

March 9, 2005

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

ALTERNATE PRESENT: Ms. Coe

ALTERNATES ABSENT: Mr. Bedini, Mrs. Korzenko

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

ALSO PRESENT: Mr. Sabin, Mr. Cavallaro, Mr. Churchill, Mr. Boling

SHOW CAUSE HEARING

Cremona/8 Perkins Road/Clear Cutting/Continuation

Mr. Picton reconvened the Show Cause Hearing at 6:34 p.m. and seated Members Gray, Hill, LaMuniere, Picton, and Purnell. He noted neither Mr. Cremona nor a representative was present.

Mr. Ajello briefly reviewed the reasons he had issued the 2/15/05 cease and desist order to Mr. Cremona (as were detailed at the first session of the hearing). He said he had spoken with Mr. Cremona who would not be attending the hearing due to a serious illness. He said Mr. Cremona understood that although he had not actually conducted the unauthorized work, as the property owner, he was responsible.

The proximity of the watercourse to the area that was cleared was noted.

For the record Mr. Picton listed the documents in the file: 1) the 12/8/04 and 2/23/05 Enforcement Reports, 2) 15 photos taken on 2/19/05 by Mr. Ajello, 3) the 11/12/03, 12/8/04, 2/23/05, and 2/25/05 minutes, 4) and everything referenced in the Reinhardt file and enumerated at the 2/25/05 Reinhardt Show Cause Hearing. It was noted the same documents were relevant to both the Cremona and Reinhardt files as it was the same unauthorized activity that occurred on both lots, but that the 15 photos submitted today by Mr. Ajello would be placed only in the Cremona file because the Commission had already acted to uphold the Reinhardt order. Mr. Ajello also submitted the 3/8/05 memo from Mr. Cavallaro.

Mr. Ajello noted some of the photos submitted showed evidence of the existence of a watercourse. Mr. Picton asked if it had the required attributes to be considered a watercourse. Mr. Ajello said it did.

Mr. Ajello stated some of the trees cleared were on the Cavallaro property and Mr. Cavallaro confirmed this was so. Ms. Purnell asked if the boundaries were clearly marked and suggested this be done before a site inspection was scheduled. Mr. Ajello said he would request maps from the property owners to show the boundary lines and the location of the watercourse.

Mr. Picton asked if there was anyone present to submit evidence that the unauthorized activity would not potentially put the wetlands and watercourses at risk.

Mr. Cremona said he knew of the watercourse that flows down the east side of the Reinhardt property and then crosses over onto his property and down to West Shore Road. Mr. Ajello also noted drainage problems in the area.

Regarding the intervener status that Atty. Kelly had requested on behalf of Mrs. Reinhardt in his 2/25/05 petition to the Commission, Mr. Picton said he had consulted with Atty. Zizka who advised him there was no reason to grant this request. Therefore, Mr. Picton stated for the record that intervener status was not granted to Mrs. Reinhardt.

It was noted there had been no information submitted for the file to show why the enforcement order

should not remain in effect.

MOTION: To close the Show Cause Hearing to consider whether the 2/15/05 enforcement order issued for the Cremona property at 8 Perkins Road should remain in effect.

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

Mr. Picton noted this matter would be discussed at the Regular Meeting under Enforcement and he closed the Show Cause Hearing at 6:59 p.m.

This hearing was recorded on tape. The tape is on file in the Land Use Meeting Room, Bryan Memorial Town Hall, Washington Depot, Ct.

REGULAR MEETING

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

MOTION: To add the following subsequent business not already posted on the agenda: Other

Business: 1) Preliminary Discussion:

Brown/125 Shearer Road/Driveway, 2)

Aquatic Pesticide Applications: a)

Pinover/12 Senff Road, b) Gootrad/187

Wykeham Road, and 3) Walker Brook Farm

Subdivision application/New Milford. By

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

Consideration of the Minutes

The 2/23/05 Regular Meeting minutes were accepted as corrected.

Page 2: Adams: 8th line: After "noted" insert "that." After "pick up" insert "and redirect."

11th line: After "flowing into the house" insert "and down the drive."

Levande-Brown: 2nd line: Change "8 scale map" to "1" = 8'."

Page 3: Holly Hill Farm: 3rd bullet from bottom: After "buffer" insert "for the existing lawn."

6th line from bottom: Correct the spelling of "intact."

Page 4: Reinhardt: 3rd line: Correct the spelling of "and."

Page 5: Reinhardt: 30th line: Insert "were" at beginning of line.

Page 7: Referral from N. Milford: 6th line: Change "Board of Selectmen" to "First Selectman."

Referral Aquatic Pesticide: In heading insert "DEP" before "Aquatic."

MOTION: To accept the 2/23/05 Regular Meeting minutes as corrected. By Mrs. Hill, seconded by Mrs. Gray, and passed 5-0.

The 2/25/05 Show Cause Hearings minutes were accepted as amended.

Page 2: 8th line: To the end of the sentence add "and to afford Mr. Cremona the opportunity to be represented at the hearing."

Page 4: 6th line: Change "in the stream" to "from the culvert installed by Mrs. Reinhardt in 2003."

Page 5: After 1st motion: Add: "Mr. Picton closed the Show Cause Hearing at 5:50 p.m."

MOTION: To accept the 2/25/05 Reinhardt Show Cause Hearing minutes as amended. By Mrs. Hill, seconded by Ms. Purnell, and passed 5-0.

The 3/2/05 Levande-Brown Site Inspection minutes were accepted as corrected.

Page 1: Time: Change "4:14 - 4:35 p.m." to "5:15 - 5:35 p.m."

6th line: Change "interim" to "intermittent."

7th line: Change "armed" to "armoured."

7th line: Change "borders" to "boulders."

MOTION: To accept the 3/2/05 Levande-Brown site inspection minutes as corrected. By Mrs. Hill, seconded by Ms. Purnell, and passed 5-0.

Pending Applications

H.O.R.S.E. of Ct./43 Wilbur Road/#IW-04-57E/Construct Sheds and Fence: No new information had been received. Mr. Ajello said he had given Ms. Wahlers until 4/1 to respond to the Commission's requests. It was noted there should not be bare ground paddocks over any watercourse and that the right for agricultural uses in wetlands does not mean filling or pollution of wetlands is permitted.

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

Carter/59 West Shore Road/#IW-05-07/Pave, Excavate Driveway: Mr. Churchill, contractor, was present. He submitted both the DEP form and the narrative description of the work to be done that had been requested at the last meeting. He presented the map, "Property/Boundary Survey," by Mr. Cheney, revised to February 2005 on which he had drawn in additional contour lines and the direction of the runoff flow. He pointed out the proposed asphalt line and several areas that would be taken down just enough in elevation so that the new stone for the driveway could be deposited. He proposed a hay bale "retaining wall" and a modified check dam at the storm drain as erosion control measures. Ms. Purnell thought the proposed work offered an opportunity to improve the existing runoff problem. Mr. Picton suggested a 16" deep trench filled with gravel be installed between the driveway and the wall to trap the sediment and slow the flow. Mr. Churchill did not think that would be possible because the water in the trench would expand and cause frost heaves in the winter, but he did agree to consider installing some type of infiltration system if, when doing the work on site, it looked possible to do so.

MOTION: To approve applications #IW-05-06 and

#IW-05-07 submitted by Mr. Adams and Mr. Carter/57 and 59 West Shore Road for driveway improvements, excavation, and paving per the material submitted to date and reviewed at the 3/9/05 meeting including

1) the map, "Property/Boundary Survey," by Mr. Cheney, revised Feb. 2005, received 3/9/05 and 2) the Project Description, received 3/9/05 with the following stipulations:

1. there are no significant changes in the elevation/grading of the parking area and

2. where the surface flow is directed in a concentrated path the applicant will look

for opportunities to provide increased infiltration and to slow the velocity of

the water by means such as installing a narrow, 16" deep trench filled with crushed stone. By Mr. Picton, seconded by Mr. LaMuniere, and passed 5-0.

Levande-Brown/88 Baldwin Hill Road/#IW-05-08/Terrace, Landscaping, Fence: Mr. Sabin, landscape architect, submitted the "Narrative Summary of Work," dated 3/9/05, which included the sequence of construction. Mr. Picton noted the proposed filling would be within 4 ft. of the stream. The map, "Proposed Pool Garden," by Mr. Sabin, dated 2/3/05 was reviewed. Mr. LaMuniere stated it was important not to disturb the steep stream banks. Ms. Purnell noted the stream was not natural, the area to be filled had previously been disturbed, the filled area would be planted with native vegetation, and additional plantings in what was now a lawn area would improve the stream buffer so she thought the proposed activity would have no long term impacts. It was noted the proposed plantings would slow the runoff and enhance the stream bank.

MOTION: To approve application #IW-05-08 submitted by

Levande-Brown for a terrace, fence, and landscaping at 88 Baldwin Hill Road per the plans,

"Proposed Pool Garden," dated 2/3/05, by Mr.

Sabin and the Narrative Summary of Work dated

3/9/05 and revised at the 3/9/05 meeting with

the understanding that as the site work is

being done, the fill will be pulled back from

the wetlands as much as possible. By Ms.

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

Holly Hill Farm, LLC./87 Whittlesey Road/#IW-05-09/Restoration, Reforestation: Mr. Childs had not yet completed his final report. Mr. Picton hoped it would be issued well in advance of the next meeting so the Commission would have time to review it.

Enforcement

Cremona/8 Perkins Road/Clear Cutting: It was the consensus that based on the information in the file, the 2/15/05 cease and desist order should be upheld.

MOTION: To keep in effect the 2/15/05 Cease and Desist

Order issued to Mr. Cremona for clear cutting without a permit at 8 Perkins Road. By Mr. Picton, seconded by Mrs. Hill, and passed 5-0.

Cremona/8 Perkins Road/Clear Cutting

Reinhardt/10 Perkins Road/Clear Cutting

A site inspection of the Reinhardt and Cremona properties was scheduled for Tuesday, March 22, 2005 at 4:00 p.m.. Mr. Cremona, Mrs. Reinhardt, and Atty. Kelly will all be notified. In his report, Mr. Ajello recommended a notice of violation be placed on the land records for both of these properties, but it was agreed to delay a decision about whether to do so until after the site inspection. Mr. Ajello said he had been advised by Atty. Kelly that Mrs. Reinhardt would appeal the Commission's decision to uphold her 2/15/05 cease and desist order. He said one of Atty. Kelly's arguments was that Mrs. Reinhardt did not know there were wetlands, but he referred to the 11/03 minutes, which indicated Mrs. Reinhardt was present when the Commission had requested an after the fact application for the installation of culverts and expressed its concern about the wet, unstable slopes in this area. Mr. Ajello was directed to send both Mrs. Reinhardt and Mr. Cremona letters requesting they submit accurate maps showing the property boundaries and the location of watercourses and delineation of wetlands within 100 feet of the area where the clear cutting occurred. Mr. LaMunier noted this was the same information the Commission had asked Mrs. Reinhardt for in November 2003. Mr. Picton noted he would prepare a memo to update Vice Chairman Korzenko on this matter as he will not be present at the next meeting.

Other Business

Brown/125 Shearer Road/Preliminary Discussion/Driveway: Mr. Picton suggested this was a matter that could be handled by the Wetlands Enforcement Officer, but Mr. Boling stated he wanted to discuss the matter with the Commission. The maps, "Soils Map Prepared for Open Space Equity, LLC.," dated 11/4/04, a conservation map by Mr. Howland, dated 11/24/04, and "Topographic Map Prepared for Mark Picton," by Mr. Howland, dated 6/84 were reviewed. Mr. Boling explained the property owners propose to construct a guest house on an adjoining property on West Morris Road and install a narrow access road from that structure to the main dwelling at 125 Shearer Road. It appeared this driveway would cross wetlands and at least one watercourse. Mr. Boling asked if it might be possible to obtain a Wetlands permit for such a project. He was advised that feasible and prudent alternatives such as using West Morris Road and Shearer Road to drive between the two dwellings, installing only a foot path, and locating the guest house closer to the main dwelling would have to be considered to determine if there were more responsible alternatives that would not require crossing the wetlands. Mr. Picton said the Commission would investigate how many stream crossings would be required, how large an area would be impacted, would it be a significant impact, what the quality of the existing wetlands was, were there wetlands within 100 feet on adjoining properties, etc. He said the Commission does not encourage wetlands crossings when there are alternatives. Also Mr. Boling was advised he would have to demonstrate that the installation of the driveway would have no short term or long term impacts on the wetlands and watercourses. Finally, the Commission said it would require wetlands delineation on both the subject properties as well as within 100 feet of the proposed activity on adjoining properties before it could make an informed decision.

Enforcement Report

Stiteler-Giddins/198 Tinker Hill Road: An appeal of the Commission's vote to deny the subdivision application without prejudice had been received. This would be discussed under Executive Session. Regarding the complaint received that a path had been cut and material deposited in the regulated area, it was noted Atty. Kelly had stated he would supply the Commission with information about the width

and depth and type of material deposited, but he had not yet done so.

Sasson/4 June Road/Repair Stone Deck, Retaining Wall: There was a lengthy discussion regarding what course of action the Commission should take regarding this matter. Mr. Sasson had been asked to supply proof that the deck had existed prior to the work done in the summer of 2004, but the evidence he submitted had been inconclusive. Ms. Purnell had checked the 1980 and 1990 aerial photos, but these, too, had been inconclusive. After much consideration, the following action was taken:

MOTION: Regarding Sasson/4 June Road/Repairing of Stone

Deck and Retaining Wall, based on the information in the file, the Commission 1)

finds it can not prove the dock did not previously exist and so it may remain, but if evidence is later found that the dock did not exist prior to 2004, Mr. Sasson will be ordered to take it out and 2) will issue a citation to Mr. Sasson for unauthorized work in wetlands.

By Mr. Picton, seconded by Ms. Purnell, and passed 5-0.

Armstrong/72 Mygatt Road/Single Family Dwelling: Mr. Armstrong posted the required bond and the remaining work will be completed in the spring. This item will be taken off the agenda.

Shanks/208 Bee Brook Road/Deck: There was nothing new to report on this matter.

Bialobrezeski/113 Woodbury Road/Accessway: Mr. Ajello reported three staggered silt fences have been installed so there is now little or no risk to the stream. Mr. Picton thought the site should be restored to its original condition. Mr. Ajello said he would request a plan for regrading, replanting, and stabilization of the disturbed area. It was noted a citation would not be issued because this is reserved for unauthorized work in wetlands, not in the regulated area, but Mr. Ajello will send a letter that an after the fact application is required.

DEP Pesticide Applications: Pesticide applications for Pinover/12 Senff Road and Gootrad/187 Wykeham Road were noted. The Commission thought the DEP should investigate the Pinover application because it was thought that pond was connected to a stream and so the pesticide would not be contained. It was noted this stream has trout. Also, the Commission stressed as it had done at the previous meeting, that property owners and the DEP should look into ways of addressing the cause of the problem rather than merely dealing with the results. Mrs. Hill was asked to write to the DEP on these matters.

Walker Brook Farm/New Milford 79 Lot Subdivision: Mr. Picton reported the N. Milford Inland Wetlands Commission had hired Milone and MacBroom to review this application and was waiting for that report and the Kings Mark report before scheduling a public hearing. The tentative date for the hearing was April 14. Mr. LaMuniere was concerned New Milford might not have conveyed to its consultants Washington's concerns about the negative impact the development could have on Washington resources and the Walker Brook watershed. Ms. Purnell suggested the Commission consider filing for intervenor status. Mr. LaMuniere will discuss filing as an intervenor with the Washington Environmental Council (WEC). Ms. Purnell will send a letter to the Inland Wetlands

Commission to inform it of Washington's concerns. It will be decided if further action is needed after the consultants reports are reviewed and it is known whether WEC will apply for intervener status.

Washington Times Article: Mr. Picton thanked Ms. Purnell for her "masterful" and informative article. He said she successfully made the connection between the actions of property owners and the resulting impacts to the wetlands.

MOTION: To go into Executive Session at 9:22 p.m. to discuss pending litigation. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

MOTION: To come out of Executive Session at 9:34 p.m. By Mrs. Hill, seconded by Mrs. Gray, and passed 5-0.

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

Mr. Picton adjourned the meeting at 9:34 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator