

# May 26, 2010

7:30 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:** Mrs. Keating, Mr. Gambino, Mr. Gabrenas, Mr. Neff, Mr. Cheney, Mr. Bibb, Mr. Auth, Mr. Wilson, Ms. Wang, Ms. Wang's contractor

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

**MOTION:**

To add the following subsequent business to the agenda:

V. New Applications; B. Sachs/35 Potash Hill Road/#IW-10-19/Drainage Repairs.

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

## **Consideration of the Minutes**

The 5/12/10 Regular Meeting minutes were accepted as corrected.

Page 8: Under King: This sentence was changed to: Mr. Ajello... and the burn area would be located where the dredged material would eventually be deposited."

**MOTION:**

To accept the 5/12/10 Regular Meeting minutes as corrected.

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

## **Pending Applications**

Lake Waramaug Country Club/314 West Shore Road/#IW-10-15/Deposit Beach Sand, Improve Drainage:

Mr. Gabrenas, superintendent, presented a construction sequence and diagram of the proposed work, entitled, "Beach Sand Proposal." This illustrated what had been discussed at the last meeting. Mr. Gabrenas said approximately 4 inches of sand would be placed on the beach and it would be pushed up as close as possible to the existing grass. He said he hoped with the implementation of the drainage improvements that the sand would last 5 years. The construction of the berm and swale were briefly discussed. It was noted that all of the material requested at the last meeting had been submitted.

**MOTION:**

To approve Application #IW-10-15 submitted by the Lake Waramaug Country Club to deposit beach sand and improve drainage at 314 West Shore Road.

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

The permit is valid for two years.

Mnuchin/210 Nettleton Hollow Road/#IW-10-16/Aquatic Herbicide Application:

Mr. Gambino, agent, reported to the Commission on questions raised at the last meeting. Artistic Irrigation agreed to install a sleeve on the out flow pipe so the herbicide would be contained in the pond. Mr. Gambino said the orchard was fertilized every other year in the fall and the sloping lawn was done every year. He noted there was a vegetated buffer between the lawn and the pond. To reduce the nutrients reaching the pond, Mr. Ajello suggested that no fertilizer be applied within 50 feet of the pond and noted that because the land slopes, some of it would be carried down to the lower lawn area

anyway. In response to questions from Ms. Cheney, Mr. Gambino explained that 25% of the pond is affected by watershield, Rodeo is applied directly to its leaves, and that what he can't reach by boat, he applies from the shore. Water testing was briefly discussed. Mr. Gambino stated he did not think the removal of the mass of dead plants was viable and said they would sink to the pond bottom. It was noted that Mrs. Corrigan's report and the 5/18/10 approval letter from Steep Rock, holder of the conservation easement, were in the file. Mr. Gambino said he also submitted an info sheet on copper sulphate as requested. He said he would not use Diquat, although he had listed it on the state application form. Mr. Wadelton objected to the inclusion of Diquat on the application, saying he wanted to see a definite need for each specific chemical listed. When it was suggested that Diquat be crossed off the local application, Mr. Gambino said the Commission did not have the authority to require this be done. Mr. Gambino reviewed the specific amounts of Rodeo and copper sulphate that would be used.

**MOTION:**

To approve Application #IW-10-16 submitted by Mr. Mnuchin to apply herbicide to his pond at 218 Nettleton Hollow Road subject to the following conditions:

1. only Rodeo and copper sulphate may be used,
2. a sleeve will be installed on the outlet pipe before application of the herbicide to ensure there will be no egress from the pond during the application.

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

A two year permit was approved.

Griffin/199 West Shore Road/#IW-10-17/Install Curtain Drain, Repair Retaining Wall:

Mr. Cheney, agent, presented the revised plan, "Drainage Remediation Plan," by Ronald Wolff Assoc., which showed the limit of disturbance and noted the entire property was within the review area. Regarding whether alternate methods to correct the drainage problem were considered, Mr. Cheney stated the state DOT had ordered the owner to deal with the problem immediately and had recommended swales. However, after meeting with the Town and gathering field evidence, he had decided to limit the impact to the banks of the intermittent stream and so he thought this proposal was the best approach. He noted he would supervise the work on site. He put a revision date on the map just submitted. Mr. Ajello said he had inspected the site and the application was straightforward. Mr. Cheney said he understood that Mr. Ajello had to inspect the erosion controls before work on the project could begin.

**MOTION:**

To approve Application #IW-10-17 submitted by Mr. Griffin to install a curtain drain and repair the retaining wall at 199 West Shore Road per the plan, "Drainage Remediation Plan," by Ronald Wolff Assoc., revised to 5/26/10.

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

**New Applications**

Keating/56 Tinker Hill Road/#IW-10-18/Repair Dock and Stairs, Install Anchor Block:

Mrs. Keating presented photos of her existing floating dock, stairs, and shoreline stones and submitted the signed conservation easement form. She proposed to repair the stairway, not changing its dimensions, and to pour a 4' X 6' concrete pier from which to attach the floating dock. As an alternative, she said she had tried to build up the stones at the bottom of the stairs, but that had not worked. The map, "Map Prepared for William Robert Byrne and Jeanne F. Byrne, dated June 1982 (Map #685 in the Town Land Records) and hand drawn construction plans by Mr. Green were reviewed. Mrs. Keating noted that the slope of the lake bottom was exaggerated in the drawing. Mr. LaMunier noted that pressure treated lumber could not be used for the entire stairway. Mrs. Hill asked

Mrs. Keating to check with the Assessor's Office for the correct street address of the lake front property. Mr. Ajello thought the proposed concrete pier looked like a build out into the lake and asked if it could be set back into the hillside. Mrs. Hill countered that moving the pier back into the hillside would cause more impact to the shoreline and so recommended a site inspection. The inspection was scheduled for Tuesday, June 8, 2010 at 4:30 p.m. Mrs. Keating said she would consult with her contractor to find out if it would be possible to move the pier back or if not, to make it smaller.

Sachs/35 Potash Hill Road/#IW-10-19/Drainage Repairs:

Mr. Neff, engineer, represented the applicant. The "Drainage Repair Plan," by Mr. Neff, dated 4/30/10 was reviewed. Mr. Neff explained the erosion at the inlet to the pond was caused by water flowing overland and bypassing the pipe to the pond. He proposed to construct a silt basin at the pipe inlet, channel the water through the pipe, and install rip rap on the steep bank at the pond inlet. He noted the work would take only one day and that the sequence of construction and project narrative were included on the plan. A site inspection was scheduled for June 8, 2010 at 5:00 p.m.

**Enforcement**

Andersson/Gunn Hill Road:

Mr. Ajello said that Land Tech would oversee the restoration work to be done this summer.

Brose/213 Roxbury Road:

Mrs. Brose will soon finalize her plans and give the Commission a date for the commencement of the ordered restoration work.

Chatfield/Tinker Hill Road:

Mr. Ajello said Mr. Chatfield had been advised there could be no soil disturbance until plans for this lot were completed.

Community table/223 Litchfield Turnpike:

Mr. Ajello said the site was in good shape, but the grass was not up yet.

Delancy/7 New Milford Turnpike:

Ms. Cheney and Mr. Bohan reported that all of the wood chips had been taken out.

Devereux Glenholme School/81 Sabbaday Lane:

The unauthorized excavation had been discussed at the last meeting. An application had been expected for this meeting, but was not submitted.

Town of Washington/16 Titus Road:

The rough grading within 125 feet of the river has been finished and a lot of the material was moved off site.

Weaver/176 West Shore Road:

Mr. Ajello met with Mr. Weaver on site a month ago, but he has not contacted the Office since.

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

Mr. Auth noted that Mr. Ajello had ordered him to stop the work in progress along his shoreline, but he insisted it was being done according to his approved permit. A very lengthy discussion ensued. Mr. Auth read from his application form and from sections of the 4/14/10 and 4/28/10 meeting transcripts to support his claim that he had never agreed to construct a ramp down to the water and that what he was building; a level grassed area out to the edge of a vertical wall along the shore, was what the Commission had approved. He also stated that Dr. Kortmann's statements made at the February 2009 Special Meeting were supportive of this type of shoreline structure, that it was what he wanted because it was "uniform," safe, and looked good, and he questioned why the wall he was building was

significant and what the negative impact to the lake would be. He also referred to his hand drawn sketch, which was in the file and which showed a vertical stone wall. The Commission and Mr. Ajello also referred to the transcripts to support their belief that a gradual slope from the edge of the grass to the bottom of the lake was what had been approved. They noted that when shown a photo of a similar ramp, Mr. Auth had not stated he did not want a ramp, but had said he wanted to use larger stones. They noted the idea was not to extend the property into the lake, but to dissipate wave action and stop erosion. Several of the commissioners thought Mr. Auth was building out into the lake, an activity, they said, which they would not have approved. Mr. Bedini noted that Dr. Kortmann had presented general information during his 2009 presentation and that since the different areas of the lake vary, the points he made at that time were not specific to this matter. It was noted that Mr. Auth had omitted the vertical wall when he submitted his revised drawing and so the commissioners had thought it was no longer included in the plans. Mr. Wadelton pointed out that the commissioners unanimously agreed that the work Mr. Auth had done on site was in violation of his approved permit because what had been approved was the installation of stones that would gradually slope down to a point at the bottom of the lake measured 26 feet from the edge of the road and what was not approved was building out the property so that it was level out to a point measured 26 ft. from the pavement and then building a vertical stone wall at the grassed edge. Mr. Wilson, engineer, spoke on behalf of Mr. Auth. He discussed conditions at the high and low water levels, and said that Mr. Auth had not extended the shoreline at low water. Mr. Auth asked again what the harm of a vertical wall was. Mr. Martino responded that if one was approved, many lake front owners would want similar walls and Mrs. J. Hill advised him that the Commission was in court over the extension of a vertical shoreline wall on the Brown property. Mr. Wilson stated that the wall was needed to protect the shoreline from scouring during high wave action, but Mr. Ajello countered that an existing stone ramp in Warren effectively absorbs the impact of the waves. Mr. Ajello said the base rock that had been moved too far out into the lake should be removed, but Mr. Wilson thought it would not be wise to disturb the lake bottom. Mr. Wilson briefly described a compromise plan and left the table with Mr. Auth to sketch it so it could be discussed later in the meeting.

Wang/110 Blackville Road/#IW-09-V07/Unauthorized Clearing and Driveway:

Mrs. Wang said that she had decided to clear the vegetation to "clean up" the area near the brook and had also removed a fallen tree from the brook. She said she had no idea a permit was required. Mr. Ajello circulated photos of the new driveway, cleared area, and pile of debris. Mr. Bedini explained it is the responsibility of the property owner to know the regulations and that the area within 100 feet of a wetlands or watercourse is regulated. The contractor said the roots had not been disturbed and the plants would grow back. Mr. Ajello spoke of the importance of the canopy to provide shade in the wetlands and advised the owner that invasive species take over when an area is cleared like this one was. Mr. Ajello noted the pile of debris was 10 to 20 feet from the stream. Mr. Bedini pointed out tire tracks; evidence that machines had operated in the stream, and said this was a blatant violation. Mr. Ajello said he had asked that the disturbed areas be mulched because storms were forecast, and the contractor said this had been done. A site inspection was scheduled for Tuesday, June 8, 2010 at 5:30 p.m. and Mrs. Wang was advised this matter would be discussed again at the next meeting.

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

Mr. Auth and Mr. Wilson returned to discuss the sketch dated 5/26/10 drawn by Mr. Wilson. He proposed to keep the existing bottom line of boulders in the lake and begin a slope in the shape of a funnel from the top of the boulders back to the elevation of the existing grass. Mr. Ajello pointed out that the line of boulders was three stones high and that they had been brought further out into the lake. Mr. Wilson said the stones would be sloped, not stacked. Mr. Ajello said there would still be a one foot wall at the water level and he did not think this was consistent with the Commission's policy around the lake. Mr. Bibb thought this was filling in the lake, saying that the new wall was beyond the old

waterline. Mr. LaMuniere asked why there could not be a gentle slope up on both sides of the property. Mr. Wilson said this was due to the location of the tree and large rock. Mr. Ajello stated the Commission had approved sloped stones from the edge of the existing grass to the lake bottom, whereas this sketch showed the slope to one foot above water level, and a 5 ft. anchor had been approved, but in the sketch it had been enlarged to 7 to 8 feet with built up sides. Mr. Wilson noted his sketch was not to scale and said he would work to move the slope back. Mr. Ajello noted that at low water the stones would act as a wall and would be a build out. Several commissioners expressed the view that while they were not happy the sketch would allow some build out into the lake, they did think it was a compromise plan. Mr. Bibb asked that a limnologist review the plan. Mr. Bedini said if this had been a new application, a review by a limnologist and engineered plans would have been required, but he thought this was a reasonable compromise. However, he advised Mr. Auth that a formal engineered drawing with accurate measurements was required. He advised Mr. Auth that work could not continue until the new plans were submitted. Mr. Martino asked that a side view and contours be included in the revised plan. Mr. Bibb stated that he was aggrieved because the bordering town of Kent had not been notified of the application. Mr. Ajello noted the application form states the applicant must notify the adjoining town if it is within 500 feet of the subject property, but that neither Kent nor Warren had been notified. Mrs. J. Hill said according to research by Mr. Ajello, the lack of notification did not legally void the Commission's decision. Mr. Bibb said he would contact his attorney regarding this issue and Mrs. J. Hill said she would refer any correspondence about it to the Commission's attorney.

### **Administrative Business**

Referring to the Auth violation, several points were made. Mr. Ajello thought a Cease and Desist Order could have been issued with directions to restore the shoreline to its original condition and it would have been upheld in court. Mrs. J. Hill recommended that in the future when considering applications for shoreline work, the Commission reference Dr. Kortmann's studies for the record. Mr. Martino suggested the Commission draw up a checklist of requirements that would include limnologist review, engineered drawings, elevations that determine slope, set pin, etc. for applications for shoreline work. Mr. LaMuniere stressed the Commission must be very specific in its approval motions. Mrs. J. Hill also thought the Commission should stop designing for applicants and should deny those that don't meet the Regulations instead of redesigning plans.

### **Application of Herbicides:**

Mr. Ajello said he had forwarded to the commissioners an article on herbicides from Mr. McGuinness, the letters that Mrs. Hill had sent to the DEP on the matter, and a 21 page document from the state on the use of pesticides in waterbodies. He noted this matter is on the agenda for the June 3 NWCtCOG meeting.

Mr. Bedini recalled that he had previously talked to Dr. Kortmann about drafting an ordinance to govern the shoreline. He thought the Commission needed some guidelines as it continues to confront the same issues and problems. Mr. LaMuniere said the Commission must decide how it will deal with the lake and the shoreline. Ms. Cheney noted that if lakefront owners all built out their properties into the lake, these small incremental changes would adversely impact the lake and environment.

MOTION: To adjourn the Meeting. By Mr. Bohan.

FILED SUBJECT TO APPROVAL

Respectfully submitted,  
Janet M. Hill, Land Use Administrator

