

February 23, 2005

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

ALTERNATES PRESENT: Ms. Coe, Mrs. Korzenko

ALTERNATE ABSENT: Mr. Bedini

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

ALSO PRESENT: Mr. Churchill, Mr. Bader, Atty. Kelly,
Mr. Sabin, Mr/Mrs. Reinhardt, Mr. Childs,
Mrs. Poinelli, Mr. Swirda

Mr. Picton called the meeting to order at 7:00 p.m. and seated Members Gray, Hill, LaMuniere, Picton, and Purnell.

MOTION: To add subsequent business not already
posted on the Agenda:

1) Enforcement: A. Bialobrezski/113

Woodbury Road/Accessway, B. Cremona/8

Perkins Road/Clear Cutting, Stump

Removal, 2) Other Business: Referral
from New Milford Inland Wetlands Comm./

Walker Brook Farms/#Ao5-007/79 Unit

Cluster Subdivision, 3) Communications:

Notification of Aquatic Pesticide Permit

Application/Robinson/88 Clark Road. By

Mrs. Hill, seconded by Ms. Purnell, and
passed 5-0.

Consideration of the Minutes

The 2/9/05 Regular Meeting minutes were accepted as corrected.

Page 1: under Present: Should be: Mrs. D. Hill, Mrs. J. Hill and Mr., not Mrs., LaMuniere.

MOTION: To accept the 2/9/05 Regular Meeting minutes
as corrected. By Mr. Picton, seconded by
Ms. Purnell, and passed 4-0-1.

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

Pending Application

H.O.R.S.E. of Ct./43 Wilbur Road/#IW-04-57E/Construct Sheds and Fence: Mr. Ajello said he had sent a letter, which included a list of information required, to Ms. Wahlers and had told her she had until April 1 to respond.

New Applications

Adams/57 West Shore Road/#IW-05-06/Driveway Improvements

Carter/59 West Shore Road/#IW-05-07/Pave, Excavate Driveway

Mr. Churchill, contractor, represented the property owners. He explained two applications had been submitted for the proposed work to excavate, slightly regrade, and then reinstall the driveway and parking area because the property line goes through the driveway. Two copies of the "Proposed Site Improvement Plan," by Mr. Neff, dated 11/1/04, one with the driveway area outlined in pink, were reviewed. Mr. Churchill noted in a previous application he had proposed to pick up the runoff where the slope meets the flat area, but had now decided not to do so. He explained the reason for that proposal had been to prevent runoff from flowing into the house. To address that, he now proposed to "rubber wall" the foundation while the excavation was being done and to let the water continue to naturally flow into the driveway area, through the stonewall, and into the ground. He did not think there would be as much water freezing on the driveway because the subgrade improvements proposed would absorb more of the runoff. Ms. Purnell asked if the runoff could be directed to an infiltration system, but Mr. Churchill said this would direct the water onto the Carter property and Mr. Picton noted there was a lot of ledge in this area. Mr. Churchill was asked to supply the following information for the next meeting: 1) completed DEP forms, 2) proposed contours and how much will be excavated, 3) the direction of the flow of runoff, 4) if there will be any changes to the sheetflow, the current and proposed flow, and 5) what will be done with the existing concrete on the driveway. Mr. Picton asked Mr. Ajello to review the project narrative and proposed erosion control measures and to make sure all questions have been answered. The Commissioners will inspect the site on their own prior to the next meeting.

Levande-Brown/88 Baldwin Hill Road/#IW-05-08/Terrace, Fence, Landscaping: Mr. Sabin, landscape architect, represented the applicant. An 8 scale map of existing conditions was compared to the proposed plan, "Proposed Pool Garden," by Mr. Sabin, dated 2/3/05. A 944 sq. ft. terrace around the pool, repair and extension of a fence, and landscaping were proposed. The terrace would be only 8 feet from the existing watercourse, but would require no fill and the landscaping proposed would create a densely wooded, shady buffer area and would include conversion of a section of existing lawn to a shrub buffer. The 34+/- c. yds. to be excavated for the terrace would be spread elsewhere on site and planted with cinnamon fern. Mr. Sabin noted silt fencing was shown on the plan. He also stated he would have supervisory authority over the entire project. A site inspection was scheduled for Wednesday, March 2, 2005 at 5:00 p.m.

Holly Hill Farm, LLC./87 Whittlesey Road/#IW-05-09/Restoration, Reforestation: Mr. Childs, Commission consultant, stated he had not yet completed his final report, but would provide the Commission with an update based on his four inspections of the property. Mr. Picton noted at this time the planting of a 30 ft. wide strip of wildflowers was the only current activity approved by the Commission. A lengthy discussion ensued. Points discussed included the following:

- Mr. Childs found this to be a "hydrologically challenged situation" and focused much of his review on the areas where surface and subsurface water accumulate.
- He disagreed with Ms. Paca's assessment of the existing forest, saying it is a late successional stage forest with a well established root network.
- His first preliminary suggestion was to redirect the runoff from the driveway to the other side of

the house and then to an area with a more gentle slope, which would eventually flow to the river. This would keep much of the runoff away from the seriously eroded channels on the steepest banks of the property. Mr. Picton thought if this were proposed, a watershed study should be done so it would be known what would occur at the discharge point. Ms. Purnell supported Mr. Childs' suggestion. Mr. Childs said he would discuss this idea with Mr. Neff.

- He thought the vegetative buffer proposed was a good idea.
- He thought the overly ambitious plan proposed was not sensible, mainly because it would require removal of the canopy by the cutting of trees. He thought the native forest should be left in tact. He recommended tulip trees be planted in the open spaces and under plantings placed in areas where there are already gaps in the canopy.
- Mr. Childs noted the hillside was so wet that the tree wells for the newly planted trees have become release points for the subsurface flow.
- Mr. Picton pointed out how the actions of this owner and previous owners had already damaged the slope and voiced his concern the proposed work would cause further destabilization. He suggested the forest be allowed to grow back on the slopes and then with Mr. Childs' help, the invasives could be slowly removed in stages.
- In short, Mr. Picton thought the flow should be engineered and redirected as little as possible and the forest left to regrow as much as possible.
- Mr. Picton asked Mr. Childs for a list of problems on the property, questions that need to be addressed about the plans, recommendations of what to do to keep the forest slope stable, and what not to do. He encouraged Mr. Childs to be involved point by point in the evaluation of the proposal and noted it would be the applicant's responsibility to solve any engineering problems.

Enforcement

Reinhardt/10 Perkins Road/Clear Cutting and Stump Removal

Cremona/8 Perkins Road/Clear Cutting and Stump Removal

Mr. Ajello noted there was a two page report on this matter included in his 2/23/05 Enforcement Report. (Copies of the 12/8/04 and 2/23/05 EO Reports are attached.) He said he had specifically advised Mrs. Reinhardt's contractor, Mr. Swirda, when they had met on site in December not to cut in the area where it appeared there was an intermittent stream and wetland soils until a soil scientist delineated the soils and it was determined whether a permit would be required. He noted Mr. Swirda was the same contractor who had done the work, and to whom he issued the cease and desist orders for work within the regulated area. Photos of the disturbed site taken on 2/15/05 were circulated and labeled. Mr. Ajello noted the silt fence photographed had since been repaired. After a short discussion, it was thought the Commission should inspect the site as soon as possible so that follow up orders for stabilization and possible remediation could be drafted and that the soils should be delineated by a soil scientist. Having seen the extent of the disturbance in the 2/15/05 photos, Mr. Picton said he would consult with the Commission's attorney to find out whether there were other appropriate enforcement measures that should be taken and/or fines that could be levied in addition to the issuance of citations. Reading the Enforcement Report, Mrs. D. Hill noted official orders had been sent to the property owners and so Show Cause Hearings were required to be held by Friday, 2/25, which would be within 10 days of their issuance dates. It was noted the purpose of a Show Cause Hearing is for the property owner to present arguments to the Commission as to why the order issued should not remain in effect. Mrs. Poinelli was in attendance on behalf of her uncle, Mr. Cremona, and was advised that most property owners attend these hearings on their own without an attorney. She stated it was not her

uncle's intention to do anything wrong and asked what he could do to "make it right." Atty. Kelly, representing Mrs. Reinhardt, said he expected her Show Cause Hearing would last at least two hours. He asked if cease and desist orders could be issued only for regulated areas. Mr. Picton stated orders may be issued for any area where an activity has the potential to damage a regulated area, wetland, or watercourse. Atty. Kelly argued the Commission should have identified what area it had a right to regulate before the order had been issued. Mr. Ajello pointed out the location of the intermittent stream in the area and so said the Commission has jurisdiction. Atty. Kelly argued the Commission should have first amended its wetlands map as there were no wetlands or watercourses shown in this area on the official map. Mr. Picton stated the Commission has jurisdiction over all wetlands and watercourses even if they are not indicated on the map and it was noted Section 3 of the Regulations states that the Commission recognizes the map is not totally accurate and that watercourses not shown on the map are under the Commission's jurisdiction. Atty. Kelly introduced Mrs. Reinhardt and Mr. Swirda, contractor, and explained to the Commission at great length what steps they had gone through to ascertain whether a permit was required. He said Mr. Ajello was aware of the work to be done, but at no time told Mrs. Reinhardt a permit was required. He maintained that upon inspection Mr. Ajello had suspected there wetlands and watercourses on the two properties, but that he had never made a ruling that what he was now calling a watercourse met the state definition and he had not hired a soil scientist to delineate the wetlands. Atty. Kelly said this was an important procedural point because the official wetlands map was the only thing the general public has to use to indicate whether an application is required. Mr. Ajello explained how the stream met the state definition of intermittent watercourse and said he had advised Mrs. Reinhardt's agent under what conditions a permit would be needed. Mr. Picton and other Commissioners asserted Mr. Ajello had based his decision to issue the orders on his experience and training as a wetlands enforcement officer. Atty. Kelly argued further that most of the work had been on the Cremona property and complained Mr. Ajello had "automatically slapped down notices," without first consulting the Commission. Mr. Bader, who had been present at the 12/7 site inspection, confirmed that Mr. Ajello had told the contractor a soil scientist would have to determine the soil types, but could not recall whether he had told him an application would be necessary. Mr. Picton recommended the Commissioners inspect the properties prior to the Show Cause Hearings, but Atty. Kelly argued that individual commissioners did not have the right to inspect the property on their own; only the WEO or Commissioners on a noticed site inspection could conduct an inspection. Furthermore, he, as legal counsel, required a written 24 hour notice prior to any inspection. Mr. Picton stated the hearings would be held without a site inspection. The following Show Cause Hearings were scheduled for Friday, February 25, 2005 in the Land Use Meeting Room, Bryan Memorial Town Hall:

4:00 p.m. - Cremona/8 Perkins Road and 4:15 p.m. - Reinhardt/10 Perkins Road.

Enforcement Report

The following were briefly noted:

Greenfield/12 Ives Road/Clearing In or Near Wetlands: The Commission is still waiting for an application.

Beck/132 Calhoun Street/#IW-02-V1: There was nothing new to report.

Fowler/#IW-04-V5/138 Nichols Hill Road/Excavation of Wetlands and Watercourse: Atty. Kelly reported Mr. Fowler had hired Mrs. Corrigan to draw up a planting plan and said he hoped the Commission would have no problem with planting the flat area in the spring.

It was the consensus this would be OK.

Carter/292 Walker Brook Road(141 Shinar Mountain Road)/#IW-04-V8/ Repair of Retaining Wall: Ms. Purnell noted the Commission had asked Mr. Neff to compare the originally approved plan

with what was actually built and to specify deviations, if any. Mr. Ajello said he had also notified Mr. Carter of this request.

Sasson/4 East Shore Road/Repair Stone Deck, Retaining Wall: Ms. Purnell brought copies of the 1980 and 1990 aerial photos to check whether there was a pre existing stone deck, but they were not conclusive. The Commission was divided about what course of action to take and will see if any more evidence is produced prior to making a decision.

Armstrong/72 Mygatt Road/#IW-05-04/Restoration Work: Mr. Ajello reported the bond had been posted.

Shanks/208 Bee Brook Road/Deck: The deck has not been removed. Mr. Ajello will contact Mr. Shanks again.

Stiteler-Giddins/198 Tinker Hill Road and West Shore Road/Depositing Wood Chips: Atty. Kelly noted there had been a discussion at the last meeting concerning what had been cut, where the wood chips had come from, etc. He stated the chips were not from on site and had been spread on the driveway path in the regulated area. He said it had not occurred to the owners that they needed a permit. Ms. Purnell noted the work completed on the beach side of the property did not comply with the permit granted. She was asked to make a list of the items that must be corrected. Mr. Ajello will send a letter to both the owner and Atty. Kelly to ask that the property be brought into compliance with the permit. Regarding the wood chip path, the Commission did not know the extent of the work done or the condition of the chips - how wide was the path, how deep were the chips, where did the chips come from, were there invasives in the chips, etc. Atty. Kelly said he would get this information. The Commission will wait for more information before deciding how to handle this matter.

Bialobrezeski/113 Woodbury Road/Accessway: Mr. Ajello said he had sent the owner a letter regarding this violation. A copy is in the file.

Other Business

Referral from N. Milford Inland Wetlands Commission/79 Unit Cluster Subdivision/Rt. 109 and Walker Brook Road: Ms. Purnell will review the application and write a new letter or redraft the previous letter sent to the New Milford Zoning Commission to point out the concerns the Commission has about the potential for the degradation of Walker Brook due to the concentrated drainage, which will flow into it. Mr. LaMuniere will discuss the application with the Board of Selectmen and WEC. He will ask WEC if it would be interested in sponsoring a review by a professional. Mrs. Korzenko will discuss the application with the Conservation Commission. Mrs. Hill was asked to find out if a public hearing will be held.

Referral re: Aquatic Pesticide Permit Application: It was noted an application had been made for treatment of the Robinson pond at 88 Clark Road. Mrs. Purnell pointed out that application of an aquatic pesticide treats only the symptoms. Ms. Purnell will draft a form letter to advise property owners who have applied for aquatic pesticide permits how to address the causes of their problems.

WEO Site Inspection Procedure: It was the consensus of the Commission that the WEO should establish a policy of following up site inspection agreements/permissions with letters of confirmation detailing on site discussion and that these should be sent to the contractor and/or property owner.

MOTION: To go into executive session to discuss

pending litigation at 10:00 p.m. By Mrs.

Hill, seconded by Mrs. Gray, and passed 5-0.

MOTION: To come out of executive session at 10:21 p.m.

By Mr. Picton, seconded by Mrs. Hill, and
passed 5-0.

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

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator