

December 13, 2006

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

ALTERNATES PRESENT: Mr. Potter, Mr. Thomson

ALTERNATE ABSENT: Ms. Coe

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

ALSO PRESENT: Mr. Frank, Mr. Reich, Mr. Wilson, Mr. Neff, Mr. Szymanski, Mr. Plourde, Mr. Watson, Mrs. Smith, Atty. Hoben, Atty. Kelly, Residents, Mrs. Reinhardt

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

MOTION: To add the following subsequent business not already posted on the agenda: 1) Approval of 2007 Calendar, 2) Consideration of the 12/8/06 Special Meeting minutes, and 3) Executive Session to Discuss Pending Litigation. By Mr. Bedini, seconded by Mr. Picton, and passed 5-0.

Consideration of the Minutes

The 11/15/06 Regular Meeting minutes were accepted as corrected.

P. 2: 2nd paragraph from bottom: Last sentence: Insert "it" after: Mrs. Purnell said....

P. 2: 10th line under Rising: Change "he" to Mr. Pawlik.

P. 6: Last line in second motion: Insert apostrophe to state, wetlands'.

P. 6: 3 lines from bottom: Correct spelling is "cumulative."

P. 7: 3rd line under Aragi: Insert "including" before approximately.

P.7: 15th line under Aragi: Correct name is Mrs. J. Hill.

MOTION: To accept the 11/15/06 Regular Meeting minutes as corrected. By Mr. Picton, seconded by Mr. Bedini, and passed 4-0-1.

Mrs. Hill abstained because she had not attended the meeting.

The November 29, 2006 Public Hearing - Regular Meeting minutes were accepted as corrected.

P. 1: Also Present: Add: Dr. Kortmann

P. 3: 4th full paragraph: Change the last phrase to: but had not participated in any discussion about the launch.

P.3: 3rd paragraph from bottom: Change the second sentence to: ...the general state permit would be followed....

P. 4: 4th full paragraph: Correct spelling is Mr. Cornet.

P. 4: 5th full paragraph: 3rd sentence: Change end of sentence to: ...invasives if the boat launch was permitted.

P. 5: 1st full paragraph: 3rd sentence: Change to: ...would not be possible because the property's septic system is located on the south side.

P. 5: 1st full paragraph: 4th sentence: Change "text" analysis to written analysis.

P. 5: 3rd full paragraph: 4th line from bottom: Insert "presenters'" before consensus.

P. 7: Under Rising: Change NCR to NCD throughout.

P. 8: 1st paragraph: 4 lines from bottom: Insert: "more than" before 45 ft.

P.10: 6 lines above motion: Insert: "upland" before review area.

P.11: Under Betolatti" Beginning of 7th line: Change to: ...plan crossing an adjacent lot was feasible....

P.11: Under Betolatti: 6th line from bottom: Add: "at this time" to the end of the sentence.

P.12: Under Steep Rock: 4th line from bottom: Insert: "within" before the river.

P.13: Under Spring Hill: The correct spelling is Whittlesey.

P.13: Under Tompkins: Change first sentence to: Ms. Purnell reported that O and G had deposited a lot of material on a steep slope above and possibly within 100 ft. of a watercourse....

MOTION: To accept the 11/29/06 Public Hearing - Regular Meeting minutes as corrected. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

MOTION: To accept the 12/8/06 Special Meeting minutes as written. By Mr. Picton, seconded by Ms. Purnell, and passed 5-0.

The 12/6/06 James Calhoun Street site inspection minutes were accepted as corrected. It should be stated that Ms. Purnell arrived late.

MOTION: To accept the 12/6/06 James Calhoun House site inspection minutes as amended. By Mr. LaMuniere, seconded by Mr. Bedini, and passed 5-0.

MOTION: To accept the 12/6/06 John Dorr Nature Lab site inspection minutes as written. By Mr. Bedini, seconded by Mrs. D. Hill, and passed 5-0.

Pending Applications

Rising/191 West Shore Road/#IW-06-46/Repair Septic System: Mr. Ajello said there was no new information. Mr. Hayden from NCD will inspect the site. Mr. Picton asked Mr. Ajello to make sure Mr. Hayden's review address the issues listed in the previous minutes.

Town of Washington/59 East Shore Road/#IW-06-53/Boat Ramp and Parking: Mr. Picton noted the public hearing had been closed on 11/29 because the Commission thought all the issues had been addressed and adequate explanations explained. He said Mr. Kortmann and Mr. Wilson, engineer, had supplied oral testimony, plus had submitted copies of the alternate plans that had been denied by the state. Ms. Purnell said she had asked for a written analysis of these plans, and noted this had not been submitted. Mr. Picton said the testimony had been given on tape and Dr. Kortmann had submitted a written feasible and prudent alternative analysis. Ms. Purnell recommended the Commission incorporate Dr. Kortmann's recommendations in any motion of approval. She then asked about the proposed 2 ft. retaining wall between East Shore Road and the parking area. She asked how much material from the highway would reach the parking area and asked if any weep holes were proposed. The map, "Boat Ramp," by Mr. Wilson, revised to 10/23/06 was reviewed. As these questions asked for clarifications of material already submitted, Mr. Wilson responded there would be no weep holes. He stated there would be a driveway apron and the slopes would be from the wall towards the road and from the parking area towards the catch basin, so no material from the road would reach the parking area. He noted the purpose of this wall was to level the area to meet ADA requirements. Regarding mitigation, Mr. Picton said he had looked for a way to replace the shallow shoreline with something equivalent, but it had been pointed out the existing shoreline dropped abruptly into the water so there was not that much of a change proposed and the quality of the shoreline that would be lost was not that great. Ms. Purnell asked the Commission to consider cumulative impacts. She noted the application

was for Phase I only and asked that mitigation be incorporated in Phase II or at least recommended by the Commission for Phase II. Dr. Kortmann's recommendations and hand written notes on the site plan were reviewed and Mr. Wilson said the applicant would be willing to include them in the final design except for the relocation of the catch basin nearest to the driveway. Ms. Purnell asked and Mr. Picton agreed that the incorporation of Dr. Kortmann's notes on the final plans be made a condition of approval. Ms. Purnell said the Commission had 65 days in which to act and thought a carefully drafted motion should be approved at the next meeting. She noted a public hearing had been held and said the Commission should now determine what the impacts to the lake would be and whether there should be mitigation required to offset them. She acknowledged the shoreline would be armored and there would be an increase in impervious surfaces, but said in her opinion, these were offset by the increased opportunity for public use of the lake. She said why and how the Commission approved the application was important to create a record to explain why the Commission was allowing the Town to fill the lake, but would not allow anyone else to do the same. Mr. Picton asked if the applicant could wait 30 days for an approval. Mr. Frank noted the Town intended to apply to the other commissions before then. Mr. Potter and Mr. LaMuniere were satisfied with the plans submitted and thought mitigation would be appropriate in Phase II. Mrs. D. Hill saw no need to delay action on the application.

MOTION: To approve Application #IW-06-53 submitted by the Town of Washington for a boat ramp and parking at 59 East Shore Road as submitted subject to the following condition and suggestion: 1) that the recommendations made by Dr. Kortmann be incorporated in the final site plan and these be checked and OK'd by the WEO against Dr. Kortmann's oral testimony and hand written notes on the site plan and 2) the Commission suggests that when the Town is ready to develop the rest of the site, it look into the possibilities for mitigation for the loss of the shoreline and filling of the lake. By Mr. Picton, seconded by Mr. LaMuniere.

Discussion followed. Mr. Picton stated that strict adherence to the maintenance plan and monitoring by the EO would be required. Ms. Purnell read Section 8.4 and said this should be addressed in its entirety. Mr. Picton reviewed each section under 8.4 and made the following statements for the record; 1) A thorough discussion of alternatives had taken place, and none were found to be feasible and prudent. 2) The file contained information on the relation between short term and long term impacts. 3) Regarding the maintenance and enhancement of the long term productivity of the lake, the plan included the continued monitoring and management of invasives. 4) Although the shoreline would be altered and some of the lake filled, the design had gone to great lengths to improve the drainage system to ensure that less pollution would reach the lake. 5) A lot of work had gone into a plan that would allow the reasonable use of Town property in a healthy and safe manner. 6) Impacts of the proposed activity outside the Town property had been briefly considered. Dr. Kortmann had advised the Commission that monitoring of invasives in the E. Aspetuck River would not be necessary. 7) There was no opportunity to mitigate the impacts in Phase I, which the applicant claimed were minimal. 8) Section 8.4.h was not applicable. He concluded by stating this situation was unique and that the Commission hoped it would never again have to approve filling in the lake or changing the nature of the shoreline. Ms. Purnell noted there were no feasible and prudent alternatives. Mr. Picton stated that even if the discussion in support of the motion was not complete, the information in the file was complete.

Vote: Approved 5-0. Ms. Purnell made a procedural objection.

Hochberg/15 Couch Road/#IW-06-55ATF/Clean Out Pond: Mr. Ajello said he had no new information and did not expect any. Ms. Purnell said this matter should have been handled as an enforcement issue rather than as an after the fact application.

MOTION: To deny Application #IW-06-55ATF submitted by Mr. Hochberg to clean out the pond at 15 Couch Road because the work has already been completed without a permit and this is not the first time Mr. Hochberg has done unauthorized work. By Mrs. D. Hill, seconded by Mr. Bedini, and passed 5-0.

Mr. Picton noted that in addition to the reasons cited in the motion, he voted to deny the application because it was incomplete.

James Calhoun House, LLC./156 Calhoun Street/#IW-06-58/Install Inground Pool: Mr. Neff, engineer, was present. Ms. Purnell noted the pool could be located elsewhere on the 30+ acre lot, but that would not make much sense because it would require more disturbance to the wetlands. Mr. Picton agreed the proposed location was a logical one. Ms. Purnell noted approval of a previous application included planting additional vegetation between the pool and wetland area. Mr. Picton asked if a garage would be proposed in the future. Mr. Neff stated the existing barn is now used as the garage and there were no plans for a garage. Mr. Picton noted if a garage were proposed in the future, the owner would have to show why the existing barn could not continue to be used. Ms. Purnell recommended a condition of approval that if the pool is drained the water must be pumped into a tanker and trucked off site.

MOTION: To approve Application #IW-06-58 submitted by James Calhoun House, LLC. to install an inground pool at 156 Calhoun Street subject to the following condition: if the pool is emptied, the water must be pumped into a truck and taken off site. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

Ms. Purnell said the proposed activity falls into the upland review area, but the building envelope was tight, the land level, and the closest point to wetlands was 54 ft. Also additional plants would be put between the pool and the wetlands so the chance of long term impacts were limited.

John Dorr Nature Lab/220 Nettleton Hollow Road/#IW-06-59/Restore Stream Channel: Mr. Szymanski, engineer, presented the map, "John Dorr Nature Lab of the Horace Mann School," by the office of

Arthur Howland, revised to 12/13/06. Ms. Purnell thought the proposed activity could cause a significant impact and a public hearing should be conducted. Mr. Szymanski thought the owner would withdraw the application if a hearing was required. Mr. Picton asked for clarification regarding the proposed erosion control measures and flood channels. Mr. Szymanski stated the stream had no potential for flood storage and its banks were eroding. He proposed to bolster the undercut banks with rip rap and coconut wattles. Plugs of ferns and other plants would be planted every 6 inches in the wattle to try to establish vegetation to stabilize the banks. Mr. Szymanski said the wattle would last for 5 to 10 years before decomposing. He reviewed both the rip rap and wattle specifications. The project would necessitate the removal of 15 trees. Mr. Szymanski advised the Commission a bobcat and a mini excavator would operate in the streambed to install the rip rap. Ms. Purnell thought the proposed filling along the watercourse and altering of the flood path was a significant activity. Mr. LaMunier did not think the proposed activity would cause an adverse impact. Mr. Bedini and Mr. Potter noted if the restoration work was not done, the situation would get worse. Mr. Picton noted the stream would be moved back to an established stream channel. Mrs. D. Hill pointed out that similar work had been done on the Carter and Knudsen properties and no public hearings had been held. Ms. Purnell read section 8.1 of the Regulations, but Mr. Picton pointed out that the Commission has the flexibility to hold a hearing or not on a regulated activity. Mr. Ajello advised the Commission the application was complete and the posting of a bond was not justifiable. Mr. Picton suggested a condition of approval that the work be done during low flow conditions, but Mr. Szymanski responded this would mean the banks would continue to erode throughout the spring and summer. Ms. Purnell recommended that additional erosion and sedimentation control measures be implemented downstream of the work area. Mr. Szymanski stated the only appropriate area would be just downstream of where the wattle would be installed. Mr. Picton asked for photos of the existing site conditions for the file.

MOTION: To approve Application #IW-06-59 as submitted by John Dorr Nature Lab at the Horace

Mann School at 220 Nettleton Hollow Road to restore a stream channel per the plan dated 10/25/06 and revised to 12/12/06 and the additional specifications in Mr. Szymanski's 12/13/06 letter to the Commission with the following condition: that the applicant work with the EO to install additional downstream erosion and sedimentation control measures. By Mr. Picton, seconded by Mrs. D. Hill, and passed 5-0.

Foothills Group/55 West Shore Road/#IW-06-60/Repair Steps and Walkway: The commissioners agreed the application was complete.

MOTION: To approve Application #IW-06-60 submitted by the Foothills Group to repair the steps and walkway at 55 West Shore Road as submitted. By Ms. Purnell, seconded by Mrs. D. Hill, and passed 5-0.

Enforcement

Plourde/33 East Shore Road/Unauthorized Tree Clearing: Mr. Ajello noted the location of the property along the East Aspetuck River and suggested the Commission conduct a site inspection. Mr. Plourde said he had not been aware he needed a permit to cut trees as he had previously cleared his land on Calhoun Street and had not needed a permit. He also said there was an existing foundation on the property, which he planned to rebuild for storage purposes. He said trees were growing up in the foundation and neighbors had asked him to clean up the property. He added he had stopped work when the EO had ordered him to do so. A site inspection was scheduled for Tuesday, December 19, 2006 at 4:00 p.m.

MOTION: To enter executive session at 8:45 p.m. to discuss pending litigation. By Mrs. D. Hill, seconded by Mr. Bedini, and passed 5-0.

MOTION: To exit executive session at 9:37 p.m. By Mrs. D. Hill, seconded by Ms. Purnell, and passed 5-0.

Enforcement

The 12/13/06 WEO Report was reviewed and other enforcement topics briefly discussed.

Franco/River Road: Mr. Ajello continues to receive complaints about runoff from this property. He already discussed the problem with the contractor. The affected neighbor may contact an attorney.

Myfield, LLC./7 Mygatt Road: Mr. Ajello was asked if he was keeping track of the conditions of approval and he said he was.

Smith/35 East Shore Road: Mr. Picton had inspected the construction site and questioned whether the work conformed with the approved plans. He said it looked like a channel had excavated into the pond on the up hill side of the last stone bridge and that the pipe forked to supply the pond with water. He said this was not included in the approved plan. Mr. Ajello explained the reasons for the changes. Mr. Picton stated all variations must be approved by the Commission and asked the EO to make sure all work conformed to the permit issued.

Corbo Assoc./40 Nettleton Hollow Road: Mr. Bedini noted the driveway work had begun. Mr. Picton complained the work was progressing on the steep hillside without installation of the required silt fence and asked Mr. Ajello to check this out.

Steep Rock Assn./Hidden Valley: It was noted the timber harvest application had been approved with the condition that Steep Rock would submit the final, exact logger's plan, but to date this had not been received. Mr. Ajello was asked to check into it.

Yourwith/258 New Milford Turnpike: A ditch had been dug to direct basement water to the river. Mr. Ajello noted one possible solution would be to direct this runoff to a raised infiltration system in the

back yard. Mr. Picton recommended the outflow pipe be moved farther from the river. Photos were circulated. Mr. Ajello said he had advised the property owner to hire an engineer to design a system to address the runoff.

Bowles/Carmel Hill Road: Atty. Fisher will represent Mr. Bowles at the next meeting. He had questioned whether the work on the spring house was a regulated activity, saying construction was not listed in the regs as a regulated activity. Mr. Ajello circulated photos, which showed how close the work was to the pond on the property. The commissioners agreed the repair work definitely required a permit. Mr. Picton asked Mr. Ajello to handle this matter.

MOTION: To reenter executive session at 9:52 p.m. By Mrs. D. Hill, seconded by Mr. Bedini, and passed 5-0.

MOTION: To exit executive session at 10:20 p.m. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Reinhardt/10 Perkins Road/Unauthorized Clearing and Soil Disturbance: After a brief discussion with Atty. Hoben regarding the terms of the revised consent order the following action was taken.

MOTION: To agree to follow our attorney's advice concerning litigation. By Mr. Picton, seconded by Ms. Purnell, and passed 5-0.

MOTION: To endorse the 12/8/06 draft of the consent order and Mr. Ajello's answers to Mrs. Reinhardt's questions dated 12/13/06. By Mr. Picton, seconded by Mrs. D. Hill, and passed 5-0.

It was noted Mrs. Reinhardt was obligated to remove the logs at 10 Perkins Road prior to the closing. Mr. Picton urged Mr. Ajello to get the consultant to the property before then and to make sure the bond was in place and the consent order signed before the work started.

Enforcement

Spring Hill Farm, LLC/Whittlesey Road: Mr. Picton asked if Mr. Ajello was monitoring the work in progress. Mr. Ajello said Mr. Neff submits reports twice a week and said he would make an appointment to inspect the property.

Tompkins/Tompkins Hill Road: Mr. Ajello said he had looked into the complaint raised at the last meeting and had found the fill for the driveway had extended into the regulated area by at least 20 ft.

Moore/25 Litchfield Turnpike/Unauthorized Clearing, Filling: Mr. Ajello said there was nothing new to report.

Feola/Carmel Hill Road: Mr. Ajello said he sent Mr. Feola a letter regarding the required restoration work that had not been done and had given him until 1/10/07 to respond.

2007 Calendar: The Commission agreed to conduct only one meeting in the months of June, July, August, and December 2007 and to approve the 2007 Calendar with these changes.

Revision of the Regulations: This work is ongoing.

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

Mr. Picton adjourned the meeting at 10:37 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator

