

## June 8, 2011

Show Cause Hearing - Regular Meeting  
6:30 p.m. and 7:00 p.m. Land Use Meeting Room

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

**MEMBERS ABSENT:** Mr. Bohan, Mrs. Hill

**ALTERNATE PRESENT:** Mr. Papsin

**ALTERNATES ABSENT:** Ms. Cheney, Mr. Martino

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

**ALSO PRESENT:** Mr. Hochberg, Mr. Szymanski, Mr. Neff

### **SHOW CAUSE HEARING/Con't.**

#### Hochberg/15 Couch Road/Unauthorized Excavation and Deposition of Materials into a Watercourse

Mr. Bedini called the hearing to order at 6:30 p.m. and seated Members Bedini, LaMuniere, and Wadelton and Alternate Papsin for Mrs. Hill.

Mr. Ajello circulated copies of the 4/18/11 notice of violation and 5/2/11 cease and desist order.

Mr. Bedini noted the show cause hearing had opened on 5/11/11 and had been continued to 6/8/11 at Mr. Hochberg's request. He explained the purpose of the hearing was to give Mr. Hochberg an opportunity to show why the cease and desist order should not be upheld.

Mr. Szymanski, engineer, spoke on Mr. Hochberg's behalf, saying that Mr. Hochberg did not want to argue the enforcement order, but did want to discuss the long term maintenance of the pond. He explained that the outlet control structure had become blocked during the winter causing sediment to be deposited behind it. He said Mr. Hochberg wanted to maintain the pond as a watercourse so that the sediment resulting from upstream erosion would continue to flow downstream. It was Mr. Hochberg's opinion that shoveling the backed up sediment from the pond into the stream had no more impact than letting it naturally flow through the pond. Mr. Szymanski reviewed Mr. Hochberg's 6/6/11 letter to the Commission in which he argued that shoveling the sediment into the watercourse did not have a significant impact and that he was not removing and then depositing sediment, but merely transferring it so that it moved along as it used to move naturally. Mr. Hochberg also stated that the amount he excavated was insignificant compared to the amount that normally flowed through the pond.

Mr. Hochberg presented eight photos both from 2008 and 2011 showing erosion along the streambanks and the resulting sedimentation.

Mr. Bedini noted that if the dam had not been constructed, the silt laden water would have continued to flow down the stream, but that since Mr. Hochberg wanted the pond, there were maintenance problems that came with it. The solution, he said, was not to have workers shovel silt back into the watercourse.

Mr. Hochberg gave some of the history of the pond, saying that since it existed when he purchased the property he had the right to clean it out. He claimed the Inland Wetlands Commission and Conservation District had approved the design to restore the dam, but now would not let him clean the pond out.

Mr. Bedini responded that the Commission had not told him he could not clean out his pond.

Mr. Hochberg stated that using heavy equipment to do the work would cost thousands of dollars and would cause environmental damage. He argued that his maintenance plan of shoveling the silt back into the stream was reasonable and would not pollute or destroy the environment.

Mr. Bedini noted that all other pond owners in Washington get permits to clean them out, that pond

maintenance was not a unique problem, and that maintenance might be costly, but it was the price of having a pond. He also noted that Mr. Hochberg was aware of the Inland Wetlands Regulations due to past experiences with the Commission. He advised him to find a way to get rid of the silt without putting it back into the stream.

Mr. LaMuniere agreed, noting it was Mr. Hochberg's responsibility to get a permit before cleaning out the pond.

Mr. Hochberg again stated he wanted to clean out the pond, but not the Commission's way.

Mr. Bedini said the Commission would listen to ideas about how to accomplish periodic maintenance, but shoveling silt back into the watercourse would not work.

Mr. Szymanski read Section 4.01.C of the Regulations re: as of right uses and asked the Commission how it interprets this section, specifically the language, "significant amounts of material."

Mr. Bedini again stated that pond maintenance is allowed, but shoveling silt back into a stream is not.

Mr. Hochberg stated that previously when the IWC had approved the use of a bulldozer to clean the pond, staked hay bales were installed below the dam and the excavated material was poured over the dam into the stream. He asked if this could be done now.

Mr. Bedini responded, no, because the Commission was not aware of what that approved plan was.

Mr. Szymanski asked if the silt could be removed manually, deposited in the woods, and seeded.

Mr. Bedini noted the Commission would not engineer a solution, but would work with Mr. Hochberg once he had submitted a plan for review.

Mr. LaMuniere agreed that removing the silt by hand was a good idea. He said, however, that the Commission has a systematic way of reviewing pond cleaning and requires specific information such as the volume of material to be removed. He said the excavated material could not be dumped back into the stream.

Mr. Wadelton stated there were reasonable alternatives to operating a bulldozer in the pond, and that the silt could not be put back into the stream.

Mr. Papsin agreed.

Mr. Hochberg said he would appeal his citation and his request for a hearing was included in his 6/6/11 letter. Mr. Ajello said he would forward the letter to the Selectmen's Office.

Mr. Bedini closed the show cause hearing at 7:02 p.m.

## **REGULAR MEETING**

Mr. Bedini called the Regular Meeting to order at 7:05 p.m. and seated Members Bedini, LaMuniere, and Wadelton and Alternate Papsin for Mrs. Hill.

### **MOTION:**

To add the following subsequent business to the agenda:

V. New Application: C. Frankland/173 Litchfield Turnpike/#IW-11-18/ Construct Barn.

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

### **Consideration of the Minutes**

#### **MOTION:**

To accept the 5/25/11 Regular Meeting minutes as written.

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

**MOTION:**

To accept the 5/31/11 Erhardt site inspection minutes as submitted.

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

**Pending Applications**

Geurts/117 East Shore Road/#IW-11-10/Dock Mooring and Abutment:

Mr. Szymanski, engineer, said he had revised the plan to include information on the dock anchor. He noted that rather than install a large stone as originally proposed, concrete would be mixed by hand and mixed with field stone to form the abutment. This would be installed at the high water line and the anchor would be on a pivot. The map, "Proposed Site Development Plan," by Arthur H. Howland and Assoc., revised to 6/8/11" was reviewed. Mr. Papsin asked how long the dock would be. Mr. Szymanski said the existing dock would be used. Mr. Bedini noted all of the concerns raised at the last meeting had been addressed.

**MOTION:**

To approve Application #IW-11-10 submitted by Mr. Geurts, 117 East Shore Road, for activities in his revised application for a dock mooring and abutment only per the site development plan by Arthur H. Howland and Assoc. revised to 6/6/11; the permit shall be valid for two 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, and passed 4-0.

Erhardt/57 West Shore Road/#IW-11-11/Repair, Reconstruct Retaining Walls, Install Stone Patio and Stormwater Management Improvements:

The site development plan by Arthur H. Howland and Assoc., revised to 5/24/11 was reviewed. Mr. Szymanski, engineer, noted the one revision was a correction to note one shade tree would be planted. He briefly described the current erosion problems and the proposed stormwater management improvements that he had detailed at the previous meeting. Mr. Ajello noted the 6/8/11 email from Mrs. Frank of the Lake Waramaug Task Force who was concerned that the proposal did not address the runoff from the driveway across the street. She thought this should be corrected or the washouts would continue. Mr. Szymanski responded that the proposed field stone retaining wall would act as a 1 ft. curb to direct this runoff to the catch basin. Mr. LaMunier said the plan had many good elements, but he asked why 18 inch rip rap was proposed for the beach when he saw no evidence of erosion there. He noted how calm the lake was in this cove and he said the placement of rip rap would actually be filling the lake. Mr. Szymanski then offered to delete the "hatched area." Mr. LaMunier also said he saw no reason for the proposed 4 ft. wall, especially considering the Commission's view on walls along the lake shore. Mr. Szymanski said it formed a seating area and suggested a compromise could be a 2 ft. wall with intermediate rip rap at the base of the wall. Mr. Wadelton also thought there was no other purpose for the wall than for people to sit on. Mr. LaMunier worried about the precedent that might be set if a patio were approved. Mr. Bedini thought the installation of rip rap would be sufficient, but Mr. LaMunier noted that Mr. Szymanski had already agreed to remove it. Mr. Bedini suggested that the rip rap remain, but the two ft. high wall at the edge of the patio be changed to wooden benches, which would serve as a barrier, but would let waves pass through. Mr. Szymanski thought it was important to

maintain the 2 ft. wall so that all of the work being proposed would not be undermined. He amended the plan and said he would submit a formal revised copy for the file.

**MOTION:**

To approve Application #IW-11-11 submitted by Mr. Erhardt, 57 West Shore Road for improvements per the drawings by Arthur H. Howland and Assoc. dated 5/4/11, revised to 6/2/11 and as revised with handwritten notes by Mr. Szymanski dated 6/8/11; 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, and passed 4-0.

Naiiokas/170 Church Hill Road/#IW-11-13/Dredge Pond:

Mr. Neff, engineer, noted that Steep Rock had sent a letter dated 5/31/11 stating that it had no objections to the proposal. He stated there had been no revisions to his plan, "Pond Cleanout Plan," dated 4/8/11 since the last meeting. Mr. Bedini noted that the application had been discussed at the last meeting and the only item to be resolved had been the letter from Steep Rock.

**MOTION:**

To approve Application #IW-11-13 submitted by Ms. Naiiokas to dredge the existing pond at 170 Church Hill Road per the plan, "Pond Cleanout Plan," by Mr. Neff, dated 4/8/11; 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 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.

Mr. Neff asked for a 5 year permit and the commissioners agreed.

Mr. Wadelton amended the motion to include a 5 year permit and Mr. Papsin seconded the amendment. Vote: 4-0.

**New Applications**

Lancaster-Fuchs/18 Sabbaday Lane/#IW-11-16/Dredge Pond:

Mr. Neff, engineer, noted there were two ponds on the property and presented his plan, "Pond Cleanout Plan," dated 5/18/11. He said the southern pond would be dredged to 10 ft. deep, but would not be enlarged. The banks would have a 1:3 slope and 1800 cu. yds. would be excavated. The designated deposition area on the east side of the driveway and the temporary dewatering area were noted. Mr. Neff stated that the erosion and sedimentation control plan and a sequence of construction had been submitted. A site inspection was scheduled for Thursday, June 16, 2011 at 5:00 p.m.

105 West Shore Road, LLC./105 West Shore Road/#IW-11-17/Relocate Driveway:

Mr. Neff, engineer, noted the existing driveway has a grade of 20% and the proposal was to lengthen it and to install more of a curve in order to bring the first 50 feet to a 10% grade and the remainder to 15% to meet the Town regulations. He noted this would provide better access for emergency vehicles.

The plan included the construction of a retaining wall at the lower edge of the driveway. Mr. Neff said this would allow more trees to be preserved and overall would require a smaller construction footprint. The plan, "Driveway Relocation Plan," by Mr. Neff, dated 5/27/11 was reviewed. Also applied for were 1) a stone walkway from West Shore Road to the driveway, 2) the restacking of the small stonewalls near the boathouse, and 3) the installation of a stone veneer on top of the existing pier on the east end of the boathouse. Mr. Ajello asked why the stone walkway was proposed where it was rather than across from the boathouse. Mr. Neff responded that the sight lines were better in this area. Mr. Ajello asked if runoff would be prevented from running down the driveway. Mr. Neff there would be sheet flow as there is now. Mr. Ajello noted the Commission had asked for a driveway cross section in a recent application and he asked how tall the stonewall on the outside curve would be. Mr. Neff said it would be a maximum of 6 ft. Mr. Wadelton asked if there were wetlands on the property. Mr. Neff said there was an intermittent watercourse at the north end of the property and it was 60 feet from the proposed driveway at its closest point. Mr. LaMuniere asked for the stonewall specifications. Mr. Neff stated it would be a gravity wall with a larger base at the bottom. Mr. LaMuniere noted there would be no direct impacts to wetlands. A site inspection was scheduled for Thursday, June 16, 2011 at 5:30 p.m.

Frankland/173 Litchfield Turnpike/#IW-11-18/Construct Barn:

Mr. and Mrs. Frankland presented the map, "Property/Boundary Survey," by Mr. Alex, revised to 6/6/11, which showed the location of the proposed barn and the reflagged wetlands. They noted there was an alternate site available, but a 200 ft. wetlands crossing would be required to reach it. Mr. Ajello said the proposed location was only approximately 20 feet from the wetlands and asked that the exact distance be specified on the map. He also asked that the contour lines be labeled. Mr. Frankland said the barn would be built on a slab. Mr. Bedini asked if the existing driveway would be extended to reach the barn. Mr. Frankland said it would not. Mr. Bedini asked if any material would be deposited to level the slab. Mr. Frankland said perhaps 2.5 feet of fill would be needed in one corner. Mr. Bedini asked for details about the fill and the footings. He also asked for a blow up of the map so that it was readable, a detailed construction sequence, an erosion control plan, location of stockpile areas, and how much material would be excavated or deposited and where. Mr. Bedini said a site inspection would be scheduled when more details have been submitted. Mr. Ajello advised the applicants that the location of the barn might have to be revised due to Zoning setback requirements.

**Enforcement Report**

Mr. Ajello noted the following from his 6/8/11 report:

Bennett/27 West Shore Road:

Mr. Neff is working on a plan to present to the Commission.

Brose/213 Roxbury Road/#IW-08/V5:

The restoration planting was completed and there had been substantial regrowth of the understory. As Mr. Ajello had requested, the agent had submitted a written statement detailing all that had been planted. Mr. Ajello stated he was satisfied that the restoration plan had been successfully implemented.

**MOTION:**

Regarding Brose/213 Roxbury Road/#IW-08-V5: to file a release of the notice of violation on the Land Records, close the enforcement file, and return the \$500 bond.

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

Davis/152 Upper Church Hill Road/Agent Approval/Shed:

Location of a shed 65 feet from flagged wetlands had been approved.

Early/52 Carmel Hill Road:

Mr. Ajello signed off on the underground service by the pond.

Gordon/180 West Shore Road:

The planting has not yet been completed, but the erosion controls are still in place.

Hochberg/15 Couch Road/Unauthorized Excavation, Deposition of Material in a Watercourse:

A hearing will be required if Mr. Hochberg appeals his citation. Mr. Ajello noted his letter written in 2006, which details the history of violations on this property. It was the consensus that the excavation of the pond was an unauthorized activity and the cease and desist order should be upheld.

**MOTION:**

Regarding Hochberg/15 Couch Road/Unauthorized Excavation of Pond and Deposition of Material in a Watercourse: to leave the 5/2/11 cease and desist order in effect.

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

Lanyi/105 West Shore Road:

The renovation of the boathouse is ongoing and the site conditions are under control.

Leary/164 West Shore Road:

The site is stable.

Rosen/304 Nettleton Hollow Road/#IW-08-V2 and #IW-10-V3:

The grass has not been mowed. Currently there are low flow conditions, so the work to restore the stone "canal" will begin on 6/13.

Wang/110 Blackville Road/#IW-09-V7:

Ten maple trees were planted. It was the consensus that the Commission should wait until fall to make sure all of the trees are established before acting to release the notice of violation on the Land Records.

Whittenberg/24 Horse Heaven Road:

Only a small area of disturbance exists. Construction activity did not extend past the limit of disturbance line.

**Other Business**

Shoreline Protection Policies/Presentation at LWA Annual Meeting:

Mr. Bedini read the letter from Mr. Frank inviting the IWC chairmen from Warren, Kent, and Washington to attend the meeting. Mr. Wadelton and Mr. Papsin will attend and report on the proposed shoreline protection policies.

**MOTION:** To adjourn the Meeting. By Mr. Wadelton.

Mr. Bedini adjourned the Meeting at 8:38 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,  
Janet M. Hill  
Land Use Administrator

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