copy of an old septic plan by Mr. Neff, dated 8/11/93, which, he said, had never been implemented. 2. Mr. Bedini asked what was the current nature of the failure. He noted that Ms. Von Holt, Sanitarian, had been to the property twice and had not seen a failure. Mr. Nadeau, contractor, said that because he had been told by the Health Dept. that the existing system does not meet the current state Health Code and because it smelled, he assumed it was failing and so informed the Commission. Mr. Bedini said that if the system was actually failing he thought that the owner would not wait until the summer to fix it or would have it pumped periodically now. 3) Was effluent actually running into the wetlands? Mr. Nadeau did not know, but again said the area smelled. 4) Was the curtain drain installed to drain the portion of the property where the existing house is located? Mr. McMorrow said the purpose is to lower the water table immediately downhill of the drain. He noted it had been monitored for three weeks and the water table remained higher than the 18" minimum required by the state Health Code. He said it would be monitored for two more weeks and the results would determine whether a more compact septic system could be installed close to the house. 5) Mr. Picton asked what the existing system consisted of and whether there could be some relatively minor maintenance such as removal of a root that could be blocking it or repair of a crushed pipe that would be effective instead of installing a completely new system. Mr. McMorrow did not know what the existing system consisted of or whether there was a blockage. He did say, however, that it was known that the system was in the same plane as the water table, which was not good for the functioning of a septic system. 6) Mr. Bedini asked why the tank was not being pumped out on a regular basis so that no effluent would reach the wetlands. Mr. McMorrow said that was up to the Health Dept. and that property owners were given a certain amount of time in which to make repairs. Mr. Bedini thought it looked like the owner was trying to make his back yard larger and trying to dry it up. Mr. Picton found the current application was "short on information." He asked that the nature of the system and of its failure be established first and that a determination then be made regarding whether it could be repaired by perhaps installing a curtain drain on three sides or by removing a blockage. If it was found that the system could not be repaired, then the next step would be to design a new system. He advised the applicant that it had applied for a new system in wetlands without data to prove that it was, indeed, necessary. Mr. Bedini agreed that facts were needed to substantiate the request. Mr. Nadeau said it was a fact that 1) the existing septic does not meet the current Health Code and 2) the installation of a new system that meets at least 50% of the current Health Code is required in order to construct the proposed addition. He said if the addition was not approved, the septic repairs would not be made. Mr. Picton said the next level of consideration would be whether an addition is appropriate in wetlands. Existing versus proposed size of the house was discussed. Atty. Malley said the proposed addition had been decreased in size since the last meeting to 24' X 32', which would result in 1676 total sq. ft. Mr. LaMuniere asked if there were zoning issues. Mr. Ajello said that Zoning requires a 50 ft. setback from wetlands. Mr. Picton said that the applicant should make an effort to minimize the footprint. He asked if there was some kind of standard for minimum sized dwellings such as 900 sq. ft. for three bedrooms. Mr. Bedini asked if the addition could go up over the existing footprint since the house is located in wetlands. Mr. Nadeau did not think the existing foundation could support it. Discussion continued about what percentage of an increase might be appropriate for a house in wetlands. Mr. Picton noted that an increase to 900 sq. ft. would be over a 100% increase in size and perhaps would not be supported by all of the commissioners. Mr. Ajello noted that another alternative would be to locate the septic in front of the house out of the wetlands soils; the Town Sanitarian will supervise perc tests here to determine whether this is feasible. Mr. Bedini noted that although the Commission had asked for substantiating data and a review of feasible and prudent alternatives, it did not guarantee that the proposed addition would be approved. Mr. Picton agreed, noting there are some sites that are not suitable for the standard American home. Mr. LaMuniere thought the main question to be addressed was how much more stress would be put on the wetlands due to the increased size of both the house and septic. Mr. Ajello pointed out that it was not

just size and/or the number of bedrooms that would control the use of the house. He noted the proposed floor plan includes a laundry, which the existing house does not have. Mr. Bedini noted that if the septic system was failing, repairs were proposed, and an addition was not proposed, or if the addition was going up on the existing footprint, he would have no objections. Ms. Barbieri noted there were nine other houses in the area that had been built on wetlands soils and said she would submit information on their type and size. She also asked if the septic could be placed out of wetlands in the front of the house and more of the back yard restored, would it affect the Commission's view about the addition. The commissioners noted they would still favor a minimally sized addition on the existing footprint. Ms. Barbieri asked if it would make a difference whether the addition had a foundation or was on piers. It was noted that this would probably affect the drainage and the Health Dept. approval. Mr. McMorrow submitted proof that he had notified the Town of New Milford of the application.

Town of Washington/59 East Shore Road/#IW-08-12/Construct Compressor Building: Mr. McGowan submitted the plans, "Site Plan" and "Compressor Building for the Lake Waramaug Task Force," both by Mr. Lasar, dated 3/20/08 and the document, "Explanation of Modifications to Application #IW-08-12/Compressor Shed, Town of Washington/59 East Shore Road," unsigned, dated 3/26/08. He briefly described the changes made since the application was discussed at the last meeting. The location of the building would shift slightly so that it would have a common wall with the ramp wall and would have a full foundation. Mr. McGowan said that potential noise from the compressor had been discussed at the ZBA hearing. A canopy can be placed over the compressor to suppress the noise, but the width of the building had to be increased to 11 ft. to accommodate it. He noted that even with the increased footprint, the total impervious surface would decrease due to the shared wall. Mr. Picton asked if the compressor could be located in the basement of the beach house or elsewhere. Mr. Ajello noted the utility lines already exist and the Town did not want to have to put new ones in through the septic system. Mr. McGowan responded that all of the space in the beach house was being used and since there was a residence in the beach house it would be too noisy with the compressor in the basement. Mr. LaMunier asked if fuel would be stored in the building. Mr. McGowan said the compressor was electric powered. Mr. Picton noted the Commission expects to review the future plans for the beach house and the reconfiguration of the parking area. He also noted the proposed building is on a completely redeveloped, not a natural site.

MOTION: To approve Application #IW-08-12 submitted by the Town of Washington to construct a compressor building at 59 East Shore Road per #ZBA-0802. By Mr. LaMunier, seconded by Mr. Bedini, and passed 4-0-1. Mr. Picton abstained because he had not been present for the discussion at the last meeting.

New Applications

Guliano/19 Winston Drive/#IW-08-14/Replace Pool: Mr. Guliano presented sketch maps showing the existing pool, dated 7/31/03 and the proposed pool, dated 3/17/08. He noted the total coverage would be reduced. Mr. Picton remembered that there had been drainage problems on that side of the property in the past. Mr. Guliano discussed the installation plans; no regrading would be required because the area was already level and a non discharge filter having a cartridge system without backwash would be installed. It was noted the pool was farther than 50 ft. from the upgrade wetlands, there was a treed buffer area between the pool and the wetlands, and that a 2007 soils report by Mr. Temple was in the file. Mr. Guliano was asked to draw a limit of work area on the sketch plan and to keep this as far from the wetlands as possible. Mr. Picton noted that the Commission would rely on Mr. Ajello's site inspection rather than schedule one of its own and would act on the application at the next meeting.

Hock-Fiedorowicz/49 Mt. Tom Road/#IW-08-15/Driveway Crossing: Mr. Wilson, engineer, submitted the plans, "Driveway Wetlands Crossing," by Mr. Wilson, dated January 2008. He explained

the old deteriorated culvert would be replaced and the level of the driveway elevated. He also stated that the crossing was required to access the building site on the 22 acre parcel and that there was no other appropriate location for the driveway. The driveway grade would be 13% at its steepest point. Mrs. Hill asked if the proposed culvert would be strong enough to support construction equipment. Mr. Picton stated that a wide swath of the hillside was not proposed and no cuts were necessary so there were no major issues to consider. Mr. Wilson noted the watershed area was small and that a gutter was proposed on the upper side of the driveway to channel some of the runoff. A site inspection was scheduled for Tuesday, April 1, 2008 at 4:30 p.m/

Other Business

Steep Rock Assn./124 Christian Street/Request to Amend Permit #IW-08-01/Herbicide

Application: Representing Steep Rock, Mr. Stafford explained the request was to increase the size of the area where the herbicide would be applied. Originally there had not been funds available, but Steep Rock recently was awarded a Dept. of Agriculture Wildlife Habitat grant to treat the entire 16 acres. He noted the success rate for the eradication of the reed canary grass would be greater if all 16 acres were treated. The equipment to be used and method of application would not change.

MOTION: To approve the request submitted by Steep Rock Assn. to revise Permit #IW-08-01 for the application of herbicides at 124 Christian Street. By Mr. LaMuniere, seconded by Mrs. Hill, and passed 5-0.

Applications for Aquatic Pesticides: Mr. Picton asked if these applications were being submitted to the Commission as required. Mr. Ajello reported that all property owners for which he had received notification from the state DEP had been sent letters to notify them that they must apply for a local permit, but so far none had done so. Mrs. J. Hill noted that she sent a letter to the DEP to ask it to inform applicants that a local permit is also required, but said she had not received a response.

Ficalora/10 Sunrise Lane/Request to Renew Permit #IW-03-55/ Construct Single Family

Dwelling: The map, "Proposed Sanitary Disposal System Plan Prepared for Church Hill Corp., Lot 56A," by Mr. Howland, revised to 8/6/03 was reviewed. Mr. Picton noted that the application had been approved in 2003, all proposed activities were more than 100 ft. from wetlands, and the grade of the property was not very steep. He also presumed that the line of silt fencing was the limit of disturbance line. It was the consensus that there was no reason to grant anything less than a 5 year renewal.

MOTION: To approve the request submitted by Mr. Ficalora to renew Permit #IW-03-55 to construct a house at 10 Sunrise Lane: the extension granted is for 5 years. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

Enforcement

Ebner/18A Mt. Tom Road/Unauthorized Shoreline Clearing: Mr. Ebner stated that he had improved his property and reinstalled a fence and that all sound trees had been left in place to provide a wildlife habitat. Mr. Bedini asked if the understory had been cleared. Mr. Ebner said that saplings had been cut. Mr. Picton read a portion of Mr. Ajello's 3/20/08 notice of violation letter. Photos of the site were circulated. Mr. Ajello said he thought there were flood plain and wetlands soils in the area where the clearing was done. Mr. Picton explained that vegetative cover is an integral part of wetlands and that clearing it changes the hydrological and biological function of the wetlands. Mr. Ebner stated there used to be a beach in this area and he had no plans to do any more clearing. It was noted the high canopy had not been completely removed and the lower vegetation could be restored. A site inspection was scheduled for Tuesday, April 1, 2008 at 5:00 p.m.

Lancaster/244 West Shore Road/#IW-07-V16/Unauthorized Shoreline Clearing: Mr. Ajello showed 2006 and 2007 photos of the property and compared them with photos he had recently taken. He said

he had been consulted about clearing invasives, had spoken to Mr. Lancaster and Mr. Pollock, contractor, about the importance of preserving the shoreline buffer, and had sent a notice of violation as soon as it was evident that part of the shoreline had been cleared to provide a view of the lake. Mr. Lancaster said that he had consulted with Mr. Ajello prior to doing any work, had been trying to establish a safe property and had not changed any of the natural properties along the shoreline. He objected to what he considered to be inaccuracies in the 3/10/08 notice of violation sent by Mr. Ajello. Atty. Kelly noted for the record that the current owners had not purchased the property until 12/28/07 and so any work done before that date was not their responsibility, Mr. Lancaster had contacted Mr. Ajello prior to doing any work, and he objected to speculation in the 3/10/08 letter that made it appear that anyone who tried to enhance his view did not care about the water quality of the lake. He asked the Commission 1) was this a violation and 2) if so, was there anything the Commission wanted Mr. Lancaster to do. Atty. Kelly submitted photos of the property, which he concluded, showed that the shoreline had not been clear cut and that approximately 75% of the canopy remained. He spoke about landscaping allowed by right. Mr. Picton assured Mr. Lancaster that the Commission would get the facts before making any conclusion about the work done and advised Atty. Kelly that if landscaping affects the wetlands, the Commission has jurisdiction no matter what the lot size. Mr. Washington, contractor, said he had discussed only construction matters with Mr. Ajello and Mr. Pollock, contractor, made a brief statement that he abides by the law in regulated areas and had thought he had carried out Mr. Ajello's recommendations for the area. Mr. Picton recommended that in the future on site recommendations be written down so there can be no misunderstanding about them. A site inspection was scheduled for April 1, 2008 at 5:30 p.m. Atty. Kelly asked the Commission to determine what had been done and whether the property owner had the right to do it. He noted there had been no soil disturbance. Mr. Lancaster again said that he believes he did nothing wrong and that once that had been confirmed by the Commission he would be willing to educate himself about the proper methods for maintenance of the shoreline.

Enforcement

Brown/127 West Shore Road/Unauthorized Work Along Shoreline: Mr. Ajello reported that Atty. Kelly would be in soon to discuss a solution. Mr. LaMuniere recommended that Dr. Kortmann brief the Commission on shoreline preservation, and suggested that all Lake Waramaug residents could be invited to attend. Mr. Ajello said he would again contact Mr. McGowan to see if such a meeting with Dr. Kortmann could be scheduled.

DiBenedetto/212-214 Calhoun Street/Restoration of Understory: Having inspected the site, it was the consensus of the commissioners that further cutting of the canopy should not be allowed until the areas that have already been cut have been properly replanted and restored to woodland with natural functions. Mr. Picton thought that a one to three year observation period would be adequate to determine whether the forest had been restored to the Land Tech guidelines and the invasives controlled. He noted that the more the canopy is cut, the more difficult it is to control invasives. Mr. LaMuniere asked if Mr. DiBenedetto would be capable of managing the understory growth and controlling the invasives in the interim period. Mr. Picton said that before any mowing, Land Tech would tag plants to be saved and afterwards it would follow up to see if the maintenance work had been properly done. For the restoration, Mr. DiBenedetto would select the plants to be planted, but Land Tech would specify where they were to be located. Mr. Picton noted that Land Tech would stay involved in a directive way. Mr. LaMuniere suggested that the Commission should inspect the site at the end of each growing season and that stabilization of the banks of the intermittent stream should be included in the restoration efforts. Mr. Ajello will draft a letter to advise Mr. DiBenedetto of the work to be done and the work that should not be done until the area is restored. Mr. Picton will review it before it is sent.

Lodsin/78 Litchfield Turnpike/#IW-07-V12/Unauthorized Excavation: This matter has been

referred to Atty. Zizka.

Peloquin/1 New Preston Hill Road/#IW-07-V13/Unauthorized Clearcutting, Stonework, and Excavation: A landscape architect is now working on plans to stabilize the disturbed areas.

Rumsey Hall School/200 Romford Road: Mr. Picton noted that even though reports are sent in by the contractor, Mr. Ajello should inspect the work site on a routine basis.

Slaymaker/17 Sunset Lane/Unauthorized Drainage Work and Excavation: Several different opinions were expressed regarding whether the Commission should allow an addition to a dwelling located directly in wetlands. Mr. Bedini thought a second story addition would be possible, but to be consistent, an expansion of the footprint should not be permitted. Mr. Ajello thought a modest increase was proposed and that moving the septic system out of the wetlands, while permitting an addition in the wetlands, would be a reasonable exchange. Mr. Bohan noted the area immediately surrounding the house is disturbed soils and asked whether adding to all sides of the house in its current location could be considered rather than constructing an addition in undisturbed soil off to one side. Mr. Picton noted the house is located in wetlands, but thought perhaps if the proposed expansion was on filled, non functioning wetlands soils, it might be less of a problem. Mrs. J. Hill asked if a public hearing would still be held. The Commission will decide at the April 9th meeting whether to schedule a hearing.

Etherington/49 Wheaton Road/#IW-08-V15/Maintenance of Sediment Pond: Mr. Ajello reported although he had determined that Mr. Etherington had exceeded the terms of his permit, he had not fined him.

Administrative Business

Processing of New Applications: It was noted that the Commission will not discuss a new application until Mr. Ajello has had the opportunity to inspect the property. Therefore, applications submitted only a day or two prior to a meeting, may not be discussed at the first meeting.

Revision of the Regulations: Mr. Picton said he was still waiting to hear from Atty. Zizka regarding the question of increasing the wetlands setback. Mr. Bedini noted that the current Regulations state that jurisdiction may be increased due to on site conditions, but that it is "easier" to specify a distance. There was a brief discussion regarding what the setback should be increased to. While most thought the current 100 feet was arbitrary and was not wide enough to include activities that could impact wetlands and watercourses, some thought it would be difficult to justify an increase to 500 feet, for example. It was also noted that a large increase would greatly increase the Commission's workload. Discussion then circled back to a 100 ft. upland review area except in areas where there are site conditions such as steep slopes. Mrs. D. Hill said the Commission had been advised that this was not specific enough. Mr. Picton suggested that Section 2.3.4 could be reworded to state that steep slopes and/or unusual drainage conditions would trigger a wider review area. Mrs. J. Hill recommended a definition of "steep slope" be added. Mr. Picton suggested a 12% grade. Mrs. D. Hill said that the second paragraph in the definition of "regulated activity" should also be revised.

Application Form: The new draft form will be circulated to members for review for final approval at the next meeting.

Commission Organization: Mr. Picton and Mr. Bedini said they had been discussing the hiring of a consultant who would review the organization of the Commission and its staff and then make recommendations on how to improve management and process. Mrs. D. Hill and Mr. Thomson thought this was a good idea. It was noted that the First Selectman thought that if a consultant was hired, he should review the entire land use department, not just the Inland Wetlands Commission. The commissioners thought they needed help now whether or not the other land use boards do and that when reviewing the Wetlands Comm. the consultant might come up with ways to better coordinate the

actions of the various land use commissions. It was also suggested that a review of the Wetlands Commission could be a "pilot program" or a first step in a subsequent review of the entire dept.

2008-2009 Budget: Mr. Picton noted he had not yet heard from the Selectmen's Office about whether the Commission's budget request had been approved. It was noted that while the request could be cut, the expenses would remain the same.

MOTION: To enter into Executive Session at 10:55 p.m. to discuss Pending Litigation. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

MOTION: To end Executive Session at 11:03 p.m. By Mrs. Hill, seconded by Mr. Bedini, and passed 5-0.

Region #12 School District/159 South Street/Reconstruct Track: Mr. Ajello noted that Mr. Dirienzo of the Roxbury Inland Wetlands Commission had sent information about mercury gasses emitted from the materials to be used to reconstruct the track. He noted he had asked for additional information and that this issue would be included in the 4/14/08 Zoning public hearing.

MOTION: To adjourn the meeting. By Mr. Picton.

Mr. Picton closed the hearing at 11:10 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator
