

## **February 22, 2006**

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

ALTERNATE PRESENT: Mr. Thomson

ALTERNATE ABSENT: Ms. Coe

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

ALSO PRESENT: Mr. Munson, Mr. Neff, Mr. Fenwick, Mr. Owens, Mr. and Mrs. Mello, Mr. Peck

SHOW CAUSE HEARING

### **Calhoun Street Trust/62 Calhoun Street/Unauthorized Construction**

Mr. Picton called the Show Cause Hearing to order at 6:47 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Purnell. He explained the purpose of the hearing was to provide the property owner an opportunity to present reasons why the 2/13/06 Cease and Desist order should not remain in effect. Mr. Ajello read the enforcement order, which cited other previous unauthorized work on the property and ordered the property owner to 1) stop all construction activity related to Permit #IW-05-03 and to 2) remove the new retaining walls and any other structures built closer than 83 feet to the wetlands and had not been authorized under any other permit. Mr. Munson, contractor, and Mr. Neff, engineer, represented the property owners. Mr. Munson explained the circumstances under which the walls had been constructed and assumed complete responsibility for the violation. The following maps and plans by Mr. Neff were reviewed: "Property Plot Plan," dated 2/11/05, "Soil Erosion and Sedimentation Plan, revised to 8/16/05, and "House Site Plan, dated 2/21/06. This last map included the location of the two retaining walls. Mr. Picton asked if there had been regrading work associated with the construction of the walls. Mr. Munson said, yes, the terracing around the house had been redone and fill had been deposited behind the walls. He noted there was lawn between the new walls and the brook and that silt fence had been installed. Ms. Purnell recommended the Commission inspect the site to determine whether the Commission would have approved the walls if they had been applied for. Mr. Munson said he discussed the previous unauthorized cutting in the wetlands with the property owner who had then authorized Mr. Neff and Kent Greenhouse to draw up a mitigation plan to the Commission's satisfaction. Mr. Picton stated and the Commission agreed there was good reason for the Cease and Desist order and it should remain in effect.

MOTION: To close the show cause hearing for Calhoun Street Trust/62 Calhoun Street/Unauthorized Construction. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

Mr. Picton closed the Show Cause Hearing at 7:08 p.m.

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 7:08 p.m. and seated Members Bedini, Hill, LaMuniere, Picton, and Purnell.

MOTION: To add the following subsequent business to the agenda: Consideration of the Minutes: C. Site Inspection/Peck/2/22/06 and New Application: A. Schneider/97 Lower Church Hill Rd/#IW-06-08/ Replace Pergola and Bridge, Landscaping. By Mr. Picton, seconded by Mrs. Hill, and passed 5-0.

Consideration of the Minutes

The 2/22/06 Regular Meeting minutes were accepted as corrected.

Page 2: Under Pasatieri: 4th line from bottom: correct spelling is "liening."

Page 3: 12th line: Add: and/or after "size."

Page 4: Fowler heading: Correct spelling is Fowler.

Private Mortgage Fund: 12th line: Add: for the wall after "design."

5th item: Add: Per Land Tech recommendations after "device."

Page 6: 9th line: Change: "Mr. Picton" to the original Fuss and O'Neill report.

10th line: Add to the end of the sentence: "and that the revised report no longer included that reference."

MOTION: To accept the 2/8/06 Regular Meeting minutes as corrected. By Mr. Bedini, seconded by Ms. Purnell, and passed 5-0.

The 2/15/06 Mello Site Inspection minutes were accepted as corrected. The correct spellings are David Thomson and Kathy Coe.

MOTION: To accept the 2/15/06 Mello site inspection minutes as amended. By Ms. Purnell, seconded by Mrs. Hill, and passed 5-0.

The 2/22/06 Peck Site Inspection minutes were accepted as amended. The correct spelling is Ajello.

MOTION: To accept the 2/22/06 Peck site inspection minutes as amended. By Mr. Picton, seconded by Ms. Purnell, and passed 5-0.

#### Pending Applications

**Pasatieri/77 Findley Road/#IW-05-68ATF/Septic Repair:** Mr. Ajello reported there was no new information. He recommended this matter be moved to Enforcement as the original application had been incomplete and a fee was never submitted.

**Brighenti/49 Calhoun Street/#IW-06-71/Tennis Court:** The Commission is still waiting for additional information.

**Spring Hill Farms, LLC./69 Whittlesey Road/#IW-05-74/Reconstruct, Enlarge, Relocate Building:** It was noted a public hearing had been scheduled for 6:00 p.m. March 8, 2006. Mr. Owens asked when the report from Land Tech Consultants was expected. Mr. Ajello said it would be in prior to the hearing and that he would send it to Mr. Owens as soon as possible.

**Private Mortgage Fund, LLC./59 South Fenn Hill Road/#IW-06-01/Revisions to Original Permit - Driveway, Generator, Retaining Wall, Etc.:** Mr. Fenwick, contractor, was present. The map, "Modified Site Plan," by Stuart Somers Co., LLC., revised to 2/15/06 was reviewed and compared to the original version dated 12/28/05. Ms. Purnell noted the plans showed a 2:1 slope, not 3:1 as recommended by Land Tech, and otherwise had not changed much except to connect the curtain drain around the patio to the yard drain with rip rapped outlet. Mr. LaMuniere asked if this would allow chlorinated water to flow from the pool to the outlet. Mr. Fenwick said the pool would have a self contained system and he did not know for sure that the pool would be installed. Mr. Picton noted Land Tech had recommended that no water run directly down the slope and it was noted that was the reason for the curtain drain. The cross sections of the curtain drain and level spreader were studied. Mr. LaMuniere asked if the proposed drainage system would handle a 6" rainfall. Mr. Fenwick stated that even with leaving the slope at 2:1, Land Tech agreed it would work. The Commission noted Mr. Allan of Land Tech had not confirmed this in writing. It was noted the applicant had not submitted an

engineered design for the sections of the retaining wall that would exceed 4 ft. in height as had been requested by the Commission. Mr. Picton referred to Land Tech's 2/7/06 report, which stated in part that the proposed activities would have no adverse impacts if 1) the wall is properly constructed, 2) the fill is properly placed, compacted, and vegetated, 3) runoff is managed, and 4) erosion and sedimentation controls are monitored and maintained. He asked Mr. Fenwick why these concerns had not been addressed point by point. Mr. Ajello said the applicant's engineer had been sent a copy of the Land Tech report and had then advised him that all the above concerns had been adequately addressed, but that nothing had been put in writing. Ms. Purnell voiced her concern about the management of runoff and the fact that "maxing out" the development on site by including structures like the pool and patio had made it impossible to achieve the recommended 3:1 slope. She thought the site disturbance had not been minimized. Mr. Picton noted if the elevation of the house were dropped 5 ft., a 3:1 slope would be possible. Mr. Fenwick stated the house was already under construction. Mr. Picton asked if the wording on the revised plan had been amended according to Land Tech's recommendations. Mr. Fenwick stated it had. Mr. Picton noted the applicant proposed to keep all activities out of the 100 ft. review area and that the land flattened out at the bottom of the hill along the stream. Mr. Fenwick stated this flat area was also thickly vegetated. The Commission briefly discussed the bond requirement and agreed \$5000 to \$10000 would be adequate. It was the consensus to wait for an engineered plan for the construction of the retaining wall and for a written response to all of the points raised in the Land Tech report before acting on the application.

**Fowler/138 Nichols Hill Road/#IW-06-04/Remediation Per IWC Order:** Mr. Picton read the "Project Narrative," revised to 1/23/06, which had been discussed with Atty. Kelly at the last meeting, and noted it was responsive to the Commission's request to refill the trench with the material that had been taken out of it. Ms. Purnell said the only questions remaining were whether there had originally been a swale and if so, the extent of that swale. She also noted the number of plants to be planted according to the planting plan did not correspond to the number shown on the sketch map. Mr. LaMuniere noted it would be important that the WEO be contacted prior to the start of work so that he can monitor the restoration work.

MOTION: To approve Application #IW-06-04 per the 1/25/06 application and attached documents submitted by Mr. Fowler for remediation at 138 Nichols Hill Road per the 5/17/04 enforcement order subject to final approval of the restoration work by the WEO and the Commission. By Mr. LaMuniere, seconded by Mr. Picton, and passed 5-0.

**Kessler/103-105 West Mountain Road/#IW-06-05/Two Dwellings, Driveway Crossing, Excavate Basin, Etc.:** A public hearing was scheduled for Wednesday, March 8, 2006 at 5:00 p.m. in the Land Use Meeting Room.

**Mello/183 Woodbury Road/#IW-06-06/Remodel House and Garage, Rebuild Stone Wall:** Mr. and Mrs. Mello pointed out the changes they had made to the plans submitted at the last meeting. 1) Grubbing invasives was no longer proposed. 2) Pruning to create a view of the pond from the house was deleted. 3) The area on the west side of the house would be allowed to naturally revegetate. The map, "Landscape Plantings," by Meadowbrook Farms, received 2/22/06 was reviewed. After briefly discussing the improvements planned for the property, Mrs. Mello further revised the map to include the following: 1) The old foundation at the south end of the property would be removed. 2) A note that the area to the west of the house would revegetate was added. 3) The slabs to be removed near the existing house were noted. 4) The location of a proposed patio on the west side of the house was added. 5) The location of a proposed stairs-walkway was added. 6) Notes regarding the repair of the existing wall along the bridge were added. Mr. Picton said the replacement of the stones on the bridge was considered maintenance. Mr. Mello noted as much of the work as possible would be done by hand and that the patio area would be regraded so the runoff would flow away from the house.

MOTION: To approve Application #IW-06-06 submitted by Mr. and Mrs. Mello per the plans "Landscape Plantings," by Meadow Brook Farms, dated 1/12/06 and revised by the applicant by hand at the 2/22/06 meeting to renovate the house and garage and rebuild the stone wall at 183 Woodbury Road subject to the following conditions: 1) no fill or regrading is permitted except as needed for the proposed patio area, stairs and walkway, and stone wall and 2) the stone wall be rebuilt in its existing location. By Ms. Purnell, seconded by Mr. Charles, and passed 5-0.

**Kleinberg/ ? West Shore Road/#IW-06-07/Driveway and Underground Utilities:** Mr. Ajello described the conditions on the property and recommended a site inspection. The map, "Site Plan," by Mr. Wilson, dated 12/5/05 was reviewed. Ms. Purnell asked if the parcel was a legitimate building lot, if it contained the correct soil types, and if it was part of an approved subdivision, noting the proposed activities were not necessarily as of right permitted uses. Mr. Ajello said the parcel was 1.6 acres and it had been represented to him that it was a legitimate lot. Mr. Picton asked for evidence it is an approved building lot and for proof of Health Department approval. A site inspection was scheduled for 4:00 p.m. on Tuesday, February 28, 2006. When on site the commissioners will consider whether there is the potential for the proposed activities to adversely impact wetlands and watercourses. If so, a public hearing will be required.

#### New Applications

**Schneider/97 Lower Church Hill Road/#IW-06-08/Replace Bridge and Pergola, Landscaping:** Mr. Neff, engineer, presented his construction plans, "Pergola Plan and Details," dated 2/10/06 and the site plan, "Fine and Schneider Residence," by McCobb and Assoc., dated 1/4/06 was reviewed. He explained the existing pergola and bridge would be replaced with steel prefab structures that would require a minimum amount of disturbance. The pergola would be set on a concrete pad. Also proposed, the patio and the coping around the existing pool would be replaced, the patio area would be expanded, and the stone work behind the house redone. Mr. Neff was asked to highlight the proposed work on the map. Mr. Picton asked if the wetlands on the property had been flagged and Mr. Neff responded that had been done a long time ago for previous applications. Mr. Picton asked Mr. Ajello to get out the old maps and to focus his review on the proposed activities that could impact the wetlands. A site inspection was scheduled for 4:45 p.m. on Tuesday, February 28, 2006.

#### Enforcement

**Peck/10 Slaughterhouse Road/Unauthorized Excavation, Tree Removal:** Mr. Peck offered to work with the Commission to resolve this matter. Mr. Picton gave him a copy of the 2/22/06 site inspection minutes. The sketch map, untitled, no date, was reviewed. Mr. Bedini had inspected the property and reported on the site conditions. He pointed out on the map the location of the stream, crushed culvert under the driveway, and the area that was cleared and regraded. He thought there might be wetlands along the north side of the disturbed area and recommended a soil scientist be hired to flag the wetlands. Mr. Ajello noted at least one third of the disturbed area was under the Commission's jurisdiction due to the location of the stream, and that this could increase depending on the results of the wetland flagging. Mr. Bedini described the ramps and jumps, the track around the house, and the piles of trees and brush pushed up along the edge of the disturbed area. Mr. Ajello was concerned that since the hardpan soils had been cleared of all vegetation, the spring rains would cause sedimentation into the wetlands. Ms. Purnell asked if silt fencing could be installed immediately, but Mr. Ajello noted the ground was frozen and that the piles of brush would act as a sediment barrier. It was noted a Notice of Violation had been issued, but not a Cease and Desist Order. Mr. Peck asked if he could cut some of the fallen wood. He was advised not to do so until silt fence could be installed. Mr. Peck agreed to hire a soil scientist and said he would abandon the track if it was found to be in wetlands. The Commission agreed a formal Cease and Desist Order should be issued and a show cause hearing scheduled at 6:55 p.m. at the next meeting. Mr. Picton asked where the septic fields were located. Mr. Ajello said he had

spoken with the Town Sanitarian who would soon inspect the property.

**Feola/84 Carmel Hill Road/Unauthorized Excavation:** The 1/11/06 letter submitted by Mr. Feola at the second show cause hearing was reviewed. It was noted Mr. Feola proposed to restore the excavated area with an 18" deep, 25' X 30' depression planted with native species. The sketch plan was circulated. Mr. Ajello pointed out it would not be round and would have natural contours. It was the consensus the restoration plan addressed the Commission's concerns. Mr. Picton suggested the depression be dug out a little deeper so that 6" of organic soil could be spread on the bottom.

**MOTION:** To approve the undated, untitled restoration plan submitted by Mr. and Mrs. Feola to restore the vernal pool area on their property at 84 Carmel Hill Road subject to the conditions 1) that at least a 6 inch layer of organic soil be spread on the bottom of the depression and 2) that the work be completed during dry weather before the end of June 2006. By Mr. Picton, seconded by Mr. LaMuniere, and passed 5-0.

**Gatto/Woodbury Road:** There has been no new information received about this appeal.

**Strachan-Auchincloss/5 Kielwasser Road:** It was noted the property owners had paved the driveway without first obtaining a permit.

**Carter/292 Walker Brook Road(141 Shinar Mt. Rd.)/#IW-04V8/Repair of Retaining Wall:** Ms. Purnell reported she was working on the letter to Mr. Carter as had been discussed at the last meeting and would circulate it to the members prior to sending it to the Commission's attorney for review. It was noted the letter would have a "nice tone" and would review what work had been done, state why the Commission considers this to be a problem, and inform Mr. Carter an expert would be hired at his expense to determine whether the work done complies with the permit granted.

**Taylor/11 Sunset Lane/Unauthorized Excavation in Wetlands:** Mr. Ajello reported he had sent the Taylors another letter to remind them the Commission was waiting for the information requested.

**9 Main Street Assoc./9 Main St./Unauthorized Construction of Stone Wall:** The property owner is continuing to work on a planting plan as requested by the Commission.

Other Business

**Town of Washington/6 Bryan Plaza/Request to Revise Permit #IW-05-16/ Replace Bridge:** Since the permit was approved it had been determined that the loose stonework on one of the existing bridge abutments would have to be rebuilt. It was noted the footing was in good condition and the repairs could be made without any work in the water. The plan, "Alternative #1 to River Bank Stabilization," by Land Tech Consultants, Inc., revised to 2/6/06 was reviewed. Mr. Picton asked if the width of the abutment would be limited to the width of the bridge. Mr. Ajello did not know, saying the next step would be to obtain an engineered design.

**MOTION:** To approve the request by the Town of Washington to revise Permit #IW-05-16 to replace the bridge at 6 Bryan Plaza to include one new abutment subject to the following conditions: 1) the abutment will be the approximate width of the bridge, 2) the concrete may not be sprayed with any toxic materials or petrochemicals and 3) clean forms with no liquid contaminants must be used. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

**Washington Montessori School/240 Litchfield Turnpike/Project Completion - Release of Bond:** There was nothing new to report. There are still a few items such as water quality reports and the drilling of a monitoring well between the septic fields and the wetlands as required by Mr. Bernard that must be addressed.

**Walker Brook Subdivision II, New Milford:** The Commission thanked Ms. Purnell for the excellent

and detailed letters she wrote on behalf of both the Planning and Inland Wetlands Commission. These had been submitted to the N. Milford Planning and Inland Wetlands Commissions at their respective public hearings. Mr. LaMuniere pointed out these letters were valuable because they would help the land use commissions to establish parameters for the review of applications in Washington.

**Revision of the Regulations/Section 8.1:** Mr. Picton referred to the last sentence in Section 8.1, which states, "A public hearing shall be required whenever the Commission finds that a proposed activity may cause a significant impact on a wetland or watercourse." The Commission briefly discussed whether to delete the sentence or to change "shall" to "may." It was the consensus to delete the sentence. It was noted there are other revisions that are needed, too, but that the Commission would quickly proceed with this one rather than wait for all the others to be drafted. The proposed revision will be referred to Atty. Zizka and a public hearing will be scheduled as soon as possible according to state statutes.

#### Communications

Mr. Picton noted the Commission was invited to attend the dedication ceremony for the Bryan Hall elevator on Friday, 2/24.

Ms Purnell briefly discussed two wetlands related cases regarding jurisdictional issues currently before the US Supreme Court.

It was noted Waterbury is currently trying to merge its Inland Wetlands Commission with its Planning and Zoning Commission in an attempt to "water down" its authority. It was also noted such ideas have been mirrored on a statewide level. There has been talk of legislation to combine Zoning, Planning, and Inland Wetlands Commissions and to establish a separate combined ZBA and Wetlands appeals board. The Commission felt strongly that this approach was not compatible and would not be effective.

MOTION: To enter Executive Session at 9:35 p.m. to discuss pending litigation. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

MOTION: To end Executive Session at 9:57 p.m. By Ms. Purnell, seconded by Mrs. Hill, and passed 5-0.

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

Mr. Picton adjourned the meeting at 9:57 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator