

# January 8, 2014

**Public Hearing - Regular Meeting**

**7:00 p.m. Upper Level Meeting Room**

**MEMBERS PRESENT:** Mr. Bedini, Mr. LaMuniere, Mr. Papsin, Mr. Wadelton (recused for Public Hearing, did not attend the meeting)

**MEMBER ABSENT:** Ms. Cheney

**ALTERNATES PRESENT:** Mr. Davis, Mr. Martino

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

**ALSO PRESENT:** Atty. Olson, Atty. Fisher, Atty. Ebersol, Mr. Towne, Mr. Charles, Mr./Mrs. Condon, Mr. Neff, Mrs. Laverge, Mr. Szymanski, Mr. Ross, Residents, Press

## **PUBLIC HEARING**

**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. Bedini called the public hearing to order at 7:00 p.m. and seated Members Bedini, LaMuniere, and Papsin and Alternates Davis for Ms. Wadelton,, who had recused himself and left the table and Martino for Ms. Cheney.

Atty. Ebersol noted Straw Man, LLC. was requesting a revision to one of the conditions of approval for Permit #IW-09-44. He cited the documents that had been submitted in support of the request; both the original motion of approval and documents from 2010 and the more detailed sequence of construction, additional information, and endorsements pertaining to the current request from Mr. Towne, contractor, and Mr. Trinkaus, engineer. He emphasized that the Commission had already approved a permit for both a temporary and a permanent bridge, but this revision, if approved, would extend the season in which the bridge related work could be done and would allow use of the temporary bridge from approval until the end of September 2014. He noted that at a previous meeting Atty. Fisher had questioned the right of Straw Man, LLC. to construct the driveway and bridge in the right of way owned by the condo associations. In response Atty. Ebersol submitted three deeds; Warranty Deed filed by the Town Clerk on 5/24/83, Vol. 94, PP. 1167-1174, Warranty Deed filed by the Town Clerk on 12/5/02, Vol. 164, PP. 0704-07-5, and Warranty Deed, filed with the Town Clerk on 5/18/99, Vol. 145, PP.49-51, which, he said, proved Straw Man, LLC. has broad and extensive rights to pass and repass across Juniper Meadow Road for ingress and egress for the purpose of development and construction on his client's property and to construct a "spur" to use for road construction and to extend Juniper Meadow Road to access his client's property. He read the language in one of the deeds. He noted the 11/8/13 letter he sent to the Commission was part of the record.

Mr. Bedini stated ownership of the property and the language in the deeds were not issues concerning the Inland Wetlands Commission.

Mr. Towne reviewed the proposed construction sequence, which he had submitted previously for the temporary bridge. Very briefly this was to inspect the erosion and sedimentation control measures and repair them or add more if there are problems, install the abutments, set the poles across and then the decking, install sections of the road bed, which would be narrower than the permanent driveway, but at the elevation of the permanent road bed, install the seepage envelope, which would also be narrower than for the permanent bridge, use the temporary bridge for testing purposes, use the temporary bridge for the construction of the permanent bridge per the original approval. He explained the heaviest piece of equipment crossing the temporary bridge would be 10,000 lbs, which would not be likely to sink or to make ruts.

Atty. Ebersol submitted photos of the proposed crossing site and of larger crossing work currently under construction in Washington at the Silverman property and on Walker Brook Road.

Atty. Ebersol asked Mr. Towne if his company normally works during this time of year. Mr. Towne responded that it does and that the proposed work was not complex.

Atty. Ebersol asked Mr. Towne if there would be impacts to the wetlands if the work was done during this time of year. Mr. Towne said the work would cause no problems and installation of blocks as had been discussed at previous meetings, would protect the banks.

Mr. Trinkaus, engineer, could not be present and so Atty. Ebersol read his 11/6/13 letter, which stated the installation of the temporary bridge would have no adverse impacts to Chaple Brook, and referred to his 11/26/13 letter, which responded to previous questions by commissioners.

Atty. Ebersol described the small size of this project; an 8 foot wide brook with a pronounced channel where the water level has not risen over the top of its banks for years and no vehicles or equipment would work directly in the stream. He compared this with other permits recently approved by the Commission where there was bulldozing and dredging in larger streams in autumn and winter months. Atty. Olson advised the Commission there was no precedent based on the decisions for other applications.

Atty. Ebersol thanked the Commission for its thorough review, and again noted the revision requested would not impact the wetlands and the temporary bridge would not remain in place after September 30, 2014.

Representing several of the Bee Brook Crossing condo associations that own the land where the right of way is located, Atty. Fisher said the Commission had not discussed the temporary bridge when the application was considered and approved in 2010 and that there was no engineering information on it in 2010 because it was to be up for only 2 or 3 weeks. He cited the following problems with the current revision request: minimal engineering had been provided, no measurements for the length of the bridge had been given, the brook was only 8 feet wide, but the entire span was approximately 35 feet, the span would be sloped as one bank was 4 feet lower than the other, a better construction

plan would be for a level bridge, the bottom of the proposed span would be fairly close to the surface of the water, the applicant had said the brook did not overflow its banks, but in 1994 this did happen causing considerable erosion, and while a temporary bridge for 2 weeks at the right time of year had no risk, a temporary bridge up for several seasons could be risky and could be damaged. Atty. Fisher had no engineering report, but said he had spoken with Mr. Jarvis from Milone and MacBroom, who had provided him with this summary of concerns.

Atty. Ebersol objected to this second hand information from Atty. Fisher.

Atty. Fisher asked for the following documentation: calculations stamped by an engineer to show the temporary bridge will support 10,000 lbs, plans showing a bridge with a level span over the brook that maximizes the distance between the bottom of the bridge and the water level of the brook, requirement for concrete block abutments at both ends of the bridge, and that the deck be attached to the concrete blocks so it will not float away in high water, the dimensions of the bank to bank span, and the requirement that if bank stabilization is needed, an erosion control blanket must be installed. He said he hoped these points would lead to more analysis so that Chaple Brook would be protected. Also, regarding the deeds, Atty. Fisher said the applicant does have a right of way, but that the Regulations require the owner to sign the application, which had not been done for the original application or for the request for this revision.

Mr. Bedini responded that Mr. Sanford of Milone and MacBroom had reviewed both the plans for the temporary bridge and the permanent bridge for the original application and so it was strange that an engineer from the same company had another list of concerns at this time. Atty. Fisher said the temporary bridge had not been analyzed because it was temporary, but now that it would be up for a longer period of time and its use would change, there would be more risk. Mr. Bedini noted the bridge was still temporary and its location and construction had been included in the original plans. He added that its ability to withstand 10,000 lbs. had never been an issue and he asked if it made any difference whether the temporary bridge would be used for 10 trips or 100 trips. Regarding the matter of the owner's signature on the original application, Mr. Bedini noted there had been a 15 day period in which to challenge the approval, but the decision had not been appealed.

Mr. LaMuniere stated the specifications submitted by Mr. Towne had addressed the Commission's concerns. He also stated that telephone poles are a standard 45 feet long, so the Commission did have that information. He noted the temporary bridge would be taken down upon construction of the permanent bridge and he said that if both bridges and the seepage envelope were constructed according to the plans submitted, there would be no impacts to the wetlands. He noted the Commission's concerns regarding the restoration of the banks had been addressed and that ownership issues were not under the jurisdiction of the Inland Wetlands Commission.

Mr. Bedini noted the Commission had considered both the temporary and permanent bridges and had determined neither would impact the wetlands. He noted the issue now

being considered was whether extending the time the temporary bridge would be up would impact the wetlands.

Atty. Fisher said his goal was to make the Commission aware of additional information it should ask for before making its decision.

Atty. Ebersol noted that Atty. Fisher did not have an engineering degree. He then pointed out that included in the narrative submitted by Mr. Towne was the length of the poles to be used; 40 to 45 feet. He also noted that building a level bridge would require filling in the area where the Commission wants no disturbance and that building the bridge as Atty. Fisher proposed would double the work and the potential to damage the wetlands.

Mr. Towne noted the major storm in 1994 that Atty. Fisher had referred to had occurred in August in the supposed dry period during which the Commission had limited the bridge work related activities.

Atty. Ebersol stated the application clearly noted the ownership of the property on both sides of the bridge, his client does have a legal right of way, and that in the 3/11/2010 IWC minutes, Mr. Meyer, now president of one of the condo associations, had offered to allow a temporary crossing on condo property.

No one from the public had any questions or comments.

Mr. Bedini asked the commissioners if they were satisfied they had all the information they needed to render a decision. They all said they did.

Mr. Martino noted that although he had not attended all of the meetings when this request was discussed, he had read the entire record and was qualified to vote.

Mr. Bedini closed the public hearing at 7:48 p.m.

This public hearing was recorded and the audio is available from the Land Use Office.

## **REGULAR MEETING**

Mr. Bedini called the Meeting to order at 7:55 p.m. and seated Members Bedini, LaMuniere, and Papsin and Alternate Davis for Ms. Cheney and Mr. Martino for Mr. Wadelton.

He noted there was no subsequent business to add to the agenda.

## **MOTION:**

To amend the order of the agenda to consider Straw Man, LLC. first to accommodate those present.

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

**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. Bedini asked the commissioners if they had enough information to make a decision tonight. Mr. LaMunier stated the bank on the far side of the brook was fairly solid according to Mr. Trinkaus and would provide a solid base for that end of the temporary bridge. Mr. Davis thought the time extension requested might increase the potential risk of impact to the wetlands, but noted extreme weather events had not happened recently and if some damage did occur, a bond had been posted. He asked if \$20,000 was a reasonable amount for repairs. Mr. Bedini thought it was more than enough. Mr. LaMunier referred to a weather graph by Mr. Sonders, which showed the water level in the brook does not rise much, said he had made inspections to the site recently and had seen that the water had not risen much after storms, and noted the erosion in the area is due to a pre existing swale. Mr. Martino noted the proposal had been thoroughly discussed and the Commission's questions had been answered. Mr. Bedini asked if there were conditions of approval that should be considered. Mr. Papsin recommended the applicant note weather forecasts and stop work if heavy rains are predicted. Mr. Bedini stated the bridge must be removed in its entirety by the end of Sept. 2014. Mr. Papsin noted a restoration plan was included in the proposal. Atty. Olson noted the bond would cover restoration to preconstruction conditions. Mr. LaMunier said the plans required the bank to be restored to its original condition and he thought removal of the temporary bridge and restoration should not begin on Sept. 30, but should be completed by that date. He added that if the permanent bridge was not built, the seepage envelope and driveway would also have to be removed. Atty. Olson agreed the Commission had the right to impose this condition if the permanent bridge was not constructed. Mr. Bedini noted that when the permit was originally approved, the Commission had had no discussion regarding what should happen if the permanent bridge did not get built. Atty. Olson said the Commission had the right to decide on any conditions it thought appropriate for the temporary bridge and the access to it. Mr. Bedini suggested that if the permanent bridge was not built, any driveway leading to it within the regulated area shall be restored to the original preconstruction condition. It was noted the original permit is valid for 9 years. Mr. Martino asked if the temporary bridge was removed at the end of Sept. 2014 but the permanent bridge had not yet been built, could the applicant construct a second temporary bridge. Atty. Olson said this would be a revision of the original permit and the Commission would have to approve it. Mr. Ajello asked if she was saying the permit would expire on September 30, 2014. Atty. Olson said, no, it would not expire. Mr. Martino noted the Commission was concerned that the temporary bridge would become permanent, and asked what would happen if at the end of Sept. 2014 the applicant needed the temporary bridge for 2 more weeks. Atty. Olson noted Sept. 30, 2014 was a deadline the applicant had self imposed, but said the Commission would have to approve a revision of the permit in order for the bridge to remain after Sept. 2014. It was the consensus that Mr. Bedini should draft a motion of approval with conditions and refer it to Atty. Olson and to the commissioners for review before the next meeting. Atty. Olson cautioned the commissioners not to discuss the motion outside the meeting. Mr. Bedini asked the commissioners to send Mrs. Hill any comments they might have. Atty. Olson said these would become part of the record. Mr. Ajello said the bond language in the original approval had been simplistic and asked if this should now be reviewed and improved. He read the original bond condition. Mrs. Hill asked if it made any difference

that the \$20,000 bond had already been posted under the original approval. Atty. Olson advised the Commission it could require a different bond for this work, the more specific the language for the bond the better, and it did concern her that the posted bond was tied to the original permit. Mr. Ajello noted that in the original motion of approval the Commission had not specified what it had meant by "temporary," and so he recommended a definition be drafted now. Atty. Olson did not think this was necessary because the approval would state the temporary bridge must be removed by Sept. 30, 2014. She also stated it would be difficult to draft a definition for "temporary" for all situations and applications. Mr. Bedini thought the term should be defined as each future application was considered.

### **Consideration of the Minutes**

#### **MOTION:**

To accept the 12/11/13 Regular Meeting minutes as written  
. By Mr. Davis, seconded by Mr. Papsin, and passed 5-0.

**MOTION:** To accept the 1/7/14 Brick School Road, LLC. site inspection minutes as written.  
By Mr. LaMuniere, seconded by Mr. Laird, passed 5-0.

### **Pending Applications**

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

Mr. Szymanski, engineer, submitted the revised plan, "Proposed Site Development Plan," by Arthur H. Howland and Assoc., revised to 1/7/14, which added the trees to be cut. Plans for the recharger and the overflow discharge into the wetlands with a rain garden and level spreader were briefly described. Mr. Szymanski added stockpile locations to the site plan. Mr. Davis asked if it was necessary to cut all of the trees indicated on the plan. Mr. Szymanski said it was because they were all within the limit of disturbance. Mr. LaMuniere noted that stone stairs would be more protective of the environment, but Mr. Szymanski responded that stone stairs were not permitted in the Zoning Regulations.

#### **MOTION:**

To approve Application #IW-13-40 submitted by Brick School Road, LLC. for a single family dwelling, driveway, septic system, shoreline work, etc. at 181 West Shore Road per the plan, "Proposed Site Development Plan," by Arthur H. Howland and Assoc., dated 11/12/13, revised to 1/7/14, and with handwritten revisions dated 1/8/14; the permit shall be valid for 5 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. LaMuniere, seconded by Mr. Papsin, and passed 5-0.**

**Coleman/31 South Fenn Hill Road/#IW-13-41/Single Family Dwelling, Driveway, Septic System, etc.:**

**Mr. Neff, engineer, noted that at the last meeting the commissioners had asked about the possibility of moving proposed activities out of the regulated area and reducing the amount of clearing. In response he had moved the house north out of the regulated area and moved the tree line closer to the house. His map, "Proposed Site Plan, revised to 1/2/14 was reviewed. Mr. Ajello informed the Commission that Mr. Law from Steep Rock Assn. would soon sign off on the revised plan. Mr. Neff said he had removed the footing drain piping on the west side of the site and the pipes were now within the building envelope. Mr. Papsin asked about loss of the canopy. Mr. Neff answered there would be no trees cut within 50 feet of wetlands. The location of the wetlands on the property was noted. Mr. Neff said the inground pool was not part of the application, but had been shown on the map for planning purposes. He explained the cleared areas would be replanted with bluestem grass, which would provide a unique habitat and expand nesting areas. A site inspection was scheduled for Wednesday, Jan. 15, 2014 at 3:00 p.m.**

**Bitar/36 Carmel Hill Road/#IW-14-01/Timber Harvest:**

**This application was withdrawn per email from Mr. Gillespie dated 1/7/14.**

**New Applications**

**Dobson/24 Wilbur Road/#IW-14-01/Construct Barn:**

**Mr. Ross, agent, submitted information in response to Mrs. Hill's review and the map, "Site Plan," by Altermatt Engineering, LLC., dated 12/24/13 was reviewed. A 26' X 40' pole barn to be used for storage on a slab with no plumbing was proposed. The barn would be 53 feet at its closest point to the wetlands. Mr. Ross stated that only two trees would have to be cut and the driveway would be extended only 10 feet. He said there would be no disturbance to the wetlands. Minimal excavation will be needed because precast forms will be used for the piers. A small stockpile area was noted and Mr. Ross drew it on the map. Mr. Ross stated there would be no trenching for utilities and no gutter drains. He noted runoff would drain to the existing detention area. It was the consensus that a site inspection was not necessary.**

**Laverge/228 Bee Brook Road/#IW-14-02/Bridge and Driveway:**

**Atty. Fisher noted that in 1994 the Commission had approved the driveway with three wetlands crossings. Mr. Ajello explained it had been reapproved in 2003, but the permit had since expired. Atty. Fisher said Mrs. Laverge was now applying for an improved plan with less disturbance and only two crossings. The plan, "Driveway Plan," by CCA, LLC., dated 12/4/13 was reviewed. Engineering specifications had been submitted this afternoon and so there had not been time to review them. Mr. LaMuniere noted his concern about the closeness to wetlands and the steep slopes on the property. He thought drainage could be a problem due to the construction on the steep slopes and the**

large amount of runoff. Mrs. Laverge said swale and rip rap specifications had been submitted and she pointed out proposed culvert locations. Mr. LaMuniere thought the culverts might be placed too far apart and that additional drainage measures such as cross culverts might be needed. Mr. Ajello said he would review the application prior to the next meeting. Mr. Bedini said the Commission would wait for his review before scheduling a site inspection.

#### **Enforcement**

In addition to the items reported about in his 1-8-14 report, Mr. Ajello made the following comments:

##### **Ingrassia/143 East Shore Road:**

The erosion controls have been reinforced for the winter.

##### **Lake Waramaug Country Club/22 Golf Links Road:**

Mr. Ajello described a potential opportunity to treat runoff and he circulated photos of a drainage basin taken in 2010 and 2012, where he would like to see the canopy restored. An application is expected.

##### **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. Bedini said that he would work with Mr. Ajello on drafting a motion and he asked Mr. Ajello to look up the language used for previous bonds. Once completed, Mrs. Hill will review the motion and then it will be referred to Atty. Olson. A vote is expected at the next meeting.

#### **Administrative Business**

Mr. Bedini noted the Regulations should be reviewed and revised. Matters such as definitions and incorporation of updated state statutes need to be addressed.

#### **MOTION:**

To adjourn the meeting. By Mr. Davis.

Mr. Bedini adjourned the meeting at 9:48 p.m.

#### **FILED SUBJECT TO APPROVAL**

Respectfully submitted,

Janet M. Hill, Land Use Administrator