

November 15, 2006

MEMBERS PRESENT: Mr. Bedini, Mr. LaMuniere, Mr. Picton, Ms. Purnell

MEMBER ABSENT: Mrs. D. Hill

ALTERNATE PRESENT: Mr. Thomson

ALTERNATES ABSENT: Ms. Coe, Mr. Potter

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

ALSO PRESENT: Mr. Griffiths, Mr. Betolatti, Mrs. Reinhardt, Mr. Neff, Mr. Aragi, Atty. Kelly, Mr. Lecher

Mr. Picton called the meeting to order at 7:07 p.m. and seated

Members Bedini, LaMuniere, Picton, and Purnell and Alternate Thomson for Mrs. Hill.

MOTION: To add the following subsequent business not already posted on the agenda: under New Applications: Klauer/102 East Street/#IW-06-58/Temporary Wetland Crossing and under Other Business: Executive Session to Discuss Pending Litigation. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

Consideration of the Minutes

The 10/25/06 Regular Meeting minutes were accepted as corrected.

P. 3: 9th line under Melahn: Change to: ...because the proposed work would be down grade of the watercourse....

P. 5: 3rd line: Change "fully stocked" to "completely filled in."

P. 6: 4th line under Wright: Correct spelling is gully.

P. 8: 9th line under Moore: Correct spelling is Mr. Allan.

MOTION: To accept the 10/25/06 Regular Meeting minutes as amended. By Mr. Picton, seconded by Mr. Bedini, and passed 4-0-1. Ms. Purnell abstained because she had not attended the meeting.

MOTION: To accept the 11/8/06 Town of Washington site inspection minutes as written. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

MOTION: To accept the 11/2/06 Special Meeting minutes as written. By Ms. Purnell, seconded by Mr. Bedini, and passed 5-0.

Pending Applications

Rising/191 West Shore Road/#IW-06-46/Repair Septic System: The discussion that took place at the last meeting was reviewed; Mr. Pawlik of the DPH had approved the application, but he had not addressed the specific questions raised by the Commission. It was the consensus that a technical review by a qualified consultant was needed to address the Commission's questions about the proposed design, the stabilization of the slopes during construction, the location so close to the stream, etc. Ms. Purnell asked if the state had inspected the site because she did not think the plan conveyed the site conditions. Mr. Ajello did not think he had done so. Mr. Picton also noted that when the boulders were removed, the soil profile would change. Mr. Ajello noted he had talked to Land Tech about keeping down the cost of this review and had written again to Mr. Rising regarding payment. Mr. Ajello noted the time limit for action on the application would expire on 11/17.

MOTION: To deny without prejudice Application #IW-06-46 submitted by Mrs. Rising to repair the septic system at 191 West Shore Road with the condition that if a request for extension is received before the close of the business day on Friday, 11/17/06 the Commission will consent to granting an extension. By Ms. Purnell, seconded by Mr. Picton, and passed 5-0.

Town of Washington/59 East Shore Road/#IW-06-53/Boat Ramp and Parking: It was noted a public hearing had been scheduled for 5:00 p.m. on Wednesday, November 29, 2006. Mr. Ajello said the discussion at that time would include temporary housing for rescue boats. Mr. LaMuniere asked how long the aerator would be shut down due to the proposed work. Ms. Purnell said has always been shut off in October.

Betolatti/32 Flirtation Avenue/#IW-06-54/First Cut: The map, "Proposed Survey Showing Proposed Parcel Line," by CCA, LLC., dated 10/19/06 was reviewed. Mr. Ajello said there had been no changes since the last meeting. Ms. Purnell noted there were seeps, which were seasonal intermittent watercourses, that were regulated and in addition, asked why an access that could never be used was being shown on the site plan. She said since there were seeps in the accessway, the Commission would be required to consider alternatives. Mr. Ajello explained the access shown was too steep to meet the zoning requirements and so the proposed lots would share a single driveway (which was not shown on the site plan.) Ms. Purnell pointed out that if the Commission approved this application with the proposed access, then in the future if the two property owners did not want to share the driveway, they would be able to use the access, guaranteeing an impact to the watercourses the Commission is trying to protect. Mr. Bedini asked why the access strip could not be eliminated. Ms. Purnell asked for an analysis of feasible and prudent alternatives that would avoid the construction of a driveway in the access strip. Mr. Picton noted the Commission would require either information about where the driveway would actually be built or information on how the drainage would be handled in the access if the driveway were built there. Mr. Betalotti gave the commissioners permission to inspect the property on their own before the next meeting.

Hochberg/15 Couch Road/#IW-06-55ATF/Clean Out Pond: Mr. Ajello reported he had sent Mr. Hochberg a letter as he had been directed to do at the last meeting, but to date there had been no response. Ms. Purnell asked Mr. Ajello if he had reviewed the previous files for this property, and he said he had. Further discussion was tabled to the next meeting.

New Applications

Mayflower Inn, Inc./118 Woodbury Road/#IW-06-56/Septic Repair: Mr. Neff, engineer, presented his map, "Brook House Septic System Repair," dated 9/16/06. He explained the existing system is undersized and he proposed to replace it in the same general location 50 feet from the watercourse as is permitted under the state health code. Mr. Picton asked if there were other locations on the property suitable for the septic system that would be further from the stream. Mr. Neff said any other location would require pumping at least 500 feet. Mr. Picton asked if Mr. Neff had considered the entire property and all the septic systems located on it and asked him to report on why no other location was practical. Mr. Neff noted that except for the top of the hill, which was quite a distance above the Brook House, there had not been good perc test results. A site inspection was scheduled for Tuesday, November 21, 2006 at 4:00 p.m.

Klauer/102 East Street/#IW-06-58/Temporary Wetlands Crossing: The map, "Site Analysis Plan," by Mr. Alex, dated October 2006 was reviewed. Mr. Ajello explained a house would be moved to another property over an existing grassed swale composed of wetlands soils. Mr. Esker, contractor, said the house could not travel over the town roads because they were too narrow and would require the cooperation and coordination of the phone, cable, and electric companies to take down the wires. He noted the proposed route, shown in blue on the map, would have the least impact because it would go

across the wetlands at its narrowest point. He proposed to put down an extra wide swath of geo textile fabric over the swale, fill in gravel over that, and then remove the gravel once the house has been moved. Ms. Purnell was concerned the gravel would not be taken out. Mr. Picton asked for a specific written description of the proposed work, including provisions for the removal of the gravel. Ms. Purnell asked for a map of the entire area with all of the wetlands delineated and for the dimensions of the crossing and the quantity of the material to be used. Mr. Esker stated it would be 40 feet wide. Mr. Picton asked Mr. Ajello to make certain the application was complete for the next meeting and to inspect the entire route.

Reinhardt/10 Perkins Road/#IW-06-57E: Atty. Kelly and Mrs. Reinhardt were present. The map, "Existing Conditions Map," by Mr. Howland, dated June 20, 2006, revised to 10/26/06 was reviewed. Mrs. Reinhardt gave a lengthy statement about the circumstances that lead her to believe she did not need a permit for the clearing done and the reasons why she took legal action against the Commission. She hoped both sides could now come to an agreement on how to resolve this matter so that the legal action would not have to continue. Atty. Kelly asked that the enforcement order be released from the Land Records so that Mrs. Reinhardt can sell her property and said the purpose of the Exemption application was to "jump start" that process. Atty. Kelly stated a soil scientist had been hired to flag the wetlands and watercourses on the properties where the cutting had occurred and with those results in hand, claimed that there had been no regulated activities on the Reinhardt property and that Mrs. Reinhardt had complied with the terms of the cease and desist order. (See the 11/9/06 letter from Atty. Kelly to Mr. Ajello for details.) Ms. Purnell said soil scientists often disagree on wetlands boundaries and noted the Commission and its consultant had been denied access to the property. She said that had been the reason for the issuance of the order. It was the consensus of the Commission that a site inspection should be scheduled and its consultant should confirm the location of any wetlands and watercourses. A site inspection was scheduled for 3:00 p.m. on Tuesday, November 21, 2006. Mr. Picton asked that the property line be flagged for the inspection. Atty. Kelly pressed for the quick approval of the application and release of the order, but the Commission wanted time to study Atty. Kelly's letter, which had just been submitted that afternoon, to refer it to its counsel, and to get a report from its own consultant. Upon continued pressure from Atty. Kelly to approve the exemption request, Mr. Picton asked the other commissioners if they thought the Commission was prepared to act on the application tonight. Ms. Purnell, Mr. LaMunier, and Mr. Thomson said, no. Atty. Kelly said his client agreed to be responsible for the work done on the other properties, but needed the order released from her property so she could comply with the terms of her real estate contract. Atty. Kelly argued that not all enforcement orders are placed on the Land Records, that the Commission could continue to enforce it if it were released, and that the order could be amended even after it was released. He also argued that he had been trying to get a decision from the Commission and its counsel, but the resolution had been continually delayed. Mr. Picton countered that the Commission had proposed a bond and conditions, which Atty. Kelly had argued against point by point. Mr. Picton noted this matter would be discussed in executive session later in the meeting. Atty. Kelly said that would not give him the opportunity to present his client's position to the Commission, to understand the parameters of any potential agreement, and to respond reasonably. It was the consensus the Commission would further discuss this matter with Atty. Kelly for a half hour later in the meeting.

Other Business

Corbo/40 Nettletown Hollow Road/#IW-06-34/Analysis of Alternate Driveway Route Per Condition of 9/27/06 Approval: Ms. Purnell read portions of Mr. Neff's 11/3/06 letter, which concluded that utilization of the existing wood road would cause the least amount of disturbance to the regulated area. The map, "Division of Property - Topographic Survey," by Smith and Company, dated 10/25/06 was reviewed. Mr. Picton asked if it was possible to traverse the hill farther up. Mr. Neff

stated the east side of the wood road was too steep, that there were 20% to 100% slopes for the first 60 feet. Mr. Picton thought this confirmed the proposed route was the most feasible. Ms. Purnell disagreed, noting she had originally voted to deny the application because she thought there was a feasible and prudent alternate driveway route on a wood road running in the opposite direction.

MOTION: Regarding Corbo/40 Nettleton Hollow Road/#IW-06-34 to approve the location originally shown for the driveway to lot #2 because there is no better alternative in the area the Commission asked to be studied. By Mr. Picton, seconded by Mr. Bedini, and passed 4-0-1.

Ms. Purnell abstained because she thought there was a feasible and prudent alternate driveway location elsewhere on the property.

Lecher/23 New Preston Hill Road/Request to Revise Permit #IW-06-49: Mr. Lecher detailed the proposed revisions to his approved site plan; 1) relocate the house to the northwest, resulting in a shorter driveway and better view, 2) relocate the septic system to the existing cleared area, which is farther from the easternmost wetlands, and 3) reduce the area of disturbance, driveway area, and building coverage. The map, "Proposed Site Development Plan," by Mr. Neff, revised to 11/6/06 with hand drawn revisions by Mr. Lecher, was reviewed. Ms. Purnell asked if the driveway area would slope away from the wetlands. Mr. Lecher said it would. Ms. Purnell said the revisions were a net gain for the resources on site, but she was concerned about future expansion. She asked if the upland review area could be marked with permanent markers to provide notice there could be no encroachment with landscaping features beyond that point. Mr. Lecher agreed to do so.

MOTION: To approve the request submitted by Mr. Lecher to revise Permit #IW-06-49 for a house, driveway, and utilities at 23 New Preston Hill Road per the revised site plan dated 11/6/06 subject to the condition that the edge of the upland review area be marked with permanent markers on the side of the development envelope; the size of the markers to be recommended by the WEO; the markers printed to state, "edge of wetlands upland review area." By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Solomon/12 Painter Ridge Road/Request to Revise Permit #IW-06-11: Mr. Neff, engineer, explained the proposed revisions to put in an underground propane tank at the north end of the pool and to build a short retaining wall on the north and south ends of the pool to even out the grade. He noted both of these activities were proposed in areas already approved for disturbance and that the limit of disturbance would not change. The map, ""Proposed Swimming Pool Site Plan," by Mr. Neff, revised to 11/11/06 was reviewed. Mr. Picton asked if there would be any fill deposited on the woods side of the pool. Mr. Neff said there would not. Ms. Purnell was concerned about cumulated impacts and the cutting off of one side of all the tree roots at the edge of the wooded area. Mr. Picton noted the proposal would keep the work area compact and maintain a buffer between it and the wetlands. Mr. Neff added that the proposed location of the tank would be easily accessible for refilling.

MOTION: To approve the request submitted by Ms. Solomon to revise Permit #IW-06-11 for a swimming pool at 12 Painter Ridge Road per the plans revised to 11/11/06. By Mr. LaMuniere, seconded by Mr. Bedini, and passed 5-0.

Aragi/9 Wilbur Road/Preliminary Discussion/8 Lot Subdivision: Mr. Aragi showed a preliminary map of the 34.5 acre parcel; no title, no date. He proposed 8 lots; one with the existing house, and approximately 7 to 8 acres of open space. He noted the wetlands had been flagged and pointed them out on the map. He asked the commissioners for suggestions. Mr. Picton suggested using the open space to buffer the wetlands and asked if Mr. Aragi could use the open space subdivision alternative so this would be possible. Ms. Purnell advised the owner that lots adjoining permanent open space have a higher retail value. Mr. Bedini asked that the 100 ft. regulated area be shown on the final map. Mr. Picton noted the steeper slopes on site were directly above the wetlands and asked that the house sites

be moved away from the edge of the slopes. Ms. Purnell agreed that development on the slopes above wetlands should be limited. Mrs. Hill said she did not think the Planning Commission would like the open space proposal. She noted in general, the Planning Commission has in the past favored open space that connects with other open space in the area or that is located along the road to preserve the rural streetscape, the Conservation Commission has recommended open space not be used as an additional wetlands buffer because wetlands are already protected, but should be used to preserve other valuable ecological features of a property, while the Inland Wetlands Commission has favored the use of open space to provide an additional buffer area to protect wetlands and watercourses. Mr. Picton advised Mr. Aragi that the Commission would inspect the site upon receipt of an application.

Reinhardt/10 Perkins Road/Unauthorized Clearing: The map, "Existing Conditions Map," by Mr. Howland, dated 6/20/06 was reviewed again. Atty. Kelly referred to the "Proposed Consent Order" and to the difficulties he said he had trying to work with the Commission's attorney to bring this matter to a resolution. He again noted Mrs. Reinhardt has a signed contract to sell her property and requested the enforcement order be released from the Land Records so it could go through. He said he understood the Commission's point that it needed time to review the materials he just submitted, but he pointed out how long he had been trying to negotiate with Atty. Hoben and said most of the documents had been in the file for a long time. Ms. Purnell asked if he was prepared to post a bond to guarantee the ongoing problems would be addressed. Atty. Kelly said, yes, if an amount could be agreed upon. He then briefly described the restoration he proposed, which, he said, was based on the comments in the Commission's site inspection report, Mr. Dirienzo's recommendation to let the disturbed areas revegetate themselves, and Mr. Temple's finding that that was no intermittent stream on the Reinhardt property. This consisted mainly of creating a low shade canopy over the wetlands. He said he had complied with all of the Commission's recommendations listed in the site inspection minutes except for the mapping of the downgrade drainage routes. Ms. Purnell noted site inspection minutes are written by one person and do not necessarily reflect all of or the final requests concerning a property. Atty. Kelly noted there had been a lack of trust on the Commission's part concerning the first consent order because it feared there were not enough funds included for the entire restoration of the three properties. Therefore, to address this concern, he wrote his own order, "Proposed Consent Order Submitted on Behalf of Susan Reinhardt, November 15, 2006." (Refer to this document for details.) A lengthy discussion ensued. Mr. LaMuniere was concerned there would not be enough funds available for the reforestation and correction of drainage problems. Ms. Purnell noted the work may have caused inadvertent impacts to the lake and down hill properties and so explained that was the reason the Commission had requested the downhill information. Mr. Picton advised Atty. Kelly that his document appeared to be a constructive effort to reach a final agreement. He said the Commission would study the document, refer it to Atty. Hoben, and possibly make some modifications that would be fair to both sides.

Enforcement

Moore/25 Litchfield Turnpike/Unauthorized Clearing and Filling: Mr. Ajello sent a letter to Mr. Moore as the Commission requested at the last meeting. Mr. Moore was unable to attend tonight's meeting, but will attend the next meeting. Mr. Ajello will try to obtain additional wetlands information before the next meeting.

Wright/59 Scofield Hill Road/Unauthorized Clearing, Filling, Soil Disturbance: Mr. Ajello reported Mr. Wright will comply with the enforcement order. The Town will pay for half the cost of the materials used to complete the restoration work on the trench.

Revision of the Regulations: Ms. Purnell said she was inclined to adopt the DEP's model regulations due to legal issues. She said she had reviewed Mr. Picton's recommendations, but did not think they could all be legally incorporated. Mr. Picton suggested a committee work on the revisions outside the regular meetings. Mr. Thomson, Mr. LaMuniere, and Mr. Bedini volunteered. All other commissioners

were asked to forward their comments to Mr. Bedini. A special meeting will be noticed when they schedule a meeting.

MOTION: To go into Executive Session at 10:10 p.m. to discuss pending litigation. By Mr. Picton, seconded by Mr. LaMuniere, and passed 5-0.

MOTION: To come out of Executive Session at 10:30 p.m. By Mr. Picton, seconded by Mr. Thomson, and passed 5-0

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

Mr. Picton adjourned the meeting at 10:31 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

By Janet M. Hill, Land Use Coordinator