

## September 22, 2010

### Show Cause Hearing and Regular Meeting

6:30 p.m. Land Use Meeting Room

**MEMBERS PRESENT:** Mr. Bohan (arrived 7:36 p.m.), Mrs. Hill, Mr. LaMuniere (for Meeting only), Mr. Wadelton

**MEMBER ABSENT:** Mr. Bedini

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

**ALTERNATE ABSENT:** Mr. Martino

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

**ALSO PRESENT:** Mr. Schellerer, Mr. Jacobs, Mr. Mann, Mr. Neff, Mr. Sabin, Mr. Tittman, Mrs. Leary, Mr. Weaver, Ms. Purnell, Mrs. Solomon, Mr. Chatfield, Ms. Turoczi, Mr. Wilson

### SHOW CAUSE HEARING

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

Mr. Wadelton called the hearing to order at 6:33 p.m. and seated Members Hill and Wadelton and Alternates Cheney and Papsin.

Mr. Ajello explained the purpose of the Show Cause Hearing.

Mr. Schellerer informed the Commission that he was one of the owners of the property. He said perc tests had been conducted to confirm the property was a buildable lot prior to his purchase and said he had not realized there were wetlands on the property. He asked how he could go ahead with work on site to prepare for the construction of a house.

Mr. Wadelton noted there was an intermittent stream on the adjoining property and that the Commission had jurisdiction in the upland review area, which would include the land within 100 ft. of this stream. He also noted the Commission's concern that the clearcutting had caused unstable soil conditions on the steep property and so there was the potential for erosion and sediment could reach Lake Waramaug.

Mr. Bohan arrived at 7:36 p.m. and was seated.

Mr. Ajello reported that in May he had told Mr. Chatfield to stop all work on the property until he had applied for and was granted all necessary permits; Wetlands, Health, Zoning, Driveway, etc. He noted the lot is very narrow and steep and possibly has wetlands so it was not yet known whether it was developable. He said the cutting had continued after he had told Mr. Chatfield to stop work.

Mr. Wadelton read the cease and restore order issued on 9/13/10, noting it required Mr. Chatfield to install and maintain erosion control measures.

Mr. Schellerer stated 16 Tinker Hill Road was not the correct address. Mr. Ajello said it was the address on file in the Assessor's Office, but he would check this out and reissue the order if necessary. Mr. Wadelton noted Mr. Ajello had met with Mr. Chatfield on site and so it was understood what property was the subject of the order.

Mr. Wadelton noted there was a large pile of firewood on site and that when moved, the unstable soil now beneath it would wash into the catch basin and then into the lake. He said stabilization of the site was a priority and once this was accomplished, the Commission would proceed with deliberations regarding how to handle the violation. He advised Mr. Schellerer to have an engineer draw up an erosion control plan and to hire a soil scientist to flag any wetlands soils on site. He also stated a site inspection would be conducted prior to the next meeting.

Mr. Ajello noted the Commission could modify the cease and restore order.

Mr. Wadelton noted items #1 and #2 would remain in effect. He then referred to item #4 in the order, getting an expert to draft a restoration plan. He noted that if the property owners could submit a feasible site development plan to show the lot was buildable, then a restoration plan would not be required. Mr. Ajello agreed, but noted how difficult it would be to develop a lot comprised of 20% to 25% slopes. He asked how the foundation, septic, and driveway could be installed per all Town regulations.

A site inspection was scheduled for Monday, October 4, 2010 at 4:30 p.m.

Mr. Schellerer was again told he must get a qualified engineer to address the potential erosion problem and stabilize the property immediately and that if he planned to build on the property he was required to prove it was a buildable lot by having the appropriate Town departments approve a feasible site development plan.

**MOTION:**

To close the public hearing to consider whether the 9/13/10 cease and restore order issued to Mr. Chatfield for unauthorized clearcutting at 16 Tinker Hill Road should remain in effect.

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

Mr. Wadelton closed the hearing at 7:05 p.m.

## **REGULAR MEETING**

Mr. Wadelton called the meeting to order at 7:07 p.m. and seated Members Bohan, Hill, LaMuniere, and Wadelton and Alternate Papsin for Mr. Bedini.

**MOTION:**

To add the following subsequent business to the Agenda:

VII. Enforcement: N. Madoff/285 West Shore Road/#IW-10-V02/Unauthorized Clearcutting of Understory.

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

Mr. Ajello also noted that Mr. Sabin was present to address Beckett/30 Loomarwick Road, a matter covered in his enforcement report.

## **Consideration of the Minutes**

The 9/1/10 minutes were accepted as amended.

Page 3: Under Horan, 7th line from bottom of page: Insert: "northern" to read: "...steep northern hillsides."

Page 6: 3rd line from top: Insert: "new" to read: "...any new wetlands issues."

**MOTION:**

To accept the 9/1/10 Show Cause Hearing – Regular Meeting minutes as amended.

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

**MOTION:**

To accept the 9/9/10 and 9/16/10 Special Meeting minutes as submitted.

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

The 9/7/10 Gager-DuBois site inspection minutes were accepted as corrected.  
he Application #, #IW-10-32, was added.

**MOTION:**

To accept the 9/7/10 Gager-DuBois site inspection minutes as amended.

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

**Pending Applications**

Gager-DuBois/16 Horse Heaven Road/#IW-10-32/Remove Trees:

Mrs. J. Hill noted the work had been completed and no additional work was proposed. Mrs. Hill said there had been very little disturbance to the wetlands. Mr. Waderton stated that a regulated activity had been conducted in wetlands without a permit, noted the application was incomplete, and asked why the application had been submitted. Mr. Ajello suggested the application could be refused and a citation issued. Mr. LaMunier agreed with Mrs. Hill that there had been little disturbance to the wetlands and noted there was sufficient and dense growth still there; no restoration was required. Mr. Ajello said the property owners would have to go into the wetlands to take the wood out. Mrs. Hill noted it was a short distance and the wetlands were dry now. Mr. Waderton thought the owners should be fined for cutting the trees without a permit and an application should be required for removal of the cut wood from the wetlands if it was to be taken out. Mr. Ajello noted the fine would be \$500. Mrs. D. Hill stated the applicants had submitted the application to correct the violation in good faith and recommended it be approved. Mr. Ajello noted he had not sent the applicants a notice of violation. Mr. LaMunier suggested two conditions of approval. (See motion below.)

**MOTION:**

To approve Application #IW-10-32 submitted by Ms. Gager and Mr. DuBois to cut and remove trees at 16 Horse Heaven Road subject to the following conditions:

1. the removal of wood shall be done without the use of heavy equipment and
2. the road shoulder shall be restored so that no road drainage flows into the wetlands.

By Mr. LaMunier, seconded by Mrs. Hill, and passed 3-2.

Mr. Waderton and Mr. Bohan voted No.

Harris/258 New Milford Turnpike/#IW-10-33/Repair Septic System:

It was noted this matter had been discussed at the last meeting and Mr. Harris had been advised he could begin work on the emergency septic repairs needed. The Commission had not been able to vote at the last meeting due to the state law that requires a 14 day waiting period before acting on an application.

**MOTION:**

To approve Application #IW-10-33 submitted by Mr. Harris to repair the septic system at 258 New Milford Turnpike.

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

**New Applications**

Leary/164 West Shore Road/#IW-10-34/Renovate Dwelling, Repair Septic System, Install Parking Area:

Mr. Neff, engineer, presented his map, "Septic System Repair Plan," dated 8/30/10. He said the new septic tank and pump chamber will be installed in the same location as the old ones, the pipe under the road will remain, and the new leaching fields will be in the vicinity of the old fields. He noted the existing and proposed contours and his "Soil Erosion and Sediment Control Plan, dated 9/15/10. He stated the septic repair work would not disturb the shoreline. Mrs. Hill noted the limit of disturbance line was indicated on the plan and Mr. Neff pointed out the silt fencing proposed below the septic area. Mr. Ajello noted approval from the state DOT would be needed for the proposed parking area. Mr. Tittman, architect, discussed the proposed parking area and the temporary parking of construction vehicles. He said the top soil in the parking area would be removed and replaced with trap rock to prevent mud and erosion. Stockpile locations were noted. Mr. Neff stated all proposed work was listed

in the construction sequence, which also includes routine inspection and maintenance requirements. Mr. Tittman described the “net” that would be installed to prevent debris from the house renovation from falling into the lake. Photos of the site were circulated. Mr. Ajello was concerned that the water had undermined a corner of the foundation and that concrete repairs would be required. Mr. Neff said foundation repairs would be added to the application. It was also noted the upper slab was in poor shape. Mr. Tittman proposed to remove the existing stairs to the deck and install a new wooden staircase from street level to the lower level. A site inspection was scheduled for Monday, October 4, 2010 at 5:00 p.m. Mr. Tittman then briefly presented elevations and site plans and said he had kept the proposed renovations on the existing footprint to minimize disturbance.

## **Other Business**

### Beckett/30 Loomarwick Road/Planting Plan:

Mr. Sabin, landscape architect, said he had been hired to implement the mitigation planting plan and do a final landscape plan for the property. Although the mitigation planting would not be changed, he pointed out on his plan, “Landscape and Layout Plan,” dated 9/6/10 minor site plan changes he proposed. These included 1) adding a bench near the top of the stonewall, 2) putting in stone slab steps, 3) modifying the shape of the rain garden and adding stones and a hedge to naturalize it, 4) putting in plants for screening at the property line, 5) piping 32 feet of the existing swale, and 6) adding a stonewall at the front of the property to decrease the amount of fill needed. He said the planting and landscaping would be completed in stages, additional hay bales and silt fence would be required to be available on site in case they were needed, and the existing erosion controls would be maintained. All of the mitigation plants and lawns would be in by the end of fall. The need to pipe the 32 ft. section of the swale in order to create a more moderate slope that could be more easily maintained was discussed.

### **MOTION:**

To approve minor revisions to Permit #IW-08-56 issued to Mr. Beckett/30 Loomarwick Road as detailed in the Dirk Sabin plan dated 9/6/10 and Mr. Sabin’s letter dated 9/17/10.

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

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

Mr. Wadelton noted the request had been received at the last meeting and the Commission had asked for a detailed written description of all proposed changes and decided to refer the revisions to Land Tech for a thorough review. Mrs. J. Hill reported that when the applicant posts \$9750 for the consultant’s bond, Land Tech will begin its review. Mr. Wadelton noted that a letter dated 9/22/10 from Ms. Purnell had listed several concerns she thought the Commission should consider and she had asked that a public hearing be held to consider the revision of the permit. Mr. Wadelton thought a hearing should be held due to the public interest. He also questioned whether there were enough significant changes proposed to require the submission of a new application. The Commission will wait to review Land Tech’s report before deciding whether a new application should be required and before conducting a site inspection. Tentative dates, Saturday, October 16 for the site inspection and October 27 for the public hearing, were discussed. Ms. Purnell asked if the interveners for the original application had been notified and also suggested the start of the hearing not be rushed so that as much information as possible would be in and available for review beforehand. Mrs. J. Hill said she had consulted Atty. Olson, who had advised her that the hearing must begin within 65 days of the receipt of the request to amend the permit. Mr. LaMuniere noted that Ms. Purnell’s letter included important assertions and he asked that Land Tech receive a copy to include in its review. Mr. Wadelton read the 9/16/10 letter from Land Tech regarding what would be covered in its review. Mrs. J. Hill noted that Mr. Bedini had stressed that a very thorough review was needed and that is what had been requested. Mr. LaMuniere noted he was concerned about the proper flagging of wetlands on the site. The public

hearing was scheduled for 6:00 p.m. on Wednesday, October 27, 2010. The Regular Meeting will begin at 5:00 p.m., will be recessed at 6:00 p.m. for the hearing, and will be reconvened after the hearing. Mrs. Hill and Mr. Papsin said they would be away on October 27 and Mr. LaMunier said there was a chance he might not be able to attend either.

### **Enforcement**

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

Mr. LaMunier recused himself and Ms. Cheney was seated.

It was noted that a Show Cause Hearing had been conducted earlier in the evening.

#### **MOTION:**

That the 9/13/10 cease and restore order issued to Mr. Chatfield for unauthorized clearcutting at 16 Tinker Hill Road shall remain in effect and the owner will comply with the provisions therein except that the requirement that an expert draft a restoration plan is suspended at this time.

By Mr. Waderton, seconded by Mr. Bohan, passed 5-0.

Mr. LaMunier was reseated.

### **Enforcement Report**

#### Angell/47 West Shore Road:

The stairs are completed and the area has been mulched.

#### Bee Brook Condominiums/Juniper Meadow Road:

Mr. Waderton recused himself because he is a member of the condo association and Ms. Cheney was seated.

Mr. Ajello said he had discussed with Mrs. Hardee the cutting of a tree in addition to those previously approved for cutting. (Permit #IW-09-38) He said the issue was protecting the streambanks of the brook and so temporary planks would be put down for to cross the brook. It was the consensus of the Commission that this work would be included under the previously granted permit, which is valid for two years, and that Mr. Ajello should use his judgment to handle the situation.

Mr. Waderton was reseated.

#### Brose/213 Roxbury Road:

Mrs. Brose will soon begin to plant the plants specified in the approved restoration plan.

#### Weaver/176 East Shore Road:

Mr. Weaver presented the site plan, "Property/Boundary Survey," by Mr. Alex, dated 8/28/04 and photos of the location where he had cut one Norway maple tree and three saplings and noted that a lot of vegetation remains in this area. Mr. Ajello said he had sent a citation because the planting plan that had been requested had not been submitted. Mr. Weaver noted that in March he had met with Mr. Ajello and the DOT who had said that as long as there was no soil disturbance it had no problem with cutting any vegetation under 20" in diameter, and therefore, since he had no plans to cut anything else, he did not understand that he had to submit a remediation plan. He noted when he had later received the letter asking for the plan, it had not included a deadline and that when he had received the citation at the end of July, he had arranged to attend the meeting. Mr. Ajello noted that the activity of cutting the tree and saplings was within the review area and that the vegetation cut was the buffer of an important water body. Mr. Weaver responded that the tree was an invasive species whose dense canopy crowded out smaller vegetation underneath. Ms. Turoczi, landscape designer, said the soil had not been disturbed when the tree had been cut, there was still a substantial canopy, there were many plants still growing in the area, and there were trees that remained with root systems to hold the soil on the bank. She

recommended the bank be left in its natural condition. Mrs. D. Hill asked if the fine had been paid. Mr. Weaver said if the reason he was fined was because he had not submitted the restoration plan, he would object because the letter he received had not specified a deadline for getting it in. Mrs. D. Hill explained the fine was for unauthorized activity within a regulated area. Mr. LaMuniere noted the cutting of vegetation at the interface of land and water is a serious matter. Mr. Weaver responded that only one tree and three saplings in a 6 ft. square area had been cut. Mr. Wadelton noted the Commission had received testimony from a qualified individual that the bank is stable and no further restoration is needed. The commissioners recommended that the fine be lowered.

**MOTION:**

Regarding Weaver/176 East Shore Rd/#IW-09-V3/ Unauthorized Clearcutting, the Commission finds that no remediation plan is required; the cut area should be left as it is and the fine will be reduced to \$150.

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

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

Mr. Chatfield arrived and Mr. LaMuniere recused himself.

He apologized to the Commission and said he had no idea there were wetlands on his property. Mr. Wadelton explained the property was in a regulated area due to the location of the intermittent stream on the adjoining property and because the lot was located on steep slopes above Lake Waramaug. He told Mr. Chatfield to get a certified soil scientist to delineate the wetlands on his property. He also advised him that the cease and restore order would remain in force and that he is required to stabilize all disturbed areas and install erosion control measures as soon as possible. Mr. Chatfield said he would contact Mr. Neff, engineer. Mr. Wadelton then explained that if the lot would be developed with a house, a restoration plan would not be needed, but that if it was determined the property was not buildable, he would be required to restore the site. He advised Mr. Chatfield to apply for all appropriate permits to determine whether the lot is a building lot. Mr. Chatfield asked if he could "clean up the mess" and split the cut wood. Mr. Ajello said the remaining debris was now providing some protection for the slope and that when the lot was to be developed, it could be cleaned up at that time. Mr. Chatfield was notified that the next meeting would be on October 13 and he should attend with feasibility plans showing that the property is a buildable lot.

Mr. LaMuniere was reseated.

Gorman/233 Roxbury Road:

The required planting has not yet been completed.

Madoff/285 West Shore Road:

Mr. Papsin recused himself. Mr. Ajello explained that although the property owner had been given permission to cut four trees near the shoreline and had been told to leave the understory as is, a 30 ft. swath of lakeshore to the east of the boathouse had been clearcut to ground level. He said he would send a notice of violation.

A site inspection was scheduled for Monday, October 4, 2010 at 5:30 p.m.

Peckerman/162 Sabbaday Lane:

The permitted work has been completed.

West Shore Farm, LLC./285 West Shore Rd./Unauthorized Clearcutting:

Mr. Papsin recused himself.

Mr. Wilson, engineer, represented the property owners who asked that in the future they be referred to West Shore Farm, LLC. Mr. Wilson said he had been given permission to cut three dead trees, but the property manager had cut more than had been flagged. He noted that the ground had not been disturbed and an erosion problem had not been created. Mr. Ajello read the email he had sent to Mr. Wilson prior

to the cutting, which made it clear the understory was not to be cut. It was again noted that Mr. Ajello would send a notice of violation and a site inspection had been scheduled for 10/4.

Shepaug Valley High School/159 South Street:

It was noted due to necessary emergency repairs, the pool had been drained into the pond as had been done last year. The use of a chemical to neutralize the chlorine was briefly discussed.

Meeker/New Milford Turnpike:

Mr. Meeker is expected to submit an application for expansion of storage in the rear of the pool and spa store.

Washington Primary School/11 School Street:

It was noted that the drainage plans approved by the Commission included 12 ft. wide by 24 ft. long energy dissipater in an area with a ramp that had been used by the Fire Dept. for years to access the river. After discussions between the WEO, Selectmen, and others, the drainage culvert outlet was moved 10 feet to the south so that the Fire Dept. could continue to use this access. Mr. Wadelton asked that in the future Mr. Ajello direct applicants to submit a request to amend the permit prior to starting any work.

141 West Shore Road, LLC./141 West Shore Road:

Work on the shoreline wall has been completed.

## **Administrative Business**

Lakeshore Policy:

Mr. LaMuniere reported that the subcommittee work on shoreline policies is nearing completion. When a draft proposal is ready, first the Commission will review it and comment and then it will be referred to others such as the Zoning Commission, Lake Waramaug Task Force, and Dr. Kortmann for review.

2009-2010 Annual Report:

The annual report was approved with two minor revisions.

**MOTION:**

To approve the 2009-2010 annual report with two minor revisions.

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

## **Communications**

9/13/10 Complaint from Mr. Hochberg/Couch Road:

Mr. Hochberg complained that his pond continually fills with sediment that erodes from the Town road. Several commissioners noted that a stream flows through his pond and so the sediment may originate elsewhere. Mr. Ajello stated that the Board of Selectmen have assisted Mr. Hochberg with clean-ups in the past, but do not agree the siltation of his pond is due to a "road problem." A lengthy discussion ensued. It was the consensus to 1) first invite the Board of Selectmen and representative from the Highway Dept. to attend the next meeting to discuss the merits of Mr. Hochberg's complaint and 2) after meeting with the Selectmen, refer this matter to a consulting engineer to determine what is the actual cause of the siltation problem.

Ethics Workshop:

It was announced that the Planning Commission is sponsoring an ethics workshop on Tuesday, November 30, 2010. Representatives from the Ct. Bar Assoc. and the Ct. Ethics Board will conduct the workshop. All commissioners are urged to attend.

MOTION:

To adjourn the meeting. By Mr. Papsin.

Mr. Wadelton adjourned the meeting at 10:30 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Administrator