

June 16, 2010

Special Meeting – Public Hearing

7:00 p.m. Land Use Meeting Room

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

ALSO PRESENT: Mr. Clark, Mr. Wilson, Atty. Kelly, Mr. Bibb, Atty. Olson

Mr. Bedini called the Special Meeting to order at 7:00 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton.

141 West Shore Road, LLC./141 West Shore Road/#IW-10-22/Repair Septic System, Install Patio and Handicapped Ramp, Reconstruct House, Rebuild Shoreline Wall, Install Dock, Remove Invasives, Control Flooding

Mr. Bedini explained the discussion would be limited to whether the application should be referred to a limnologist for review. He noted the commissioners had not made this decision at the last meeting because they had wanted to inspect the site first.

Mrs. Hill said she wanted the limnologist's review because the application involved a long stretch of shoreline, several questions had been raised, and there are differences in the way the water would hit different types of walls. The other commissioners and alternates did not think the review was necessary. Mr. LaMuniere pointed out that while a limnologist might think it would be better if there was no wall, it had been constructed prior to the adoption of the Regulations, was grandfathered in, and could be rebuilt. Mr. Wadelton agreed, but said the question was, how would the wall be rebuilt. Mr. Bohan said as long as the wall was constructed so it was very similar to the existing wall, it would be OK. He said he had also consulted with Mr. Sabin, landscape architect, about putting in crushed stone behind the wall to improve drainage. Mr. Papsin said the reconstruction plan was good and if the wall was rebuilt in sections as proposed, it would be OK. Ms. Cheney agreed. Mr. Martino deferred to the other commissioners because he had been unable to attend the site inspection.

Mr. Bibb asked if existing walls were automatically grandfathered. Atty. Olson said that general questions would be taken at the following hearing.

MOTION:

Regarding 141 West Shore Road, LLC./141 West Shore Road/#IW-10-22, the Commission feels it does not need to hire a limnologist for an application review.

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

Mrs. Hill voted No for her reasons given above.

Auth/329 West Shore Road/#IW-09-V06/Violation of Permit #IW-10-10

Mr. Bedini noted the purpose of the Public Hearing was to give Mr. Auth and his representatives the opportunity to explain why his permit should not be revoked.

Mr. Wilson, engineer, presented his plan, "Shoreline Improvements," no revision date, but marked received 6/16/10. He said the one revision since the last meeting had been to correct the cross sections. Mr. Wilson said he had understood at the end of the discussion at the last meeting that Mr. Auth and the Commission had come to an agreement and that this agreement is what is represented on the plan. He said he did not agree with several statements in Mr. Ajello's 6/9/10 enforcement report. He stated the following: 1) The 30 ft. width of the project had been included on the sketch map that was part of the

original approval. 2) The 4.8 X 8 ft. stone anchor was “not at variance” with what was approved. 3) There had been no question about the crescent shape of the rocks proposed, which varied from 24 ft. to 26 ft. from the edge of the road, and he circulated photos of the shore at low water to show the location of the rocks. 4) He said at the previous meeting it was agreed there would be a row of stones at the edge of the crescent and he noted these stones were 1.5 feet tall. 5) He pointed out that on the sketch included with the application, which, he said, was formalized at the Commission’s request, the funnel shaped slope between the two docks extended from the back of the lowest course of rocks to the edge of the grass. He stressed that the back of the lowest course of rocks was from the rocks as they now sit and said the intent was to remove all rocks placed above the initial run. 6) What was constructed to date was not a further intrusion into the water, nor was it any higher than the rocks that were in the lake to start. 7) He also stated the slope behind the rocks shown on his revised plan would “eat up” the wave velocity and the slope would not be subject to the force of the ice as it breaks up.

Mr. Bedini stated the entire Commission believed what it had originally approved was a slope going from the grassed area to the base of the lake. He explained that when the EO found a wall being constructed in the water, he stopped the work, and the discussion on how to modify the plan had begun. He noted that the current proposal differs from what the Commission approved in the original permit and so it would like to revoke the permit and let Mr. Auth apply for what he actually wants to do. Mr. Wadelton agreed the work completed to date was not at all what the Commission envisioned. Mrs. Hill agreed with Mr. Wadelton. Mr. LaMuniere agreed the work had not been done according to the approved permit and said the misunderstanding was due in part because Mr. Auth’s plan had no elevations. He said in addition to the plan, the Commission’s approval was also based on the discussion at the meeting. Mr. Papsin and Mr. Bohan agreed with Mr. LaMuniere. Ms. Cheney agreed with Mr. Bedini and said she thought what had been constructed was clearly a build out and she was concerned that if all lakeside property owners did the same, there would be a cumulative impact on the lake. Mr. Martino agreed the work done was not according to the approved permit and noted that in the transcript Mr. Auth asked many times for clarification, which Mr. Martino thought indicated that he had not understood what had been approved.

Atty. Kelly said he had no letter of authorization, but did represent Mr. Auth. He agreed there was a misunderstanding and stressed that Mr. Auth did not think he had exceeded his approval, which was based on his 4/28/10 plan. He noted Mr. Auth clearly understood the Commission did not want the grassed area extended, or a level area constructed, or a build out into the lake. Atty. Kelly thought the Commission determined that the height of the perimeter stones at the edge of the work area exceeded what it had approved. However, he read from Mr. Auth’s plan, which he said the Commission had approved, “Existing stones to be supplemented with large and small natural and native stones...with slope that is natural and consistent with slope of land/grass...” Atty. Kelly thought the misunderstanding was caused in part because the Commission did not know what the natural slope of the grass was, but approved the plan anyway. He said if the Commission intended more of a “hinged” slope with two different slopes, that was not what it approved. He stated that Mr. Auth remembered Mr. Ajello saying the slope would be from the edge of the grass to the lake bottom, but he also remembered that heavy duty stones would be needed at the edge and then it would have to be filled in with rocks from the inside. He read several statements made by Mr. LaMuniere.

Atty. Kelly said he understood part of the misunderstanding was the result of the Commission’s attempts to help Mr. Auth. He asked if the Commission accepted this was an honest misunderstanding, since the project is now unfinished in mid season, would it be willing to delineate the work that was done beyond the permit and authorize Mr. Auth to correct and complete the remainder of the work according to the Commission’s expectations. He noted the Commission could revoke or not revoke the permit, but also had the option of suspending it to allow Mr. Wilson to draft a plan per the

Commission's expectations.

Mr. Bedini noted another aspect that exceeded the approved permit was the building out with rock on both sides of the dock anchor. He said that had never been discussed as part of the application.

Atty. Olson advised the Commission to review its Regulations and then determine 1) if the work exceeded what was granted and 2) if so, are the modifications so significant that a new application is required. She also noted the Commission was not required to make its decision at tonight's meeting.

Mr. LaMuniere noted the Commission had approved a plan without elevations, but also had an understanding of how the work would be done based on the hours of discussion with Mr. Auth. Atty. Olson responded that should the matter go to court, the transcript would be reviewed to determine the Commission's intent.

Mr. Wilson presented a photo taken from the lake of the first row of stones. Mr. Bedini noted none of the commissioners had envisioned the row of stones or the stones on the sides of the anchor block. Atty. Kelly said the stones on the sides of the anchor block were separate from the issue of revocation because they were not part of the original permit, but were added after the fact to address the problem of the two elevations that did not match in the later compromise plan. He also asked at what point stones become a stone wall.

Mr. Bibb stated the Commission had specifically approved a slope down to the bottom of the lake.

Mr. Martino said Mr. Ajello had made it clear the Commission wanted a slope and the Commission had not agreed to Mr. Auth's proposal for a level area between the anchor blocks. He did not know how Mr. Auth got the idea it had. Atty. Kelly responded the concept originated in recognition that two separate elevations were part of the approval.

Atty. Kelly noted that Mr. LaMuniere did not support the stacking of the stones and said Mr. Auth would fix this. He said honest mistakes were made on both sides and so argued that instead of "punishing" Mr. Auth, the Commission should clarify what it approved and instruct him on how to properly complete the work.

Mr. Ajello made several points: 1) The word, punishment, should not be used in the discussion. 2) Mr. Auth can not claim that he has no use of his beach due to the unfinished work because he still has access to the concrete abutment from which he can attach his 360 sq. ft. dock. 3) The Commission had not been discussing the application since February as Mr. Auth claimed; a complete application had been accepted on April 14.

Mr. Bedini was concerned that the modification process had gotten "so mixed up" and preferred a new application and a "clean start."

Mr. Wilson explained the proposed grades in the disputed area between the two docks.

Mr. LaMuniere stated the Commission doesn't allow the extension of land out into the lake and that the shoreline had to be sloped to dissipate the wave action to prevent further erosion. He said instead Mr. Auth had extended the plain of grass and the Commission could not agree to this. Mrs. Hill agreed the slope from the grassed area to the lake bottom had been required.

Mr. Bibb noted he had submitted a petition requesting that a public hearing be held on this matter. Atty. Olson did not agree the petition was relevant, but noted a hearing was now being conducted and he would be permitted to speak. Mr. Bibb pointed out where Mr. Auth proposed to change the contours of the grade of the land. Mr. Wilson agreed the grade might change. Mr. Bibb stated that according to the Zoning Regulations there could be no regrading or recontouring of the Lake Waramaug shoreline and so said the work must be stopped. Atty. Kelly disagreed with Mr. Bibb's interpretation and advised him

to bring it up with the Zoning Commission as it was a zoning matter.

Mr. Bedini asked the commissioners if they had sufficient information to vote on whether or not to revoke the permit. Mr. Wadelton said he was ready to vote.

Mrs. Hill asked if the Commission had considered asking Mr. Auth to request a revision of the permit rather than revoking it and submitting a new application. Mr. Wilson said Mr. Auth had indicated his willingness to do this. Mr. Bedini explained the problem with this approach was that Mr. Auth's understanding of what would be modified was different from the Commission's understanding. Atty. Kelly said Mr. Auth was willing to make modifications based on the Commission's understanding of the approved permit.

Atty. Kelly asked if the Commission would allow larger stones at the perimeter or must they start at the lake bottom and slope up. Mr. Martino said Mr. Ajello made it clear the rocks had to slope up from the lake bottom. Mr. LaMuniere stated the existing jagged rocks had not been sufficient to dissipate the wave action and prevent erosion so a slope of flat rocks from the edge of the grass was needed. He said this had also been discussed on site because the contractor was caught stacking rocks to make a wall.

Atty. Kelly advised the Commission to decide what it approved based on the record, not on its memory, and again said if it would clarify the work it wanted done, Mr. Auth would do it. He read some of the transcript to support his contention that Mr. Auth had been clear that he did not want a slope out to a point at the lake bottom measured 26 feet from the edge of the road and that the Commission had approved the plan, which stated the existing rocks were to be supplemented.

Mr. Kelly noted that if the Commission asked Mr. Auth to submit a new application, it did not know what he might propose. He said he could apply for a wall and bring in an expert who could say it would have no impact to the lake.

Mr. Wilson pointed out that some of the misunderstanding centered around the definition of "level." A brief discussion followed.

Mr. Bedini drew a diagram to illustrate two alternatives for the placement of the stones and slopes in relation to the lake bottom. Mr. Ajello noted there was a third alternative, which was a slope from the grassed area to the lake bottom as had been discussed. Mr. Ajello said Mr. Auth tried to raise the outer height of the stones and that a tremendous increase in volume results when this is done. Mr. Bedini agreed that was a problem.

Atty. Kelly agreed that Mr. Auth had no right to stack the stones, but noted there was a difference between what Mr. Ajello wanted, what was submitted, and what the Commission approved. He again stated Mr. Auth had made it clear he did not want a slope to the bottom of the lake.

Atty. Kelly again asked the Commission to clarify what it had approved and to let the work go forward.

Mr. Wilson stated from an engineering point of view if there was nothing at the edge of the lake, it would invite scouring over time. He said all of the language supported a perimeter that defines the edge of the lake to resist the scouring action of the waves. He also said there had to be something substantial in place to handle the interaction of the waves with the lake bottom. Mr. Ajello responded that Mr. Auth had brought up the issue of scouring under the old concrete abutment, but he had observed that the original concrete pier had been poured on top of rocks and there had been no scouring underneath. He also suggested that rip rap could help prevent erosion, although he said there had been no erosion or apparent movement of stones in the last ten years.

Mr. Bedini again asked the commissioners if they had enough information to make a decision, did they want to revoke the permit and require a new application, or did they want to modify the permit. Mrs. Hill noted per the Regulations, a request by Mr. Auth would be required to modify the permit.

Atty. Kelly said his preference was to have the Commission confirm what it believes it approved, clarify it, and offer the applicant the opportunity to modify the work to meet the Commission's approval. Mr. Wadelton noted the Commission had spent hours at the last meeting trying to accomplish that.

Mr. Bedini noted the commissioners should make their decision based on the record.

There was a brief discussion on what the record was and what the decision had been based on. Atty. Kelly thought the decision had been based on the plans, while Mr. Ajello and Atty. Olson said it was based on the plans, discussion, and anything else in the record that was relied on.

Given the level of misunderstanding, the fact that neither the adjoining town nor adjoining property owners had been notified of the application, and a public hearing had not been held, Mr. Bibb thought the permit should be revoked and a new application submitted.

Mrs. Cheney said she would like time to review the record. Mr. Papsin, Mr. Bohan, and Mr. Martino agreed. Mr. Wadelton said he would go along with the majority.

Atty. Kelly noted the transcripts in the file and asked if they included the entire discussion. Atty. Olson said the transcript was not required at this point, so if there was any part of the discussion not covered by the transcript, the minutes should be reviewed.

Mr. Ajello noted that if the Commission agreed to modify the permit, there would have to be an agreement about what the permit was for, but said this had already been debated for hours without resolution. Mr. LaMuniere and Mr. Bedini agreed that if the Commission decided the permit could be modified, it would have to be absolutely clear what it had originally approved. Atty. Olson explained the public notice had been whether to revoke the permit, not whether to modify it, so the vote should be to revoke or not to revoke.

Mr. Bohan asked if there was a reason the elevation of the new dock anchor block was so high. Mr. Wilson said it was due to the high water mark.

Atty. Olson voiced her concern about including the new plan in the file because it was not part of the record upon which the Commission rendered its approval of the original permit. She said the record should consist of what was in the file up to and including the approval and not what came in after. She reminded the Commission it had to decide whether Mr. Auth had exceeded the permit granted.

Mr. LaMuniere said it was clear to all the commissioners they had not approved a wall or the stacking of stones.

Mr. Bedini noted it was the consensus that more time was needed to review the record and he thought everyone should have a copy of the transcript. Atty. Kelly said to be clear, the transcript is not the entire record and the Commission's decision should be based on the whole record.

Atty. Kelly asked if the Commission voted against revocation, would there be anything to prevent the Commission from instructing Mr. Auth about how to correctly complete the work. Mr. Bedini asked who would determine what was the correct way to do the work. Atty. Olson said the Commission could direct Mr. Auth how to proceed in the form of an enforcement order. She said there was no time limit for deciding on revocation, so the Commission could issue an order directing Mr. Auth to do certain work within a specific time frame and if it wasn't satisfactorily completed within that time, the Commission could then revoke the permit. Mr. Bedini said he liked this approach. Mr. Ajello noted that if an enforcement order was issued, a show cause hearing would have to be held.

Mr. Bedini asked the commissioners to review the transcript and file before the next meeting, which would be a Special Meeting held on Wednesday, June 23, 2010 at 7:00 p.m.

MOTION:

To adjourn the hearing to consider Auth/329 West Shore Road/whether or not to revoke Permit #IW-10-10.

By Mrs. Hill.

Mr. Bedini adjourned the hearing at 9:03 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Administrator