

# October 13, 2010

## Show Cause Hearing – Regular Meeting

6:30 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:** Mr./Mrs. Hochberg, Mrs. Solomon, Mr. Rogness, Mr. Lyon, Mr. Smith, Mr. Tittman, Mr. Neff, Mr. Szymanski, Mr. Wilson, Mr. Chatfield, Mr. Schellerer

## SHOW CAUSE HEARING

### Rosen and White, Stonebrook Estates, LLC./304 Nettleton Hollow Road/#IW-10-V03/Unauthorized Construction in Stream

Mr. Bedini called the show cause hearing to order at 6:30 p.m. and seated Members Bedini, Bohan, Hill, LaMuniere, and Wadelton.

Mr. Ajello noted the property owners were not present and that the certified letter sent to notify them of the hearing had been returned after only one attempt by the Post Office to deliver it. He also stated he had spoken with an environmental analyst from the DEP who said he would contact Mr. Tessitore, also of the DEP, about this violation.

Mr. Ajello explained the recent unauthorized stonework was not in the stream that had been the subject of another violation two and a half years ago, but was in Sprain Brook. He said the work done had narrowed the streambed and that wing walls, which required excavation in the brook, had also been installed. He noted, too, that stone edging had been added to the bridge. Also a two story structure had been built in the stream.

Mr. LaMuniere said this was a very serious violation and asked if the Army Corps of Engineers had resolved the original violation on the property. He noted that the Commission had requested a plan to restore the channel that Mr. Rosen had converted to a rock lined canal, but that Mr. Rosen had never responded. Mr. Ajello reported that the Army Corps had sent letters and had threatened fines, but said its letters had also been returned. As far as the Commission knows, no progress has been made.

Mr. Bedini said the Commission would investigate why the Post Office had not attempted to deliver the letter a second time, noting the Town had paid \$5.54 to have it delivered. Mr. Wadelton volunteered to discuss this with the postmaster.

Mr. Ajello asked the Commission if it wanted to add anything to the 10/6/10 enforcement order and said he would file it on the Land Records. He recommended a \$1000 fine because this was the second violation and it was for work done directly in the watercourse.

Because the first violation remains unresolved, Mr. Bedini recommended that a copy of the enforcement order be sent to Atty. Zizka and that he be asked to advise the Commission on how to proceed with enforcement. He also recommended that in the meantime a citation for a serious violation be issued.

The difficulty of communicating with the property owner was discussed. Mr. Bohan suggested the Commission hire a sheriff to deliver orders and mailings. Mr. Wadelton noted the property is for sale and suggested the enforcement order be sent to the realtor. Mr. Ajello stated he would deliver the citation to the door at 304 Nettleton Hollow Road.

It was noted that concerning the previous violation, the Army Corps of Engineers had threatened a

\$120,000 fine and that the current violation is even more serious because the unauthorized activity took place directly in Sprain Brook.

Mrs. Hill said the violation was easily seen from the road.

Mr. Bedini noted the following would be done: 1) Mr. Wadelton will discuss the problem of non delivery of certified mail with the Post Office, Atty. Zizka will be consulted concerning how the enforcement should progress, the latest cease and desist order will be filed on the Town Land Records, another attempt will be made to send the enforcement order, and a citation will be issued.

**MOTION:**

To close the Show Cause Hearing to consider whether the 10/6/10 enforcement order issued to Mr. Rosen and Mr. Winter of Stonebrook Estate, LLC. for unauthorized construction in the stream at 304 Nettleton Hollow Road should remain in effect.

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

Mr. Bedini closed the show cause hearing at 6:53 p.m.

**REGULAR MEETING**

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:

**VII. Enforcement:**

P. Popkin/30 Tinker Hill Road/#IW-10-04/Unauthorized Shoreline Work and

Q. Denscot Pool and Spa.269 New Milford Turnpike/Unauthorized Expansion of Parking and Outdoor Storage.

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

**Consideration of the Minutes**

The 9/22/10 Show Cause Hearing and Regular Meeting minutes were accepted as corrected.

Page 1: Mr. Bohan arrived at 6:36, not 7:36 p.m.

Page 1: 9th line from bottom: Change: "could reach" to "to reach."

Page 4: Under Harris: It should be noted this was an application for a commercial restaurant.

Page 4: It was noted that Mr. Bohan's reasons for voting No had not been included. Mrs. Hill thought this should have been included in the minutes, while Mr. Wadelton thought this was necessary only if a public hearing was held. This topic will be added to the list of those to be discussed at a future administrative workshop.

Page 8: 1st line under Chatfield: Change: "He" to "Mr. Chatfield."

Page 9: 2nd line under West Shore Farm, LLC: Add: "as" at the end of the line.

Page 9: Last sentence under Washington Primary School: Change to: "Mr. Wadelton said in the future he would like to know in advance about requests to amend permits."

**MOTION:**

To accept the 9/22/10 Regular Meeting minutes as amended.

By Mr. Bedini, seconded by Mr. Wadelton, and passed 4-0-1.

Mr. Bedini abstained because he had not attended.

**MOTION:**

To accept the 10/4/10 Chatfield site inspection minutes as written.

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

**MOTION:**

To accept the 10/4/10 Leary site inspection minutes as written.

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

The 10/4/10 West Shore Farm, LLC. site inspection minutes were accepted as corrected.

1) The correct spelling of barberry was noted.

2) 2nd line in the last paragraph: Change: "cabin" to "boathouse."

**MOTION:**

To accept the 10/4/10 West Shore Farm, LLC. site inspection minutes as corrected.

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

**MOTION:**

To accept the 9/30/10 subcommittee special meeting minutes as written.

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

**Other Business**

Hochberg/Couch Road/9-13-10 Complaint re: Siltation of Pond:

Mr. Hochberg summarized the information he included in his 9/13/10 letter, detailing the need to clean out his pond more frequently and the previous work done by the Town in 2008 to address runoff from Rt. 202 as a partial solution to the problem. Mr. Hochberg maintained that in 2008 the Town also changed the method of drainage for Couch Road by digging ditches along each side and that this was now the direct cause of the siltation of his pond. He presented numerous photos of the drainage conditions along the road. He noted he had tried to resolve this matter many times with the Selectmen's Office, but that the First Selectman refused to believe that erosion from Couch Road was the cause. Mr. Hochberg also presented samples of the silted material he had taken from his pond to show that it was not mud, as Mr. Lyon believed, but was, indeed, sand and gravel from Couch Road. He stated there was no ongoing construction above his property, and so concluded the only possible source of the sediment was from the Town road. He said the Town should not be able to pollute the wetlands and so asked that the Town pay to maintain his pond, and that the Town correct the erosion problem. Mr. Bedini noted the Hochberg property is located at the bottom of two hills and that the runoff must have always flowed in his direction. He asked what was different now. Mr. Hochberg stated in the past he had only had to clean out the pond every five or six years, but it was now filling with sediment every year. The only difference he had noted was the new ditches along both sides of Couch Road. Mr. Lyon described briefly the drainage improvements made by the Town in 2008 to handle the runoff from Rt. 202. He noted that runoff from the direction of the Couch Road hill in Warren could not possibly be the cause of the silt because the runoff would have to flow uphill to reach the Hochberg pond. He also stated that if the 80 to 90 yards of material that had been dredged from the pond in 2008 had come from Couch Road, the Town would have had to replace all of that, but this was not necessary because no large washouts had occurred. He said there was evidence of some silt from Mr. Hochberg's driveway, but no evidence on the other side of the road or in the rip rapped swale. Mr. Smith, Highway Dept. Director, stated 80 yards of material would fill a trench 2' X 2' X 600' long, and that there had been no washout like this on Couch Road. He said in the last year the Town had top graded the road with one load of material and noted the Town uses crushed blue stone on the roads, not the sand and gravel contained in Mr. Hochberg's samples. He also presented photos of erosion of the streambanks further up Bee Brook and said he thought this was the source of the sediment. Mr. Bohan asked if the Town uses a lot of sand on the road in the winter. Mr. Smith explained that each time Couch Road is sanded approximately 90 lbs of sand, which is comparable to one bag of concrete, is spread from Rt. 202 to the Hochberg property. Mr. Smith stated the pond is acting as a natural retention basin for Meeker Swamp and noted there had been heavy storms after dry periods, which could increase erosion. Mr. Bedini stated the Commission had heard from both sides and would schedule a site inspection to investigate. Later in the

meeting this was set for Saturday, October 23rd at 9:30 a.m.

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

Mr. Szymanski, engineer, submitted his letter dated 10/13/10 in which he responded to the issues raised by Ms. Purnell. Mrs. Hill asked if he had submitted a written, detailed description of the revisions requested. Mr. Szymanski said he had. It was noted Land Tech's review was expected later in the week and that the public hearing had been scheduled for 6:00 p.m. on Wednesday, October 27th. Mr. Szymanski said he would submit the \$250 public hearing fee. He said for the site inspection he would put in stakes for what had already been approved and for the changes proposed so that the Commission could compare them. Mr. Bedini asked for a written consideration of feasible and prudent alternatives, including the reasons why they are or why they are not being proposed. Mr. Wadelton noted the Commission must be careful to consider only the changes proposed and not the plan that has already been approved. Mr. Bedini asked if there were any interveners. Mr. Ajello said there weren't. The Commission had been waiting for Land Tech's report before scheduling the site inspection, but decided to schedule it without the report in hand in preparation of the 10/27 public hearing. The site inspection was scheduled for Saturday, October 23, 2010 at 10:30 a.m. Mrs. Solomon noted the 9/27/10 letter from Mr. Rogness requesting that copies of the application in digital format be made available before the hearing. Mrs. Solomon and Mr. Rogness said the digital information would help the public review the application and to understand what was being proposed. Mr. Ajello stated the land use office was not equipped to handle this type of information and Mr. Bedini and Mr. LaMuniere said there was nothing in the Regulations to require that an applicant submit material in digital form. Mr. Martino noted that paper copies better served the Commissions because they could not be altered. Mr. Bedini said applicants are not required to submit digital information, but that it would be nice if the applicant volunteered to do so. Mr. Szymanski said he would not provide a digital copy. Mr. Bedini said in the future the Commission would consider this issue and whether revisions to the Regulations were needed.

**Pending Applications**

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

Mr. Neff, engineer, and Mr. Tittman, agent, were present. Mr. Neff explained that since the last meeting the plans had been revised to include an underground propane tank located 10 ft. off the east end of the house behind the existing retaining wall. He said it would be covered with soil and grass. He also noted it had been added to the construction sequence. The plan, "Septic System Repair Plan," by Mr. Neff, revised to 10/8/10 was reviewed. Mr. Neff stated the septic repair plan had been approved by the Health Dept. and the approval letter was in the file. Mr. Bedini noted that no concerns had been raised at the site inspection. Mrs. Hill noted the 9/22/10 minutes said foundation repairs would be added to the application. Mr. Neff said they had been considered, but were not needed. Mr. Tittman stated the foundation was structurally sound and the repairs would have caused a lot of disturbance. This would be a 2 year permit. .p>MOTION:

To approve Application #IW-10-34 submitted by Mr. and Mrs. Leary to renovate the dwelling, repair the septic system, and construct a parking area at 164 West Shore Road.

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

**New Applications**

Schwartz/173 West Shore Road/#IW-10-35/Build Garage, Adjust Driveway, Rebuild Septic System:

Mr. Neff, engineer, presented his plan, "Septic System Repair Plan," revised to 10/6/10. The location of the property was discussed and it was noted it was accessed by a private road off Loomarwick Road. The applicant proposed to abandon the existing cess pool on the north side of the house and install a new septic tank and pump chamber to the leaching fields up by Tinker Hill Road where there is a drier

area and to construct a 25' X 27' detached garage next to the existing driveway. Mr. Neff stated that due to IW and Zoning setback requirements and steep slopes, this was a "tricky" site. He noted the proposed leaching field was only 19 ft. from the wetlands. Mrs. Hill was concerned about construction equipment accessing the work site from Tinker Hill Road due to the proximity to wetlands. Mr. Neff said it was necessary to access the septic work from Tinker Hill Road due to the steep slopes on the property. Mrs. Hill asked that additional protection be added to the plans. Mr. Neff stated he would review the access location. Mr. Ajello noted the site is close to the Beckett property where the hillside failed during a recent construction project. He recommended that construction be done only during the driest time of year and that the septic fill be dumped from Tinker Hill Road and then moved by a loader. Mr. Neff agreed the work should be done only during the driest time of the year. The commissioners will inspect the site on their own before the next meeting.

Bee Brook Crossing, Condo #2/Juniper Meadow Road/#IW-10-38/ Drainage Improvements:

Mr. Wadelton recused himself.

The plan, "Drainage Swale Stabilization Plan," by Mr. Neff, dated 10/7/10 was reviewed and Mr. Neff described the proposed work to stabilize the existing 16 ft. long swale between buildings. Currently there is erosion at the outlet and so the swale will be extended downhill along the eroded path. Mr. Neff said the flow would be stabilized, but not changed. He noted the plans include a cross section of the swale, erosion controls, sequence of construction, equipment access, limit of disturbance line, and stockpile areas. Commissioners will drive by the site on their own before the next meeting.

Mr. Wadelton was reseated.

Carey/138 Church Hill Road/#IW-10-36/First Cut Review:

Mr. Szymanski, engineer, pointed out on the plan, "Subdivision Feasibility Map," by Arthur H. Howland and Assoc., revised to 9/28/10, the proposed 14.5 acre lot, the existing conservation easement, and the proposed conservation easement. He said it would be stipulated that no further subdivision would be permitted. He explained the wetlands issue is that the proposed driveway and culvert are 85 ft. from the wetlands. It was noted the application was incomplete because the mandatory conservation easement form had not been submitted.

Neuwirth/156 Sabbaday Lane/#IW-10-39/Dredge Pond:

It was noted that this was a spring fed pond with steep sides and years of accumulated organic matter and would be dredged to a maximum of 8 ft. deep. Staff had not had the time to review the application for completeness, and so further discussion was tabled.

## **Enforcement**

Chatfield-Schellerer/19 Tinker Hill Rd./Unauthorized Clearcutting:

Mr. LaMuniere recused himself.

Mr. Chatfield presented septic test results from August 2009 and the map, "Property/Boundary Survey," by Mr. Alex, dated January 2010. He said the Town Sanitarian had witnessed the perc tests. Mr. Ajello presented septic data dated 7/29/09 in which the Sanitarian stated that it was not known whether the property could accommodate a septic system. In a 10/8/10 letter, Ms. VonHolt, Sanitarian, stated that the upper portion of the lot was unsuitable for a septic system and that additional tests and engineered plans would be required to determine whether the lower portion would be suitable. Mr. Ajello noted the clearcutting had occurred prior to Town approval of a site development plan and it had been close to a watercourse, and he had asked the owner for an erosion control plan if he wanted to remove logs from the lot. Mr. Chatfield said no erosion had occurred in the recent rains. Mr. Ajello responded that was because the cut wood was stabilizing the disturbed hillside. Mr. Bedini advised Mr. Chatfield that he must install erosion controls to address the problems he created by clearcutting and said both an immediate short term plan and a long term plan to address the construction process were required. Mr.

Chatfield said he would plant winter rye to stabilize the disturbed areas. Mr. Ajello stated that given the steep slopes, unstable soils, and absence of trees and roots, the site would have to be carefully monitored. Mr. Chatfield said he had already installed erosion controls, but Mr. Ajello circulated a photo of a poorly maintained silt fence. Mr. Chatfield agreed to fix it. Mr. Ajello requested several rows of erosion controls. Mr. Wadelton said that ultimately Mr. Chatfield must submit either a feasible site development plan or a restoration plan.

## **Enforcement Report**

### Angell/47 West Shore Road:

The planting is done.

### Ficalora/1 Green Hill Road:

Remediation work to remove contaminated soil has resumed. The same process is being used as was originally approved by the Commission and the groundwater is being filtered through charcoal filters before it reaches the river. Mr. Ajello said he OK'd the start of this project.

### Holiman/125 West Shore Road:

The approved planting has been successfully completed.

### Jepsen/144 East Shore Road:

An agent approval was processed and work in the area near the road has begun.

### Lodsini/Litchfield Turnpike:

There was nothing new to report.

### Peckerman/162 Sabbaday Lane:

The pond work has been completed.

### Rosen/304 Nettleton Hollow Road:

This violation was considered at the show cause hearing. Mr. Ajello encouraged new members to review the previous file.

### Urquhart/27 West Morris Road:

Mr. Ajello gave an update on an agent approved pool replacement and said work would soon begin.

### Von Hoorn/179 West Shore Road:

An agent approval was granted for the replacement of the driveway culvert; work to be done this fall.

### West Shore Farm, LLC./285 West Shore Road:

It was noted a site inspection had been conducted.

### Weaver/176 East Shore Rd:

A citation has been sent to Mr. Weaver.

### Denscot Pool and Spa/269 New Milford Turnpike:

Mr. Meeker had said he would attend tonight's meeting with plans to address the violation, but he was not present. Mr. Ajello will contact him.

### Popkin/30 Tinker Hill Road:

Mr. Ajello recommended that the unauthorized shoreline work be allowed to remain because removing it would cause additional disturbance. A citation will be issued.

## **Enforcement**

### West Shore Farm, LLC./285 West Shore Road/Unauthorized Clearcutting/#IW-10-V02:

Mr. Wilson, engineer, circulated photos taken on 8/31 before the clearing and some taken after the clearing. He noted the area had not been maintained for several years, that the ground had not been disturbed, and that there was still cover. He said a lot of the work done had been normal maintenance and a significant amount had not been cut. Mr. LaMuniere stated he respectfully disagreed, noting that a lot had been cut on the southeast side close to the lake and this was a violation. Mr. Ajello compared the existing shoreline conditions to a photo taken from the water in June 2010, which showed a heavily vegetated shoreline. Mr. Wilson said the owner plans to plant a hedge along the road and additional plants, but that a "foot friendly" area was wanted between the two stumps. He said he would submit an application for these plantings plus a stairway and rowing dock on the west side of the boathouse, a construction driveway on the opposite side of the road, and golf cart access to the boathouse. A citation will be issued.

Rosen-Stonebrook Estates/304 Nettleton Hollow Road/Unauthorized Construction in Stream/#IW-10-V03

**MOTION:**

Regarding Rosen and Winter, Stonebrook Estates, LLC./304 Nettleton Hollow Road/ #IW-10-V03/Unauthorized construction in the stream, the 10/6/10 enforcement order shall remain in place. By Mr. Bedini, seconded by Mr. Wadelton, and passed 5-0.

**Administrative Business**

There was a brief discussion regarding whether the EO should issue citations on his own or first get Commission approval. Mrs. Hill noted this was the citation officer's duty by Town Ordinance. Mr. Martino agreed. Mr. LaMuniere said the EO could consult with the Commission when needed. It was the consensus that both Popkin and West Shore Farm, LLC. would be sent citations and that this matter would be discussed again at a future Commission workshop.

Report from Shorelines Guidance Subcommittee:

Mr. LaMuniere said the draft report would be sent out for review before the next meeting.

**Communications**

The schedule for the 10/27/10 regular meeting and public hearing was considered. After a lengthy discussion it was the consensus to change the date/times as follows: 6:00 p.m.- October 27, 2010: The public hearing for Wykeham Rise, LLC./101 Wykeham Road/Request to Amend Permit #IW-08-31 will commence and continue as long as necessary. The regular meeting will be cancelled. The next regularly scheduled meeting will be held on Wednesday, November 10, 2010.

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

The commissioners decided to ask Atty. Olson to attend the hearing. Atty. Olson will be asked for an estimate for this work and the applicant will have to post a consulting bond to cover the expense. It was also noted that only the proposed revisions to the permit were to be considered at the upcoming hearing and not the original approval.

MOTION: To adjourn the meeting. By Mr. Bedini.

Mr. Bedini adjourned the meeting at 10:56 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,  
Janet M. Hill, Land Use Administrator

