

January 13, 2010

Public Hearing – Regular Meeting

5:00 p.m., Land Use Meeting Room

MEMBERS PRESENT: Mr. Bedini, Mrs. Hill, Mr. LaMuniere

MEMBER ABSENT: Mr. Bohan

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

ALSO PRESENT: Mr. Sonder, Mr. Trinkaus, Mr. Boling, Mrs. Canning, Mr. Charles, Mr. Wadelton, Mr. Meyer, Mr./Mrs. Condon, Ms. Johnson, Mr. Dunbar, Residents

PUBLIC HEARING

Straw Man, LLC./135 Bee Brook Road (Juniper Meadow Road)/#IW-09-44 /Construct Bridge and Driveway

Mr. Bedini called the public hearing to order at 5:03 p.m. and seated Members Bedini, Hill, and LaMuniere. He noted Mr. Wadelton had recused himself. He then read the legal notice that was published in Voices on 12/30/09 and 1/10/10. Mrs. J. Hill read the list of documents in the file.

Mr. Bedini asked if the \$250 public hearing fee and the consulting bond had been received. Mrs. J. Hill said they had not. Mr. Charles submitted a check for \$250 and said the \$4950 consulting bond would be submitted the next day.

Mr. Sonder read part of the 12/09/09 minutes and noted the options the Commission had regarding opening and closing of the hearing if the applicant did not post the consulting bond. He stated he wanted the consulting engineer's report in the file before the start of the hearing so that he and his consultants would have an opportunity to review it and comment on it first. He thought without the consultant's review, the Commission would not be in a fully informed position to consider the applicant's presentation. Mr. Bedini responded that ideally the consultant's review would have been available prior to the start of the hearing, but that the hearing would be opened, the applicant's presentation made, and all the information referred to Milone and MacBroom as soon as the bond was paid. Mr. Sonder said that he had prepared an extensive review of the application, that his engineer still had disagreements with the applicant's proposal, that an independent engineering review was necessary, and he had wanted his engineer present for the presentation of the application, but had thought from reading the minutes, that this would not take place until the Milone and MacBroom report had been received. He also wanted to make sure his engineer, Mr. Battista, would have an opportunity to respond to the consultant's report.

Mr. Bedini stated that having differing views from engineers was common, that the Commission would make the final decision regarding whether the applicant's proposal was adequate, and the Commission would proceed with the hearing.

Mr. LaMuniere said the Commission would strive to learn as much about the application as it could and would not make a decision until the consulting engineering report was in.

Mr. Boling noted the public hearing was being held to consider the application for a driveway and bridge to access the 13+ acre interior lot over the only legal access to the lot. He said there was no development plan for the property at this time. He explained the 24 ft. wide bridge was proposed because it was the minimum width recommended for safety by the Fire Department. He also noted that Mr. Trinkaus' 12/16/09 report responded to both the issues raised at the site inspection and to those raised by Mr. Battista in the 11/22/09 review from Lenard Engineering.

Mr. Trinkaus, engineer, presented his map, "Wetlands Crossing for Access Driveway," revised to 12/20/09. He pointed out Chaple Brook and the two small wetland areas, which had been delineated by Mr. Miles of Arthur H. Howland and Assoc. in the vicinity of the proposed crossing. An 18 ft. wide gravel driveway and 24 ft. wide concrete deck bridge were proposed. He noted the portion of the driveway on the far side of the brook would be paved due to the steep grade. He explained why it was best to cross at the narrowest point and the limited impact development (LID) concepts he proposed to implement. These included swales with check dams, a level spreader outletting towards the brook, and a diversion swale along the stonewall. Mr. Trinkaus explained he had originally proposed a bridge with a 20 ft. span, but due to concerns raised by Mr. Battista and Mr. LaMuniere, he had lengthened it. The abutments had been pulled back, but the elevation had not changed.

