

November 26, 2013

7:00 p.m. Upper Level Meeting Room

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

MEMBER ABSENT: Ms. Cheney

ALTERNATES ABSENT: Mr. Davis, Mr. Martino

STAFF PRESENT: Mr. Ajello, Mrs. Hill

ALSO PRESENT: Mr./Mrs. von Hoorne, Atty. Fisher, Mr. Neff, Mr. Showalter, Atty. Ebersol, Mr. Woodruff, Mr. Charles, Mr. Towne, Residents, Press

Mr. Bedini called the meeting to order at 7:00 p.m. and seated Members Bedini, LaMuniere, Papsin, and Wadelton.

MOTION:

To add the following subsequent business to the Agenda:

X. Communications

A. 11/25/13 Letter from Mr. Woodruff to the Commission re: Smith/35 East Shore Road/Unauthorized Work.

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

Consideration of the Minutes

The 11/13/13 minutes were accepted as corrected.

Page 3: Paragraph 3, last sentence: Insert: "and required" after "...to include..."

Page 3: Paragraph 4: Mr. LaMuniere asked that in addition to his 11/13/13 statement, which was attached as an addendum to the minutes, that it be noted in this paragraph he had objected to Atty. Ebersol's comparison because the other requests that were referred to were approved on the basis of full documentation, whereas, there had not been written justification for the approval of the request by Straw Man, LLC.

Page 7: Last paragraph: The correct spelling is Woodruff.

MOTION:

To accept the 11/13/13 Regular Meeting minutes as corrected.

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

New Applications

The Gunnery, Inc./22 South Street/#IW-13-38/Installation of Two Wells:

The plans, "Proposed Well Locations," by Smith and Company, dated 12/6/12, and revised to 11/14/13 were reviewed. Mr. Showalter, representative from The Gunnery, explained the state had approved two well sites, although the school intends to drill only one, well #8, at this time. He pointed out the location of wetlands on the property and noted a trench for the power and water feed would have to be dug from the well to the control building. The trench would be 4 ft. deep and then backfilled. Page 2 of the plan was reviewed. The well drilling equipment will access through the existing gate. It was noted that the application fee and letter of authorization for Mr. Showalter

had not yet been submitted. Mr. Bedini asked that a note be added to the plans that the erosion controls must remain in place until the disturbed area is completely stabilized. It was noted that two wells were requested although only one would be drilled at this time. Mr. Wadelton advised Mr. Showalter he could request a 5 year permit so he would not have to reapply when the second well was drilled. Mr. Ajello said a start and stop card could be submitted for each well.

9 Main Street Assoc./9 Main Street/#W-13-39/Septic System Repair:

Mr. Neff, engineer, explained the existing leaching field has reached its capacity and is undersized for its use. A distribution box and additional leaching fields are proposed. The plan, "Septic System Repair Plan," by Mr. Neff, dated 11/4/13 was reviewed. Mr. Ajello asked if there would be increased use of the system. Mr. Neff responded, no, there had been a fairly constant amount of water used, but the system was small because it had been originally designed for residential use. Mr. Neff noted the construction site would be accessed from East Shore Road and had been staked. He also stated the Health Dept. had approved the work, that there were no alternatives, and that the erosion controls would be left in place through the winter. Mr. Wadelton thought there was no reason for a site inspection because the Health Dept. had signed off and the repair work was needed. It was noted a letter of authorization for Mr. Neff was needed for the file.

Brick School Road, LLC./181 West Shore Road/#W-13-40/Construct Single Family Dwelling, Well, Septic System, Driveway, etc.:

Mr. Szymanski, engineer, was not present and so it was decided to take this matter up later in the meeting.

Other Business

Silverman/341 Nettleton Hollow Road/Request to Revise Permit #W-13-19/Dredge Pond:

Mr. Ajello noted the \$500 fine had been paid. Mr. Neff, engineer, noted the revised plan showed a larger disturbed area on the upstream side of the silt basin. The plan, "Pond Cleanout Plan," by Mr. Neff, revised to 11/25/13 was reviewed. Mr. Neff said due to the storm forecast, the work had stopped, the area was being stabilized, and the erosion controls were being reinforced. Mr. Ajello circulated photos of siltation downstream from the work site in Sprain Brook after last Friday's rain. Mr. Neff said the contractor had tried to isolate the flow to the west side of the pond. Mr. Ajello said he suspected the siltation on Friday was the "initial flush." Mr. Neff said Sprain Brook, a major watercourse, flows through the middle of the pond making it difficult to control the area. Mr. Bedini asked if dredging had occurred in the streambed and whether it had been necessary for the machinery to work from within the pond. Mr. Neff responded, yes, to both questions and noted approximately 1000 yards had been removed. Mr. Ajello noted there was still a lot of work to do and asked when the job would be completed. Mr. Neff said if the flow became too intense due to the storm, the work would have to be put off until next summer. Mr. Ajello noted that if the Commission had known the scope of the work to be done at the time of the original application, it would have limited the work to the low flow months. Mr. Neff responded that it was not until the pond had been drained that it was realized how much material there was to remove. He again stated that the work site was being stabilized and they were preparing to close the dam. The criteria for stopping the work until next summer was discussed. Mr. Neff said he had already advised the contractor he thought the work should stop and said if weather conditions were bad he would discuss the situation with the WEO, contractor, and owner. He noted that the dredged solid material had not been piled in the middle of the flow channel. It was agreed that Mr. Ajello and Mr.

Neff would inspect the site the next day to determine what impact the storm had and whether the work should be stopped. It was noted that a two year permit had been granted and so the permit would be valid should work have to resume next summer.

MOTION:

To approve the request by Mr. Silverman to revise Permit #IW-13-19 to dredge the pond at 341 Nettleton Hollow Road in accordance with the Plan, "Pond Cleanout Plan," sheet 1 of 1, by Mr. Neff, dated 3/19/13 and revised to 11/25/13; all previous conditions of approval remain in place. By Mr. Wadeldon, seconded by Mr. Papsin, passed 4-0.

Straw Man, LLC./135 Bee Brook Road/Request to Revise Condition of Approval for Permit #IW-09-44/Extension of Time for Bridge Related Work:

Mr. Wadeldon recused himself and left the table.

Atty. Fisher summarized his 11/26/13 letter submitted that afternoon on behalf of the four condo associations and the service corporation. He noted one of the condo associations owns the land on which the driveway and bridge will be built, but had not signed the application nor had it been approached for input regarding the issue of the temporary vs. permanent bridge. He asked that the revision request be rejected as incomplete and that the Commission consult with its attorney regarding whether Permit #IW-09-44 should be revoked. Mr. Bedini asked if the ownership had changed since the original application in 2009. Atty. Fisher said it had not. Mr. Bedini asked why this issue had not been raised at that time, noting that a public hearing had been held and the fifteen day appeal period had expired long ago. He suggested that discussion be tabled so that the Commission could consult with its attorney. Mr. LaMuniere noted the Commission had determined that sufficient data had been received and that the proposed activity would not cause serious damage to the wetlands. Atty. Fisher argued that the applicant had not submitted enough information to enable the Commission to determine there would not be significant impact to the brook and asked that the Commission refer the matter to an engineer for review.

Atty. Ebersol noted that the issue was factually the same as it had been in 2009 and had not been raised at that time and the appeal period for approval of the permit was now over. He stated Straw Man, LLC. has a deeded right of way over Juniper Meadow Road and the stream and that when you have a right of way the law permits you reasonable access. He stated Straw Man did not need the condo association's permission. He added that this was not a matter that could be decided by the Inland Wetlands Commission; it was between Straw Man, LLC. and the condo assoc. Mr. Bedini agreed that normally the Commission does not get involved in property disputes. Mrs. Hill read her 11/26/13 memo to the Commission in which she reported on her conversation with Atty. Olson regarding Atty. Fisher's 11/26/13 letter and which included Atty. Olson's advice that ownership is not a matter that can be determined by the IWC. Atty. Fisher countered that he had not said Straw Man needed the owner's permission, but that the application was incomplete because the owner had not been properly identified.

Mr. Bedini said the Commission would hear the applicant's presentation and would make a determination whether the proposed activity would significantly impact the wetlands.

Atty. Ebersol reviewed the request to revise the condition of approval for Permit #IW-09-44 as recommended by the Commission and Atty. Olson at the last meeting. He said according to Atty. Olson the Commission should determine whether there would be significant impact to the wetlands and whether a public hearing is needed, and if not, it could act on the request tonight. He said his

letter dated 11/26/13 addressed the questions raised by the Commission at the last meeting (dates and duration of time for the temporary bridge, justification of the increase in time, and restoration plan for the bank when the temporary bridge is removed) and that information previously submitted, such as the more detailed construction sequence and explanation of the additional trips to be made, had been resubmitted. He noted the 11/26/13 letter from Mr. Trinkaus, engineer, had also been submitted to respond to the Commission's questions. He noted the Commission had already approved both the temporary and permanent bridges and the seepage envelope and that this request was only to revise the condition of approval relating to the season in which bridge related work would be allowed. He asked that use of the temporary bridge be allowed through 9/30/14.

Mr. Towne, contractor, reviewed the narrative he had submitted at the previous meeting. He stated the bridge work had already been approved, there would be no change to the seepage envelope, and the temporary bridge would have no impact to the brook whether it was crossed one time or one hundred times. He said neither the actual work to be done nor the scope of the work would change from the approved permit. He noted the dry season varies per year and that he would work with the weather conditions as best he could. He then said he would take photos of the bank prior to the start of work and would restore it to its original condition upon removal of the temporary bridge. Mr. LaMuniere thought this would be OK.

Mr. LaMuniere stated he had no problem with the specifications for the temporary bridge, that specs for the anchoring of that bridge had been submitted, and that the nature of the bridge was not an issue for the Commission.

Mr. Bedini stated the number of crossings was not relevant and the commissioners agreed; more important was how the temporary bridge would be constructed and the length of time it would be up. It was noted either the permanent bridge would be done or the temporary bridge would be taken down by 9/30/14. Mr. Bedini noted the temporary bridge was what was being discussed now; that the work on the permanent bridge was still limited to June 30 – September 30.

Atty. Ebersol reviewed the latest letter from Mr. Trinkaus, which stated the bank was pretty stable and described how it would be stabilized after the temporary bridge was removed. Mr. Towne added that concrete blocks would be benched into the banks, that erosion control measures had already been installed, and that more erosion controls would be added. Mr. Towne also stated the seepage envelope would be constructed as approved, but would be narrower for the temporary bridge. It was noted that if the permanent bridge was never built, the seepage envelope would be removed, but if the permanent bridge was built, the seepage envelope would remain in place and would be expanded. It was agreed all sources of potential impact would be restored to their original condition. Mr. Towne and Mr. LaMuniere said this information was in the written documentation already submitted and Atty. Ebersol so amended his 11/26/13 letter.

Atty. Ebersol noted that if the Commission did not approve the request to revise the condition of approval, work would go ahead on extending the driveway to within 25 feet of the streambank as had previously been approved.

Atty. Ebersol reminded the Commission that it had approved work involving larger streams and equipment working in watercourses, whereas this request involved only crossing over a brook, not working in it. He and Mr. Towne stated there would be no impact to the wetlands and Atty. Ebersol referred to Mr. Trinkaus' letter, which also said there would be no impact to the wetlands.

There was a brief discussion regarding how the WEO would monitor the project once work started and how to ensure there would be no adverse impacts in the event of bad weather.

Atty. Fisher stated there was a lot of material that neither he nor his clients had had the opportunity to review. He also said there was nothing to support the Commission's finding that approval of the revision request would result in no significant impact to the wetlands. He submitted a petition signed by residents requesting a public hearing. Both Mr. LaMuniere and Atty. Ebersol told Atty. Fisher that no new material had been submitted. Atty. Fisher responded that because the work would be done on property owned by the condo assoc. it had the right to evaluate and comment on the request.

After another brief discussion it was the consensus of the commissioners there would be no significant impact. They were inclined to approve the request, but decided to check with Atty. Olson regarding whether the request would be considered an application that residents could petition for a public hearing. Atty. Fisher confirmed that he would submit the petition.

MOTION:

To table the vote on the request submitted by Straw Man, LLC./135 Bee Brook Road to revise Permit #W-09-44 until the Commission discusses the matter with its attorney.

By Mr. Bedini, seconded by Mr. Papsin, and passed 3-0.

Atty. Ebersol asked if the matter could be considered at a Special Meeting prior to the next regular meeting. Mr. Bedini said that would be decided after consulting with the Commission's attorney.

Mr. Wadelton was reseated.

Smith/35 East Shore Road/Unauthorized Work Near Riverbank

Mr. Bedini said the agenda would be altered to hear Mr. Woodruff, who had requested in his letter dated 11/25/13 to address the Commission regarding Smith/35 East Shore Road.

Mr. Woodruff said Mrs. Smith had had the area behind a retaining wall on her property along the river dug out with an excavator, the stonewall there disassembled and rebuilt, and fresh fill deposited behind the wall and then power tamped down. He said this took an excavator, two dump trucks, and five workers. He said the work had been done the first week in October, he had come in to report it but Mrs. Hill had been on vacation, and so he reported it to her after she returned. He noted that soon after he had reported this work, the Selectmen had reassigned Mr. Ajello to handle enforcement for the Smith property. Mr. Woodruff complained that upon inspection of the site, Mr. Ajello had reported to the Commission that no violations were apparent and there was nothing on which he could take action. He referred to the 11/13/13 Enforcement Report and the 11/13/13 minutes to substantiate his claim. He urged the Commission to treat all violations in a consistent manner. He then listed several other previous complaints he had regarding work in wetlands on the Smith property including the installation of lighting, deposition of material, and improper septic repair work that could endanger his water supply. He described these in detail and complained that the Commission had not held Mrs. Smith accountable for them. Mr. Bedini noted the complaint about the septic repair work should be taken up with the Health Department. Mr. Ajello stated that Mrs. Smith had a permit for the deposition of fill that Mr. Woodruff had referred to. Mr. Woodruff asked to see a copy of this permit. Mr. Woodruff presented copies of an email Mrs. Hill sent to Mr. Ajello on October 25 and photos he took of the work area and asked 1) why it had taken Mr. Ajello 19 days to make the inspection and 2) why it had not been evident to him that work had been

recently done. He compared both soil samples, which he said were taken from the newly filled area behind the retaining wall and from the old driveway, to show how they differed as well as photos of the work site before and after the work had been done, pointing out differences between the photos. Mr. Ajello said it was obvious that he and Mr. Woodruff had seen different things on site and said he would like to go out again with a commissioner. Mr. Woodruff said he would like to attend. Mr. Bedini asked if Mrs. Smith's permission was needed, but Mr. Woodruff stated the work could be seen from his right of way over the Smith property. Mr. Woodruff asked for the same protections as the Commission provides other property owners and that a cease and desist order be issued to Mrs. Smith. Mr. Bedini explained enforcement procedures to Mr. Woodruff, noting that enforcement was more difficult when there were no photos taken at the time the violation had occurred.

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

The draft letter Mr. Bedini had written to the DOT regarding its policy of spraying herbicides on roadsides near wetlands and watercourses was discussed. The letter advised the DOT there was concern about the pollution of the lake and asked it to consider changing its methodology. It was hoped that the selectmen from Washington, Kent, and Warren would sign the letter as well as the Lake Waramaug Task Force, Lake Waramaug Authority, NW Conservation District, and CACIWC. It was thought the more organizations that were involved, the more consideration DOT would give.

New Application

Brick School Road, LLC./181 West Shore Road/#W-13-40/Construct Dwelling, Driveway, Septic System, Well, etc.:

There was no representative present. Mr. Ajello stated this was a long term project so discussion could be tabled to the next meeting.

Mr. Wadelton left the meeting at 9:55 p.m.

Enforcement

In addition to the items listed in Mr. Ajello's 11/26/13 Enforcement Report, the following matters were discussed:

Berg/22 Foulis Road/Activity Exceeding Approved Permit:

Mr. Ajello said he would call Mr. Berg's agent again and that he hoped this matter could be resolved without having to issue an enforcement order, which would require a show cause hearing.

Lancaster/244 West Shore Road:

The work site will have a lot of disturbed soil exposed over the winter and will require frequent inspection by the WEO.

Administrative Business

Revision of the Inland Wetland Regulations:

Mr. Bedini noted that in addition to the revisions listed on the agenda, definition for "dry time of year," fee schedule vs. language in the text, application form, etc. new state statutes must be

incorporated in the Regs.

Privilege of the Floor

Regarding Silverman/341 Nettleton Hollow Road, Mr. Charles asked why it had taken four days for the WEO to notify the contractor and Mr. Neff that the ongoing dredging was well beyond the scope of the permit. He also said he thought that Mr. Neff's latest revised plan still did not accurately depict the extent of the disturbance. Mr. Ajello noted that Mr. Neff said it was, indeed, accurate. Mr. Charles asked if his photos had been presented to the commissioners at the meeting. Mr. Ajello noted they were in the file and those commissioners who had reviewed it had seen them. Mr. Ajello read the Silverman entry from his 11/26/13 report, which said if the Commission had realized the extent of the work that would be done, it would have limited it to the dry time of year.

MOTION:

To adjourn the meeting. By Mr. LaMuniere.

Mr. Bedini adjourned the meeting at 10:08 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

By Janet M. Hill, Land Use Administrator