

**April 9, 2008**

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

ALTERNATE PRESENT: Mr. Waderton

ALTERNATE ABSENT: Mr. Bohan

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

ALSO PRESENT: Mr. Fleishmann, Atty. Malley, Mr. Nadeau, Mr. Neff, Mr. McMorrow, Mr./Mrs. Redstone, Atty. Kelly, Mr. Guliano, Mr. Dunlap, Ms. Gray

Mr. Picton called the meeting to order at 7:01 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Thomson.

MOTION: To add subsequent business not already posted on the agenda: Enforcement: Gray-Dunlap/26 Painter Ridge Road/Unauthorized Clearing, Soil Disturbance. By Mrs. Hill, seconded by Mr. Bedini, and passed 5-0.

Consideration of the Minutes

The 3/26/08 Regular Meeting minutes were accepted as corrected.

Page 1: Add: Mrs. Lancaster and Mrs. Pollock to those present.

Page 1: 2nd line from bottom: "hat" should be "had."

Page 6: Under Hock-Fiedorowicz: 5 lines from bottom: After "proposed" insert: "to be affected by road drainage...."

Page 6: At the end of the same line: After "major" add: "stormwater" issues....

Page 11: Last line: Change: "hearing" to "meeting."

MOTION: To accept the 3/26/08 Regular Meeting minutes as amended. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

Regarding the 3/12/08 Regular Meeting minutes, Mrs. D. Hill said regarding DiBenedetto that she had seen bluebirds, but did not say they were actually nesting on site and regarding Slaymaker that she did, indeed, consider the proposed construction of the addition in wetlands to be a significant activity.

The 4/1/08 Gruson/62 Frisbie Road site inspection minutes were accepted as corrected. In the third paragraph it should refer to: "the old Frisbie Road."

MOTION: To accept the 4/1/08 Gruson site inspection minutes as amended. By Mr. Bedini, seconded by Mr. Thomson, and passed 5-0.

MOTION: To accept the 4/1/08 Hock-Fiedorowicz site inspection minutes as submitted. By Mr. Picton, seconded by Mrs. Hill, and passed 5-0.

MOTION: To accept the 4/1/08 Ebner site inspection minutes as written. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

MOTION: To accept the 4/1/08 Lancaster site inspection minutes as written. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Pending Applications

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

**Caboose:** The maps, "Excavation and Drainage Plan," by Mr. Riordan, revised to 4/9/08 and "Inland Wetland Application," revised to 4/9/08 and the 4/9/08 report by Mr. Temple were reviewed. Mr. Temple found that 1) the seepage along Rt. 199 was not a wetland and 2) the man made pond was not a vernal pool because it has a permanent outlet. Mr. Fleishmann pointed out the proposed areas of regrading and filling and the location of silt fencing, which, he said was also the limit of disturbance. Mr. Picton asked him to add a notation that the silt fence was the limit of disturbance line and Mr. Fleishmann did so. He also added a notation to the map that there would be no filling outside the proposed excavation area. Mr. Picton also asked for the addition of a note to state that the limit of disturbance line was also the limit of clearing line. The commissioners reviewed the list of information that Mr. Fleishmann had been asked to provide to make sure it had all been submitted. It was noted that the intermittent watercourse flowing in and out of the pond was not shown on either map and that information about who had done the original wetlands flagging had not been provided. Mr. LaMuniere said that although the maps were not as precise as those usually submitted to the Commission, the added notations provided the necessary specificity. Mr. Picton noted that the Commission had not identified any immediate wetlands concerns. Mrs. D. Hill noted it was understood that the caboose was not to traverse the wetlands when it was moved.

**MOTION:** To approve Application #IW-08-05 submitted by Mr. Fleishmann to construct a house and barn, remove a shed, and relocate the caboose at 219 Roxbury Road per the map with handwritten notations dated 4/9/08. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

**Gruson/62 Frisbie Road/#IW-08-10/Pond Maintenance:** Mr. Neff, engineer, said the breach on the east side of the dam had grown from 6 to 8 inches wide to 3 feet wide. He said he would submit revised plans to extend the dam 5 to 6 feet into the bank to more safely hold it. The map, "Pond Maintenance Plan," by Mr. Neff, dated 2/20/08 was reviewed. In response to the concerns raised by the Commission at the last meeting, he suggested that the deposition area could be moved across the road to a 100 ft. by 300 ft. area, where the excavated material would be spread to a depth of 6 inches. Mr. Bedini noted the construction sequence called for stripping the top soil, spreading the excavated material, and then putting the top soil back. He asked if this would be stable in case of a heavy rain. Mr. Neff stated that the work would be done during the dry time of year, the material would be spread along the contour line, and that time of year was good for germination. In contrast, Mr. Picton pointed out that the originally proposed location could be unstable for over a month on a 20% to 25% slope. Mr. Picton asked if it was the best solution to create basin sides all around the pond. Mr. Neff said that he did not propose to alter the existing sides, would not over excavate in terms of depth, and would excavate approximately 500 yards of material. The most appropriate location for the deposition of this material was again considered. Mr. Neff noted that the grades were better on the other side of Frisbie Road, but it was farther to truck the material there. Mrs. D. Hill asked if the seeps near the originally proposed area were significant. Mr. Picton said that due to the location of these seeps and evidence of scouring in this area, he was not comfortable with using it as the deposition area. Mr. Bedini said a temporary gravel access would be needed for equipment to reach the deposition site on the other side of Frisbie Road, but Mr. Ajello said this would not be needed if a track excavator was used. It was agreed that if the field originally proposed for the spoils was to be used, the wetlands would have to be flagged. Mr. Neff stated that the owner was hesitant to provide a "full blown planting plan" because his application was only for pond maintenance and repair of the dam. Mrs. D. Hill thought that Mr. Gruson should agree to plant some plants without necessarily submitting a complete planting plan. Mr. Picton proposed an emergent area at the north inlet with one third of the underwater slopes at 4:1 so they would be shallow enough to support a variety of aquatic plants to help maintain the ecology of the pond and an area around one third of the perimeter of the pond where native shrubs would be planted to provide shade. He noted this was an opportunity to enhance the wetlands environment and to mitigate the accumulated affects of one dimensional landscaping. Mr. Neff said he would discuss this with Mr.

Gruson. Mr. Picton asked for more information on how the pond would be flushed. Mr. Neff referred to the sequence of construction and said the drain would not be opened. Mr. Picton asked that this specifically be stated on the plan. Mr. Picton asked Mr. Neff to try to come up with a plan for pumping out the pond that would leave an undisturbed basin for underwater ecology rather than removing the entire underwater ecosystem. Mr. Neff was not sure if this would be possible because the pond was only 2/10 of an acre. This application will be discussed again at the next meeting.

**Slaymaker/17 Sunset Lane/#IW-08-13/Repair Septic System, Construct Addition to Existing Dwelling:** New maps by Berkshire Engineering entitled, "B100a Sketch Prepared for Adept Builders," dated 4/4/08 were reviewed. Mr. McMorro, engineer, stated there had been good perc test results in the front yard and so he had designed a septic system plan for 2 bedrooms for that area. He noted the current system is in wetlands, while the proposed new front yard system would be smaller and 19 feet from the wetlands. He also noted it would be a pumped system, the existing wells would have to be abandoned, and a new well would be drilled in the back. Mr. Picton stated that this plan was an improvement. Mr. Picton asked who had decided to drain the back yard. Mr. McMorro said it had been indicated on the 1993 septic plan by Mr. Neff and the Health Dept. had been involved. Mr. Picton noted that this current violation was a good example of why the Inland Wetlands Commission should be involved in septic designs in or near wetlands, adding that both the WEO and the Health Dept. should consider wetlands early in the application process and the property owner should know the regulations and complete the application process before doing any site work. It was noted the other two aspects of the application were the proposed addition and restoration of the disturbed areas in the back portion of the property. Mr. Picton asked if the scope of the addition had been revised. Atty. Malley stated that due to the proposed septic improvements, the size of the proposed addition had not been decreased. Mr. Bedini, however, saw the improved septic plan as mitigation for the unauthorized curtain drain and tree clearing, which, he said, had been done without an indication that the septic system had been failing in the first place and without the exploration of feasible and prudent alternatives. Mr. LaMuniere voiced his concern that the approval of the proposed addition would establish a precedent for the Commission. He noted the addition was a significant increase in the size of the house, twice the size of the existing floor plan, and would be completely in wetlands. Mr. Bedini noted that the Commission had not allowed new construction in wetlands and said he did not support doing so now when the owner could propose a second story addition on the same footprint. Mr. Picton noted that the DEP publication, "Guidelines, Upland Review Area Regulations, Connecticut's Inland Wetlands and Watercourses Act," states that degraded conditions should not be used to justify further degradations and said that the size of the addition was very large compared to the existing structure. Mrs. D. Hill noted the proposed addition was two times the size of the existing dwelling and would require additional driveway. She recommended that the applicant investigate how to enlarge the building without increasing its footprint. Mr. Picton suggested another alternative might be to increase the size of the house by adding a few feet all around the perimeter in the area immediately surrounding the house, which had previously been regraded and was not functioning as wetlands. Mr. Ajello noted there was a deck on the previous plan that was not shown on the current map. Atty. Malley asked what the Commission thought about construction on piers. Mr. LaMuniere still thought it would require a lot of work to build up on the existing foundation, but that sonotubes for a deck would not cause too much damage. Mr. Picton thought construction on piers would be a significant activity in the wetlands. Mr. Bedini thought that if a new foundation was needed, piers would make sense, but said he was against increasing the size of the footprint whether it was on piers or not because new construction in the wetlands could not be justified. He added that it would be unfair to say that the owner could not rebuild on the existing footprint. Mrs. D. Hill, Mr. LaMuniere, and Mr. Picton agreed. Atty. Malley complained that the Commission was not taking into account the quality of the wetlands, which was lawn, nor the proposal to improve the septic system. He also thought it was unfair of the Commission to think that

the owner should have known the regulations before purchasing the property. Mr. Picton responded that if someone buys a bungalow, he can't be sure he's got a house until he gets all the required permits. Atty. Malley said his client was applying only to moderately expand his house and to provide mitigation in the back. Mr. Bedini asked how the wetlands were enhanced by the installation of the curtain drain. Mr. Nadeau, contractor, said his client did not want to decrease the size of the addition, pointed out that the wetlands had been disturbed for "80 years," and offered to plant additional trees in the back. Mr. Picton asked if the commissioners thought enough material had been submitted to approve the new septic system. Mr. Bedini stated there was no point in having separate votes on the addition and the septic system because if the addition was not approved, the owner would not install the new septic system. Mr. Picton noted that the commissioners had discussed the proposed addition and the majority had spoken against it and said he did not find the authority in the regulations for the Commission to approve a new structure in the wetlands. Mr. Thomson, Mr. LaMuniere, and Mr. Bedini said they were prepared to act on the application. Mr. Nadeau asked whether the Commission believed that removing the existing septic system would result in further degradation of the wetlands; he did not think so. Mr. Picton replied that the expansion of the house was not an offset to the replacement of an antique septic system.

**MOTION:** To deny Application #IW-08-13 submitted by Mr. Slaymaker to repair the septic system and build an addition to the existing dwelling at 17 Sunset Lane as proposed on the map, "B100a Sketch," by Berkshire Engineering and Surveying, dated 4/4/08 because: 1. the addition is proposed in wetlands and its construction would be a significant activity in the wetlands, 2. the addition is very large; approximately two times the size of the existing footprint, 3. the Commission has never approved new construction in a wetlands and does not want to set a precedent by doing so, 4. the applicant has feasible and prudent alternatives he could propose such as decreasing the size of the addition, changing the configuration of the addition, adding a second story addition over the existing foundation, etc., and 5. the Commission cites the June 1997 DEP document, "Guidelines, Upland Review Area Regulations, Connecticut's Inland Wetlands and Watercourses Act," which states that degraded conditions should not be used to justify further degradations. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0. (Motion approved, Application denied)

Mr. Picton noted that a cease and desist order was still in place (actually, a notice of violation had been issued), no further work should be conducted in the wetlands, and the wetlands must be restored.

**Guliano/19 Winston Drive/#IW-08-14/Replace Pool:** Mr. Picton noted that this application had been discussed at the last meeting and the Commission was not waiting for any additional information. Mr. Guliano presented the sketch plan dated 3/18/08 and noted the distance from the side of the house to the proposed pool was 17 feet. The plan was not drawn to scale so he wrote in this measurement on it. Mr. Picton asked if Mr. Ajello had reviewed the application and determined it was complete, and Mr. Ajello responded that he had. It was noted the existing pool is 846 sq. feet, while the proposed pool will be 828 sq. ft.

**MOTION:** To approve Application #IW-08-14 submitted by Mr. Guliano to replace the swimming pool at 19 Winston Drive per the map dated 3/18/08 with notes revised to 4/9/08. By Mr. Bedini, seconded by Mrs. Hill, and passed 5-0.

**Hock/Fiedorowicz/49 Mt. Tom Road/#IW-08-15/Driveway Crossing:** The map, "Driveway Wetlands Crossing," by Mr. Wilson, dated January 2008 was reviewed. It was noted the existing 18 ft. long culvert would be replaced with a 30 ft. culvert, which would be long enough to accommodate the necessary regrading along the side of the driveway. It was also noted that silt fencing was shown on the map and that a construction detail sheet had been submitted. Mr. Ajello noted there were wetland areas on both sides of the driveway approximately 100 ft. in from Mt. Tom Road and guessed they were connected and that another culvert would be required. He also thought other cross culverts would be

required further along the access. It was the consensus to ask Mr. Wilson, engineer, to investigate both of these issues. Mr. Bedini also asked what would be done with the rock removed from the ledge and how the water would be handled on the south side of the driveway. Mr. Ajello noted that the plan should show the limit of disturbance and clearing and these should be kept as close to the driveway as possible. Mr. Picton asked that all work, including installation of the silt fence, be kept a minimum of 20 feet from the wetlands except within 50 feet of the crossing and that the depth of fill over the culvert be provided.

Also on the adjoining property, the commissioners thought logging was being done directly in wetlands. Mrs. D. Hill asked if Mr. Ajello had signed off on a timber harvesting application. Mr. Ajello said he would make an inspection.

#### New Applications

**Redstone/83 West Morris Road/#IW-08-16/Inground Pool:** The sketch map by the owner and the survey map, "Map Prepared for Mark E. and James F. Picton," by Mr. Howland, dated October 1988, which showed the location of the flagged wetlands, were reviewed. Mr. Picton said he had not owned the property for 16 years and so did not have a conflict of interest. It was noted the proposed pool was 70 feet from the flagged wetlands. Mr. Ajello said he had inspected the property, the house location was "high and dry," and the proposed pool location was in an area that was already lawn. Mrs. Redstone said that no additional clearing would be required. Mr. Bedini asked if the limit of disturbance was defined by the location of the silt fence and whether a 20 to 25 ft. wide area around the pool was a large enough area in which to work. Mr. Ajello said it would be tight, but it would work. He noted that construction equipment would enter from the south and that the excavated material would be transported to a site sloping away from the wetlands. Mr. Picton asked for "plenty" of buffer area between the pool and the wetlands. Mr. Ajello noted that the existing vegetation within 35 feet of the wetlands was long grasses and ferns. It was noted the proposed pool was 16 ft. by 40 ft. plus a 4 ft. wide deck. Mrs. Redstone explained that alternate locations for the pool would not work because elsewhere the line of vision from the house to the pool would be blocked by a hill or the garage. Mr. LaMunier asked if a cartridge filter would be used. Mrs. Redstone said it would. The commissioners determined that a site inspection was not necessary.

#### Enforcement

**Gray-Dunlap/26 Painter Ridge Road/Unauthorized Clearing, Soil Disturbance:** Mr. Ajello circulated photos of the recent work, noted there were three intermittent streams and a wetland on the property, and advised the Commission that a notice of violation had been mailed yesterday. Mr. Picton read this letter dated 4/8/08. Mr. Ajello said that Mr. Sabin, landscape architect, had been hired, but had not yet had time to draw up a restoration plan. Mr. Picton asked for specific information on the extent of the fill, the drainage work, the redirection of the drainage flow, and the reestablishment of the native understory. Mr. Dunlap noted that top soil had been deposited along both sides of the driveway and trees and shrubs had been cut. He thought many of these plants would regrow on their own. He also noted that the porch on the house had to be replaced due to settling and that Mr. Ajello had advised him a Wetlands permit was required. He said that Mr. Sabin would include the porch work in his mitigation plan. A site inspection was scheduled for Tuesday, April 15, 2008 at 4:00 p.m.

**Lancaster/244 West Shore Road/#IW-07-V16/Unauthorized Clearing:** Mr. Picton reported that Mr. Pollock had given the Commission a complete explanation of the strategy of the recent clearing, noting that 75% of the canopy of the larger trees along the lake had been maintained and that invasives and several smaller sized trees had been removed. He thought Mr. Ajello and Mr. Pollock had had a misunderstanding about the cutting of the larger material. In the future he asked Mr. Ajello to take on site notes on a carbon pad so that each party would have an immediate record of what transpired. Mr.

Ajello said he was pleased that Mr. Lancaster responded to the notice of violation and that he wanted him to understand that the lake shore buffer is important and should be respected. He said he had a problem with the removal of the invasives on the steep shoreline slope and he encouraged replanting there to hold the soil. Mr. Picton stated the activity that occurred should have had a permit. Mr. LaMuniere agreed, saying that all work along the shore line needs a permit. Atty. Kelly specifically asked the Commission if it considered the work done to be a regulated activity. The five seated commissioners said, yes. Mr. Bedini added that although everyone agreed a permit was required, it did not mean that "wholesale destruction" had taken place. Mr. Picton said the Commission would make a list of recommendations for maintaining a healthy natural buffer along the lake shore. Atty. Kelly said that would be OK if it was advisory only. Mr. Ajello noted he had already sent Mr. Lancaster streamside buffer literature. The list of recommendations was reviewed: 1) No further removal of trees or woody understory except for the suppression on invasive species on the lake shore bank. 2) Allow the natural wood understory growth to fill in on the bank. 3) The shoreline vegetation west of the large oak should not be removed. 4) Plant native woody shrubs or trees in the depression in the bank that needs stabilization. 5) There should be no further unpermitted work. Atty. Kelly said his clients would be disappointed that the Commission considered this a violation. He asked what the minimum acreage was in which landscaping can occur as an unregulated activity and thought the Commission should not have made the determination that the work done was a regulated activity without first knowing the answer. Mr. LaMuniere thought the Commission and Atty. Kelly differed on the definition of "landscaping." Atty. Kelly referred the Commission to Section 4 of the Regulations. He stated the Commission had not right to regulate landscaping that may pose a risk to the wetlands if it was done on a minimum sized lot. Mr. Bedini read Section 4.1.d and asked Atty. Kelly if he thought that gave the property owner the right to do whatever he wants even though it is regulated elsewhere in the document. Atty. Kelly said, yes, that was his position. He then submitted a letter dated 4/9/08, which he said was a compilation of responses to Mr. Ajello's enforcement letter.

**Brown/127 West Shore Road/Unauthorized Work Along Shoreline:** It was noted that Atty. Kelly and Mr. Ajello had met to try to resolve this matter. Atty. Kelly said he was trying to determine which areas were subject to restoration and was trying to find photos of the area between the boat launch and the stairs. A photo dated 9/06 was reviewed. Mr. Picton stated that the restoration work done to date was a good example of shoreline restoration.

Mr. Bedini asked Atty. Kelly if there was a legal definition of "shoreline." Atty. Kelly thought that any surveyor would have this information and he would pass it on to the Commission if he found it.

**DiBenedetto/212-214 Calhoun Street/Restoration of Understory:** It was noted that Mr. Ajello had sent a letter to Mr. DiBenedetto as had been requested at the last meeting.

**Ebner/18A Mt. Tom Road/Unauthorized Shoreline Clearing:** The 4/1/08 site inspection minutes were reviewed. It was noted that Mr. Ebner had been instructed that there could be no further cutting of trees, the view could be maintained in the 50 ft. corridor between the deck and the pond, but outside this corridor and except for the septic area, the understory should be allowed to reestablish, there could be no stump removal, and there could be no soil disturbance. Mr. Picton asked that Mr. Ajello write to Mr. Ebner to inform him of these restrictions and that he include a copy of the 4/1 minutes with the letter. Mrs. D. Hill asked if a citation should be issued. Mr. Ajello did not think so because there was no earthwork, nor was there massive clearing, and Mr. Ebner had responded promptly when asked to stop.

**25 Mt. Tom Road/New Dwelling:** Mrs. D. Hill reported activity near the pond, away from the new house, which was out of the upland review area. Mr. Picton asked Mr. Ajello to inspect the site. Mr. Ajello said there had been no disturbance near the pond.

**Peloquin/1 New Preston Hill Road/#IW-07-V13/Unauthorized Clearcutting, Excavation,**

**Stonework:** The site plan that Mr. Peloquin promised still had not been submitted. Mr. Picton asked Mr. Ajello to write to him to instruct him to immediately seed and hay all disturbed areas.

**DiBenedetto/212-214 Calhoun Street/Restoration of the Understory:** The 4/5/08 letter from Mr. DiBenedetto to Mr. Ajello was circulated. Generally, the commissioners thought that Mr. DiBenedetto did not understand why the Commission wanted the areas that had been cut to be restored before additional areas were cut. Mr. LaMuniere noted that the consensus of the commissioners had been that too many trees had been cut. Mr. Picton noted Mr. DiBenedetto had been asked to follow up with restoration work for each phase before going on to the next phase. Mr. Ajello explained that Mr. DiBenedetto was anxious to complete the cutting and then begin replanting this year; that he objected to waiting three years to see whether the restoration efforts were successful before he could resume removing trees. Mr. Picton and Mr. LaMuniere thought it was important to ensure that the invasives were under control, because if they weren't, nothing else would be able to grow. Mr. Picton added that native shrubs that could have been left were cut along with the invasives. Mr. Ajello said that Mr. DiBenedetto was concerned that the Commission, rather than Land Tech, was managing the project. Mr. Picton noted the Commission had asked Land Tech that the work be carried out in stages, but Mr. Ajello said Land Tech wanted to proceed with the cutting now. Mr. Picton said this property had a history where restorations previously ordered had not been successfully completed, and so the Commission needed to see results before any more cutting was done. A lengthy discussion ensued. Mr. Bedini suggested that Mr. Ajello ask Land Tech to support the phasing of the project and that Land Tech then advise Mr. DiBenedetto on how the work should proceed. Mr. Picton said he would call Land Tech as soon as possible.

#### Administrative Business

**Revision of the Regulations:** The commissioners discussed how to define the upland review area. Increasing the upland review area to within 200 ft. of wetlands and watercourse, increasing it to 200 feet only when the proposed activity is within 100 ft. of slopes exceeding 12%, or leaving it at 100 feet with a more specific definition of steep slopes and under what conditions the upland review area could be expanded were considered. Upon receiving input, Mr. Picton said he would compose a draft, which would be circulated prior to the next meeting. It was also suggested that timber harvesting be added to the list of regulated activities or at least add a reference to the Town Timber Harvesting Ordinance.

**Application Form:** The updated form had been circulated prior to the meeting. The one suggestion received was that "Use Form B for Exemptions" should be added to page 1.

#### Communications

The Commission asked Mr. Ajello to try to set up a meeting with Dr. Kortmann on shoreline ecology.

**MOTION:** To go into Executive Session at 11:07 p.m. to discuss pending litigation: Andersson. By Mrs. Hill, seconded by Mr. Picton, passed 5-0.

**MOTION:** To end Executive Session at 11:17 p.m. By Mr. Picton, seconded by Mr. Bedini, passed 5-0

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

FILED SUBJECT TO APPROVAL

Respectfully submitted,

By Janet M. Hill, Land Use Coordinator