

November 12, 2003

MEMBERS PRESENT: Mrs. Gray, Mrs. Hill, Mr. La Muniere, Mr. Picton, Ms. Purnell

ALTERNATES PRESENT: Mr. Bedini, Mrs. Korzenko

ALTERNATE ABSENT: Mr. Weber

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

ALSO PRESENT: Mrs. Dyer, Ms. Matteo, Mr. Kleinberg, Mr. Howland, Mr. Sabin, Atty. Blum, Ms. Rhinehart, Mr. Armstrong, Ms. Small, Mr. Bennett, Residents, Press

Regular Business

Mrs. Hill called the meeting to order at 7:00 p.m. and seated Members Gray, Hill, La Muniere, and Picton.

MOTION: To add subsequent business not already posted on the agenda. By Mrs. Gray, seconded by Mr. Picton, and passed 4-0. (Ms. Purnell was not yet seated.)

Pending Applications

Dyer/#IW-03-46/273 Sabbaday Lane/Replace Culverts

Mrs. Hill noted at the last meeting the information presented had not been complete and the green sheet of the application form had not been filled out. Mrs. Dyer explained two existing 6 ft. long, 8" culverts along the footpaths between the house and cottage would be replaced. She said no filling or additional trenching would be required and there would be no changes made to the paths. Considering the small scope of the job, Mrs. Hill asked that the contractor use a small tractor excavator. Mr. Ajello completed the green form.

MOTION: To approve the application, #IW-03-46, submitted by Mrs. Dyer to replace two culverts along the footpaths at 273 Sabbaday Lane with the condition that there be no disturbance to the existing soil other than at the actual site of each culvert. By Mr. Picton, seconded by Ms. Purnell, and passed 5-0.

Ficalora/#IW-03-54/13 Winston Drive/Single Family Dwelling

Mr. Howland, engineer, presented a site plan revised according to input from the 10/30 site inspection, "Proposed Sanitary Disposal System Plan Prepared for Church Hill Corp. Lot 59A," by Mr. Howland, revised to 11/11/03. The revisions included the addition of the location of the existing watercourse and of a proposed grass swale and the redirection of the curtain drain into the existing watercourse. Mrs. Hill noted the map had also been revised in August 2003 to show a four bedroom septic system and asked why this had been done as the system was so close to the wetlands. Mr. Howland said the owners proposed a four bedroom house. Mrs. Hill questioned why an A-2 map had not been submitted. Mr. Howland stated all the corners had been located as for an A-2, but on the Class D map submitted, the adjoining property owners had not been noted. There was a lengthy discussion about the drainage plans; including concentration and velocity of the runoff, whether the proposed swale should be rock lined, whether the water would channel to the sides of the lot, whether there was an acceptable way to respread the runoff over the hillside, etc. Mr. Howland did not recommend the swale be rip rapped because he said it was not steep. He also thought the best plan was to direct the water to the existing ditch where it would be kept away from the septic system and where there would be no problem with overflowing the banks. He noted there would be a flat swale along the driveway, which would flow to a new culvert at the bottom pending approval of the Board of Selectmen. It was the consensus the map should be revised to include a note that there be no clearing of vegetation beyond the limit of disturbance line, which should follow the wetlands boundary as closely as possible.

Ficalora/#IW-03-55/10 Sunrise Lane/Single Family Dwelling

Mr. Howland, engineer, reviewed the map, "Proposed Sanitary Disposal System Plan Prepared for Church Hill Corp. Lot 56A," by Mr. Howland, revised to 8/6/03 and said there had been no further revisions. Mr. La Muniere expressed his concern about the potential for scouring at the outlet of the footing drain. Mr. Picton noted it was good that the drainage had been routed around the house and septic area and asked that a grassed swale to spread the flow at the outlet be shown on the plans. Mr. Howland will submit a revised map at the next meeting.

Levy-Kady/#IW-03-56 ATF/129 Wykeham Road/Deposition of Fill, Planting

Atty. Blum and Mr. Sabin, landscape architect, were present. Mrs. Hill noted at the last meeting she had asked the Commissioners to put their thoughts in writing and that all had read Atty. Blum's 10/30/03 letter. It was noted the application was for the work already done and the planting of a few additional trees. Mr. Picton submitted a copy of the USDA soils map and pointed out a 150 ft. wide wetland band running through the property mostly on the east side of the stream where most of the filling had been done. Atty. Blum said the Regulations state this map may not be accurate, but Mr. Picton countered it was a good indication there were wetlands in this area. Atty. Blum did not dispute the area was filled, but did dispute the Commission's contention that there were wetlands in the area where the fill was deposited. Mr. Sabin said the wetlands had recently been flagged and it had been determined there were none in the fill area. He referred to the map, "Site Analysis Plan," by Mr. Alex, dated September 2003, pointed out the location of existing trees in upland soil, and noted although there is a wetlands system on the property, it narrows down in the vicinity of the road crossing. He also stated less than 10 cubic yards of fill had been deposited. Mr. Picton outlined the issues/questions he thought should be considered by the Commission prior to action on the application. 1) Is there the potential for an adverse impact on protected resources? He thought there was an impact to the wetlands corridor as that resource had been replaced with another soil type. 2) Were there feasible and prudent alternatives? He thought there were as screening from Wykeham Road could have been accomplished without the deposition of fill. 3) In the case of an after the fact application, would the Commission have approved the proposed activity were it not after the fact? He thought the planting would have been permitted, but not the deposition of material. 4) Is mitigation proposed to offset the damage done? He noted no mitigation was proposed. 5) Would restoration work, if so ordered, cause more damage to the wetlands. He noted this was a subjective question, but thought it was not unreasonable to require this area to be restored. He also pointed out that the Commission had ordered other property owners to remove fill from wetlands and it would be unfair to those people to adhere to lesser standards in this case. When Atty. Blum objected and said again the fill had not been placed in wetlands, Ms. Purnell and Mr. Picton responded that core samples had not been taken and as the USGS map indicated it was wetlands, Atty. Blum could not prove it was not. Mrs. Korzenko noted the Commission's charge is to protect wetlands and watercourses through compliance with the Regulations, which would include enforcement actions when violations occur. Atty. Blum said there had been no violation as landscaping is permitted by right. The Commissioners noted the owner had not applied for an exemption. Atty. Blum stated "filling" had not been described in the Regulations and therefore, the regulation was not logical and had no meaning. Ms. Purnell agreed with Mr. Picton and said it was unlikely the Commission would have permitted filling in a wetland or in the area immediately adjacent to the wetland if the activity had been applied for. Mr. Sabin made the following points. 1) The USDA map is a guide only. Wetlands are determined by soil type and a soil scientist had determined the area was not wetlands. 2) There was an assertion at a previous meeting that the trees had been planted on Town property. This is not true. 3) There was also a statement that the property owner was a repeat offender. This was not true. 4) The area in question is located at the edge of a road with a long history of impact. While there may have been impact to the regulated area (not to the wetlands), it was insignificant and so restoration was not warranted. Mr.

Picton recommended the Commission deny the application on the basis that it does not permit fill to be deposited in a wetlands or adjacent to a wetland and to follow up with an enforcement letter requiring the fill to be removed down to the original surface within 25 feet of the east side of the stream. He thought this work could be completed in a day and that the new trees could then be planted at the original grade. Atty. Blum submitted a written withdrawal of the application and asked the Commission to be specific regarding any restoration it would require. Mr. Picton advised the attorney that if the owner did not respond to the satisfaction of the Commission, a notice would be filed on the Town Land Records. It was noted enforcement would be discussed later in the meeting.

Auchincloss/#IW-03-57/5 Kielwasser Road/Clearing, Streambank Stabilization, Planting

Mr. Bennett, landscape architect, was present. Mr. Picton's 10/30/03 site inspection report was circulated. Mr. Bennett explained the trees were diseased and the owner had been clearing out the dead ones each year and had put in some replacement plants to serve as screening. He said the dead trees and limbs were hazards to both the driveway and the Town road and that he did not think a permit was required to clear out dead wood. Ms. Purnell stated any activity that alters the indigenous character of the wetlands is a regulated activity. Mr. La Muniere noted the planting and activity already completed and said the Commission would guard against further destruction of the canopy. The "Map for Site Work at the Strachan Property," by Kent Horticultural Svcs., no date, depicting the proposed work areas in color on an A-2 map was reviewed. Mr. Bennett proposed to remove 52 of approximately 250 trees so there would be a one time disturbance and read his 10/20/03 letter submitted at the last meeting. This letter described all the work proposed including work along the stream bank. The following concerns were raised: 1) Ms. Purnell about the disturbance that would be caused by pulling out the root systems of invasive species, 2) Mrs. Korzenko about the possibility of cutting healthy trees, and 3) Mr. Picton about taking down the canopy as that would change what would grow below. Mr. Bennett thought adequate canopy would remain and offered to mark the trees to be cut. Mr. Picton advised him only invasives should be cut and should be cut individually with hand held equipment and that the area should not be converted to lawn as had been done elsewhere on the property. The proposed stream bank stabilization was discussed, but it was noted there were no specifications submitted regarding how this would be accomplished. The Commissioners will reinspect the site on their own and Mr. Bennett will submit additional information on the bank stabilization for the next meeting.

New Applications

Town of Washington/#IW-03-60/Tinker Hill Road/Install Culverts, Repair Road

Selectman Solley was present on behalf of the Town. Mrs. Hill read both the 11/7 and 11/10/03 letters from Mrs. Luckey, which briefly described the proposed work. Mr. Solley said the five existing culverts would be replaced and approximately 1600 feet of the gravel base of the road repaired and asked that an emergency approval be granted. Mr. La Muniere noted the culverts would concentrate the runoff and increase the velocity of the flow and so said the water must be spread out at the discharge points. Mrs. Hill read the 11/12/03 letter from Mr. Kleinberg, who urged a thorough review of the application due to the sensitive environment in this area, the alleged adverse impact caused by the work already completed, and the legal ramifications of the work proposed. Mrs. Hill noted Tinker Hill Road had not been discontinued at the 11/12/03 Town Meeting and issues pertaining to the discontinuance were not under the Commission's jurisdiction. Mr. Picton thought the work proposed was more than routine maintenance. Mr. La Muniere suggested the Commission reinspect the site as there were "extreme" conditions there, much erosion had already occurred, and no engineering report had been submitted. Mr. Solley noted the Board of Selectmen and road foreman had given Mrs. Rhinehart and her contractor approval to begin work so it could be completed before winter. Mrs. Rhinehart spoke of her need to access her property from Tinker Hill Road due to the unacceptable conditions on Perkins Road. Ms. Matteo, adjoining property owner, did not agree this merited emergency action, thought the

work to be done might impact the road's use as a greenway, and feared the change in the drainage due to the culvert work would impact her septic system, which is located next to Tinker Hill Road. She thought a site plan and engineer's report should be required. Mr. Ajello noted at least one of the new pipes, #2, was causing a drainage problem and was cutting a new channel through the area. Mr. Picton noted the Commission must protect the downhill properties and had many questions regarding the drainage. Mrs. Hill asked for an engineered plan, but Mr. Solley said it would be Mrs. Rhinehart's responsibility, not the Town's, to submit it. There was a brief discussion about whether a public hearing was warranted, but it was the consensus this decision could not be made prior to the receipt of a detailed engineer's plan, which would include information on bank stabilization, size of rip rap, culvert sizes, watershed calculations, peak flow rates, proposed grades, etc. Mrs. Hill advised the adjoining property owners that if a public hearing were scheduled, they would be notified.

Other Business

Armstrong/72 Mygatt Road/Request for Transfer of Permit #IW-99-16 and Revision of Permit

Mr. Armstrong was present. Mrs. Hill read the 11/5/03 letter, which requested the transfer of the permit to Mr. Armstrong and Ms. Small and proposed to move the garage to ground level at the side of the house to avoid an 8 ft. cut into the site. Mr. Armstrong said this change would decrease the potential for erosion problems and would assure proper drainage of the driveway. The map, "Subsurface Sewage Disposal System," by Mr. Neff, revised to 11/4/03 was reviewed and compared to the original map dated 11/1/98. It was noted the proposed change to the footprint would bring the garage 12 feet closer to the wetlands on both sides of the house. Drainage on the property was reviewed. Mr. Picton noted the contour lines were shown at the same elevation on both maps and that the limit of clearing would not change due to the relocation of the garage. It was the consensus the revision was relatively minor as it would not require a change in elevation. Mr. Picton asked that the parking area/back up distance out of the garage come no closer to the wetlands and Mr. Armstrong agreed to maintain the setback as shown on the map.

MOTION: To approve the transfer of permit #IW-99-16 for construction of a single family dwelling at 72 Mygatt Road to Mr. Armstrong and Ms. Small and their request to revise the permit to relocate the garage; setback from the wetlands not to be any closer than 12 feet on either side of the building as shown on the map, "Subsurface Sewage Disposal System," by Mr. Neff, revised to 11/4/03. By Ms. Purnell, seconded by Mrs. Gray, and passed 5-0.

New Application

LaVerge/#IW-03-62/228 Bee Brook Road/Stream Crossing

Mrs. LaVerge was present. Mrs. Hill read the 11/7/03 letter submitted with the application. Mrs. LaVerge noted the Commission had granted a permit for the crossing ten years ago, but it had since expired. While she was submitting the same plans with the current application, she said she understood they were now ten years old and was willing to be flexible with the design. Ms. Purnell noted that best management practices for erosion and sedimentation control have changed over the last ten years. Various maps by CCA, Mr. Alex, and Mr. Neff were briefly reviewed. Mr. Picton noted the bridge with concrete abutments was proposed at the wetlands' narrowest point, but that slope stabilization and erosion in non wetlands areas were issues. Mrs. Korzenko asked for a letter from CCA that the original plans submitted meet the new erosion control standards and Mrs. LaVerge agreed to contact the engineers. A site inspection was scheduled for Tuesday, November 18, 2003 at 9:00 a.m. It was thought the Commissioners might have additional questions for the engineers once they had inspected the property.

Pending Applications

Madoff/#IW-02-42/241 West Shore Road/Revision of Permit

Mrs. Hill noted Mrs. Madoff had been sent a letter on 11/5/03 requesting additional information, but that she had not yet responded.

Wadsworth/#IW-03-50/12 Winston Drive/Single Family Dwelling

Mrs. Hill noted the Commission was waiting for information from Mr. Neff, engineer, and that there was only one more meeting within the 65 day time limit. Mr. Ajello was asked to contact Mr. Neff.

Wilson-Marbledale Pub/#IW-03-53 ATF/258 New Milford Turnpike/Septic Repair

Mrs. Hill noted the application had been received at the last meeting, the repairs were required by the Health Department, and the work had already been completed. The system is located under the parking lot.

MOTION: To approve the application, #IW-03-53 ATF, submitted by Ms. Wilson to repair the Marbledale Pub septic system at 258 New Milford Turnpike. By Ms. Purnell, seconded by Mr. Picton, and passed 5-0.

New Applications

Meyers/#IW-03-58/5 West Church Hill Road/Clean Silt Basin**Meyers/#IW-03-59/5 West Church Hill Road/Rebuild Stone Wall**

It was noted an additional \$20 was due for fees and that neither application included a completed "green form." Also, while copies of the 1998 approvals were included, no plans had been submitted. Mr. Ajello was asked to call Mr. Meyers to request a site plan and construction sequence. It was decided to wait for this information before scheduling a site inspection.

Town of Washington/#IW-03-63/59 East Shore Road/Install Fence

Mrs. Hill reviewed the application and hand drawn site plan for a 45 ft. long fence with gate to be located approximately 68 feet from Lake Waramaug. It was thought there would be no impact to the wetlands.

Enforcement

Beck/#IW-02-V1/132 Calhoun Street/Cutting, Clearing in Wetlands

Mr. Ajello contacted Mrs. Beck who reported the invasives would be cut as soon as a qualified person is found to identify them. Mr. Beck was out of town, but will call Mr. Ajello when he returns.

Brown-Longview Landing, Inc./#IW-02-V3/96 Romford Road/Dam Failure

Mrs. Hill read the 10/24/03 and 10/27/03 letters explaining the reasons for the delay in submitting the additional documentation required by the Commission.

Ross/#IW-02-V4/10 Sunny Ridge Road/Wetlands Restoration

Mr. Ross had telephoned the office on 11/3 to report that he was not sure if he would be able to attend the 11/12 meeting and he had not yet received the revised plans from his engineer. It was the consensus that the original enforcement order remains in effect and that Mr. Ajello should write a strong letter to Mr. Ross to advise him that there is a deadline for completing the remediation work required by the Commission and that if this work is not completed to the satisfaction of the Commission, further steps will be taken to compel compliance.

Boies/#IW-03-V7/27 Cook Street/Illegal Deposition, Erosion

Mrs. Hill noted this item had been resolved and could be taken off the agenda.

Levy-Kady/#IW-03-V6/129 Wykeham Road/Deposition In and Near Wetlands

It was the consensus a letter would be sent to the owners that 1) the original enforcement order remains in effect and 2) all the fill placed within 25 feet of the east side of the stream must be removed down to the previous grade. Ms. Purnell thought material deposited on the opposite side should also be removed, but Mrs. Hill pointed out there was no file and no enforcement report on that activity. The letter will also inform the owners they must apply for either an exemption or a permit if they wish to do any other work in this area. Mr. Picton will draft a letter and get it to Mr. Ajello to mail.

Wertheimer/#IW-03-V11/106 Shearer Road/Logging Operation

Mr. Ajello had not yet contacted the caretaker, Mr. Johnson, as requested.

Enforcement Report

Mr. Ajello reviewed his 11/12/03 report. Updates on Fraley/Popple Swamp Road, Guliano/Winston Drive, Hildeman/Popple Swamp Road, Lloyd/Whittlesey Road, Randall/53 River Road, and Miller/Nettleton Hollow Road were included. He also noted he had approved applications submitted by Boies/27 Cook Street for a garage and Hammerstein/27 Scofield Hill Road for a fence.

Administration

Mr. La Muniere announced there would be a seminar on water problems in NW Ct. on Thursday, 11/13 at St. John's parish hall. Speakers from Rivers Alliance and the HVA would be participating.

Those interested in attending were reminded about the annual CACIWAC meeting on 11/15.

Ms. Purnell noted she had spoken with Mr. Martin, Zoning Chairman, and Mr. Canavaro, road foreman, regarding stormwater regulations. She was concerned about runoff being diverted from town roads and from one private property to another and thought this was a continual problem. Mrs. J. Hill noted the Zoning Commission would soon resume work on updating Section 14 of the Zoning Regulations, which would include provisions for managing stormwater runoff.

Mr. La Muniere noted the importance of preserving water quality is stressed in the Plan of Conservation and Development. He asked who was responsible for the testing. Mrs. J. Hill said the 1993 Plan recommended the Conservation Commission be responsible for monitoring water quality, but as far as she knew this had not been done. Ms. Purnell said WEC does limited testing. It was thought WEC and the Conservation Commission should work together to monitor water quality.

Mrs. Hill noted Mrs. Luckey had sent letters to Mrs. D. Hill, Mr. Picton, and Mr. Ajello authorizing them to issue citations under the new fine ordinance.

It was noted all the Commissioners had received the letter from Mrs. Friedman concerning the fine ordinance and the ongoing enforcement efforts by the Wetlands Commission.

Other Business

Sheinfeld/110 Lower Church Hill Road/Conservation Easement

Mrs. Hill said she had received a proposed conservation easement, but that it did not include schedule A on which it was based. She will contact Mr. Sheinfeld to discuss this matter. It was noted both the Wetlands Commission and the Planning Commission must approve the revised mylar before it is filed on the Land Records.

Consideration of the Minutes

The 10/30/03 Site Inspection minutes for both Ficalora applications were accepted as corrected. The spelling of Ficalora was corrected in each and it was noted Mark Picton was spelled with a k not a c.

MOTION: To accept the 10/30/03 Special Meeting minutes for Ficalora - #IW-03-54, Ficalora - #IW-03-55, and Auchincloss - #IW-03-57 as corrected. By Mrs. Hill, seconded by Mr. Picton, and passed 5-0.

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

Mrs. Hill adjourned the meeting at 11:59 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator