

## **March 14, 2007**

MEMBERS PRESENT: Mr. Bedini, Mr. LaMuniere, Mr. Picton, Ms. Purnell

MEMBER ABSENT: Mrs. D. Hill

ALTERNATE PRESENT: Mr. Thomson

ALTERNATES ABSENT: Ms. Coe, Mr. Potter

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

ALSO PRESENT: Mr./Mrs. Rubler, Mr. Plourde, Mr. DiBenedetto, Mr. Szymanski, Mr. Hardy, Mr. Woodward, Mr. Horrigan, Mrs. Matthews, Mr. Reich, Mr. Neff, Mr. Beardsley, Ms. Zinick, Mr. Swanson

### **SHOW CAUSE HEARING**

#### **Rubler/240 Wykeham Road/Clearing, Driveway Washout**

Mr. Picton called the hearing to order at 7:00 p.m. and seated Members Bedini, LaMuniere, and Picton and Alternate Thomson for Mrs. Hill. He noted the purpose of the hearing was to provide the property owner with an opportunity to show cause why the 3/5/07 enforcement order should not remain in effect.

Mr. Ajello noted the commissioners all had copies of the order and photos of the site he had taken on 2/22/07 and 3/2/07 were presented to the Commission for review.

Mr. Rubler made a brief statement noting his interest in the environment, apologizing for and explaining the circumstances which resulted in the driveway washout, and offering to work under the direction of Mr. Neff, engineer, and the Commission to resolve the matter as quickly as possible. He also noted temporary erosion and sedimentation control measures had been installed.

Ms. Purnell arrived and was seated.

Mr. Picton asked if there were also problems associated with the clearing done above the driveway. Mr. Ajello said clearing had been done in upland areas, the cleared areas had no leaf or mulch protection, and the soil stockpiles had also been unprotected. Mr. Rubler noted the clearing had been in preparation for a tennis court and that Mr. Neff did not think it had contributed to the driveway problem.

Mr. Picton stated the enforcement order had been justified, the property owner should submit a remediation plan for the Commission's approval, and once approved, the plan should be carried out as soon as possible. Mr. Rubler restated his commitment to work in accordance with the Regulations, but was concerned that the Commission would not let him proceed immediately with the driveway repair work under Mr. Neff's supervision. Mr. Bedini asked if Mr. Neff was preparing a plan. Mr. Rubler said he was. Ms. Purnell noted the temporary erosion controls had to stay in place and the enforcement order would remain in effect until a plan was submitted and approved.

Mr. Beardsley, contractor, submitted photos of the silt fence that, he said, had been installed at the toe of every slope before the driveway repair work had begun and of the temporary erosion control measures that had been installed after the issuance of the order. Mr. Picton asked if Mr. Ajello had inspected the temporary erosion controls. He had not. Mr. Beardsley said the final grading had been held up due to the weather and that the plowing had created an ice dam, which channeled the runoff down the driveway, and resulted in the washout. He said he was offended by the wording of the enforcement order.

Mr. Picton asked Mr. Rubler to coordinate emergency stabilization measures with Mr. Ajello. He said that was all that could be done now; that the driveway work could not continue at this point.

At 7:30 p.m. Mr. Picton closed the show cause hearing.

This hearing was recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

#### REGULAR MEETING

Mr. Picton called the Regular Meeting to order at 7:31 p.m. and seated Members Bedini, LaMuniere, Picton, and Purnell, and Alternate Thomson for Mrs. D. Hill.

MOTION: To add the following subsequent business to the agenda: New Applications: 1) Matthews/ 50 Painter Ridge Road/#IW-07-08/Addition to Dwelling, 2) Hochberg/15 Couch Road/#IW-07-09/ Driveway, and 3) Adams/233 West Shore Road/ #IW-07-10/Renovations, Reconfigure Driveway, Inground Pool, Etc. By Mr. Bedini, seconded by Mr. Picton, and passed 5-0.

Ms. Purnell asked that when applications are submitted after the agenda has been prepared that the date of submission be included in parentheses. Mr. Ajello noted he could not do a review for completeness on applications submitted the day before a meeting.

#### Consideration of the Minutes

The 2/28/07 Regular Meeting minutes were accepted as corrected.

Page 1: 3rd Motion: Change: Mr. Charles to Mr. LaMuniere.

2nd line from bottom: Change: stumps to trees.

Page 3: Delete the last sentence.

Under Rising/191 West Shore Road, Mr. LaMuniere suggested that Mr. Ajello send a letter to Mrs. Rising to summarize the Commission's position.

Page 4: Under Tompkins: 2nd sentence: Delete: she thought.

Under Plourde: Correct spelling is Plourde.

12th line: Insert old before foundation.

Page 6: Under Hardy-Gill: Lines 4-5: Should state: he tested for additional wetlands in two areas and found wetlands in one; the heaved pocket down hill of the proposed septic system.

Page 9: Under Steep Rock: Add to the third sentence from the end: ...and it was done under the presumption of clearing a field to its original boundaries on flat land.

Add to the end of the last sentence:

...around the pool.

MOTION: To accept the 2/28/07 Regular Meeting minutes as corrected. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

#### Pending Applications

**Hardy-Gill/211 Baldwin Hill Road/#IW-07-03/Single Family Dwelling:** Mr. Szymanski, engineer, presented his 3/13/07 letter regarding the prudent and feasible alternative analysis requested by the Commission and the map, "Proposed Plot Plan," by Mr. Szymanski revised to 3/13/07. He summarized five alternative plans using the maps, "Subsurface Sewage Disposal System, Alternative #1, #2, and #3" by Mr. Szymanski dated 12/12/05, 6/7/06, and 1/4/07, and the two versions of the plot plan dated

2/6/07 and 3/13/07. After a lengthy discussion, Mr. Szymanski said he proposed Alternative Plan #5, which addressed many of the comments made by the Commission at previous meetings. Ms. Purnell asked if there would be unanticipated impacts to the wetlands due to the proposed regrading. Mr. Szymanski said there would not because there was an existing stone wall and hundreds of feet between the area to be regraded and the resource. Mr. Picton asked if the length of the driveway could be decreased. Mr. Szymanski again noted the great distance to the wetlands and said he did not think doing so would decrease the impact on the wetlands. Mr. LaMunier asked if the canopy would be removed. Mr. Szymanski said the canopy would be cut only within the limit of disturbance and said he would add a note on the map that the limit of disturbance line was also the limit of clearing. Ms. Purnell also asked that this be included in the legend and that a note be added that additional clearing of trees or of the understory would require a separate permit. Mr. Picton asked if runoff would be channeled into the wetlands. Mr. Szymanski noted full driveway specs had been submitted and said the runoff would spread out from several relief points; it would not be channelized. Ms. Purnell and Mr. Picton voiced their concern that the notes on the maps were not adequate enough to ensure the drainage system would be constructed so that it would properly function. Mr. Picton asked Mr. Ajello to review the technical plans and to make recommendations to the Commission. He wanted to make sure there were specific plans to handle the water both during construction and permanently. Mr. Hardy complained that questions about the driveway hadn't been raised at any of the earlier meetings. It was noted the 65 days in which to consider the application would be up on 3/16 and a request for an extension was needed. Mr. Picton stated he thought Alternative #5 was an improvement over the plans previously reviewed by the Commission.

**Tompkins/39 Tompkins Hill Road/#IW-07-05/Driveway:** Ms. Purnell recused herself. Mr. Picton said he had driven by the site and had noted there was a lot of fill deposited within 60 feet of the wetlands. Although the fill was stable, water was draining down and carrying mud onto Tompkins Hill Road and to the west. He said, therefore, the details for the driveway surface were very important. Mr. Ajello agreed the fill was stable. Mr. Picton said the driveway runoff had to dissipate, not run in a concentrated channel down the driveway. He also stated the slope below the leak off should be dealt with so there would be no erosion problems. He recommended Mr. Ajello inspect the site and discuss additional measures with the property owner. Mr. LaMunier noted that any requirements Mr. Ajello thought were necessary would become part of the application. Mr. Picton agreed, but said they had to be drawn on the plan. He noted recent driveway drainage problems in Town and said highly detailed plans for water management should be an automatic requirement for Inland Wetlands applications.

Ms. Purnell was reseated.

**Abella/44 Scofield Hill Road/#IW-07-06/3 Lot Subdivision:** Mr. Szymanski, engineer, was present. It was noted the site inspection had been cancelled and was rescheduled for Wednesday, March 21, 2007 at 4:00 p.m. Mr. Ajello noted a neighbor on Mygatt Road had submitted a letter for the file, citing how his property had suffered from development on Scofield Hill during the past ten years. Mr. Picton noted development can cause downhill impacts and so said the Commission would carefully consider the proposed plans.

#### New Applications

**Brown-Carroll/41 Buffum Road/#IW-07-07/2 Lot Resubdivision:** Mr. Szymanski, engineer, pointed out the location of the property on the map, "Overall Site Development Plan," by Mr. Szymanski, revised to 1/24/07. He noted there was a mistake in scale on this map and that almost all of the proposed development was farther than 100 ft. from the watercourse. Mr. Picton asked for the contours downhill of the development area. Ms. Purnell noted the length of the driveway and asked if there was any other configuration that could be used to lessen the impact. Mr. Szymanski responded the driveway had to use the existing access. Mr. Ajello said he had not yet inspected the property. Mr. Picton asked

him to check the site, look for nearby wetlands off site, and to determine whether any additional information was needed before the Commission discussed the application. He also noted a site inspection would be deferred until Mr. Ajello had first inspected the property.

**Matthews/50 Painter Ridge Road/#IW-07-08/Addition to Dwelling:** There was a brief discussion about whether incomplete applications like this one should be added to the agenda or discussed at meetings. Mr. Ajello said since the application had been submitted the day before, he had not yet inspected the site or identified any concerns. The map, "Soil Erosion and Sediment Control Plan," by Mr. Neff, dated 3/8/07 and the existing and proposed site plans by John A. Matthews, dated 1/29/07 were reviewed. Mr. Ajello noted the site was in the vicinity of the Fowler property; an area of complex wetlands. The addition was proposed 55 ft. from flagged wetlands. Mr. Picton asked Mr. Ajello to inspect the property, check whether the wetlands were adequately flagged, and prepare a thorough report before the Commission reviewed the application. He said he would not know whether additional information would be required until after the report was completed. Mrs. Matthews complained that the Commission did not schedule a site inspection, but Mr. Picton responded the Commission was attempting to handle applications in an efficient manner.

**Hochberg/15 Couch Road/#IW-07-09/Driveway:** Mr. Ajello said he had not inspected the property. The map, "Proposed Driveway Plan," by Mr. Szymanski, dated 3/12/07 was reviewed. Mr. Szymanski noted he had submitted a written review of feasible and prudent alternatives and said the proposed plans stopped at the point the driveway leaves the regulated area because there were no plans to extend it beyond that point at this time. Further discussion was tabled until Mr. Ajello has reviewed the application for completeness and conducted a site inspection.

**Adams/233 West Shore Road/#IW-07-10/Renovations, Driveway Reconfiguration, Inground Pool, Etc.:** Ms. Zinick, agent, and Mr. Swanson, contractor, were present. It was noted that a preliminary discussion had been held a few weeks ago and that Mr. Ajello had not yet inspected the property. The map, "Site Plan," by Mr. Cheney, dated January 2007 was reviewed. The location of the intermittent watercourses, deck to be demolished, and proposed retaining walls were noted. Ms. Zinick noted the tennis court was not included in the current application. Plans for the driveway were discussed. Ms. Zinick said the replacement of the existing catch basins, reconfiguration of the driveway to curve it around to the east to access the new bays under the carriage house, and the removal of approximately 100 c. yds. of material and its deposition behind the main building where the existing driveway would be taken out. Mr. Picton said the topos and grading plan had to be shown on the map. Ms. Zinick said the proposed driveway route would come within 6 ft. of the eastern watercourse, but that the applicant planned to place large boulders along the top of the bank to protect it. Mr. Picton asked Mr. Ajello to review the plans to determine whether a soil scientist would be required. Ms. Zinick stated a soil scientist had already been on site, but had not yet submitted his sketch map. She said only the watercourses were found; there were no associated wetlands. Renovation of the existing buildings was briefly discussed. The windows and doors on the main building would be replaced. The deck on the boathouse would be rebuilt and a turbidity apron would be installed to protect the lake during this work. It was also noted the existing concrete dock would be covered with mahogany and a large oak tree near the lake would be taken down. She noted all of this work was described in the text accompanying the application form. Ms. Purnell noted the existing coverage is 22.2% and the proposed coverage was less. She asked if the proposed coverage included the future tennis court. Ms. Zinick said it did. Ms. Purnell asked for a copy of Mr. Cheney's coverage calculations. Mr. Picton and Mr. LaMunier thought detailed information such as the proposed grading should be submitted before a site inspection was scheduled. Ms. Zinick said she would have Mr. Neff provide the contours, but did not think driveway considerations should hold up plans to renovate the boathouse or main building. Mr. Thomson suggested the boathouse be applied for under a separate application. He also asked if power

lines or the well would be replaced, what protection measures would be utilized, and what the distances from the proposed work to the watercourses were. He noted the applicant had just submitted several pages of specifications that the Commission had not yet had an opportunity to review. After a brief discussion it was decided to schedule a site inspection on Wednesday, March 21, 2007 at 4:30 p.m. for a quick look at the whole site and a careful look at the boathouse in particular. Mr. Picton said there would be no questions for Mr. Swanson until a comprehensive plan with specific details, proposed areas to be regraded, water runoff management plan, etc. had been submitted.

#### Enforcement

**Plourde/33 East Shore Road/Unauthorized Clearing:** Mr. Plourde submitted a letter dated 3/8/07 with attached map indicating where he proposed to plant two red maple trees for remediation. He also presented a copy of a photo, which showed the building that had been on the old foundation on the property. He proposed red maples because he had been advised they do well in wet conditions and they would provide a shade canopy. Mr. Picton read the letter, which also stated the owner would like permission to resume the clean up of debris on the property. Mr. Picton noted the Commission had asked for a restoration plan including the number, size, type, and location of the vegetation to be planted and specifics about how the clean up would progress. Mr. Plourde said he would only remove the stumps that were located within the foundation, there would be no excavation, and he would not expose any soil. Mr. Picton asked Mr. Ajello to review the plan and to advise Mr. Plourde if there was anything missing. Ms. Purnell voiced her concern that it would take many years for the canopy to be restored. Mr. Picton asked if the clean up would be done by machine or by hand. Mr. Plourde said he would add to his letter that no heavy equipment would be used on site. Mr. Ajello suggested Mr. Plourde contact Mr. Hayden at NCD to help develop the restoration plan. Mr. LaMunier asked Mr. Plourde to provide details in his letter and to show the foundation on the site plan. Ms. Purnell said the Commission wanted the function lost to be restored; that larger trees had been cut down and the proposed replacement plantings were not comparable. Mr. Plourde said it would take time for the trees to grow and that he did not plan to plant them until his new building was up so they would not be disturbed by the construction. Mr. Picton asked Mr. Ajello to determine whether the two trees proposed in the location on the site plan would be adequate mitigation. When Mr. Plourde objected to Mr. Ajello reviewing his plans, Ms. Purnell volunteered to review the plans and letter and inspect the site before the next meeting.

**DiBenedetto/212-214 Calhoun Street/Restoration of Understory, Unauthorized Clearing:** Mr. DiBenedetto submitted seven sheets of photos, which, he said, showed the clearing done was not as bad as the enforcement officer had reported. He said he had taken down 35 dead ash trees and had removed invasive species. Ms. Purnell asked if the area under the notice of violation was the same area where there had been previous enforcement action. Mr. DiBenedetto said the current area was closer to the road. He submitted material from the United States National Arboretum, dated 3/14/06 and the Department of Parks, Recreation, and Community Resources, undated, regarding invasive species. Mr. Picton said the Commission agreed invasive plants should be removed, but not the entire understory. Mr. DiBenedetto noted he had done a pilot program for the removal of invasives, but the Comm. had told him since he had replaced the invasives with grass, he could not continue. Ms. Purnell said the plan had been to let the natural understory grow. Mr. DiBenedetto argued that it was his land and he had already spent thousands on landscaping. He said the trees cut would be replaced with shadblow and other good canopy trees. The Commission requested a detailed map. Ms. Purnell asked if trees in the wetlands had been cut. Mr. Ajello presented a section of a survey map on which he outlined the cut area and nine photos he had taken on 3-8-07. That area included both wetlands and the regulated area. Ms. Purnell voiced her displeasure as Mr. DiBenedetto knew he was conducting a regulated activity, but did not apply for a permit. She said the ecological functions were slowly being encroached upon and the

Commission had been correct in denying Mr. DiBenedetto's last application. Mr. DiBenedetto stated he had not disturbed the wetlands with any equipment. Mr. Picton noted in the pilot project area the natural native forest understory had not been restored as required. He asked Mr. Ajello to investigate the compliance of the pilot project with the permit granted. A site inspection was scheduled for Wednesday, March 21, 2007 at 5:15 p.m. Mr. Picton advised Mr. DiBenedetto not to do any more work in wetlands or within 100 ft. of wetlands without a permit. Mr. DiBenedetto said he would work on a remediation plan. Mr. Picton asked that the leaf litter and soil cover be left in place so the forest understory could regrow.

**Rubler/240 Wykeham Road/Clearing and Driveway Washout:** Mr. Picton summarized what had been agreed upon at the show cause hearing: 1) Mr. Neff would work on a permanent water management plan, 2) There would be no further work until the Commission approved that plan, and 3) Installation of temporary stabilization measures would be the only activity that could be done prior to the approval of Mr. Neff's plan. Mr. Rubler complained that his driveway was covered with hay bales and mud. Mr. Picton asked Mr. Neff for a list of both short term and long term recommendations on how to reconfigure the driveway so that runoff no longer channels water and for a management plan that would work whether or not there is snow. Ms. Purnell also asked for plans to stabilize the steep slopes that had been disturbed. Mr. Ajello will review the recommendations before they are considered by the Commission.

**MOTION:** To uphold the 3/5/07 Enforcement Order issued to Mr. Rubler for erosion and sedimentation at 240 Wykeham Road. By Mr. Picton, seconded by Ms. Purnell, and passed 5-0.

**Carter/292 Walker Brook Road (141 Shinar Mt. Rd.) #IW-04-V8/Repair of Retaining Wall:** It was noted Mr. Pawlak's 2/19/07 report had been circulated at the last meeting. Ms. Purnell said Mr. Pawlak's field was not riparian restoration, his report did not address the specific questions raised by the Commission, and she thought a fluvial geomorphologist should be consulted. Mr. Picton and Mr. LaMuniere agreed. Mr. Thomson did not think the Town culvert should be aimed at the Carter streambank. Ms. Purnell asked if Mr. Pawlak had received a copy of the Commission's letter as he made no reference to the questions raised and asked that he submit a resume. It was agreed Mr. Pawlak should be sent a copy of the letter so that he could answer the questions or state that he is not qualified to do so. Mr. Picton discussed the property owner's liability for future adverse impacts resulting from the improper construction of the retaining wall. He suggested the Commission consider requiring a bond and/or filing a letter on the land records that the wall had not been built in compliance with the permit issued. Ms. Purnell advised him to consult with Atty. Zizka on the proper legal procedure since the Commission had not enforced what it permitted.

**Feola/84 Carmel Hill Road/Restoration of Vernal Pool:** Mr. Ajello noted Mr. Feola had not paid the second fine and a notice had already been posted on the land records.

**Puertas/72 Horse Heaven Road/Unauthorized Clearing:** Mr. Ajello reported he had sent a letter requesting the information that the Commission indicated was needed at the last meeting.

**Moore/25 Litchfield Turnpike/Unauthorized Filling, Clear Cutting:** It was noted Mr. Potter had not contacted Mr. Moore and Mr. Ajello had not sent him the letter requested by the Commission at the last meeting. Mr. Picton noted at the last meeting it had been decided that if there was no written agreement by Mr. Moore and if he had not posted a bond by tonight's meeting, a third citation would be issued and a notice posted on the land records. It was the consensus to put this off until the next meeting as the letter had not been sent.

**Reinhardt and Cremona/Perkins Road:** Mr. Ajello passed out copies of Mr. Childs' review and estimates and said Mr. Childs would attend the next meeting to answer the Commission's questions. The Commissioners will read the review before the next meeting and will discuss it then. Questions for

Mr. Childs should be sent in before then. Mr. Picton asked Mr. Ajello to analyze the report for the next meeting.

**DiBenedetto/212-214 Calhoun Street:** Mr. LaMuniere thought the photos presented earlier by Mr. DiBenedetto showed that more than dead ash trees had been cut. Mr. Thomson noted Mr. DiBenedetto agreed to work on a restoration plan, and asked if the Commission should direct him to qualified professionals. Mr. Ajello thought the Commission should instead ask a qualified professional to review the plan when it is submitted. Mr. Picton discussed possible measures the Commission could take such as requiring the restoration to be done under the supervision of a professional such as Mrs. Corrigan or Mr. Childs, requiring the mapping of all the wetlands on the property, and requiring a bond for the restoration work. The commissioners will consider these possibilities after conducting the site inspection. Mr. Picton asked Mr. Ajello for a written analysis of if and how what the Commission permitted for the pilot program differs from the work Mr. DiBenedetto actually did on site and that he complete this review before the 3/21 site inspection.

**Steep Rock Assn./River Road/"McKennee" Field:** Mr. Thomson noted the line of trees cut along the edge of the field were large enough so that it was evident the farm field had not extended that far in recent memory. He thought Steep Rock should be held to the same standards as everyone else in Town. Mr. Picton asked that Steep Rock be advised that it must apply to the Commission for any activity within 50 ft. of a watercourse and that Mr. Ajello include this in the letter to Steep Rock he had been asked to send at the last meeting.

Other Business

**Aquatic Pesticide Permit/Robinson/Clark Road:** Ms. Purnell asked Mr. Ajello if he had distributed the undated DEP memo re: aquatic pesticide permit applications and asked again that he do so. She read a section of this memo, which said that the DEP was interested in obtaining local knowledge and that municipalities may require Inland Wetlands applications for this activity. The Robinson herbicide application was discussed. It was noted there was a "wetland complex" on the Clark Road property. Ms. Purnell voiced her concern that the pond was connected with other wetlands on the property. Mr. Picton noted in the past the Commission had made the distinction between ponds in the flow of a stream vs. isolated ponds. Mr. LaMuniere agreed he would not favor the use of an herbicide in any pond that is part of a wetlands network. Mr. Ajello recommended this be added to the Regulations when they are revised. Ms. Purnell said property owners should be advised to work on the causes of algae problems instead of on the symptoms. It was noted this was a matter that should be included on the policy list that Mr. Bedini and Ms. Purnell are drafting and that any policy statement should be backed up with sources.

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

Mr. Picton adjourned the meeting at 10:25 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator