

November 13, 2013

7:00 p.m. Upper Level Meeting Room

MEMBERS PRESENT: Mr. Bedini, Mr. LaMuniere, Mr. Papsin, Mr. Wadelton

MEMBER ABSENT: Ms. Cheney

ALTERNATES PRESENT: Mr. Davis, Mr. Martino

STAFF PRESENT: Mr. Ajello, Mrs. Hill, Atty. Olson

ALSO PRESENT: Mr. Baker, Atty. Fisher, Mr. Charles, Mr. Neff, Mr./Mrs. Condon, Mr. Towne, Atty. Ebersol, Mrs. Castagnetta, Mr. Kalur, Ms. Dobson, Press

Mr. Bedini called the meeting to order at 7:02 p.m. and seated Members Bedini, LaMuniere, Papsin, and Wadelton and Alternate Davis for Ms. Cheney.

MOTION:

To add the following subsequent business to the Agenda:

VII. Other Business

E. 175 Calhoun St., LLC./175 Calhoun St./Request to Modify Permit #W-13-29/Change Location of Pool;

VIII. Enforcement

N. Silverman/341 Nettleton Hollow Road/Violation of Permit #W-13-19.

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

Consideration of the Minutes

The 10/23/13 Regular Meeting minutes were accepted as corrected. On page 3, line #4: After "... the pipe exit" insert: "for the drains under the walls...."

MOTION:

To accept the 10/23/13 Regular Meeting minutes as corrected.

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

MOTION:

To accept the 10/30/13 Gaggini site inspection minutes as written. By Mr. Wadelton, seconded by Mr. Papsin, and passed 5-0.

Other Business

Straw Man, LLC./135 Bee Brook Road/#W-09-44/Request for Extension of Time for Bridge Work

Related Activities:

Mr. Wadelton recused himself and left the table.

Atty. Ebersol and Mr. Towne, contractor, represented the applicant.

Atty. Ebersol and Mr. Towne discussed the material that had been submitted since the last

meeting: the 11/8/13 letter to the Commission from Atty. Ebersol, the untitled construction plan/cross section and "Sequence of Construction Events for the Fall of 2013," by Mr. Towne, and 11/6/13 letter to Mr. Bedini from Mr. Trinkaus, engineer. These included a more detailed construction narrative, an explanation of the number of trips and purpose of the trips over the temporary bridge, and the type and size of equipment to be used. Mr. Towne noted the sequence of construction had not changed from that originally approved for Permit #IW-09-44 and he reviewed the construction details for the temporary bridge, driveway, and second wetlands crossing that were specified on the above referenced documents. He stated the request for the time extension would not cause any more impact to the wetlands than would result from the originally approved permit.

Mr. Bedini noted how steep one of the streambanks was and asked if silt fence and straw wattles would be installed at the bottom of the slope. Mr. Towne pointed out the location of the erosion controls on the plan, "Wetland Crossing for Access Driveway," by Trinkaus Engineering, revised to 3/4/10 and said they would be installed just below the work area so that the portion of the bank closest to the water would not be disturbed. He noted, too, that if it was found that the soils in the bank were not as stable as expected, driveway stabilization fabric would be rolled out over the bank. Mr. LaMuniere asked if there had been any change to the erosion control plan originally approved. Mr. Towne said there had not.

Mr. LaMuniere stated the data submitted cleared up his technical questions, but raised issues regarding the scope of the request. These were:

- 1) Can the Commission consider the set of expanded activities under the request of "extension of time for all bridge work related activities?"
- 2) Does the shift from a simple temporary bridge originally approved to stand for a few weeks to allow for a small excavator, bridge footings, and wing forms into a more complex bridge to be in place for up to a year for the passage of various vehicles for both bridge work and property maintenance also fit under "extension of time for all bridge work related activities?"
- 3) Does the temporary wetland crossing by an interim modified seepage envelope also fit under the time extension request, as even though it is interim, it is a revised activity?

Mr. LaMuniere read his statement, "Note for the File, 11/13/13," which is attached to these minutes as an addendum. In brief, after asking the questions above, he stated

- 1) that based on the latest information submitted by the applicant, he thought the gathering of data elsewhere on the property was not under the Commission's jurisdiction,
- 2) the "functionally expanded temporary bridge and the interim seepage envelope" were unlikely to negatively impact the wetlands or watercourse,
- 3) the in place duration of the temporary bridge must be agreed upon,
- 4) leaving the temporary bridge in place until the end of September 2014 "seems to be fair,"
- 5) the requested set of wetlands activities was too different in scope and time scale from what was originally approved to be approved under the request for an "extension of time for all bridge work activities," and

6) approval of a request for permit modification would not be a problem because the technical justification provided by Mr. Towne was sound.

Atty. Olson explained the request should not have been to simply extend the time for the bridge related work, but should have been to amend a condition of the original permit.

Mr. LaMuniere again stated that although he thought the technical data submitted was adequate and that he had no problem with the activities proposed, the request for an extension of time was not comprehensive enough to include modification of the permit.

Mr. Bedini said he had understood the main issue should be whether the proposed change would have a greater impact to the wetlands and watercourse.

A discussion followed regarding whether a new request or an application was required and what the correct process is to consider the modification of a permit. Atty. Ebersol compared the process to consider this request with previous requests by others, which had been approved in a single meeting, and asked that his client be treated equally and fairly. Atty. Olson explained she was concerned about the "legal integrity" of the process, wanted to ensure any action by the Commission would hold up on appeal, and advised the applicant to submit an application in the same form as others have in the past; a letter requesting the modification of a permit.

Mr. Ajello stated that the condition of approval had been generated after a public hearing and asked if the Commission ruled this was a minor change without holding another hearing, would that leave it open to criticism. Atty. Olson responded that the question to be considered was whether the change was likely to cause significant impact to the wetlands and watercourse and that the decision about whether to hold another hearing should be based on the Commission's finding regarding whether there would be a significant impact.

Mr. Towne noted that although the Commission continued to talk about changes to the permit, both of the bridges and the driveway had already been approved and that all construction would be done per the approved plan. He said the approved activity would be the same, but the temporary bridge would be used for additional trips. Atty. Olson said that because the applicant had originally represented that the temporary bridge would be used for only a week or two, the Commission had the right to consider whether leaving it in place for up to a year would result in significant impact.

Mr. LaMuniere stated that all of the required technical data had been submitted and that the modifications requested would result in minimal impact to the wetlands. He noted, however, that the Commission still needed to know how long the temporary bridge would remain in place.

Atty. Olson advised the Commission that the request for an extension of time was inappropriate and so should be denied without prejudice. She added that if applications for modifications of permits had been done by letter in the past, that was what should now be requested of Straw Man, LLC.

MOTION:

To deny the request for an extension of time without prejudice and to request a new application in the form of a letter for permit modification.

By Mr. Papsin, seconded by Mr. LaMuniere, and passed 4-0.

After another discussion the applicant was advised to include the following information in the application by letter for permit modification:

- 1) Dates and duration of time the temporary bridge will be in place,
- 2) Justification for the increase in time – the purpose should be fully outlined,
- 3) Plans for the restoration of the bank when the temporary bridge is removed, and
- 4) Specifics about any other change(s) from the approved plan.

Mr. Towne noted that plans for the restoration of the bank were already a part of the approved plan.

At this point Mr. LaMuniere left the meeting and Alternate Martino was seated. Mr. Wadelton was reseated.

Pending Application

Gaggini/213 Roxbury Road/#IW-13-37/Pool, Patio, Addition to Dwelling, Stonewall:

Mr. Baker, engineer, presented the updated map, "Site Plan, Grading Plan, Erosion Control Plan, Proposed Pool," by Civil 1, dated 9/18/13 and revised to 11/11/13, which now showed the location of the pool equipment and pad and the conduit to serve it. He pointed out an area more than 50 feet from the wetlands where the pool would be drained if necessary. It was noted that a self contained unit for backwash would be installed. In response from questions from the commissioners, Mr. Baker stated the proposed stonewall would be located on the road side of the evergreens and that filter fabric would be put down on the temporary construction access so that the lawn would be in tact when it was pulled back upon the completion of work. He also said he would add protection for the existing trees as needed.

MOTION:

To approve Application #IW-13-37 submitted by Mr. Gaggini, 213 Roxbury Road for the installation of a pool and a patio and the construction of an addition and a stonewall per "Site Plan, Grading Plan, Erosion Control Plan, Proposed Pool," sheets 1 and 2, by Civil 1, dated 9/18/13 and revised to 11/11/13; the permit shall be valid for 2 years and is subject to the following conditions

1. that the Land Use Office be notified at least 48 hours prior to the commencement of work so the WEO can inspect and approve the erosion control measures,
2. that the property owner give the contractor copies of both the motion of approval and approved plans prior to the commencement of work, and
3. any change to the plans as approved must be submitted immediately to the Commission for reapproval.

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

Other Business

Laffont/10 Sunrise Lane/Request to Amend Permit #IW-13-17/Develop Building Lot:

The Commission recently approved a permit for the development of this lot, but the property was since sold and the new owner proposed an inground pool and shed beyond the upland review area, some changes in the location of the footing and roof drains, and minor changes to the septic system. Mr. Kalur, agent, presented the plan, "Proposed Sanitary Disposal System Plan," by Arthur H. Howland and Assoc., dated 10/29/13 and it was compared to the previously approved plan revised to 11/7/03. Mr. Wadelton said the proposed revisions were outside the upland review area and would not cause significant adverse impacts to the wetlands.

MOTION:

To approve the request by Mr. Laffont/10 Sunrise Lane for a revision of Permit #IW-13-17 in accordance with the plan, "Proposed Sanitary Disposal System Plan," by Arthur H. Howland and Assoc., dated 10/29/13; all existing conditions of approval remain the same.

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

Rumsey Hall School/201 Romford Road/Request to Revise Permit #IW-11-24:

Mr. Ajello explained the minor change to the driveway plan was needed for safety reasons. The approximate 300 square feet of additional pavement was offset by decreases in lot coverage resulting from the previous permit revision. The map, "Campus Center," by Buck and Buck, LLC., revised to 11/5/13 was reviewed.

MOTION:

To approve the request by Rumsey Hall School/201

Romford Road for a revision of Permit #IW-11-24 in accordance with marked plans, "Campus Center," by Buck and Buck, LLC., dated 9/1/11 and revised to 11/5/13; all time limits and conditions remain the same.

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

175 Calhoun Street, LLC./ 175 Calhoun Street/Request to Revise Permit #IW-13-29/Change

Location of Pool: It was noted this request to change the location of the pool had been tabled at the last meeting because the proposed location did not comply with the Zoning Regulations. Ms. Dobson from Dobson Pools and Mrs. Castagnetta from Arthur H. Howland and Assoc. represented the applicant. Mrs. Castagnetta explained the proposed location had been moved to meet the Zoning requirements and the size of the pool had been decreased from 30' X 60' to 25' X 50'. Also, it had been moved further from ledge and would be surrounded by grass, not pavers. A portion of the pool would be in the regulated area. Ms. Dobson stated that a backwash was not needed because a cartridge filter would be installed. Mr. Davis asked where the excavated material would be stockpiled. Ms. Dobson said it would be taken off site.

MOTION:

To approve the request by 175 Calhoun Street, LLC. to modify Permit #IW-13-29 to change the location of the pool at 175 Calhoun Street in accordance with the plan, "Proposed Site Plan," sheet #L2, by Folia Gardens, revised to 11/8/13; all original conditions and time limits apply.

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

Update re: State Spraying of Herbicides Near Wetlands and Watercourses:

Mr. Papsin and Mr. Bedini will work on this matter.

Enforcement

In addition to the items in Mr. Ajello's 11/13/13 Report, the following matters were discussed:

Silverman/341 Nettleton Hollow Road/Violation of Permit #IW-13-19:

Representing the property owner, Mr. Neff, engineer, submitted a letter dated 11/13/13 requesting a modification of the permit to include dredging of the entire pond. Mr. Ajello had noted in his report that this work was already underway. The plan, "Pond Cleanout Plan," by Mr. Neff, revised to 11/13/13 was reviewed. Photos of the ongoing work were circulated. Mr. Neff said 3 to 4 feet of material would be dredged from the bottom of the pond. He said since it was unusually dry, there would be no need for dewatering of the excavated material in the area previously approved for dewatering. Instead, it was being piled within the pond for a day before being completely removed. He also noted the disturbance was contained within the limits of the pond and that the work could be finished in a week. Mr. Papsin asked if the check dam was still in place. Mr. Neff said a berm had been built on top of it. Mr. Ajello said he had not asked the contractor to stop the unauthorized

work due to the favorable dry weather conditions. It was the consensus of the commissioners that this was clearly a violation of the permit as there had been a significant change in the scope of the work being done without the prior approval of the Commission and so the property owner should be fined. Mr. Ajello noted unauthorized activity directly in a watercourse was a \$500 fine. The request for the modification of the permit had not been submitted within the required time frame and so action was tabled to the next meeting. Several commissioners thought approval should be conditioned upon payment of the fine.

Smith/35 East Shore Road/Complaint re: Unauthorized Excavation, Deposition, Reconstruction Near River Bank:

Mr. Ajello said he had received a complaint from a neighbor regarding excavation and stonework on the bridge abutments. He said he had taken photos dated 11/13/13, which he circulated, and that none of the abutments looked like they had been disturbed. Mrs. Hill noted she had taken the complaint call and said it had been work along the river bank, not the abutments, about which the complaint had been made. Mr. Ajello said the alleged unauthorized work had not been apparent and there was not enough to act on. He said the neighbor should have complained while the work was in progress or should have taken photos at the time. Mr. Ajello said he had tried several times to call Mrs. Smith, but to date, had not been able to reach her. He said he would continue to try to contact her.

Woodruff/3 West Shore Road:

Mr. Ajello said he had reviewed this file and noted Mr. Woodruff had told the Commission he would resubmit his application to correct a violation in the spring, but had not done so. It was the consensus that no further action was needed by the Commission; the enforcement order would remain on the Land Records until Mr. Woodruff cleans up the debris.

Other Business

Straw Man, LLC/135 Bee Brook Road/Request for Extension of Time For Bridge Work Related Activities:

It was noted that Mr. Ajello had circulated the 11/13/13 letter from Atty. Fisher at the beginning of the meeting and that none of the commissioners had had the opportunity to read it prior to the Straw Man discussion. Mr. Bedini pointed out that Atty. Olson had said that even if it was a request by letter, the request was considered an application.

MOTION:

To adjourn the meeting. By Mr. Wadelton.

Mr. Bedini adjourned the meeting at 9:07 p.m.

FILED SUBJECT TO APPROVAL

Respectfully Submitted,

Janet M. Hill, Land Use Administrator

**STRAW MAN, LLC/135 BEE BROOK ROAD/#IW-09-44/REQUEST FOR EXTENSION OF TIME FOR BRIDGE WORK RELATED ACTIVITIES
NOTE FOR THE FILE, 11/13/13**

I thank Mr. Ebersol for the information he provided the IWC in his letter of 8 Nov. The attached data provided by Mr. Towne regarding the abutment of the proposed temporary bridge, the follow through of the temporary roadway and the seepage envelope also clears up most of the technical queries at least I had regarding these activities.

Nonetheless, this addition of solid technical information raises a number of questions concerning the scope of the request in front of us. Basically, I have 3.

1. can we legitimately fold this set of expanded activities under the request “extension of time for all bridge work related activities”?
2. does the shift from a simple, temporary bridge – originally approved to stand for a few weeks only to allow for a small excavator and bridge footings and wing forms to be carried across Chapel Brook – into a far more consequent bridge that is to stay in place for up to one year and allow for the passage of various vehicles for 30 crossings (60 if round trip and that does not include Gator traffic to cut downed trees and to do land stewardships). Does this also fit under “extension of time” or previously approved bridge related activities?
3. does the temporary wetland crossing by an interim, modified seepage envelope also fit under the time extension request? Even if only “interim” it is a revised activity.

1a. On the first question, i.e. the gathering of complementary economic data, this is a field of activities which does not fall under the IWC’s purview. When during the review of the request for the installation of the permanent bridge, we queried our attorney about “a bridge to nowhere” he emphatically told the IWC that it could only focus on potential impacts to wetlands and watercourses. This was confirmed recently by attorney Kari Olson.

2a and 3a. Back to the expanded scope of the temporary bridge and the interim seepage envelope. I believe that based on the information provided by Messrs. Trinkaus and Towne that the placing and construction of the new functionally expanded temporary bridge and the interim seepage envelope across the wetland pocket are unlikely to negatively impact the wetlands or Chapel Brook. But I also think that they are new activities not foreseen in the original approval even though together with the sought after additional data on the residential development potential of the land – and for which they appear to be a prerequisite if this data is to be gathered – they form sort of a complementary request that fits logically under the first approval. But they are new or modified wetland related activities which of course need an extension of time to be carried out but I don’t think they can be simply fitted under the terms of the approved permanent bridge application.

One other point: What is the precise duration of the request for the in-place sitting of the temporary bridge? In Mr. Ebersol’s letter of October 22, he mentions 9 months, until June or July 2014. Mr. Trinkaus’s letter of 23 October says “no more than 12 months from the date of installation”. Estimates mentioned during discussion of the request ranged from 2 to 3 weeks to 5 to 6 months. What is it? I think that the in-place duration must be agreed upon and specified in the application together with the agreement to the effect that the left bank of Chapel Brook will be restored to its

original configuration when the temporary bridge is removed. An in-place duration to the end of September 2014 seems to be fair as it would allow time for the applicant to gather the additional residential data that he seeks as well as to reach a determination as to whether or not the permanent bridge is constructed.

In conclusion – and I am only one vote and I don't know what my colleagues think – it would be difficult to approve this set of wetland activities under a simple “extension of time for all bridge work activities”. They are too different in scope and time scale from what was originally approved. I would welcome our counsel's advice on this point.

I do not think however that their approval as a request for a permit modification or revision would be a problem because the technical justification for these modified activities provided by Mr. Towne is sound.

Charles H. LaMuniere,
IWC Commissioner