Mr. Trinkaus responded to many of the points raised in Mr. Battista's review including 1) the excavated trench was defined as three feet on either side of the abutment, 2) he pointed out two lines of erosion control measures; silt fence and wattles, 3) he discussed how the abutments could be dug out with a small excavator from the opposite side of the stream, 4) a complete erosion control plan was included on Sheet #4 of the plans, 5) only the bridge and the driveway were being applied for, the applicant would have to return to the Commission for any other future activities, 6) the applicant could not delineate the wetlands on the Bee Brook Condo property without permission of the property owner, 7) there were no wetlands within 100 feet of the proposed activity on the east side of Chaple Brook, 8) the soil types at the site and their characteristics were described, 9) all finished contours had been labeled, 10) all typical cross sections had been provided, and 11) Mr. Trinkaus detailed the wetlands crossing; geotextile fabric would be put down and stones placed on top so the wetlands could be crossed without compacting their soils. Also, 12) he said a map of such a small watershed was not necessary because only one side of the driveway would drain into the wetlands and the proposed swale would slow the flow of the runoff to a non erosive velocity, 13) the proposed PVC pipes would handle both 2 year and 10 year storm events, 14) the downhill edge of the swale was not weak and would not fail and since it is an engineered swale, 2:1 side slopes can be used, 15) the area near the existing septic system could be regraded, but this was not proposed in order to save the existing trees, and 16) the submitted bridge design is conceptual; more specific drawings would be submitted if the application is approved, but the walls and footings for the bridge would not change. In addition, in response to a concern about downstream flooding, Mr. Trinkaus stated the channel would not be altered and that Chaple Brook is located in Zone X with no defined flood boundaries specified. He stated that flood levels in the brook would be well below the bottom of the bridge's steel beam and that scour analysis of the channel was not required because the abutments would be located completely outside the stream. Regarding feasible and prudent alternatives, Mr. Trinkaus stated the crossing was proposed within the legal right of way and that using any type of culvert would impact the channel, whereas the bridge would have no long term impacts. He noted that filling in the wetlands was unavoidable since the crossing had to be in the right of way and that the crossing was at the narrowest section of the channel and could not be moved due to property lines and steep slopes. Mr. Trinkaus read section 22a-367 and other sections of the CGS to respond to Mr. Battista's concerns about water diversion, stating that by definition, the applicant was not moving water from one location to another and to show that since less than 5000 sq. ft. would be disturbed, review by the Army Corps of Engineers was not required.

Mr. Bedini asked how close the bridge abutments would be to the stream. Mr. Trinkaus stated that on the east side they would average 12 ft from the stream and on the west side, about 8 to 12 ft. from the stream on the west side. He added that the abutments would be 4 ft. below the existing grade.

Mr. Bedini asked if the space between the streambed and the excavated area would be protected. Mr. Trinkaus said, yes, with two rows of erosion control barriers.

Mr. LaMuniere read from the 1/13/10 letter from Atty. Yoxall, which stated there were feasible and

prudent alternatives, which would have less impact. Mr. Trinkaus disagreed, saying that the proposed plan would have the least impact because the other alternatives would significantly impact the bottom of the channel or require more filling of the wetlands.

Mr. Bedini asked the applicant to submit a written review of the feasible and prudent alternatives and why each had been proposed or eliminated.

Mr. Dunbar said he was concerned about what would happen during a heavy rainfall as in the past there had been flooding, which had eroded the east bank and had required fill for repairs. He thought the runoff from a paved driveway would aggravate the situation. Mr. Trinkaus noted the specific LID techniques he would utilize for stormwater management and explained since they would enable the runoff to infiltrate into the ground, it would not contribute to flooding or erosion. He stated this project would not change the flow characteristics in the stream.

Mr. Bedini asked about the soil types in the crossing area. Mr. Trinkaus said they were Charlton soils, which were good infiltrating soils.

Mr. Meyer asked if the stormwater management system would require maintenance. Mr. Trinkaus stated that annual maintenance would be needed and the grass in the swale would have to be cut. He said it would require less maintenance than would catch basins and culverts.

Mr. Sonder asked what would keep the check dams in place when the road was plowed. Mr. Trinkaus drew a diagram and said the plows would not be near the check dams.

Ms. Johnson asked if the proposed bridge would be suitable for a subdivision and if it would meet the state safety requirements. Mr. Trinkaus said it would.

Mr. Sonder said he did not agree that there were no feasible and prudent alternatives and he also disagreed with many of Mr. Trinkaus' technical statements. He said a narrower bridge would result in less impact to the brook and wetlands and there was no evidence presented that an 18 ft. wide driveway was needed to access the property. He said, too, that the proposed 3000 sq. ft. of wetlands filling could be reduced if the driveway width was reduced to 10 ft. He urged the Commission to approve the alternative with the least impact.

Mr. Bedini advised Mr. Sonder that it was not sufficient to say the proposed activity would have an adverse impact, specific information showing how the brook and wetlands would be impacted was required. Mr. LaMunier noted that recent Supreme Court decisions required evidence of negative impact to the physical character of the wetlands. Mr. Sonder said he would provide details.

Mr. Sonder also spoke of a disparity between Mr. Trinkaus' drawings and what would happen on site in reality. He said the plans actually showed a 50 ft. wide swath of clearing to accommodate such a wide driveway and side slopes of 6%, not 2% as Mr. Trinkaus claimed. He said he did not believe the project as proposed would "work properly." Mr. Bedini asked Mr. Sonder to submit all of his concerns in writing.

Mr. Meyer voiced his concern about the good intentions of the applicant and asked the Commission to diligently review the plans.

Regarding the proposed width of the driveway, Mr. Trinkaus stated it was not yet known how the property would be developed, and if a single dwelling would be constructed, a narrower driveway would be installed. He also noted that if the owner decided to put the property under a conservation easement, a 12 ft. wide driveway might not be sufficient for IRS tax deduction purposes. He assured the Commission an 18 ft. wide driveway to nowhere would not be built.

Mr. Bedini noted the time constraints for consideration of the application per state statute and again

asked the applicant to post the consulting bond as soon as possible.

Mr. Charles responded to several points in the 11/22/09 letter from Lenard Engineering. He noted the photo submitted of flooding was of an area 800 feet below the proposed stream crossing. Regarding Mr. Battista's concern about the septic system, Mr. Charles stated there was no as-built for that system in the Health Dept. file, but if it had been installed as proposed, there would be no problem. He also noted the retaining wall was proposed so that more trees could be preserved.

Mr. Sonder read a portion of the 11/24/09 minutes and said information to tie together all of the soils reports had not been submitted as required. Mr. Bedini responded that if all of the required information was not submitted, the application would be denied for lack of information.

Mr. Bedini continued the public hearing to Wednesday, January 20, 2010 at 5:00 p.m. in the Land Use Meeting Room.

This public hearing was recorded. The audio is available to the public upon request.

REGULAR MEETING

MEMBERS PRESENT: Mr. Bedini, Mr. Bohan, Mrs. Hill, Mr. LaMunier

MEMBER ABSENT: Mr. Waderton

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

ALSO PRESENT: Mr. Papsin, Ms. Turozi, Mr. Rieffenhauser, Mr. Weaver, Mr. Nettleton, Mr. Neff, Mr. Sonder

Mr. Bedini called the Meeting to order at 7:03 p.m. and seated Members Bedini, Bohan, Hill, and LaMunier.

MOTION:

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

V. New Applications:

C. Lyons-Gray/82 Old Litchfield Road/#IW-10-03/Remove Invasives and Other Vegetation,

VIII. Administrative Business:

D. Workshops,

E. 2010-2011 Budget.

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

Consideration of the Minutes

The 12/9/09 Regular Meeting minutes were accepted as corrected.

Page 1: Add to those present: Mr. and Mrs. Johnson

Page 4: Under Long: Line 4: Change: "recommendations" to "observations."

Page 5: Under Spring Hill: Line 2: Change: "discussion" to "observations."

Under Spring Hill: Line 18: Insert: "utility" before "pole."

Page 10: Line 24: Insert: "for all planting areas" after "plan."

MOTION:

To accept the 12/9/09 Regular Meeting minutes as corrected.

By Mr. Bedini, seconded by Mrs. Hill, and passed 4-0.

The 12/22/09 Special Meeting minutes were accepted as amended.

Page 1: Line 1: Insert: "vice chairman" after "Mr. Waderton."

Page 1: last line: Change: "construction" to "building reconstruction."

MOTION: To accept the 12/22/09 Special Meeting minutes as amended. By Mr. Bedini, seconded by Mrs. Hill, and passed 3-0-1. Mr. Bedini abstained because he had not been present at the meeting.

Pending Application

Straw Man, LLC./135 Bee Brook Road/#IW-09-44/Bridge, Driveway:

The public hearing was continued to Wednesday, January 20, 2010 at 5:00 p.m. in the Land Use Meeting Room.

New Applications

Rowe/44 Kielwasser Road/#IW-10-01/Resubdivision Feasibility:

Mr. Neff, engineer, represented the property owner. The map was reviewed. Mr. Neff explained a 5.33 acre lot was proposed. He pointed out feasible sites for a house, well, and septic system and the location of wetlands down grade of the proposed development area. He noted no activities were proposed within 100 feet of the wetlands and no tree cutting would be required to build the house. The curb cut to the existing house would be shared. He also noted the farm road shown on the plan was existing and was used for maintenance. Again it was noted this plan was for feasibility only; no development was proposed at this time and there was no need for a site inspection.

MOTION:

To approve Application #IW-10-01 submitted by Mrs. Rowe for the feasibility of a one lot resubdivision at 44 Kielwasser Road.

By Mr. Bedini, seconded by Mr. LaMunier, passed 4-0.

Nettleton/81 Painter Ridge Road/#IW-10-02/2 Lot Subdivision, Upgrade Driveway, Install Conduit:

Mr. Rieffenhauser, engineer, presented the plan, "Nettleton Subdivision," 4 sheets, by Smith and Company, dated 12/16/09. He proposed to create a 12.19 acre lot from the existing 17.24 acre parcel with dwelling. The existing driveway would be extended and paved due to steep grades and used to access the development site in the western portion of the proposed lot. Underground utilities were also proposed in a conduit that would run down the centerline of the driveway. Mr. Rieffenhauser noted that 65 feet of the driveway would be in the regulated area and that no other regulated activities were proposed. Mr. Ajello noted the existing wetlands crossing is narrow and would have to be widened for the installation of the driveway. Mr. Rieffenhauser showed the driveway design that had been done several years ago and said the stone envelope and pipe beneath the driveway had already been installed. Mr. Ajello thought a section of the driveway might exceed the 15% grade permitted. Mr. Rieffenhauser said he would investigate. Mr. Nettleton noted a conservation easement would be placed on the property. Mr. Rieffenhauser responded to the application review dated 1/13/09. He said Mr. Nettleton was the property owner and there were no feasible and prudent alternatives as the driveway was already in place. A site inspection was scheduled for Tuesday, January 19, 2010 at 3:00 p.m.

Lyons-Gray/82 Old Litchfield Road/#IW-10-03/Removal of Vegetation:

Mr. Neff, engineer, presented his plan, "Invasive Vegetation Removal Plan," dated 12/6/09. He pointed out the locations where limbs would be cut from trees, two dead trees removed, invasive species removed, and where the wetlands had been flagged. He noted the invasives would be cut in a 2 to 3 acre area along the entire edge of the property and that a stonewall existed between the wetlands and the work zone. Mr. Neff stated the invasives would be removed by hand in the regulated area. Mrs. D. Hill asked if native vegetation would be left in place. Mr. Neff said some of it would remain. Mr. LaMunier asked for a map showing the exact size and location of the area where the invasives would be removed. Mr. Ajello was concerned that native plants would be removed as well as invasives, especially because there was no limit line shown on the map and no person specified who would be in charge of the work. Mr. LaMunier said the work crew must have a capable supervisor who can

differentiate the invasive from the native plants. Mr. Neff offered to have the plants to be removed marked in the field by an expert before the work begins or to note on the plan that the invasive plants must be identified before the cutting begins. Mr. Ajello noted that the applicant proposed to do this work in the winter when it was more difficult to distinguish native from invasive plants, and that no planting was proposed. Mr. Bedini stated that if the land is clearcut, the owner will be required to properly restore the land. Mr. Neff said he had informed the owner that clearcutting is not an option. Mr. Ajello suggested he meet on site with the supervisor before any work begins. Further discussion will take place at the next meeting.

Enforcement

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

Ms. Turozi, agent, circulated aerial photos of the property, and pointed out the section between the road and the lake where the clearing had occurred. She noted there were invasives in the area and that the owner had cut down a Norway maple that had ended up in the lake. She submitted a written statement with site plan dated 1/12/10, in which described Mr. Weaver's goal to remove the non native plants and to replace them with minimal soil disturbance. Several photos of the plants now on site were reviewed. Mr. Bedini asked how the plants would be removed. Ms. Turozi said the trees would be girdled so when dead they would provide wildlife habitat. She stated that only the trees that were potential safety hazards would be removed. Mr. Ajello said he had consulted with the DOT who maintained that Mr. Weaver had no control over the property and the Commission could not approve his proposal because it was almost entirely within the state right of way. Ms. Turozi said she would try to get permission from the DOT and then return to the Commission with an application.

Other Business

Possible Impact of Rt. 109, New Milford, Walker Brook Subdivision on Walker Brook:

Mrs. J. Hill said she had called Hydro Technologies as had been discussed at the last meeting, and was still waiting for them to get back to her with the information she requested. She will contact them again and report back at the next meeting.

Enforcement Report

Auth/329 West Shore Road/Utility Trench:

The work has been completed.

Andersson/35-45 Gunn Hill Road:

The stonewall work has been completed.

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

Ms. Brose has not yet returned Mr. Ajello's phone call regarding agreement to the proposed restoration plan, which includes the removal of the stone patio and lower stairs. He said if she refuses the settlement offer, he will forward the matter to Atty. Zizka to begin enforcement proceedings.

Charvillat/96 Roxbury Road:

Mrs. Charvillat did not respond to Mr. Ajello's October letter. He was directed to send another letter and if this one is not answered, to issue a notice of violation.

Delancy/79 Litchfield Turnpike/#IW-09-V6:

It was noted that Mr. Delancy was not in attendance and had not submitted the documentation that had been requested at the last meeting. Mr. Bedini noted Mr. Delancy had to prove to the Commission that

he would actually farm the property. Mr. Ajello recommended the commissioners read the article on farming exemptions in the latest issue of The Habitat.

Donovan/53 Kinney Hill Road:

The piers for the deck are in.

King/153 Lower Church Hill Road:

An application to dredge the pond and remove invasives is expected.

Molinari/59 South Fenn Hill Road:

Mr. Molinari cleared some of his neighbor's property, but did not do extensive damage.

Moriniere/22 Wheaton Road:

Work to reconstruct the dwelling has begun and an application for a drainage system is expected.

Rosen/304 Nettleton Hollow Road/#IW-08-V2:

The Army Corps of Engineers sent another enforcement letter to Mr. Rosen.

Showah/311 Bee Brook Road/#IW-09-V2:

Mr. Ajello sent Mrs. Showah an application for an exemption, but she has not yet responded.

Washington Partners, LLC./108 New Milford Turnpike:

The clean up work continues as there was more debris on site than expected.

Weaver/176 East Shore Road:

It was decided to wait and see whether Mr. Auth returns to the Commission with an application before deciding whether to fine him.

Angell/47 West Shore Road/#IW-09-V1:

Mr. Angell paid his citation, but has not yet submitted an application.

Administrative Business

Education:

Mr. Bedini said he had contacted Atty. Branse to see if he would be willing to address the Commission on various issues such as creating the record, public hearing procedure, avoiding court, etc. and Atty. Branse had written that the Ct. Bar Assoc. provides speakers for no charge. After hearing suggestions from the commissioners, Mr. Bedini said he would try to schedule a speaker on these issues: creating the record, public hearing procedures, agricultural exemptions, and plant and animal inventories. There was a brief discussion about whether to invite wetlands commissions from other towns, but it was thought that the fewer people in attendance, the more specific the issues that could be addressed.

Public Hearing Procedures:

Mrs. Hill circulated her document, dated 1/12/10 regarding public hearing policies with an attached newspaper article regarding creative thinking for problem solving.

Criteria for Consulting Reviews:

Mr. LaMuniere noted a consultant must be given specific questions/issues to address. Mr. Bedini agreed and stated these would include short and long term impacts and feasible and prudent alternatives and their impact on the physical character of the wetlands. Specifically regarding Straw Man, LLC., the commissioners were asked to write down any questions they had for Milone and MacBroom and to get them to Mrs. J. Hill as soon as possible.

MOTION:

To go into Executive Session at 9:32 p.m. to discuss pending litigation:
the Brown and Peacocke appeals.

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

MOTION:

To end Executive Session at 9:42 p.m.

By Mr. LaMunier, seconded by Mrs. Hill, and passed 4-0.

MOTION:

To adjourn the Meeting. By Mr. LaMunier.

Mr. Bedini adjourned the meeting at 9:42 p.m. FILED SUBJECT TO APPROVAL

Respectfully submitted,

By Janet M. Hill, Land Use Administrator