

April 12, 2006

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

MEMBER ABSENT: Mrs. D. Hill

ALTERNATES PRESENT: Ms. Coe, Mr. Thomson

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

ALSO PRESENT: Mr./Mrs. Frank, Mr. MCGowan, Ms. Matteo, Mr. Bonachea, Mr. Wilson, Ms. Baldwin, Mr. Neff, Mr. DeSantos, Mr. Jontos, Mr. Owens, Ms. Saul, Mrs. Schaffner, Mrs. Linen, Mr. Sabin, Mr. Boling, Ms. Dzenutis, Mr. Dobson, Mr. Bennett, Mr. Lasar, Atty. Kelly, Mr. Rosiello, Mr. Charles, Ms. Zinick, Mr. Munson, Mr./Mrs. D. Wright, Mr. H. Wright, Atty. Ebersol, Mrs. Kessler, Mr. O'Malley

PUBLIC HEARINGS

Kleinberg/181 West Shore Road/#IW-06-07/Driveway and Utilities

Mr. Picton called the public hearing to order at 5:05 p.m. and seated Members Bedini, LaMuniere, Picton, and Purnell and Alternate Coe for Mrs. Hill. He noted the location of the property, said the hearing had been noticed according to the state statutes, and referred to the list of 22 documents in the file.

Mr. Wilson, engineer, briefly described the proposal to construct a driveway to a potential house site. He submitted the 5/6/75 Planning Commission minutes and Map #357 filed on the Town Land Records to show this was an approved lot. He noted it had recently been perc tested because the old perc test results were not on file.

The map, "Site Plan," by Mr. Wilson, dated 12/5/05, revised to 4/3/06 was reviewed. Mr. Wilson noted the driveway route had been redesigned to preserve the existing trees. This made it longer, approximately 210 feet, and placed it on a steeper slope, which resulted in a maximum grade of 14.5%. He stated there would be no more than a 2 ft. cut on the up hill side and 7 ft. at the corner on the down hill side. He pointed out the location for a possible retaining wall. He said the flat parking area would serve as a stockpile area during construction, the 1.5 to 2 story house would be cut into the bank and had been located so it would have a view without cutting the trees. The driveway entrance was located as far as possible from the wetlands on the lower part of the lot.

Ms. Purnell noted there was a watercourse nearby and asked if there was any subsurface flow. Mr. Wilson responded there was a high water table and noted the house would probably have foundation drains that would connect to the state drainage system.

Ms. Purnell stated the Commission does not approve many driveways without complete plans for the residence and so advised Mr. Wilson he must address the septic issues. Mr. Wilson submitted the map, "Feasibility Site Plan Prepared for Tinker Hill Estates, Lots 2 and 3," dated 4/3/06. He noted Lot #2 contained a proposed septic easement area for Lot #1. He said this had not yet been approved by the Health Department, but he expected it would be because it met all its requirements. The proposed septic easement area was in a flat area approx. 40 feet above the house site on Lot #1. It was noted the lot may have been approved at one time, but would no longer be an approved building lot if the Health Department did not approve the septic plans. Ms. Purnell noted Lot #2 would have to be approved for two septic systems according to the feasibility plan. Mr. Picton noted the Commission was concerned with the overall impact of the proposal and wanted to make sure all the lots would work together. Mr. Wilson stated he only wanted to apply for a driveway to make the lot saleable.

In response to questions about the location of wetlands, Mr. Wilson said they had been flagged by Mr. Temple and he would fax the soils report to the Commission as soon as it was available. Mr. Bedini and Mr. Picton had inspected the property and thought there were wetlands off site to the east and also above the site. Mr. Picton asked that wetlands on all three lots be flagged.

Mr. Picton pointed out there was no curtain drain proposed along the driveway. Mr. Wilson said he did not want to discharge surface water into the lake as it could have a thermal impact. He showed a potential underdrain on the uphill side of the driveway. Mr. Wilson proposed sheet flow to the wetlands and noted the driveway would be crowned so its runoff would flow to the catch basin. He said the roof runoff could be handled up the hill in the flat parking area.

Ms. Baldwin asked if coverage had been addressed. Mr. Wilson noted it was not a problem because the lot was 1.6 acres.

Mr. Bonachea noted there appeared to be several underground currents, which had damaged a neighboring driveway in this area. Mr. Picton agreed that groundwater was evident close to the surface and said the Commission would pay close attention to this condition. Mr. Wilson noted the driveway construction plans called for stabilization fabric and base run gravel.

Mr. McGowan, consultant for the Lake Waramaug Task Force, asked if the feasible house site was in the upland review area. Mr. Wilson said it was, but no activities were proposed in the wetlands. Mr. McGowan then asked if the Commission had asked Mr. Wilson to look at the feasibility of the other two lots as well as Lot #1, noting that potentially the entire subdivision was located in the upland review area. Ms. Purnell said he was probably correct and that the Comm. had asked the applicant to look at the wetlands off the property and at possible activities in the upland review areas. Mr. McGowan noted the entire area has severe limitations and so noted it would be wise to find out whether the other lots were feasible building lots. He did not think the approach of the application; applying for a driveway without any information regarding drainage issues that could result from the construction of a house, was a prudent one. He noted, too, that the corridor for the proposed septic pump system was proposed in the upland review area. Mr. Picton agreed the Commission would look into the feasibility of all the lots and the area as a whole. Mr. Wilson noted that the other lots were not part of the application and that he did not want future owners to be locked into the site plan discussed at this time.

Mr. LaMunier asked if the tree cutting would be selective. Mr. Wilson said there would be no clear cutting and the grading avoided large trees.

Ms. Purnell stated she is a member of the Lake Waramaug Task Force, although she was not a neighbor and had no financial interest in the application. She asked if anyone thought she had a conflict of interest. The Commissioners did not think there was any conflict.

Mr. Picton voiced his concern about water and runoff issues on such a constrained lot. He thought the plan presented was so deficient in detail and comprehensiveness that he suggested the applicant submit more thorough plans. He noted, for example, none of the drainage facilities for the house was shown. Mr. Wilson said he was trying not to increase the runoff from the site and again stated he was applying only for a driveway. He said he would consult with his client about whether he would submit more detailed plans. Mr. LaMunier agreed with Mr. Picton, saying future owners might apply for revisions, but all possible impacts should be considered at this time. Ms. Purnell advised Mr. Wilson that the Commission reserved the right to review beyond 100 ft. of wetlands if there were steep slopes or specific concerns.

Mr. McGowan requested that the Commission ask its consultant to review the runoff implications of the entire area. He noted runoff flows from Tinker Hill Road over Lot #1

It was the consensus not to refer the application to the Commission's consultant until more detailed

plans were submitted.

At 6:00 p.m. Mr. Picton continued the public hearing to Wednesday, April 26, 2006 at 5:00 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall.

Kessler/103-105 West Mountain Road/#IW-06-05/Two Dwellings, Wetlands Crossing, Etc./Con't.

Mr. Picton reconvened the public hearing at 6:04 p.m. and seated Members Bedini, LaMuniere, Picton, and Purnell and Alternate Coe for Mrs. Hill. He noted 21 documents to add to the list of documents in the file, which had been presented at 3/22/06 session of the hearing.

Mr. Jontos, applicant's consultant, submitted the following documents: 1) "Wetland Mitigation Plan," by Land Tech Consultants, revised to 4/12/06, 2) the 4/12/06 letter from Mr. Jontos to the Commission re: response to Fuss and O'Neill's 4/4/06 review, and 3) the 4/11/06 letter from Land Tech to the Commission regarding erosion and sedimentation controls, which included in particular, information on instream water controls.

Mrs. Kessler made a brief statement to the Commission noting her efforts to come up with an environmentally sound plan.

Mr. Neff, engineer, submitted the following documents: 1) his 4/12/06 letter to the Commission responding to the 4/4/06 Fuss and O'Neill review, including drainage calculations, 2) "Proposed Grading Plan," by Mr. Neff, revised to 4/9/06, 3) "Existing Site Plan," by Mr. Neff, dated 3/5/06, and 4) "Soil Erosion and Sediment Control Plan," by Mr. Neff, revised to 4/8/06. He detailed the revisions of these documents, which included the addition of silt fence and straw wattle areas on the erosion control plan and the deletion of the future tennis court from the map. Mr. Owens, architect, said he understood separate future applications would be required for the tennis court and swimming pool.

Ms. Purnell noted there had been three original lots and asked where the current boundary lines were. It was noted the eased lot was 14 acres, the lot with the proposed new main house was 5.5 acres, and the lot with the existing house was 5+ acres.

The map, "Existing Site Plan," was reviewed.

Mr. DeSantos, the Commission's engineer, asked if Mr. Neff had computed the volume of runoff both for pre and post development. Mr. Neff said, yes, he had done the calculations for 10, 25, and 100 year storm events. Mr. DeSantos asked if the velocity of runoff flowing down off the slopes had been analyzed. He said he wanted to review the velocity at the splash pad so he could determine there would be no erosion problems. Mr. Neff briefly described the proposed reinforced channel down to the splash pad. It was noted there were no swales graded in between the splash pad area and the area below. Mr. Neff said there would be sheet flow from the high point and that it would naturally drain away from the house site.

Ms. Purnell voiced her concern about the long term impacts once the houses are lived in. She noted Mr. Owens had stated the terrace at the existing house would be removed, but that garden plans had not yet been submitted. She said plant buffers were needed to protect the water resources. Having no plans for regrading or planting in this area, she asked if the future garden would interfere with plans to handle runoff. Mr. Jontos noted the drainage calculations had been for turf grass, and that gardens would have more infiltration capabilities. Ms. Purnell noted pesticides and herbicides would be used in a constrained area.

Mr. Picton asked if the public hearing were closed tonight, whether Mr. DeSantos would be able to report on the documents just submitted. Ms. Purnell said he would, but that the applicant would not have an opportunity to respond. Mr. DeSantos described briefly the steps the applicant had taken to try to mitigate the impacts to the wetlands including the treatment of polluted runoff with the installation

of the proposed rain garden. He also noted the proposed porous pavement, while not as good as grass, infiltrated runoff better than hard pavement.

The mitigation plan revised to 4/12/06 was reviewed.

Mr. Jontos summarized his responses to Fuss and O'Neill's 4/4/06 review. He included the following points. He noted he had been concerned about the separation distance between the bioretention system, which would be 6 inches deep and 700 sq. ft. in area, and the seasonal groundwater table so he had shot the grades and had determined the basin would be 24 inches above the maximum seasonal groundwater. Mr. Jontos listed the roof construction materials and said there would be no leaching of heavy metals. Ms. Purnell asked about the copper flashing. Mr. Jontos responded the runoff from the flashing would flow through a substantial vegetative buffer. He noted these buffers were 35 feet wide and properly sized according to the latest literature. He said they would serve to enhance both the filtration on site and would also enhance the floral community. Mr. Picton asked if the forest floor would be undisturbed. Mr. Jontos said it would because the all the plants to be added would be planted by hand. He briefly reviewed the planting plan, which called for grasses and a second line of shrubs. Grass would be planted over the leaf molt; it would not be removed from the site. Mr. Jontos noted a letter from the Health Dept., which stated the proposed 25 ft. separation distance between the infiltration system and the well was OK, had been received.

Mr. Owens submitted 4/12/06 revisions to his original 1/12/06 letter concerning feasible and prudent alternatives and quickly reviewed it for the Commission. Mr. Picton noted when Mr. Owens had discussed the alternate main house at the 3/22 hearing, he had stated a lot of fill would be required if the house was moved because there would be no guard rails. He asked if the amount of fill could be decreased if guard rails were installed. Mr. Owens read the section regarding the variation of the building foundation on page 3 of his revised letter, said he had encroachment information, but had no cut and fill comparisons. Mr. Jontos noted if the house were moved, the driveway would be longer and the vegetative buffer would have to be moved to a less effective location.

Mr. Jontos stated he stood by his original assessment of state listed species on the property. Ms. Purnell questioned whether he had been on site at the proper times of year to find all of the species in question.

Mr. Jontos discussed the limits of the proposed clearing, saying there would be no selective clearing within the buffers. The trees in the buffers would be preserved and the understory planted. Ms. Purnell thought clearing had been proposed to the northeast, but Mr. Jontos said none was proposed.

Mr. Jontos concluded saying he believed with the best management practices and the design criteria proposed there would be no loss of wetlands and no loss of upland function as a result of the proposed development.

Ms. Purnell stated she had concerns about the construction of the guest house because it was in a constrained area, was not located on the existing footprint, and there was no mitigation proposed. She noted there were steep slopes adjacent to wetlands E and B and that the water quality data had indicated the pond was atrophic. She asked Mr. Jontos if he thought the existing house affects wetlands E and B. He replied he did not think so because it was a well established house and because the day a pond is born, it begins to die. Ms. Purnell said she was trying to establish the existing impacts and asked whether a yearly evaluation was needed. She wished it could be moved further than 100 ft. from the wetlands and said Mr. Jontos's conclusion that a 35 ft. wide buffer would remove a major amount, not all of the pollutants, was a concern to her. Mr. Jontos stated from both a scientific and engineering perspective the control measures proposed were more than adequate to treat the post development runoff and to maintain the hydrology of the system. He was not concerned about the possible use of pesticides and herbicides because he said the runoff flow path moved through extensive areas of understory. Ms. Purnell pointed out, however, there were 20% to 35% slopes in the area. She again said

she believed there were existing impacts and that it was not likely the Commission would permit the construction of a new house in such proximity to steep slopes and to the wetlands. She said she did not consider the proposal to be a reconstruction of the existing house. She asked why no protective buffers were proposed near the steep slopes. She noted this was a precedent setting decision for the Commission. Mr. Jontos again reviewed all of the fully engineered protective measures and best management practices proposed, stated the existing vegetative buffers would remain and could be enhanced per a condition of approval. Mr. Owens noted the proposed guest house was smaller than the existing and the drainage system would be improved.

Mr. Picton thought Ms. Purnell's main concern was the disturbance of the inadequate buffer on the steep slopes above the wetlands. He said the existing slope had an approximate 45% grade. Mr. Jontos noted the post construction slope would be 25%. Mr. Picton said some of the slopes to the east of the guest house where the applicant would try to manage sediment had grades between 60% and 100%. Mr. Jontos stated no activities were proposed on those slopes. Ms. Purnell said she wanted to make certain that what was proposed would affect the existing impacts, especially because the construction site was surrounded by wetlands.

Mr. Jontos agreed the applicant would consent to an extension of the public hearing to give the Commission's consultant an opportunity to review all of the information that had just been submitted. Mr. DeSantos noted some of the material he particularly wanted to review and questions he had included 1) runoff from the copper flashing on the guest house infiltrating within 25 ft. of wetlands, 2) how best to restrict the use of fertilizers, and 3) how to minimize the area of disturbance. He noted the plans had been designed within the spirit of the Stormwater and Erosion and Sedimentation Control Guidelines.

Mr. Picton stated the proposed activity imposed an inherent possibility of significant impacts to the wetlands due to its proximity to steep slopes above wetlands and that was the reason for all of the engineering. He said feasible and prudent alternatives that would be less likely to impact the wetlands should be considered. He said he did not understand why the applicant did not try to implement the obvious feasible and prudent alternative and move the activity away from the steep slopes. He also said he did not understand why it was not possible to move the house into the hillside closer to the uphill wetlands, but away from the downhill wetlands and the steepest slopes. He read excerpts from "Site Planning for Urban Stream Protection" and urged everyone to read the entire article. He noted BMP's can only partially control impacts to the wetlands and watercourses due to the difficulties of successful implementation and a high incidence of failure. Therefore, he stated the most effective protection was the vegetative buffer to increase the distance between the activity and the sensitive resources. He thought the proposal ignored what a good site planner would have designed for this property.

Ms. Purnell submitted the following documents for the record: 1) "Federal Guidance on the Use of Vegetative Buffers as Compensatory Mitigation Under Section 404 of the Clean Water Act," draft dated 8/27/04, 2) "Understanding the Science Behind Riparian Forest Buffers: Effects on Water Quality," by the Virginia Cooperative Extension, 2000, 3) "Vegetated Buffers: Improving Environmental Quality in Coastal North Carolina," by the North Carolina National Estuarine Research Reserve, no date, and 4) "Scientific Overview of Coastal Buffer Water Quality Functions," by Arthur Gold from URI, dated 1/12/05. She read a section of Table 1 from #3 above, regarding the effectiveness of buffers based on their width.

Mr. Picton asked Mr. DeSantos 1) did he think the proposed activity posed a possible adverse impact to the wetlands, 2) did he think there was the possibility of failure during construction, and 3) did he find after analyzing the feasible and prudent alternatives that there was an opportunity to reduce the risk of error and adverse impact to the wetlands. Mr. DeSantos said the construction would have to be monitored closely or mistakes could happen and that was his biggest concern. If the construction

progressed as proposed, he did not think this would be an issue. Mr. LaMuniere said the Commission must have a precise and detailed construction sequence and proposal for monitoring the project. Mr. Neff noted a thorough and detailed construction sequence was included on sheet 2 of the "Soil Erosion and Sediment Control Plan" and added that execution could be a problem. Regarding alternatives, he noted the applicant did attempt to mitigate the disturbance, but said there were other possibilities for the main house such as moving it into the hillside. He said moving it further from the steep slopes would minimize the disturbance closer to the downhill wetlands.

Mr. Jontos asked the Commission to identify what likely loss of wetlands function would result from the project. Mr. Picton said the impacts of development activity were included in the file.

Mr. Jontos submitted a letter consenting to a two week extension of the hearing.

Ms. Purnell said she was concerned about water quality and noted the runoff would ultimately flow into Sprain Brook. Mr. Jontos asked if the activities were relocated entirely out of the 100 ft. setback, would all of the Commission's concerns go away. Mr. Picton said not only would the activity have to be moved 100 ft. away, but it would also have to be moved away from the steep slopes, there would have to be a fully forested buffer, and the size of the work area increased.

MOTION: To continue the public hearing to consider Application #IW-06-05 submitted by Mr. and Mrs. Kessler for two new dwellings, a driveway crossing, etc. at 103-105 West Mountain Road to 6:00 p.m. on Wednesday, April 26, 2006 in the Land Use Meeting Room, Bryan Memorial Town Hall. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

At 7:43 p.m. Mr. Picton continued the hearing to 6:00 p.m. on Wednesday, April 26, 2006 in the Land Use Meeting Room.

These public hearings were 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 meeting to order at 7:47 p.m. and seated Members Bedini, LaMuniere, Picton, and Purnell and Alternate Thomson for Mrs. Hill.

MOTION: To include the following subsequent business on the agenda: 1. Consideration of the Minutes - D. Site Inspection - Linen - 4/4/06, 2. New Applications - H. Wodke/155 West Shore Road/#IW-06-21/Dock Anchors, I. Bent/60 Hinkle Road/#IW-06-22/ Dry Hydrant. J. O'Malley/9 Mallory Brook Road/#IW-06-23/Remodel Guest House, 3. Enforcement - O. Wright/59 Scofield Hill Road/Unauthorized Clearing, Soil Disturbance, and Filing of Watercourse, P. McTiernan/52 Calhoun Street/Unauthorized Clearing, 4. Other Business - F. Beck/132 Calhoun Street/Request for Release of Bond. By Mr. Picton, seconded by Mr. LaMuniere, and passed 5-0.

Pending Applications

Kessler/103-105 West Mountain Road/#IW-06-05/Two Dwellings, Wetlands Crossing, Etc.: The public hearing was continued to 4/26/06 at 6:00 p.m.

Kleinberg/181 West Shore Road/#IW-06-07/Driveway and Utilities: The public hearing was continued to 4/26/06 at 5:00 p.m.

Due to the late start of the meeting, it was decided the order of the agenda would be altered to accommodate those present.

Schaffner/12 Painter Ridge Road/#IW-06-11/Inground Pool: The map, "Proposed Swimming Pool Site Plan," by Mr. Neff, revised to 4/10/06 was reviewed. Mr. Neff, engineer, noted the Commission had expressed its concern about the distance between the limit of disturbance line and the wetlands near

the road, and so he had pushed the pool back to increase the separation distance and provide a wider buffer. He noted the closest activity, the pool fence, would now be 54 feet from the wetlands. He said the existing woods and brush would not be disturbed and a barrier fence would be installed around the work zone prior to the start of work. Mr. Picton noted the wetlands were across the slope, not down slope, of the proposed activity. Mr. Neff pointed out that runoff would be directed by a grass swale around the east side of the house. Ms. Purnell noted there were already erosion problems in this area. Mr. Neff said he was reluctant to pipe the runoff because the grass swale would be the lowest impact way to handle the runoff and the natural flow was to the east around the house. He said he would encourage more of a vegetated surface, grass for shade, to prevent further erosion. Mr. Ajello recommended the entire construction site including the area by the driveway be seeded and mulched immediately upon completion of the work. He pointed out an area near the driveway at the foot of the construction access where erosion was likely to occur and said it would need daily monitoring. Mr. Neff said the proposed pump and cartridge filter system was a closed system that would be placed up against the house and would require no dumping of water to grade. Mr. Ajello asked if all the excavated material would be used on site. Mr. Neff said some would be taken off site and there would be no fill spread outside the barrier fence. Mr. Neff added the grassed swale to the revised map. Ms. Purnell noted with the revisions to the plan and the conditions of approval agreed upon by the Commission, there would be minimal impact to the wetlands.

MOTION: To approve Application #IW-06-11 submitted by Mrs. Schaffner to construct an inground pool at 12 Painter Ridge Road per the map, "Proposed Swimming Pool Plan," by Mr. Neff, dated 3/10/06, revised to 4/10/06, and further revised at the 4/12/06 meeting subject to the following conditions: 1. the swall shall be redirected on the east side of the house as shown and initialed on the plan and 2. for the duration of construction the entrance to the site shall be stabilized every day with hay bales. By Mr. Picton, seconded by Ms. Purnell, and passed 5-0.

Linen/34-38 New Preston Hill Road/#IW-06-12/Site Grading: Mr. Neff, engineer, said there had been no changes since the last meeting to his map, "Proposed Site Plan," dated 12/21/05. Mr. Neff reviewed the proposal for grading associated with the driveway construction within 100 ft. east of the pond and noted it would be down grade of the septic system. All other activities for the site development for a single family house would be further than 100 ft. from wetlands and not at the edge of any steep slopes. Mr. Picton thought a good effort had been made to keep the development activities outside of the upland review area and noted there was an existing stone wall to separate the regraded area from the undisturbed meadow. Mrs. Linen noted she planned to keep most of the property as rough meadow and said she had contacted Weantinogue for advice on how to remove Japanese knotweed.

MOTION: To approve Application #IW-06-12 submitted by Mrs. Linen for site grading at 34-38 New Preston Hill Road per the map, "Proposed Site Plan," by Mr. Neff, dated 12/21/05 subject to the condition that the area within 100 feet of the wetlands to the east of the septic system be mowed a maximum of three times a year and with the strong recommendation that the Japanese knotweed be removed. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

New Applications

Adams/57 West Shore Road/#IW-06-15/Retaining Wall, Path, Plantings: Mr. Ajello explained the applicant proposed to replace the beach with a vegetated buffer. He said he had driven by the property and had found it was a neglected beach and there were no erosion problems in the area. Ms. Dzenutis, contractor, presented a site plan, "Beach Renewal Project," no signature or date, drawn on the survey map by Mr. Cheney, dated July 2004. Ms. Dzenutis explained she had met with the DOT because West Shore Road is being undermined along this stretch of beach. To correct this problem a stone retaining wall was proposed to prevent any more sand from washing out. Also proposed, the existing walkway would be upgraded to bluestone, stone stairs down to the beach would be added, and a dry stone wall

built at beach level. Behind the beach level wall, soil would be brought in and landscape fabric would be pinned over it. Holes would be cut in the fabric for the proposed plants. Mr. Picton asked the applicant to fully describe the installation procedures because the Commission would want to be certain the soil would not erode into the lake. He asked Mr. Ajello to review the application to make sure it was complete. A site inspection was scheduled for Thursday, April 20, 2006 at 4:40 p.m.

Dobson/255 New Milford Turnpike/#IW-06-16/Accessory Building: Mr. Dobson, property owner, submitted the map, "Property/Boundary Survey," by Mr. Cheney, dated May 2000 on which he had drawn in the location of the proposed accessory building and the distances from boundary lines and wetlands. He noted a brook flowed across the rear boundary line towards the East Aspetuck River. He proposed to place a 40' X 70' storage building 30 ft. from the brook and said according to Mr. Condon, previous owner, the brook had never flooded the property. Mr. Ajello advised him that according to Section 12.1 of the Zoning Regulations, the building must be set back 50 ft. from the brook. Mr. Picton asked Mr. Dobson to include grading and the access on the site plan. Mr. Dobson said there was an existing access. A site inspection was scheduled for Thursday, April 20, 2006 at 4:15 p.m. Mr. Dobson said he would have the corners of the building staked for the site visit.

Lederer/274 Nettleton Hollow Road/#IW-06-17/Demolition of Greenhouse and Fill to Grade: Ms. Zinick, agent, explained an old 10' X 16' greenhouse would be demolished and the area where it had been built into the ground would be refilled. The site plan, drawn by hand on a portion of a survey map from 1988, was reviewed. She said 6 yards of clean fill would be brought on site and a mini excavator would be used to spread it. She pointed out the location of the proposed hay bale barrier to be installed between the work site and Sprain Brook and noted there were no wetlands between the work site and the brook. The duration of work was estimated to be 4 hours. Mr. Picton asked Mr. Ajello to inspect the site and to make sure before the next meeting that the application was complete.

Schoellkopf/300 Nettleton Hollow Road/#IW-06-20/Deer Fence: Mr. Sabin, landscape architect, submitted a topo map, pointed out the location of the property, and noted Sprain Brook flows through it. He noted most of the proposed fence would be in the upland review area, but two sections would cross the brook. Mr. Picton noted the Sprain Brook corridor would be bisected and would change the biological community. He asked why the owner couldn't just fence the garden. Mr. Sabin explained the garden was nationally recognized by the National Garden Trust and the whole hillside was an integral part of the landscape setting. The space between the fence and the surface was discussed, noting it would have to be low enough to prevent deer from crawling under, but high enough so debris would not back up on the brook. Mr. Sabin said he would submit details of the proposed wing walls and said the fence would have wooden posts and would not be electric. Mr. Picton asked if migrating deer were integral to the function of wetlands corridors, noting areas all over Town were being fenced off. Mr. Sabin said there was a large amount of open space and conserved land in the Nettleton Hollow area and so there were many existing wildlife corridors. Mr. Picton recommended Mr. Sabin draft a plan that did not include cutting off the watercourse corridor. Mr. Sabin spoke of the uniqueness of the garden and Mr. Ajello said if there was any place where an exception would be beneficial, this would be it. Mr. Picton said he understood, but asked if the view of the garden landscape was a wetlands concern. A site inspection was scheduled for Tuesday, April 25, 2006 at 4:40 p.m.

Enforcement

Wright/59 Scofield Hill Road/Unauthorized Filling of Watercourse and Clearing: Mrs. Wright submitted an undated letter to the Commission to respond to the 4/11/06 notice of violation. Mr. Picton read the 4/11 notice. Mrs. Wright said they wanted to build a stonewall at the top of the hill so they had removed trees there and had cleaned rotten logs and leaves from the hillside. Mr. Ajello circulated photos of the work that had been done and the debris and contamination in the channel. He said he thought the channel met the state definition of a watercourse, but recommended the Commission

discuss it later. Mrs. Wright said the only time water flows through it is when there is a heavy rain. Mr. Ajello noted even if it was determined it was not a watercourse, there was a stream below and work had been done within 100 ft. of it. She said Mr. Wright had been filling the channel since 1994, the Town had installed a longer pipe in the area so he could continue to do so, and she objected to the wording of the enforcement letter. A site inspection was scheduled for Thursday, April 20, 2006 at 4:00 p.m.

New Applications

Wodke/155 West Shore Road/#IW-06-21/Dock Anchors: The map, "Site Plan and Details for Proposed Dock," by Stephen Lasar Architects, dated 4/11/06 was reviewed. Mr. Lasar explained the proposed dock would be located in the middle of the 40 ft. wide property. Mr. Ajello said he was concerned about shoreline disturbance. Mr. Lasar noted a dry field stone retaining wall exists, and the dock would be anchored by two sono tubes sunk behind the wall. The holes would be dug by hand. The dock would be cedar and would be capable of seasonal removal. Ms. Purnell noted the application was not signed and Mr. Lasar said he would have the signature for the next meeting. Mr. Picton asked Mr. Ajello to review the application for completeness.

O'Malley/9 Mallory Brook Road/#IW-06-23/Remodel Guest House: Mr. O'Malley submitted photos of the guest house and surrounding area. He proposed to remodel the guest house including enclosing and extending the existing porch, which was 50 to 60 ft. from the pond on the property. Mr. Picton noted it was fairly level between the construction site and the pond and that some of it was already covered by impervious surface. Mr. O'Malley also proposed to remove the brick patio and replace it with stone. Mr. Picton asked the applicant to provide the Commission with all the details concerning hard landscaping, changes in grade, and proposed hard surfaces. He asked Mr. Ajello to review the application for completeness and to inspect the site before the next meeting.

Other Business

Bitar/36 Carmel Hill Road/Tennis Court and Sports Court: Atty. Kelly represented the property owner and said he would prefer to send a letter regarding this matter. He said the owners had proposed a tennis court within 100 ft. of wetlands, but had revised their plans. The court was no longer in the upland review area, but the WEO had advised him an application was still required. He respectfully asked why an application was needed. Ms. Purnell referred to Section 4.4 of the Inland Wetlands Regulations and noted the Commission reserved the right to regulate an activity depending on the resources that need protection, soil types, slope, etc. Atty. Kelly argued that even so, an application would not be required. Ms. Purnell said it would if the proposed activity was deemed a regulated activity. Ms. Purnell also referred to Section 2.3.4 regarding regulated activities. Atty. Kelly stated there was nothing in this section that suggested the Commission could regulate further than 100 ft. from wetlands and said he would put his response in writing. Mr. Picton noted there was a 20% slope in the area and said if the court would drain towards the slope, the Commission would tend to consider it a regulated activity unless it was isolated by the terrain. He asked Mr. Ajello if the court was isolated. Mr. Ajello said the plan was a good one, but the drainage would flow towards the wetlands. Mr. Picton asked how much fill was required at the lower edge. Mr. Ajello said 4 to 5 ft. at most. Mr. Neff noted the other corner only required a 1 ft. cut. Mr. Picton asked whether it would be easy to control the runoff. Mr. Neff indicated the area was not flat, that it did slope towards the pond. There was a brief discussion regarding whether Mr. Ajello could handle this matter without an application. He reminded the Commission it had required an application from Mr. Brighenti whose court was also further than 100 ft. from wetlands. Mr. Picton said this was so, but in that case there had been 40% slopes, 9 ft. of fill was required, and there had been alternate sites available. Mr. LaMuniere thought Mr. Ajello should use his judgment, but Ms. Purnell thought the Commission should act in a consistent manner. Mr. Ajello was confident the wetlands would be protected in this case because the area was heavily wooded. It was the consensus that Mr. Ajello should work with Mr. Neff to make sure adequate erosion

controls would be installed and there would be no clearing within 100 ft. of the wetlands. Mr. Ajello asked if this was a new Commission policy. Mr. Picton said it was not because each situation was different and had to be assessed according to the existing site conditions.

MOTION: Regarding the construction of a tennis court and sports court by Mr. Bitar at 36 Carmel Hill Road, the Commission authorizes Mr. Ajello, EO, and Mr. Neff, engineer, to plan adequate and substantial erosion and sedimentation controls and to ensure that no woodlands be cleared within 100 feet of wetlands and watercourses. By Mr. Picton, seconded by Mr. LaMuniere, and passed 5-0.

Reinhardt/10 Perkins Road/Clear Cutting: Atty. Kelly noted a decision on this matter was pending, but in the meantime Mrs. Reinhardt wanted to have the notice of violation taken off the Land Records because her property is for sale. He said that very little clearing had actually been done on her property and he was not convinced that any of it was within 100 ft. of a wetlands or watercourse. He asked if a soil scientist flagged the wetlands on this property only, would she be able to get the title cleared. Mr. Picton noted the Commission had to consider the Reinhardt and Cremona properties as a whole. Atty. Kelly noted he did not represent the Cremona estate. He said he would send a letter to ask the Commission for consideration in this matter.

Calhoun Street Trust/62 Calhoun Street/Unauthorized Construction: Mr. Picton asked if a comprehensive plan of the property had been prepared as requested. Mr. Munson, contractor, said Mr. Alex was working on it. Mr. Picton noted there were multiple deviations from the approved plan and so an entire property map on one sheet was required so the Commission could compare what had been approved to the work actually done. Mr. Ajello said he had met with the contractors on site to discuss the violations noted in the site inspection minutes. Mr. Rosiello reported he had cleaned out sediment by hand and installed silt fence by the edge of the driveway with Mr. Ajello's OK. Mr. Munson stated the day after the inspection all the debris left by the former caretaker was removed and the disturbed areas raked, seeded, and mulched. He also stated he had inspected all the silt fence and found it was in good shape. Mr. Picton asked if the channel near the guest house had been redirected away from the wetlands. Mr. Munson, said, yes, the berm had been replaced. Mr. LaMuniere said this was important because pool chemicals should not end up in the pond. Mr. Rosiello said a contained cartridge system would be used. Mr. Picton suggested for mitigation of the unauthorized work the buffer areas surrounding the wetlands be enhanced. There was a brief discussion regarding whether to issue a second citation for the violation of the permit conditions and Mr. Ajello was ordered to do so.

Myfield, LLC./7 Mygatt Road/Request to Revise Permit #IW-05-54: Mr. Boling, agent, advised the Commission that revisions had been made to the approved site plan to respond to the Zoning Commission's concerns regarding comparability. He noted this was "good news" from an Inland Wetlands Commission perspective because all of the changes either moved the activity further from the wetlands and/or reduced the impact. Mr. Picton noted he had previously written a letter to the Zoning Commission to say that he did not think the application was a good solution for the affordable housing problem, but said he could consider the wetlands issues separately in an unbiased manner. Atty. Ebersol thanked him for bringing this to his attention and Mr. Boling noted that Mr. Picton had previously held the same opinions, but had voted to approve the Myfield Inland Wetlands application. Mr. Boling reviewed the document, "Wetlands Implications of Modified Site Plan," revised 4/11/06. The Map, "Proposed Site Plan, 13 Detached 1904 Sq. Ft. Unit Scheme," by Mr. Worcester, dated 3/26/06 and revised to 4/4/06 was also reviewed. Ms. Purnell was concerned any contamination from the parking areas would seep down into the groundwater due to the pervious underlayment. Mr. Boling compared the plan originally approved with the revised plan. Mr. Picton thought the applicant did a good job of keeping activities that could cause erosion away from sensitive areas. Although the applicant preferred to work with Mr. Ajello and Mr. Neff, the Commission thought its consultant should review the revised plans. Mr. Picton said the consultant would be asked about the possibility of oil contamination from the

parking areas.

MOTION: To approve revisions to Permit #IW-05-54 issued to Myfield, LLC. for 13 dwelling units at 7 Mygatt Road per the map, "Proposed Site Plan, 13 Detached 1904 sq. ft. Unit Scheme," by Mr. Worcester, revised to 3/26/06 (on the survey map by Mr. Alex, dated January 2005) subject to a satisfactory review by the Commission's consultant and if the consultant makes any recommendations, subject to the applicant addressing them all to the consultant's satisfaction. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

Stiteler-Giddins/198 Tinker Hill Road/Preliminary Discussion/Accessory Building: Atty. Kelly noted Mr. Talbot was not present, nor did he have a map, and so he asked that this be discussed at a future meeting.

Averill/7 Titus Road/#IW-06-10ATF/Excavation: Mr. Ajello reported all the contaminated soil had been removed from the riverbank. He said Mr. Averill now proposed to pull back the gravel that had been deposited in 1972 for the parking area to resculpt the bank to its natural contours. Mr. Ajello circulated photos of the site and read Mr. Averill's letter received on 4/11/06.

MOTION: To approve Application #IW-06-10ATF submitted by Mr. Averill for excavation and restoration of the riverbank at 7 Titus Road subject to the following conditions: 1) the old fill material from the riverbank shall be used to refill the recently excavated area at the edge of the parking area and where the old fill is removed, the contour of the original riverbank will be restored so it is similar to the contour on each side of the old fill pile, 2) there shall be no excavation within 10 ft. of the river, 3) all work shall be done under the WEO's supervision, and 4) all disturbed areas shall be seeded with conservation mix and mulched immediately upon the completion of work. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

There was a brief discussion about the construction of the parking area. The Commissioners voiced their concerns about gas and oil seeping through blacktopped surfaces, proper maintenance of sumps, parking junked and/or leaky vehicles so close to the river, and the benefit of requiring a concrete surface because the lot was so close to the river. It was the consensus the lot should pitch away from the river.

Potter/220 Old Litchfield Road/#IW-06-14/Site Development

Swanson/282 New Milford Turnpike/#IW-06-18/Dry Hydrant

Bent/60 Hinkle Road/#IW-06-22/Dry Hydrant

No representatives were present to discuss these three applications. Mr. Ajello was asked to review them for completeness and to have recommendations ready for the next meeting.

Enforcement

Beck/132 Calhoun Street/Cutting, Clearing in Wetlands: Mr. Ajello said he had discussed this matter with both Atty. Miles and Atty. Cornell and it had been agreed that Mrs. Beck would post a \$1000 bond with the Town to cover the monitoring and removal of invasives on the property by Mrs. Corrigan. Ms. Purnell recused herself because she is a friend of Mrs. Corrigan. Ms. Coe was seated.

MOTION: To authorize Mr. Ajello, EO, to accept a \$1000 bond to cover the completion of monitoring and the removal of the invasive species by Mrs. Corrigan for the Beck property, IW-02-V1, at 132 Calhoun Street. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Ms. Purnell was reseated.

Carter/292 Walker Brook Road (141 Shinar Mt. Rd.)/#IW-04-V8/Repair of Retaining Wall: Ms. Purnell reported she had completed a draft letter, which she would circulate before the next meeting.

Taylor/11 Sunset Lane/Unauthorized Excavation in Wetlands: No new information had been received. Mr. Ajello said he would reinspect the property to make sure no additional work had been done. Ms. Purnell noted the Commission wanted a buffer restored around at least part of the pond. The possibility of a citation was discussed, but no decision was made.

Peck/10 Slaughterhouse Road/Unauthorized Excavation, Tree Removal: Mr. Peck had asked Mr. Ajello if he could regrade the site, but was told he had to wait for the results of the wetland flagging.

Moore/25 Litchfield Turnpike/Unauthorized Filling and Clearcutting: The Commission is still waiting for a report from a soil scientist.

Caco/16 Flirtation Avenue/Unauthorized Clearing, Grading: Mr. Picton read the 4/12/06 letter from Mrs. Caco to the Commission in response to the 4/4/06 notice of violation. Mr. Picton asked Mr. Ajello to inspect the site and come up with some solutions for the ongoing drainage problem that is sending an increased amount of runoff to the Berry property across the street. Mr. Bedini thought this might qualify as a civil matter between property owners.

Collins/323 West Shore Road/Unauthorized Clear Cutting, Soil Disturbance:

Mr. Ajello said there was no question that wetlands had been cleared and circulated photos of the site. He said he had issued a notice of violation and urged the commissioners to make a drive by inspection prior to the next meeting.

McTiernan/52 Calhoun Street/Unauthorized Clearing: The commissioners agreed citations should be issued to both the contractor, Mr. Moore, and the property owner.

Revision of Fee Schedule and Public Education: Ms. Purnell suggested the Commission ask the Town to amend the citation ordinance to adopt a more stringent fee schedule. It was generally agreed there had been many violations of late and this might be a good deterrent. Ms. Purnell also suggested a direct mailing to residents to inform them of the necessity to obtain a permit prior to clearing in or within 100 ft. of a wetlands or watercourse.

Parent/Old Litchfield Road/Unauthorized Clearing: Mr. Ajello noted he had ordered clearing stopped in this area along the stream two years ago. He did not think too much clearing had been done this time and said he had ordered that all the leaf mulch raked up be respread.

Bennett/207 Bee Brook Road/#IW-05-55/Addition to Existing Dwelling: Ms. Coe noted the Commission had approved an addition, but instead the house had been taken down completely. Ms. Purnell reported material was stockpiled by the riverbank. Mr. Picton thought if the Commission had known the house would be completely demolished, it would have required that it be moved further from the stream. It was the consensus Mr. Bennett should be issued a citation for the violation of his permit and that he be requested to attend the next meeting to explain why he had not complied with his permit and to explain what his plans are. Upon further consideration, it was also decided that a stop work order should be issued.

MOTION: Regarding Bennett/207 Bee Brook Road/ #IW-05-55/Addition to Existing Dwelling, to instruct Mr. Ajello, EO, to issue a stop work order and to direct Mr. Bennett to attend the next Commission meeting to explain his future plans and why he is in gross violation of his permit. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Other Business

Walker Brook Subdivision II, New Milford: Ms. Purnell said she had sent everyone an update and reminded them the New Milford Inland Wetlands Commission would next meet on April 13.

Revision of Inland Wetlands Regulations/Section 8.1: It was noted a public hearing had been

scheduled on Wednesday, April 26, 2006.

Communications

Mr. Picton reported he had been talking to the Selectmen about increasing the capacities of the Land Use Office. He said more staff and hours are needed. He requested that the WEO's job be augmented so that he can spend more time in the field on enforcement matters and less time in the office doing administrative work. The commissioners worried both that the current staff was overworked and the land use commissions would lose volunteers if staffing wasn't increased so the Town's regulations could be better enforced. Mr. Picton said he would not write another letter, but asked that the minutes be sent to Mr. Sears so he would know the Commission considers this to be an important issue.

Wright/59 Scofield Road/Unauthorized Filling, Clearing: Mr. Ajello said he had consulted with Mr. Cannavaro, Road Foreman, who had advised him there were ongoing problems with the filling done by Mr. Wright, that he had caused the road to wash out, and that he had repeatedly warned him to stop.

Consideration of the Minutes

MOTION: To accept the 3/22/06 Public Hearing - Regular Meeting minutes, the 3/29/06 Public Hearing - Special Meeting minutes and the 4/4/06 Linen, Schaffner, and Calhoun Street Trust site inspection minutes as written. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

MOTION: To adjourn the meeting. By Ms. Purnell.

Mr. Picton adjourned the meeting at 11:40 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator