

# November 10, 2010

6:00 p.m. Land Use Meeting Room

## SPECIAL MEETING

**MEMBERS PRESENT:** Mr. Bedini, Mr. Bohan, Mrs. Hill, Mr. LaMuniere, Mr. Wadelton

**ALTERNATES PRESENT:** Ms. Cheney, Mr. Martino, Mr. Papsin

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

### Discussion of Draft Ordinance/Lakeshore Protection Policies

Mr. Bedini called the Special Meeting to order at 6:06 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton.

Mr. LaMuniere explained that the members of the subcommittee agreed on the technical aspects of the draft document and urged all commissioners to review it. He said its purpose was to describe the problems in protecting the lakeshore, to explain why it should be protected, and to establish rules for doing so. He said the subcommittee members differed on the following points: 1) whether to refer to Section 6.6 of the Zoning Regulations so the two documents would be closely linked and 2) whether the draft should be a) guidelines only, b) included as a revision to the Regulations, or c) a Town ordinance. The majority of the subcommittee members thought the reference to the Zoning Regulations should be deleted because if included, the document would have to be amended whenever the corresponding section of the Zoning Regulations was amended. Mr. LaMuniere reported that the majority of the subcommittee preferred an ordinance rather than a revision to the Regulations.

Mrs. Hill thought the citation ordinance was the only ordinance authorized for Inland Wetlands commissions under the state statutes. Mr. Bedini responded that it would be possible to have a Town ordinance approved at a Town Meeting.

Mr. Wadelton reminded the Commission that this issue first came up when the WEO asked for guidelines when advising property owners about the work they propose along their shorelines. He said he was very much against a Town ordinance because the Commission would not be the entity to enforce it.

Mr. Wadelton stated that shorelines vary so much that each case would have to be reviewed on its own merits. Mr. Bedini responded that was true of all applications reviewed by the Commission. Mr. LaMuniere said broad parameters were needed, but that did not mean the Commission would not take the specifics of each case into consideration.

Mr. Wadelton thought the draft document would have to be rewritten if it were to be used as an ordinance. He said the language would have to be undisputable and enforceable. Mr. Bedini said the Commission should first decide whether the document would be guidelines, incorporated into the Regs, or proposed as a Town ordinance.

The items under "Appraisal Guidelines" were discussed. #6: Mr. Ajello thought the term, "surrounding land," was too vague. Mr. Wadelton agreed and said, instead, the "regulated area" should be referred to. He suggested "immediate banks to the high water mark" be substituted. Mr. LaMuniere thought it should be changed to, "upland review area." Mr. Wadelton then questioned why "landscaping" was included as it is a use permitted by right. Mr. Bedini noted, however, that the Commission often regulates the installation of top soil and lawn to the edge of the water and also the cutting of trees along the shoreline. Mr. Ajello recommended language such as, "the application may be denied due to severe recontouring and/or regrading." Mr. Bedini asked what the difference was between recontouring and landscaping.

Mrs. Hill suggested viewing the document as advisory only. Mr. Bedini objected because guidelines are optional and the public, then, would not necessarily abide by them. Mr. Wadelton noted as guidelines the document would express the Commission's intent when interpreting its Regulations. Mr. Bedini stated that guidelines would not be a sufficient basis for denying an application.

Mr. Wadelton said the shoreline is wetlands and so the Commission already has jurisdiction over it under the current Regulations. Mr. Bedini disagreed because some of the shoreline is in the upland review area.

#7: Mr. Wadelton noted one reason for the document is to prevent the physical degradation of the environment that will adversely impact the habitat of aquatic and land based species, and so said he had no problem with #7. Mrs. Hill and Mr. Bohan agreed. #8: It was generally thought this section was good, but what was meant by "slanted" was debated. Mrs. Hill recommended "is not allowed" be changed to "The erection of new vertical or slanted retaining walls is discouraged" as these were guidelines and there might be a circumstance when the Commission might want to approve a vertical wall. Mr. LaMuniere noted the Commission did not want new vertical walls around the lake and said if exceptions were allowed, everyone would claim they should be the exception. Mr. Wadelton suggested the Commission was against new vertical walls except in the case of extreme erosion. Mr. Bohan noted that the Commission's recent problems with new retaining walls were because sufficient documentation had not been submitted with the application so it was not clear what had actually been approved. #12 and #13: Mr. LaMuniere read these and stated that detailed and specific plans were required.

#9: The definition of "width" was discussed and it was the consensus that this section should refer to the height, length, and width of walls. Mr. Ajello noted that in the case of failing cement structures, the width would be increased when repairs were made, but the height and length should not exceed what existed prior to the repairs.

Mr. Bedini agreed with Mr. Wadelton's earlier statement that if the document was going to be a regulation or an ordinance, more exact language was needed.

Mr. Wadelton noted that before the subcommittee discusses the document with the Zoning Commission and Lake Waramaug Authority, it had to know whether it would be used as guidelines, regulations, or an ordinance. Mr. LaMuniere said it should not be guidelines as they have no value in court. Mr. Wadelton said attorneys usually advise Commission's to "go to your regulations." Mr. Ajello noted most ordinances are enforced by the police. It was noted an ordinance must be approved at a Town meeting, while the Commission could adopt regulations on its own.

Mr. Bedini asked the commissioners to review the document again and to write down their thoughts about how it should be used. The discussion will continue at the next meeting.

Mr. Wadelton circulated data sheets regarding the ecological impacts of pressure treated wood. He said he could not find justification for the banning of its use near wetlands. Mr. Ajello said he would also research this matter.

#### MOTION:

To adjourn the Special Meeting.

By Mr. Martino.

Mr. Bedini adjourned the Special Meeting at 7:06 p.m.

#### **REGULAR MEETING**

**ALSO PRESENT:** Mr. Bennett, Mr. Sedito, Mr. Neff, Mr. Klauer, Mr. Szymanski, Mr. Worcester, Mr.

Gitterman

Mr. Bedini called the Meeting to order at 7:12 p.m. and seated Members Bedini, Bohan, Hill, LaMunier, and Wadelton.

**MOTION:**

To include subsequent business not already posted on the Agenda:

**VI. Other Business:**

C. Myfield, LLC./7 Mygatt Road/Request to Revise Permit #IW-05-54,

D. Town of Washington/10 Blackville Road/Request to Revise Permit #IW-10-27, VII.

**Enforcement:**

O. Denscot Pool and Spa/269 New Milford Turnpike/Outdoor Storage,

**VIII. Administrative Business:**

B. Ex Parte Communications,

C. 10/29/10 Email from Mr. Bedini to Commissioners, D. Motion Template.

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

**Consideration of the Minutes**

**MOTION:**

To table consideration of the 10/13/10 Regular Meeting minutes until the next meeting. By Mr. Wadelton, seconded by Mr. Bohan, and passed 5-0.

The 10/27/10 Public Hearing minutes were accepted as corrected.

Page 1: Atty. Olson should be added to the list of those present.

Page 2: End of 5th line: Change: "were" to "was."

3rd paragraph: Change the first sentence to: "Mr. LaMunier asked again why proposed driveway #1 and the two proposed catch basins could not be moved 20 ft. to the south...."

Page 9: 4th line from bottom: Change: "Mrs. Hill" to "Mrs. J. Hill."

**MOTION:**

To accept the 10/27/10 Public Hearing minutes as corrected.

By Mr. LaMunier, seconded by Mr. Wadelton, and passed 5-0.

The 10/23/10 Wykeham Rise, LLC. and Hochberg site inspection minutes were accepted as corrected. The spelling of LaMunier was corrected in both.

**MOTION:**

To accept the 10/23/10 Wykeham Rise, LLC. and Hochberg site inspection minutes as corrected.

By Mr. LaMunier, seconded by Mr. Wadelton, and passed 4-0-1.

Mrs. Hill abstained because she had not attended.

**Pending Applications**

Schwartz/173 West Shore Road/#IW-10-35/Build Garage, Move Driveway, Repair Septic System:

Mr. Neff, engineer, presented his plan, "Septic System Repair Plan," revised to 10/6/10 and said there had been no revisions since the last meeting. He briefly described the proposed activities; 1) abandon the existing cess pool, 2) install a new septic pump chamber nearer to Tinker Hill Road, and 3) construct a new detached garage adjacent to the driveway. He noted that the construction sequence and maintenance requirements were included in the "Soil Erosion and Sediment Control Plan," dated 10/10/10. Mr. LaMunier noted the "tightness" of the site and asked Mr. Neff to confirm that the construction sequence called for most of the work to be done from Tinker Hill Road. Mr. Neff said this was so. Mr. LaMunier asked what type of access would be installed to access the new leaching field

area. Mr. Neff noted that minimal maintenance work on the leaching area would be needed in the future, so Mr. Bennett, contractor, stated that only a "pathway" would be needed and this could be taken out, smoothed over, and seeded after the work was completed. Mr. Ajello asked if the drainage from the culvert would be redirected. Mr. Bennett said the culvert had already been filled in. Mr. LaMuniere reviewed the sequence of construction. Mr. Bedini noted the permit would be good for two years.

**MOTION:**

To approve Application #IW-10-35 submitted by Mr. Schwartz to build a garage, move the driveway, and rebuild the septic system at 173 West Shore Road per plans by Mr. Neff: "Septic System Repair Plan," dated 8/25/10, revised to 10/8/10 and "Soil Erosion and Sediment Control Plan," dated 10/10/10. By Mr. LaMuniere, seconded by Mr. Wadelton, and passed 5-0.

Carey/138 Church Hill Road/#IW-10-36/Feasibility of First Cut:

The map, "Subdivision Feasibility Plan," by Arthur H. Howland and Assoc., revised to 9/28/10 was reviewed. Mr. Szymanski noted the Commission had been waiting for an approval letter from the holder of the conservation easement, which, he said, was now in the file. The 11/1/10 letter from Mr. Law, Director of Steep Rock Assn., was noted. Mr. LaMuniere asked if there would be further subdivision allowed, read from the 10/13/10 minutes that Mr. Szymanski had previously stated there would be no further subdivision of the property, and asked that a note stating this be added to the map. Mr. Szymanski added the note to the map and initialed it.

**MOTION:**

To approve Application #IW-10-36 submitted by Mr. Carey for the feasibility of a first cut at 138 Church Hill Road per the plan, "Subdivision Feasibility Plan," by Arthur H. Howland and Assoc., dated 11/6/07 and revised to 9/28/10 and the 11/10/10 statement by Mr. Szymanski. By Mr. Wadelton, seconded by Mr. LaMuniere, and passed 5-0.

Neuwirth/156 Sabbaday Lane/#IW-10-39/Dredge Pond: Mr. Neff, engineer, noted the pond to be dredged was 1/10th of an acre, manmade, and spring fed. One foot of silt and sediment would be removed from the bottom and deposited next to the pond. The map, "Pond Cleanout Plan," by Mr. Neff, dated 10/2/10 was reviewed. Mr. Neff stated the excavation equipment would access the site over a damp area. He explained the excavated material would be spread in the area where it would be dewatered.

**MOTION:**

To approve Application #IW-10-37 submitted by Ms. Neuwirth to dredge the pond at 156 Sabbaday Lane per the plan, "Pond Cleanout Plan," by Mr. Neff, dated 10/2/10. By Mr. LaMuniere, seconded by Mr. Wadelton, and passed 5-0.

Bee Brook Crossing, Condo #2/34-35 Juniper Meadow Road/#IW-10-38/ Drainage Improvements: Mr. Wadelton recused himself.

Mr. Neff presented the map, "Drainage Swale Stabilization Plan," dated 10/7/10. He explained that erosion had occurred due to runoff from the driveway area and so he proposed to extend the existing rip rapped swale. This would slow the velocity of the runoff and encourage infiltration. A flared apron would be installed at the swale's end to spread out the flow.

**MOTION:**

To approve Application #IW-10-38 submitted by Bee Brook Condo Assoc. #2 for drainage improvements at 34-35 Juniper Meadow Road per the plan, "Drainage Swale Stabilization Plan," by Mr. Neff, dated 10/7/10. By Mr. Bedini, seconded by Mrs. Hill, and passed 4-0. Mr. Wadelton had recused himself.

Mr. Wadelton was reseated.

### **Other Business**

#### Wykeham Rise, LLC./101 Wykeham Road/Request to Amend Permit #IW-08-31:

Mr. Bedini noted the public hearing had been continued and the Commission had not yet determined whether the proposed revisions could be considered revisions to Permit #IW-08-31 or if they were significant enough that a new application would be required. It was not known whether this issue could be voted on while the hearing was still in progress and new information was still coming in. Atty. Olson will be consulted at the next session of the hearing. Mr. Bedini thought it probably should be decided after the close of the hearing. It was noted that additional documentation was expected from Ms. Purnell and that as soon as it was received it would be forwarded to Land Tech.

#### Hochberg/Couch Road/9-13-10 Complaint re: Siltation of Pond:

Mr. Wadelton noted he had written up his opinion regarding whether the Town was responsible for the siltation in the Hochberg pond and had placed this memo dated 11/5/10 in the file. Mr. Ajello noted he had received another letter from an upstream property owner complaining about erosion on his property. He read the 11/6/10 letter from Mr. Kohn of 10 Couch Road, which alleged that neighbors had interfered with the natural flow of the brook, resulting in damage to his property. Mr. Bedini stated this was a separate issue that had nothing to do with the Hochberg complaint and the Commission would respond to it separately. It was noted that after Mr. Lyon and Mr. Smith, representing the Town, and Mr. Hochberg had addressed the Commission, a site inspection had been conducted. Based on that site inspection, the commissioners made the following statements: Mr. Bohan: The majority of the silt in the Hochberg pond did not come from Couch Road, but was eroded material from upstream scouring. Ms. Cheney: The silt in the pond appeared to come from upstream. Mr. Papsin: The silt did not come from the road; it came from upstream. Mr. LaMunier: He had studied the sediment samples and the sediment in the pond did not come from the road. Mr. Wadelton: He agreed with the statements above. Mrs. Hill had not attended the site inspection. Mr. Bedini: He had walked upstream and had taken a sample. He said the sediment in the pond was not road sand and that it had definitely come from the stream, not the road. He added that the Town would have had to replace the same amount of material on the road if the sediment had come off the road. Mr. Martino said there was no evidence of crushed blue stone (road material) in the pond, nor evidence of any washout from the road over the grass to the pond or catch basin. He believed the sediment washed down from the brook and settled in the pond.

#### **MOTION:**

Regarding the 9/13/10 complaint from Mr. Hochberg: The Inland Wetlands Commission has determined after investigation that the Town of Washington has no responsibility for the siltation in the Hochberg pond.

By Mr. Wadelton, seconded by Mr. Bedini, and passed 4-0-1. Mrs. Hill abstained because she had not attended the site inspection.

Mr. Wadelton's 11/5/10 memo was considered and after a lengthy discussion it was made part of the Commission's official record. Regarding the Kohn complaint, the commissioners were given copies of his letter and this matter will be discussed at the next meeting.

#### Myfield, LLC./7 Mygatt Road/Request to Revise Permit #IW-05-54:

Mr. Gitterman, property owner, and Mr. Worcester, architect, were present. The plan, "Myfield, LLC.," Sheet SP-1, by Mr. Worcester, revised to 10/4/10 was reviewed. Mr. Gitterman explained the proposed revisions to the permit did not change the fundamental plan for 13 units of affordable housing for Washington residents. He said the units would be decreased in size to make them more marketable and

environmentally friendly and would be factory built so construction would cause little environmental impact. All units would use the existing septic and water systems and driveway. The affordability and comparability requirements under the state statutes were briefly discussed. It was also noted that none of the drainage system would be changed and that the remaining houses to be built would be located 3 ft. to 8 ft. further from the wetlands than they had been under the original approval. Mr. Worcester stated under the proposed revisions, the permeable driveway would cover slightly more area, but all other coverage figures would decrease. It was noted that the construction of the remaining houses would have little impact on the wetlands and that the main possibility of impact had been from the installation of the driveway and septic system, which were now completed. Mr. Waderton summed up the revisions, noting the footprint of the project would be reduced and the activities would be further from the wetlands.

**MOTION:**

To approve the request by Myfield, LLC. to amend Permit #IW-05-54 for affordable housing at 7 Mygatt Road per the 11/2/10 letter from Mr. Fowlkes and plans, by Mr. Worcester, Sheet "SP-1," revised to 10/4/10.

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

Town of Washington/10 Blackville Road/Revision of Permit #IW-10-27:

Mr. Ajello explained the ZBA had required revisions to the plan approved by the Inland Wetlands Commission. The map, "Site Development Plan," by Arthur H. Howland and Assoc., revised to 10/2/10 was reviewed. Mr. Ajello explained the outdoor storage bins had been moved farther from the western boundary line and the bins, sediment basin, and trees were moved 10 ft. farther from Blackville Road. The stilling basin was reconfigured, but its capacity was unchanged. He noted these had all been relocated in order to allow for increased buffering.

**MOTION:**

To approve the request by the Town of Washington to revise Permit #IW-10-27 for outdoor storage and drainage improvements at 10 Blackville Road per the site development plan by Arthur H. Howland and Assoc., dated 6/26/10 and revised to 10/2/10.

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

**Enforcement**

Denscot Pool and Spa/269 New Milford Turnpike/Outdoor Storage Violation:

Mr. Bedini noted that encroachment towards the river has been an ongoing problem on this property. Mr. Ajello stated that Mr. Meeker had apologized and had submitted both a letter and a plan for outdoor storage and buffering. Mr. Bedini suggested a site inspection be scheduled. Mr. Ajello said the plans call for extending the parking area by 20 ft. to accommodate two additional spaces, keeping the after-the-fact stockade fence/storage area, and planting along the top of the riverbank. Mrs. Hill asked what would be stored outside. Mr. Ajello said dry goods would be stored within the stockade; no liquids or chemicals. He advised the Commission that he had issued a notice of violation in August, had followed up with a letter in October, and would notify the Zoning Commission of the violation. Mr. Bedini asked if equipment had been parked beyond the parking area, closer to the river than permitted. Mr. Ajello said he had suggested the owner apply for a permit for a fence to contain the parking area. Mr. Ajello noted that Mr. Meeker had submitted the information the Commission had previously requested and said the installation of the fence 15 feet from the riverbank was a Zoning issue. He also noted that Mr. Meeker had reported erosion of the riverbank and said he had advised him that engineered plans would have to be approved before any repair work could be done.

Angell/West Shore Road:

Mr. Ajello reported that a large, wooden, pressure treated storage box had been placed near the shore. He was concerned this would set a precedent. He discussed the properties of old and new pressure treated wood, explained the safety concerns when using it, and recommended the Commission abide by its current policies because “it was better to be safe than sorry.” Mr. Wadelton objected, saying the industry data sheets written to government standards do not justify its limitation, and said he wanted the Regulations amended. Mr. Ajello noted pressure treated wood is currently allowed for posts, but not for rails and decking near the lake. He said he would like to review independent reports before the Commission decides whether to amend the Regulations. In the meantime, he noted that if the IWC was not concerned about the storage box, he would refer the matter to the Zoning Commission.

Brose/213 Roxbury Road/#IW-08-V5/Unauthorized Clearcutting and Structure:

The patio has been removed and the replanting is underway.

Chatfield/16 Tinker Hill Road/#IW-10-V01/Unauthorized Clearcutting:

Mr. Ajello reported that a tractor had been moved to the property, but there had been no further disturbance. He said the erosion controls looked good, but were out in the road. He also noted some flooding through the silt fence and sheet flow across Tinker Hill Road, but he did not know whether this had resulted from the clearing. It was noted the property owners had not submitted the documentation requested by the Commission, nor had they paid their fine.

Popkin/West Shore Road:

The fine had been paid and this item had already been removed from the agenda.

Shepaug Valley Regional High School/South Street:

Mr. Bedini noted that vehicles had parked on the septic system pipes and they would have to be inspected and possibly replaced. Also, the Town of Roxbury had breached a beaver dam and had taken the beavers off site because the water behind the dam had been backed up too close to the septic system. It was noted that Mr. Neff had written a report on this matter.

Rosen/304 Nettleton Hollow Road/#IW-08-V2 and #IW-10-V03/ Unauthorized Stream Work, Clearing, and Structure Built in Sprain Brook:

This matter was fully addressed in Mr. Ajello’s 11/10/10 report. Mr. Ajello recommended that the DEP be consulted to find out whether it can assist the Commission in enforcement efforts. After talking with the DEP the Commission will check with its attorney regarding whether to take this matter to court. Photos of the new wing walls on the bridge, stone facing on the bridge, and new stone guardhouse were circulated. All work was done without permits.

Weaver/176 East Shore Road/#IW-09-V3/Unauthorized Clearcutting:

Mr. Weaver paid his fine and this item will be taken off the agenda.

**Administrative Business**

Plan of Conservation and Development:

The Planning Commission asked for one member from each of the Town commissions to serve on a subcommittee that will meet approx. three times over the winter to discuss issues to be included in the update. Mr. Wadelton volunteered.

Ex Parte Communications:

Mrs. Hill said she had been advised by Atty. Zizka that communication about an application between a staff member and one member of the commission was ex parte communication, which is not permitted. As this was a departure from the definition of ex parte communication as it had long been understood, commissioners said they would discuss this matter with the attorneys at the upcoming CACIWC seminar.

9/29/10 Email from Mr. Bedini to Commissioners:

It was the consensus that Mr. Bedini raised valid points and the commissioners would conduct themselves in a more disciplined manner at future hearings.

Motion Template:

Mrs. J. Hill said she thought the Commission had agreed to use a standard form for motions, but was not doing so. She will bring copies of the template to future meetings so commissioners can refer to it.

Wykeham Rise, LLC./101 Wykeham Road/Request to Revise Permit #IW-08-31:

Mr. Bedini noted the public hearing had been continued to Tuesday, November 16 at 6:00 p.m. in the Land Use Meeting Room. He asked everyone to review both the current file and the original permit so they would be prepared to make the determination whether the proposed revisions could be handled as revisions as proposed, or whether the revisions were significant enough to require a new application. Mr. Papsin noted he had found the information submitted by Ms. Purnell to be very informative. It was noted that Mr. Allan of Land Tech and Atty. Olson would attend the next session of the hearing.

MOTION:

To adjourn the Meeting. By Mrs. Hill.

Mr. Bedini adjourned the Meeting at 10:12 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,  
Janet M. Hill  
Land Use Administrator