

February 8, 2006

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

ALTERNATES PRESENT: Ms. Coe, Mr. Thomson

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

ALSO PRESENT: Mr. Charles, Mr. Neff, Mr. Sears, Mr. Fenwick, Mr. Owens, Mr. Majewski, Atty. Kelly, Mr. Johnson, Mr. and Mrs. Mello, Mr. Peck

Mr. Picton called the Regular Meeting to order at 7:07 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Purnell.

MOTION: To add subsequent business not already posted on the agenda: New Applications: C. Mello/183 Woodbury Road/#IW-06-06/ Remodel House and Garage, Landscape, D. Kleinberg/___ West Shore Road/#IW-06-07/ Driveway and Underground Utilities and Other Business: B. Ingrassia/135 East Shore Road/Jurisdictional Ruling/Fence. By Mrs. Hill, seconded by Mr. Bedini, and passed 5-0.

Consideration of the Minutes

The 1/25/06 Regular Meeting minutes were accepted as corrected.

Page 2: 5th line: Correct spelling is substrate.

Pasatieri: End of 5th line: Substitute "replacement" for "reserve."

Pasatieri: Add: Mr. Ajello will obtain a map from the Health Department file.

Page 4: Private Mortgage Fund: End of 3rd line: Add: "and after" after "during."

Page 5: 12 lines from bottom: Add: "within the watercourse" after "proposed."

Page 6: Under Kessler: Add just before the motion that the applicant refused to consent to an extension.
16th line: Delete: "for which." Add: "within 20 feet of wetlands and...."

Page 10: 2nd motion: Correct spelling is repercussions.

Page 11: Line above motion: Correct spelling is thought.

Page 12: Under Carter: 8th line: Correct phrase is fluvial geomorphology.

Page 13: Mrs. D. Hill noted her remarks in support of the Depot Study had not been included.

MOTION: To accept the 1/25/06 Regular Meeting minutes as corrected. By Ms. Purnell, seconded by Mr. Bedini, and passed 4-0-1. Mr. LaMuniere abstained because he had not attended the last meeting.

The Commission's attorney, Kari Olson, arrived and was introduced.

Pending Applications

Pasatieri/77 Findley Road/#IW-05-68ATF/Septic Repair: Mr. Ajello said he had no new information. Mr. Picton noted the Commission was still looking for documentation to show why it was necessary to install the replacement system so close to the watercourse and that no other area was available. It was noted it had been the prior property owners who had done the work without an Inland Wetlands permit and Atty. Olson suggested the Commission ask the new owners to assist with the application. She said the Commission would not know whether it was reasonable to issue an enforcement order until the application could be reviewed. She stated the Commission did not have the right to require the new owners to submit an application unless there was an ongoing violation and that

she would research whether there might be a legal basis for leaning the property for fees. Mr. Picton said he did not want to set a precedent where the sale of a property could stop enforcement proceedings. Atty. Olson said this would not happen if the violation was ongoing.

Brighenti/49 Calhoun Street/#IW-05-71/Tennis Court: Mr. Ajello reported Mr. Brighenti is working to submit a survey map. Discussion was tabled to the next meeting.

Spring Hill Farms, LLC./69 Whittlesey Road/#IW-05-74/Reconstruct, Enlarge, Move, Existing Structure: The map, "Septic System Repair Plan," by Mr. Neff, revised to 2/7/06 was reviewed. Mr. Neff noted test pits had been dug in the area of the proposed building; one was in the area of the roof infiltration system and the other was in the back area of the building. Mr. Picton detailed the list of concerns discussed at the last meeting. He then read part of Section 8.1 of the Washington Inland Wetlands and Watercourses Regulations, which states that a public hearing shall be required whenever the Commission finds that a proposed activity may cause a significant impact on a wetland or watercourse. He said he did not want anyone to assume since the Commission did not hold a hearing it did not think there could be a significant impact, and so strongly recommended the Commission follow its Regulations and conduct a hearing on this application. He thought the Commission should no longer be casual in carrying out its Regulations. Atty. Olson explained to the Commission the three criteria upon which to base the determination of whether to schedule a hearing to consider an application. She stressed if a hearing is scheduled because the Commission thinks the proposed activity may cause a significant impact, this is a preliminary finding. The information presented later at the hearing may change the Commission's opinion. Also, she noted that when a Commission does not schedule a hearing when it first reviews an application, it may later change its mind based on further review or additional information and determine a hearing is, indeed, required. She stressed the Commission has the right to change its mind. In response to a question regarding the timing of scheduling a hearing on this specific application, Atty. Olson advised the Commission it could schedule the hearing within the 65 day extension, but would also have to vote on the application within that same 65 day extension. Ms. Purnell asked whether the Commission could establish a general policy that all activities of a certain size within a certain distance of a wetlands or watercourse would require a public hearing. Atty. Olson noted per the state statutes a hearing shall not be held unless at least one of the criteria is met, but otherwise it would be OK to do so. She stated the Commission need not feel pressured to make a determination that an activity would be likely to cause a significant impact because it could decide instead that it would be in the public interest to conduct a hearing. Regarding the Spring Hill Farms application, the commissioners gave the following reasons why they thought a hearing should be held. Mr. Picton felt strongly the proposed activities might have a significant adverse impact due to the extent of the disturbance proposed and the proximity to wetlands and that the Commission's Regulations were clear that a hearing had to be held in such a case. Ms. Purnell noted the application proposed demolition of the existing structure and building an entirely new structure in a location severely limited due to the existing conservation easement. She thought a hearing would be in the public interest so that conservation and open space concepts could be discussed and the public could see how important it is to allow sufficient area for future plans prior to the filing of easements. Ms. Coe and Mr. Thomson agreed with Ms. Purnell. Mrs. Hill agreed with Mr. Picton. Mr. Bedini thought it was both an activity, which could cause a significant impact and it was in the public interest to hold a hearing. Mr. LaMuniere thought the hearing should be held unless the Commission's consultants found the proposed activity would not cause a significant impact.

MOTION: To hold a public hearing on Wednesday, March 8, 2006 at 6:00 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall to consider the application submitted by Spring Hill Farms, LLC./69 Whittlesey Road/#IW-05-74/Reconstruct, Enlarge, Move Dwelling. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

Atty. Kelly pointed out that the Commission had not mentioned it would schedule a hearing when it had asked the applicant for the extension and thought this could be considered as an obstruction and a delaying tactic. Mr. Picton responded the Commission was not perfect and had only decided to do so after reviewing its Regulations and consulting with its attorney. Mr. Owens, architect, asked that all material submitted tonight be forwarded to the consultant as soon as possible. Atty. Kelly asked if all correspondence including all the questions the consultants were asked were in the file for review. Mr. Picton said they were. Atty. Kelly asked who had attended the site inspection. Mr. Ajello stated he had accompanied the consultant.

Private Mortgage Fund, LLC./59 South Fenn Hill Road/#IW-06-01/Driveway, Retaining Wall, Generator, Etc.: Mr. Fenwick, contractor, was present. The map, "Modified Site Plan," by Stuart Somers Co. dated 12/28/05 was compared to the overlay map, "Modified Site Plan," unsigned, undated, received 1/17/06. Mr. Picton noted the Commission's consultant had been asked to review the stability of the slope where the retaining wall was proposed at the edge of the upland review area. It was noted the consultant advised that walls over 4 ft. high require engineered plans and the plans showed sections of the proposed wall to be at least 6 feet high. Mr. Picton read sections of Land Tech's 2/7/06 report and said he did not think what had been submitted to date qualified as an engineered design. In addition the Commission asked for the following: 1) the amount and location of top soil to be spread for planting vegetation to hold the slope in place after the work is completed, 2) slopes not to exceed 3:1 where ever possible, 3) the limit of disturbance line to be marked on the map and on site, 4) contour lines to be shown on the map, and 5) the proposed water transmittal device to be shown on the map. Ms. Purnell also asked that feasible and prudent alternatives such as moving the wall farther from the wetlands and keeping more of the grade to 3:1 be scrutinized. She noted that not only had the location of the driveway been moved since the Commission had reviewed the original plan, but the amount of fill had been increased and the size and orientation of the house had been changed. It was also noted the consultant had recommended a bond and the amount would have to be determined.

New Application

Folwer/138 Nichols Hill Road/#IW-06-04/Remediation Per IWC Order: Atty. Kelly represented the applicant. He explained the proposal to refill and regrade the trench to the pre existing slope on both sides of the trench. All work would be done by hand. It was noted the Commission had requested the trench be refilled with the material originally removed from it. Atty. Kelly agreed that this would be done and the invasives that had grown in would be removed by hand per plans by Ms. Corrigan. Atty. Kelly stated there had been a swale in this area of the property before the excavation occurred and so there would be one there when the work was completed. Mr. Picton thought the application was responsive to the enforcement order and said the Commission would act at the next meeting.

Kessler/103-105/West Mountain Road/#IW-06-05/Construct Two Dwellings, Install Crossing, Excavate Basin, Etc.: Mr. Picton noted the application had been resubmitted and said the Commission would consider whether or not to hold a public hearing to consider it. Ms. Purnell favored a public hearing due to the scope of the disturbance and its proximity to wetlands and watercourses. She noted the applicant had restricted the work area with the placement of a conservation easement and that the existing building would be completely rebuilt in a new location. Mr. Picton agreed noting the activities were proposed just above steep slopes above the wetlands and he thought there was a potential for a significant adverse impact. He said the Commission's Regulations require a hearing if the proposed activity may cause a significant impact. There was a brief discussion regarding whether it was a pond or a basin that would be excavated. Ms. Purnell said it was a watercourse, which drains directly into the pond, then into Sprain Brook, and so the proposed work would have a direct impact on the brook. The conservation easement was discussed. Mr. Owens said it had been filed on the land records by the property owner after the submission of the original application. Ms. Purnell asked if such an easement

could be modified to provide greater protection. Atty. Olson said she could not say without studying the easement's language. Mr. Owens said the boundary of the easement had been established after consulting with an attorney and with the IRS. The Commission noted, however, that the placement of an easement could be considered a self created hardship, and noted this one had resulted in the loss of feasible and prudent alternatives. Atty. Olson advised the Commission in general that it would be difficult to deny an application because the conservation easement affected feasible and prudent alternatives unless the proposed activity would result in a severe adverse impact to the wetlands. Mr. Picton noted there was always a range of feasible and prudent alternatives including design, size, and location and that these would all be analyzed by the Commission when reviewing this application.

MOTION: To hold a public hearing on Wednesday, March 8, 2006 at 5:00 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall to consider the application submitted by Mr. Kessler/103-105 West Mountain Road/#IW-06-05/Construct Two Dwellings, Wetlands Crossing, Excavate Basin, Etc. By Ms. Purnell, seconded by Mr. Picton, and passed 5-0.

Mrs. D. Hill noted she had voted not to hold a public hearing on the first application, but said the application was more complicated than she first realized and so thought now that a hearing should be held. Mr. Picton thought there could be a significant adverse impact to the wetlands and so the Regulations required a hearing. Mr. Bedini agreed and also said a hearing would be in the public interest. Mr. LaMuniere also said he had originally been against a hearing, but since reviewing the consultant's report he thought it would be in the public interest to hold one.

Mr. Owens submitted the following documents: 1) page 4 of the application with the property owners' signatures, 2) the 1/31/06 letter from Mrs. Branson stating the proposed activities did not impinge on the conservation easement, 3) revised calculations for the biofiltration system by Land Tech, dated 2/8/06. He asked for copies of all correspondence from Mr. Picton to the consultant and any materials resulting from the site inspection with the consultant. Mr. Picton said he had not taken any notes and had been surprised the applicant had not attended. Ms. Purnell explained that if only one member of the Commission inspects a site, it is not a Commission meeting and minutes are not required. Mr. Owens objected that Mr. Picton had referenced the Commission's desire to keep new construction out of the 100 ft. upland review area. Mr. Picton said he had wanted to be sure the consultant addressed the technical details of what would happen in the buffer areas during construction. Mr. Neff submitted the map, "Proposed Grading Plan," dated 2/6/06 and commentary on the Fuss & O'Neill report. Mr. Owens objected to the Commission questioning the Kessler's motives when placing the conservation easement on the property. Mr. Bedini thought it was unfortunate this general issue had been raised during the discussion of this application, but explained the Commission does not usually have its attorney present to answer questions and the question raised was meant to be a general one and did not refer in particular to the current application. The Commission's consultant will be asked to attend the March 8th hearing.

Mello/183 Woodbury Road/#IW-06-06/Remodel House and Garage, Rebuild Stone Wall: Mr. and Mrs. Mello were present. The map, "Zoning Location Survey," by Mr. Gee, dated 12/8/05 with proposed activities noted in pencil by owner, and planting plan, "Landscape Planting," by Meadowbrook Farms, dated 1/12/06 were reviewed. It was noted a 50 ft. setback line had been placed on the map and that all the work proposed was within 100 feet of wetlands and watercourses. The property owners noted trees had been cleared from the hillside and proposed to replant some of them. Two sections of the existing stone wall would be rebuilt. Mr. Mello said they would be replaced without regrading. The house would be repaired without any expansion of the footprint, but foundation work would be required for the porch. Mr. Picton asked the applicants to fully describe in writing all of the work proposed. Mr. Ajello asked if an improved erosion and sedimentation control plan had been submitted. Mr. Mello said it had. A site inspection was scheduled for Wednesday, February 15, 2006 at

3:30 p.m.

Kleinberg/___West Shore Road/#IW-06-07/Driveway and Underground Utilities: Discussion was tabled to later in the meeting in order to accommodate those present.

Enforcement Report

9 Main Street Assoc./9 Main Street/Unauthorized Construction of Stone Wall: The map, "Property Survey Prepared for 9 Main Street Associates," by Mr. Adams, dated January 2002 with plantings along the brook drawn in by hand was reviewed. Mr. Picton noted the stone wall was located in the upland review area. Ms. Purnell said the fairly steep slope above the brook had been gradually cleared over time. Mr. Picton asked for information on how the streambelt buffer would be maintained and enhanced and asked Mr. Ajello if he had provided Mr. Johnson with riparian buffer guidelines. Mr. Picton did not think the planting plan provided enough detail and asked for the number, size, and species of plants to be planted and for the location of the natural buffer and what is currently growing there. Ms. Purnell recommended planting in groups of two or three for a greater success rate. Mr. Johnson stated he had done no clearing within 50 feet of the stream. Ms. Purnell briefly explained the value of riparian buffers and Mr. Picton again asked Mr. Ajello to provide Mr. Johnson with the information he will need to improve his planting plan.

Peck/10 Slaughterhouse Road/Unauthorized Excavation, Tree Removal: Mr. Peck showed a sketch map of the property, which indicated the disturbed area was approximately 75 feet from a watercourse. He explained he had installed a motorcycle track and he wanted to replace a crushed culvert under the existing driveway, which was causing water to pond above it. Mr. Ajello circulated photos of the area. Mr. Picton said the Commission was concerned about clearing and excavation within the upland review area. There was some discussion about whether Mr. Peck had constructed a new road, but Mr. Ajello said an old road had previously existed. Mr. Peck admitted he had cut approximately a dozen trees and made the motorcycle track within 100 ft. of wetlands. He said he would move it back at least 100 ft. from the stream and Mr. Picton advised him the Commission required a map showing exactly where the work was proposed. Ms. Purnell said a construction sequence and an erosion control plan should be included. It was not known whether there were wetlands soils on site or if there was a high water table. Mr. Bedini and Mr. LaMuniere will inspect the property before the next meeting. Mr. Picton also asked Mr. Ajello whether he could say with authority there were no wetlands on the property. If he could not do so, then he asked that the area be flagged. Mr. Peck was advised to submit an application to replace the driveway culvert. Remediation for the enforcement matter will be handled separately.

Ingrassia/135 East Shore Road/Fence/Jurisdictional Ruling: Atty. Kelly represented the property owner. He stated he had applied to the state for an encroachment permit for the installation of a fence. If granted, the fence would be no higher than 3.5 ft. and would be attached to the guard rail abutments. The top of the cement abutments would be drilled by hand and the fence attached with bolts. The only posts required would be at either end of the fence. The two post holes would be dug by hand and refilled the same day. Ms. Purnell asked if any material would be stockpiled, what material would be used for the fence, and how the work area would be accessed. It was the consensus that if no pressure treated wood was used, the post holes were dug by hand and refilled the same day, only the existing parking areas were used to access the work area, and there would be no stockpiling of materials there would be little potential for adverse impacts to the lake. Atty. Kelly agreed pressure treated wood would not be used. Atty. Kelly was advised to fill out an application for a de minimis activity, which would be approved by the Wetlands Agent.

MOTION: To authorize Mr. Ajello to sign off as Wetlands Agent on the upcoming application to be submitted by Mr. and Mrs. Ingrassia/ 135 East Shore Road to install the end sections of a fence along the road subject to the conditions that the post holes be dug by hand and refilled the same day, truck

access is limited to the existing parking areas, and no pressure treated wood is used. By Mr. Picton, seconded by Mr. LaMuniere, and passed 5-0.

Calhoun Street Trust/62 Calhoun Street: Mr. Picton asked if the erosion problems and tree cutting recently reported were now under control. Mr. Ajello said they were, but that he had found unauthorized construction of two massive retaining walls within 100 feet of wetlands. These walls had not been shown on any of the plans submitted for the various ongoing projects. The Commissioners asked Atty. Olson whether she recommended issuing an enforcement order or suspending the permit and whether it should be dealing with the contractors or with the property owner. She responded the Commission should contact the owner and since there were several permits issued for this property, it could only suspend the permit that was violated. Ms. Purnell thought an enforcement order should have already been issued, but Mr. Ajello said he was timing the order so the Show Cause Hearing could be held at the next meeting. Mr. Picton asked Mr. Ajello to issue a citation and to issue an enforcement order to take down the walls. Mr. Bedini asked whether the Commission first had to prove they were harmful to the wetlands. Atty. Olson said it did not. Atty. Olson asked whether the Commission would consider this work a violation of an existing permit or unauthorized work. It was the consensus it was unauthorized work. Her advice, then, was to issue a cease and desist order. It was noted there had been previous violations on the property and so Mr. Picton asked that all activities in the regulated areas be stopped. A Show Cause hearing was scheduled for Wednesday, February 22, 2006 at 6:45 p.m. in the Land Use Meeting Room.

Gatto/Woodbury Road: It was noted Atty. Zizka had not yet advised the Commission on the status of this case. Atty. Olson said she would remind him to report to the Commission.

Taylor/11 Sunset Lane/Unauthorized Excavation in a Watercourse: Mr. Ajello briefly updated the Commission on the progress to date. He thought the restoration plan proposed by Mr. Picton at the last meeting; 1/3 natural buffer, 1/3 planted buffer, and 1/3 lawn, was a good compromise. He is still working with Mr. Taylor to obtain all the information requested for the file.

Carter/292 Walker Brook Road/#IW-04-V8/Repair of Retaining Wall: The Commissioners summarized the history of the violation for Atty. Olson. She advised the Commission that if the owner built a structure he was not permitted to build, it could make an inspection and require repairs. Mr. Picton noted Atty. Zizka said the Commission could pursue the matter even though the work had been done two years ago. Atty. Olson thought the Commission could write to the owner that Mr. Neff's report had not been satisfactory and that it would hire its own engineer to inspect the retaining wall. She thought the Commission could charge the property owner for this review since it would be to determine whether the work done was in compliance with the permit granted and confirmed this was so when she reviewed Section 7.1.a of the Regulations. Ms. Purnell will draft a letter to Mr. Carter, which will detail how the work done does not comply with the permit, state the reasons why the Commission is concerned, and notify him that he will be charged for the Commission's consultant to inspect the work and report on compliance and impacts. When the letter has been prepared, it will be forwarded to Attys. Olson and Zizka to review before it is sent to Mr. Carter.

Other Business

Montessori School/240 Litchfield Turnpike/Request to Release Bond: Ms. Purnell said there was nothing new to report.

Data Base: The Commissioners asked Atty. Olson if they could base their determination regarding whether it was likely an activity would cause a significant impact on the basis of the Commission's experience. For example, if a data base was set up and it was found that for permits issued for activities of a certain scale within a certain distance of wetlands or watercourses that over a certain percentage resulted in violations which adversely impacted the wetlands, could this be a basis for a determination

that a significant impact was likely. Atty. Olson thought this type of study should be used more to establish bond amounts, draft conditions, decide on appropriate remediation, etc. rather than as a basis for denial of an application. She said it could be used as a basis for determining whether or not to hold a public hearing. She cautioned that concern that a permit might be violated was not a reason for denial. She explained a reason for denial must be based on fact such as there was not enough protection proposed to allow the activity to take place. Ms. Purnell asked if such data could be used by the Commission to determine when feasible and prudent alternatives should be considered. Atty. Olson said it could. She also stated when deciding an application, the Commission should use all available information to consider all of the likely impacts to wetlands and whether there would be any conditions that could be imposed that would make the proposed activity acceptable.

Revision of the Regulations/Section 8.1: Mr. Picton noted Atty. Zizka had suggested this section could be amended to state the Commission may hold a hearing if it finds the activity may cause a significant impact, not shall hold a hearing. Otherwise, the Commission will be scheduling many more hearings than it has in the past.

Procedures: Mr. Bedini questioned the wisdom of conducting more public hearings since the public does not usually understand that the Commission can not consider non technical information. Atty. Olson agreed this was true, but said the Commission could take a second look when property owners with local knowledge make complaints or voice concerns. What neighbors suggest, she said, could help the Commission impose conditions and do a thorough job. The issue of converting a seasonal building to year round use was raised and Atty. Olson was asked if an intensification of use could be considered when deciding an application. She responded that an increase in the intensity of use could be considered in relation to its impact on wetlands and watercourses. Mr. Picton asked how specific the Commission had to be when describing this impact. Atty. Olson said if the Commission could not articulate the basis for the impact on wetlands and watercourses, it could not deny the application. Any denial had to be because there would clearly be a negative impact and there were no possible conditions minimize the impact. Mr. LaMuniere asked whether the Commission should redesign and modify applications for the applicant. Atty. Olson thought applications could be referred to the Commission's consultant who would then recommend revisions.

Atty. Olson noted the Land Use Office needs an updated copy of the state statutes. She said she would look into the questions raised at the meeting and get back to the Commission with answers.

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

Mr. Picton adjourned the meeting at 10:53 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator