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Washington Board of Selectmen
Washington Inland Wetlands & Watercourses Commission
Washington Zoning Commission
Town Hall of Washington
P. O. Box 383
Washington Depot, CT 06794

March 30, 2021

RE: Ongoing Enforcement Issues at 101 Wykeham Road

Dear Board of Selectmen and Commissioners,

We find the need to contact you directly regarding recent violations (first brought to the town's attention on 2/12/21 by a land use commissioner). We originally sought to address the issue in the proper manner, with email notification (including photographs) to Washington's Enforcement Officer (EO). But instead of putting an immediate stop to the work before it even began, easily accomplished on 2/12/21 by a note left on the staged machinery, he effectively ignored a cascade of complaints from us and others received over the ensuing days while this un-permitted work was undertaken, in violation of the 2018 wetlands permit and the 2013 Settlement Agreement.

It is clear to see that the access from Bell Hill Road (into the 101 Wykeham Road property) has been widened and leveled (see Attachment A). Arbor Services of CT, the contractor involved, continued to utilize the ("permanently abandoned" per the 2013 Settlement Agreement) access in this area for nearly two weeks with heavy equipment, removing trees on what we believe are both properties (101 Wykeham and 23 Bell Hill Road). Only after they had completed their work in that area, claimed to be only on the 23 Bell Hill Road property, they relocated their equipment further up the hill to conduct other work that had been requested by the property owner (Erika Klauer, who at present owns or is a managing member of all three properties: 101 Wykeham Road, 23 Bell Hill Road and 27 Bell Hill Road).

It appears to us that Ms. Klauer's behavior is nothing short of willful, since she is clearly aware of and bound by the 2013 Settlement Agreement, and she is also aware that this access road off of Bell Hill Road was to be abandoned...this has been a promise made by the Klauers since 2008 and was memorialized in 2013's Settlement Agreement. In addition, Ms. Klauer is aware of the wetlands features of the site and that this area in particular was originally designated as wetlands and referred to as the "existing road through wetlands" that was to be restored.

Washington's EO updated the Zoning and the Inland Wetlands Commissions on February 22 and February 24, respectively, but provided an incomplete picture of what had transpired. He erred on the timeline as well as the enforcement actions that had been taken (none, other than perhaps a verbal request to stop work, which apparently was defied for days). He also did not disclose¹ to the

¹ We informed him early on February 22, 2021 of Ms. Klauer's ownership interest in 23 Bell Hill Road.

Zoning Commission the fact that Ms. Klauer was a member of KR CT Homes, LLC (the new owner of 23 Bell Hill Road as of early December 2020) who ostensibly obtained “permission” from 101 Wykeham Road (also controlled by Ms. Klauer) to use the abandoned access. His silence regarding this detail led the Commission to believe that a separate “third party” was involved, when that wasn’t the case. As of 2/24/21, almost two weeks later, no cease and desist or notice of violation had been issued. Instead, it appears that the EO allowed the work to continue as long as was needed.

During both the Zoning and Wetlands meetings, the EO defended and rationalized the unpermitted actions taking place on 101 Wykeham Road, incorrectly attributing sole responsibility to the 23 Bell Hill Road property owner. In actuality, separate violations and fines should have been issued to each of the properties (23 Bell Hill Road and 101 Wykeham Road). At the same time the EO minimized and cast doubt on the legitimacy of the complaints lodged by multiple Washington residents. On 2/22/21 the EO made the following statements to the Zoning Commission (emphasis ours):

"Apparently, back on the 12th we had gotten a complaint that there was work being done on the property."

"The contention is that there's an agreement from 2013 stating certain things and certain things would happen, a contention, on approval for a plan of development."

"The copy of the agreement that I was given² was not signed or sealed by the courts. It was an agreement that was supposedly submitted. So, the town at this point, we don't know what agreement is enforced. We don't even know if the activities, which are not even related to the construction or demolition of the 101 Wykeham property, is involved with what's happened. So, we are investigating."

"I can't just jump the gun and assume that when somebody tells me that something is valid [the 2013 Settlement Agreement], that it's valid."

Keep in mind that these statements were being made by the EO 10 days after the first complaint was received. This is the kind of thing that has led many in Washington to question the integrity and selective nature of enforcement in town.

This abandoned access matter was discussed again at the Zoning Commission’s meeting on March 22. At that meeting Washington’s EO again downplayed the seriousness and extent of the matter stating “We don’t know if it was widened” and conveying the impression that the commission’s Attorney had advised them that the 2013 Settlement Agreement was itself not valid until after the inn was completed. While we have no knowledge of the specific question(s) asked or how the issue was framed by the EO to Attorney Zizka, we strongly disagree with what may have been Attorney Zizka’s quick take on the abandoned access matter. Our counsel has confirmed our clear reading of the 2013 Settlement Agreement. The relevant sections are as follows:

NOW THEREFORE,...the undersigned Parties hereby agree that the following covenants and restrictions become binding and legally valid if and when the Property is approved for use as an Inn by the Zoning Commission and the Connecticut Superior

² We emailed a copy of the 2013 Settlement Agreement to him that morning immediately after he requested it.

Court pursuant to Section 8-8(n) of the Connecticut General Statutes, (the “Approval”) and no appeal, validly maintained or otherwise, of the Approval is pending.

And

6. The existing driveway of the property that intersects Bell Hill Road will be permanently abandoned.

And

Upon Court approval pursuant to an § 8-8(n) hearing, this settlement agreement shall be in full force and effect...

The property at 101 Wykeham Road was approved for use as an inn on 1/7/2013 by the Washington Zoning Commission and by the CT Superior Court pursuant to Section 8-8(n) of the CT General Statutes on 2/5/2013. No appeal of “the Approval” is pending³.

The Klauers’ “stewardship” of 101 Wykeham Road (Photos 1-6) has extended through multiple town administrations, land use staff and commission members. As such we offer the following recitation intended to provide historical background (or a refresher for some) to better understand the repeated enforcement failures to date which unfortunately continue to create ongoing issues for Washington and its residents.

Background

In 2008, the property was purchased and the new owner, exploiting allegedly ambiguous language within the Zoning regulations (interpreted consistently for decades by Washington’s Zoning Commission to mean that inns can only be sited on State Roads), sought approvals from Washington’s land use commissions (Zoning, Zoning Board of Appeals (ZBA) and Inland Wetlands and Watercourses (IWC)) to build a “low-profile” country inn in a residential district. The respective permit applications were denied (Zoning), withdrawn (ZBA) and approved (IWC).

From 2009 through 2012, numerous different proposals were submitted to Washington’s land use commissions while the property owner pursued an appeal of the Zoning denial. In the late fall of 2012, a settlement was reached between the property owner and the two neighbors who had intervened⁴ in the 2009 inn appeal brought by the owner. That Settlement Agreement was presented to the Zoning Commission in early 2013 for an up or down vote. The entire presentation to the Zoning Commission describing an “inn” use while using the last approved (February 2012) “University” plans lasted less than 15 minutes. The Settlement Agreement was approved the same night it was received by the Commission and approved by the Superior Court on February 5, 2013.

The 2013 settlement marked the first time the Washington Zoning Commission had ever reversed a thoughtfully considered and previously rendered decision. In this case, the denial of a 44-room inn with 103 parking spaces and a total of 52,000 square feet of interior floor space in the residential

³ Two legal appeals are currently awaiting decisions, but only involve the property owner’s 2018 **modification** requests (to significantly enlarge the physical size and expand the uses).

⁴ Ms. Klauer has since bought out (or facilitated the renovation and sale of) both intervenors. In 2015 Ms. Klauer purchased the Federer property (27 Bell Hill Road). More recently Ms. Klauer renovated and then occupied the Peacocke property (14 Bell Hill Road). This property was just sold on 2/5/21. It was one week after the sale of 14 Bell Hill Road that the access across the street was widened and used without permits or a right to do so.

zone was “settled” by allowing a 54-room inn with 100 parking spaces and a total of around 75,000 square feet of interior floor space.

Since that time, instead of building the “inn” as approved in 2013, the property owner has pursued further modifications to dramatically increase the size and add even more public uses. By 2018 the property owner was seeking a total of 110,000 square feet of interior floor space (more than 81,000 square feet in the main building alone); the Zoning Commission conditionally approved this request, which was appealed and is currently before the Appellate Court. All the while, the property has been allowed to deteriorate further and rack up additional violations.

Violations

2008-2021 – During 2008’s IWC permitting process, it was observed that an area of significant erosion existed on the property. Land-Tech, the IWC’s consultant observed “...an eroded gully with vertical walls” and recommended that “[t]his area should be regraded and stabilized to prevent further erosion.” The property owner’s engineer admitted that “[b]y evidence of the existing scour and erosion, this point discharge is adversely impacting the wetlands after every storm event.” Work to remediate this identified pollution source was incorporated into the 2008 project plans. As the IWC Chairman observed at the time, this erosion “...could be easily corrected voluntarily or via an enforcement action.” To date, well over a decade later, this area has not been remediated, and this excessive erosion continues into Kirby Brook.

2009-2010 – An important protective aspect of the 2008 IWC approval was condition #4, which required quarterly pre-construction water quality sampling of Kirby Brook according to a proscribed sampling plan developed by Hydro-Technologies and as recommended to the IWC by their consultant Land-Tech who stated that “[a] baseline water quality analysis...” would serve as a “...comparison to post construction conditions...”. Only the first of these quarterly water quality pre-construction samples was ever provided to the IWC. Since early 2009, this permit condition was flagrantly ignored. In 2010, following the close of the public hearing on the first “University” application (during which this inconvenient fact came to light and was not disputed by the applicant nor discussed further by the Commission), the IWC abruptly and unexpectedly eliminated permit condition #4 at the behest of the Chairman. This was astonishing because the property owner had never asked to be relieved of this condition, and further it was entirely inconsistent with the water quality monitoring that all other large projects (on steep slopes or close to important wetlands resources) in Washington have had to comply with to ensure the protection of Washington’s wetlands and watercourses.

2013 – When the Settlement Agreement was approved, it allowed numerous violations of Washington’s Zoning regulations, mostly involving building and structure setbacks but also granting uses that are not permitted in the residential district. Because it was a settlement, it was accomplished by legal fiat and without a public hearing. An additional result was the mooting of three or four other land use appeals associated with the various “University” approvals; the merits of most of those appeals were never decided or even heard.

The Settlement Agreement weakened another important element that was integral to the 2008 “inn” proposal: an extensive 50-foot planted buffer surrounding the entire property. This vegetated buffer, originally promised and touted by the property owner, was designed and intended to be protective of the neighborhood by limiting light and sound emanating from the property. The 2013 settlement allowed substantially narrower property setbacks than the 2008 inn had proposed; this

was achieved through utilization of setbacks for a “school” rather than an “inn” which effectively reduced the buffer on two sides of the property to 30 feet as it allowed buildings to be repositioned at the very edge of the setback. The 2018 plan allowed further encroachments and reduction of the vegetated buffer behind the main building by regrading and positioning new structures and pathways in the setback (forever precluding buffer planting where these structures are located); this expansion is now under review by the Appellate Court. Most recently, the un-permitted clearing along the abandoned Bell Hill Road access has obliterated the remains of the vegetated buffer that had partially regrown since the 2017 violation (see below) and has now opened up a wide view into the interior of the property, adding insult to injury.

2017 – In January the main building, long an attractive nuisance by this time, burned down (Photos 5 & 6), spewing toxins near and far. The owner pursued a reduced bond and relaxation of the erosion and sedimentation controls required by the 2008 permit in order to abate and clear the contaminated remains. The IWC granted this request, reassured that the property owner was moving quickly to eliminate the ongoing threat represented by the burned out pile of rubble, known to contain, at a minimum, asbestos and lead. Four years later, nothing has been done; material from the site continues to wash into Kirby Brook.

In late May/early June, Washington’s then EO was notified of unauthorized stone work being performed in and adjacent to Kirby Brook (Photos 11-14). By the time the EO reported the violation to the IWC, the rebuilding of the two stone walls was mostly complete. The EO incorrectly informed the IWC that the wall reconstruction was part of the 2008 permit; in fact, it was not. Instead, due to sight line issues identified during the 2008 public hearing, the only activity that was permitted in this area was the removal of the tops of the pillars to match the height of the existing stone wall, thus providing improved sight lines along Wykeham Road. Rebuilding any portion of the stone wall was never permitted (nor sought previously). The owner, knowing full well that she did not have permission to conduct this work from either the IWC or the Board of Selectmen, hired an out-of-town based mason to rebuild the stone walls at the 101 Wykeham Road entrance (opposite Golf Course Road). Instead of lowering the height of the pillars (per the 2008 permit), the pillars were actually enlarged and rebuilt taller than what existed before. Additionally, the entire stone wall was removed at the entry alongside Kirby Brook, initially without any erosion controls in place. Scaffolding was constructed in and over Kirby Brook, and construction debris and excess sediment were visible in the brook itself. It bears mention that much of this stone work extended well into Wykeham Road’s right of way, thereby posing an ongoing liability issue for the town. The EO asked that the area be hayed (which it was), and the IWC provided a list of what needed to be done to resolve the violation. Once again, to date, other than payment of a small fine, none of the other actions were taken, and the area remains incomplete, an ongoing violation and a source of additional sediment into Kirby Brook.

Also that year, substantial tree and brush removal took place on the interior of the lot and along the Kirby Brook riparian corridor. Most of this work was indeed granted (and detailed) by the 2008 IWC permit, but the property owner never provided the required bond and the 48-hour notice to the EO that any work under that permit was commencing. Additionally, the trees were supposed to be flush cut in the area along Kirby Brook, but instead many were left as large stumps. Apparently the IWC made no effort to enforce these violations.

Again, that same year, yet another violation occurred when clearing was undertaken along the “abandoned” access off Bell Hill Road. When the matter was raised before the IWC, the Commission was told that the clearing was conducted so CL&P could remove the overhead service lines. There is

no record of the IWC making any effort to enforce this un-permitted clearing and transit through the abandoned access, despite the fact as mentioned earlier, this area is upland review area (or wetlands) and thus required a permit. If a permit had been sought in a timely manner, the “abandonment” issue could have been identified, and CL&P could have been directed to gain access from Wykeham Road, the sole point of entry permitted for this property.

2018 – In March 2018, a new EO was hired, and she pursued some long time violations. One of these involved the ongoing violations at 101 Wykeham Road. In September, a cease and correct order and citation were sent to the property owner by the Zoning Commission; an October 2018 deadline was given for initiation of the work. Two and a half years later, no abatement work or clean-up has been commenced on the property.

2021 – That brings us to the present and the most recent violations on the 101 Wykeham Road property (Photos 9, 10 & 15). It is incomprehensible that Washington’s current EO (who started in January 2019), now with two plus years of work under his belt, appears to remain ill-informed of the regulatory history of this property. We and our neighbors are particularly frustrated that the work was not halted immediately upon first notice, so that the requisite research could be conducted to determine what might have been permissible. Now, the damage has been done, and faith in Washington’s enforcement capacity has eroded even further. What good is timely notice if enforcement doesn’t proceed in an equally timely manner?

In light of the above, we respectfully request that:

1. the property owner be directed to:
 - a. install an effective barrier with a notice indicating that this access is abandoned and not to be used;
 - b. remove the elevated road bed;
 - c. restore the wetlands (as previously proposed and approved); and
 - d. submit a planting plan to the IWC for restoration of this area and require the plantings to be installed this spring; and
2. the Board of Selectmen:
 - a. investigate why the EO did not act immediately to stop all activity when it was first brought to his attention; and
 - b. ensure that land use staff have continuing and updated training in all aspects of their positions, including enforcement of open permits and prior violations.

Thank you for your consideration.

On behalf of the neighborhood,

Rob Parker and Peter Rogness

Cc: Gail McTaggart, Esq.

Attachment A – Photographs 1-15

Attachment A



Photo 1 - 2008

(Klemm Real Estate Listing 2008)



Photo 2 - 2008

(Republican-American June 2008)



Photo 3 - 2012

(New York Times 2012)

Attachment A



Photo 4 – 2014

(News Times August 2014)



Photo 5 – 2017

(Voices 2017)



Photo 6 – 2018

(IWC Site Walk 3/27/18)

Attachment A



Photo 7 – 2017

Bell Hill Access Violation I (from Bell Hill Rd. looking SW)

(4/20/17)



Photo 8 – 2017

Bell Hill Access - Fall (from Bell Hill Rd. looking SW)

(11/1/17)

Attachment A



Photo 9 – 2021

Bell Hill Access Violation II (from Bell Hill Rd. looking SW)

(2/25/21)



Photo 10 – 2021

Bell Hill Access – Violation II (from Bell Hill Rd. looking SW)

(3/17/21)



Photo 11 – 2017

Wetlands Violation VIII+ (from Wykeham Rd. looking S)

(6/13/17)



Photo 12 -2107

(6/13/17)



Photo 13 – 2017

(6/13/17)

Attachment A



Photo 14 – 2017

Wetlands Violation VIII+ (from Wykeham Road looking E)

(8/10/17)



Photo 15 – 2021

Wetlands Violation IX+ (from Bell Hill Rd. looking NW)

(3/17/21)