

**MINUTES OF THE REGULAR IWWC MEETING**  
**MARCH 4, 2014**

**PRESENT:** Vice Chairman Samantha Marone, Dwayne Xenelis, Mike Engels, Bruce Chappell, Mary Labbadia and IWWC Enforcement Office Heidi Wallace.

**ALSO PRESENT:** Commission Attorney John Casey.

**1. Call To Order:**

The meeting was called the meeting to order at 7:00 p.m. by Vice Chairman Samantha Marone.

**2. Public Comment Period:**

None.

**3. OLD BUSINESS:**

**1. 684 West Pond Meadow Road, Assessor Map 125, Lot 021 – in-ground pool/gazebo:**

The following parties were present: Applicant Kenneth Capano Jr., Applicant Engineer Joe Wren, Applicant Attorney Jeffrey Godley, Intervenor Belinda Jones, Intervenor Attorney Keith Ainsworth.

The following is a brief summary of what transpired. A word for word transcription of the meeting pertaining to this application from a tape of the meeting to be provided when completed.

Vice Chairman Marone asked the Applicant to give testimony first. Engineer Joe Wren submitted the drainage computations to IWWC Enforcement Officer Heidi Wallace, who sent them to the Town Engineer for review. An e-mail from Woodard & Curran was received and read for the record. In the e-mail, Jeff Stearns stated that:

“I have reviewed the documentation provided in this e-mail as it relates to the stormwater impacts from the proposed improvements on the Capano property. Based upon the calculations and plans provided, it appears that the Applicant’s engineer has demonstrated that there will be a decrease in the peak rate of run-off to design point, which is located on the southern property line. This is accomplished by removing the pool and adjacent patio area from the overall contributing drainage area (1.0 ac vs. 1.8 ac), as the pool and area surrounding the pool drain onto itself. Therefore, I have no objection to this project in respect to stormwater impacts. I would recommend that the Applicant’s engineer provide a stamped and signed plan for the Town’s file.”

Mr. Wren stated again that if any of the pool water is to be drained, it will be done professionally into a truck and taken off-site. The pool will be salt water so there will be very few chemicals uses. The pool will also be maintained by a professional company. Revised Plans dated 3/4/14 were submitted. The revisions are minor, but made at the recommendation of Town Engineering Staff and Town Staff. The changes were: Delineated total limit of area of work added; silt fence pulled in as requested; hay bales added; added erosion control matting for any 3 to 1 slopes. Also submitted were Drainage Area Plans dated 2/14/14. It was stated that Soil Scientist Robert Russo looked at the site and reviewed the plans. A letter from Mr. Russo, dated 2/14/14 was submitted and read for the record. In summary, Mr. Russo stated:

“CLA has evaluated the potential for impacts based on activities proposed to occur with the upland review zone. The on-site wetlands include the upper end of a wooded swamp. The surrounding ecological communities show considerable alteration for residential development; both on the site and surrounding it. The proposed activities are on the location of existing lawn and will not have adverse wetland impacts. This assessment is based on the absence of direct impacts to wetlands and the analysis of the functions and proposed alterations to the existing upland buffers. Further, CLA believes that the proposed activities as shown on the site plan do not constitute conduct which has, or which is reasonably likely to have, the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.”

At this time, the Intervenor, Belinda Jones and her Attorney, Keith Ainsworth, an Environmental Attorney, were given the floor to give testimony. Attorney Ainsworth stated that the applicant needs to follow the wetland laws. He feels that this application is a continuance of an old application for a fence. This old permit had some restrictions that he feels were not met.

Attorney for the applicant, Jeffrey Godfrey, pointed out that the Commission voted at the last meeting to grant Intervenorship on items' 1 & 3 of the petition so he objects to the presentation for other issues. He also pointed out that the Intervenor has not submitted an Engineer Reports.

Attorney Ainsworth stated that there are existing violations on the property and he is using this opportunity to manage the violations because they haven't been handled very well. There have been alterations to the wetlands because a 2010 survey was done and it doesn't show the stone wall that now exists and there was no permit for it. He wants everything in compliance prior to the Commission moving forward with the current application. Attorney Ainsworth made reference to previous minutes regarding an application for a pool on Cold Spring Drive.

Intervenor Belinda Jones showed the Commission an August 2003 Aerial view of the Capano property and it shows the whole yard with trees. Her property is to the southwest of the applicants. In April of 2008 they cleared what was a buffer and she feels that this affects this application. An aerial view from March of 2012 again shows the area clearcut.

Applicant Kenneth Capano stated that he has previously addressed the previous application and complaint and the IWWC Enforcement Officer Heidi Wallace had evaluated the situation and has documented this in here monthly reports.

Attorney Ainsworth stated that he feels the Commission should place restrictions to this application including previous violations. Anything other than this would be a dereliction of duties by the Commission.

Engineer Joe Wren stated that they have proven that there will be no increase in volume or run-off with this application and that the Town Engineer and Bob Russo have agreed with these findings.

Attorney Ainsworth stated that he would like to cross-examine Mr. Russo.

Attorney Godfrey thanked the Commission and stated that he does not feel that the Intervenor provided any expert testimony. All parties had ample opportunity to submit information. Because of this, he would like the application to be voted on tonight and not delayed any further.

Attorney for the Commission, John Casey stated that in fundamental fairness, if the Intervenor's Attorney doesn't have the opportunity to cross examine Mr. Russo, the applicant cannot use Mr. Russo's letter as testimony.

Attorney Ainsworth stated that he will waive the cross examination of Mr. Russo if the document is removed from the testimony.

The applicant will try to reach Mr. Russo. Mr. Russo was reached and is on his way to give testimony

While waiting for Soil Scientist Robert Russo to arrive for cross examination by Attorney Keith Ainsworth, the Commission tabled this application and will return to it.

**2. Public Hearing for Property of Ketelsen, Proposed 6-Lot Subdivision (Conservation Design) with road improvements located at 990 E. Pond Meadow Rd, Parcel ID 116/034:**

A copy of the Legal Notice was read for the record.

Engineer Bob Doane was present representing the applicant, as well as Attorney Cronin. Mr. Doane stated that this property is 20.99 acres and they are proposing a Conservation Sub-Division where 50% of the property will be designated as Open Space. There are already 2 existing lots and they are proposing an additional 4 to be accessed via Green Meadow Road. The proposed roadway will have a cul-de-sac and there is a proposed wetland crossing. All storm drainage will go to a bio-retention area. A stormwater management report, dated 1/2/14 was submitted from Trinkous Engineering LLC. Engineer Doane stated that they have received some comments from the Town Engineer from the Planning Commission's review of the application. The Commission has tried to schedule a site walk but it has not happened due to the amount of snow on the ground. Therefore, they will ask for the Public Hearing to be continued pending a site walk. There is a berm on lot #4 that has been used for target practice and they will be hiring an environmental firm to evaluate for lead content to make sure there is no problem with the ground water. They are being proactive about the matter. This area is not within the 100' review area as far as they know. The Town Engineer agrees that the area must be tested. Engineer Doane pointed out that there will be an extra driveway that connects to the existing driveway off

of East Pond Meadow Road for emergency access if needed. Once the subdivision is approved, each proposed lot will have to be reviewed also.

At this time, the floor was opened to the public to speak in favor of the application. There were no members of the public who wished to speak.

At this time, the floor was opened to the public to speak against the application. The following people spoke:

1. Attorney Michael Cronin, who is representing adjacent property owner Fred Malcarne (77 acres east of the applicants property). Attorney Cronin stated that Mr. Malcarne feels that this development will impact his property the most. His property is not shown on the map provided by the applicant. He is requesting that the plans be revised to show his property. An aerial view, which includes his property, was submitted. An e-mail from Mr. Warzida of DEEP was submitted that refers to State Statutes. The applicant will look into this matter. Mr. Malcarne has also taken water samples to be tested and will have the results by the next meeting. He further stated that the neighbors expect a rural residential not medium density which is what this application is. It is also a very sensitive area. Maybe the applicant should cut down the number of lots. Mr. Malcarne's land is mostly wetlands.
2. Rob Marshall of 944 East Pond Meadow Road stated that the shooting has been going on for 30+ years. The land may not be wetlands, but it is wet. At times, throughout the year, the land is very, very wet. He doesn't understand how the property can be developed without bringing in a lot of fill. Most of the neighbors get water on their property and a lot of flooding. He is afraid that this development might be too much for this area. All neighboring properties are 2 acre zoning, so maybe they can develop only 2 lots instead of 4.

Upon a motion by Dwayne Xenelis, seconded by Bruce Chappell, it was:

**VOTED:** Unanimously to continue the Public Hearing for this application to April 1, 2014 at 7:00 p.m. in the Multi-Media Room at the Mulvey Municipal Center.

**1. 684 West Pond Meadow Road, Assessor Map 125, Lot 021 – in-ground pool/gazebo:**

Mr. Robert Russo, Certified Soil Scientist was now present and stated that he was asked to look at the property at 684 West Pond Meadow Road to see if there would be any impact to the wetlands with the proposed application. He stated that he did not do the delineation, but did verify them the best he could given to the snowy conditions. He further stated that he does not feel there will be any wetland impact. Vice Chairman Marone asked Mr. Russo what his opinion was of the run-off and volume calculations that were provided by the applicant. Mr. Russo stated that this area is a very small watershed and the proposal is a very small area of change. There is no change in the hydrology. Commission Member Bruce Chappell thanked Mr. Russo for coming to the meeting on such short notice.

Attorney Ainsworth asked Mr. Russo that being there was significant snow cover during his visit to the property, were soil samples taken. Mr. Russo stated that yes he did take 6 or 7 samples in independent locations on either side of the wetland delineation. Attorney Ainsworth asked Mr. Russo if he did a full analysis as done by Soil Scientist Rich Snarski. Mr. Russo answered "no he did not, he just verified the information". Attorney Ainsworth stated that there was a reference to previous work including the construction of the house and driveway and would like to know what he means. Mr. Russo stated that he only became part of the project in February and was not

informed of any previous work. Attorney Ainsworth asked Mr. Russo if he was relying on Mr. Snarski's work that was done. Mr. Russo stated that Mr. Snarski flagged the property and he verified it. Mr. Russo stated that the borings were approximately 2' deep.

Engineer Joe Wren clarified that the lawn is established and has submitted pictures showing this.

Commission Member Bruce Chappell stated that he feels that all rules have been followed. Commission Member Dwayne Xenelis stated that he feels the design has proven that there will be no impact to the wetlands. Commission Member Mike Engels stated that he agrees that there is enough evidence presented to prove this and there has been no evidence provided to the contrary.

It was stated by the Commission that the possible violation of the stone wall that has been brought up repeatedly by the Intervenor will be addressed aside from this application.

There was discussion amongst the members of possible stipulations if the application were to be approved.

Upon a motion by Mary Labbadia, seconded by Bruce Chappell, it was:

**VOTED:** Unanimously to approve the application for 684 West Pond Meadow Road, Assessor Map 125, Lot 021 for an in-ground pool and gazebo, with the following stipulations:

1. An Engineer is to be consulted if groundwater is hit and a meeting at the site will be held with the IWWC Enforcement Officer.
2. There will be no draining of pool water onto the land for winterization or maintenance.
3. A stamped drawing by a Soil Scientist (partial drawing) certifying that the 50' buffer exists between the hardscape edge and the wetland flags.
4. The dimension of the house corners to the silt fencing will be added. The IWWC Enforcement Officer will be notified to assure that the installation of sedimentation and erosion control measures are properly in place prior to any excavation.

#### **4. NEW BUSINESS:**

##### **1. 1961 Boston Post Road, Assessor Map 29, Lot 136, rain garden for stormwater drainage to accommodate the construction of a building for 24 apartments with 25 parking spaces and 30 reserve spaces with a storage/bus stop building:**

Engineer Bob Doane was present representing the applicant Chapman Beach Commons. This parcel is 1.9 acres and is located on the corner of Boston Post Road and Chapman Beach Road, formerly known as the Dibble House. Most of the house was torn down and rebuilt. They are proposing a 1500 sq. ft. building in an "L" shape that will house 24 apartments for Vista Vocational. There will be 16 2-bedroom units and 8 1-bedroom units. They are proposing 25 parking spaces with an additional 30 in reserve. They are proposing a bio-retention rain garden for the first inch of run-off which is partially in the review area. There are 1300 square feet of wetlands on the property. If the 30 reserve parking spaces do not have to be built, which they feel is 0% chance of this happening, the bio-retention can be moved. A drainage analysis will be done by Engineer Joe Wren for up to the 100-year storm. They will continue to look at alternate areas for the bio-retention rain garden. There is very good soil on the property. If the additional 30 parking spaces are needed, they will put in an underground retention under the paved surface.

The application was accepted and the applicant will submit revised plans in the next couple of weeks. There is not enough information yet to decide if this application should be “Significant Activity”.

## **5. REGULAR BUSINESS**

### **A. Minutes of the Previous Meeting – Regular Meeting – 2/4/14:**

The approval of the minutes was tabled until the April Meeting.

### **B. Chairman’s Comments:**

None.

### **C. Correspondence:**

1. Winter 2014 edition of the Habitat.

### **D. Staff Report:**

Distributed and discussed.

### **E. Commission Member Reports:**

None.

### **F. Bills:**

#### **Regular bills:**

Upon a motion by Bruce Chappell, seconded by Mike Engels, it was:

**VOTED:** Unanimously to approve payment of the following bills:

Robinson and Cole - \$378.00

Katie Kelemen – \$80.89 and \$92.44

Heidi Wallace - \$35.00 (reimbursement for E.J. Prscott erosion control workshop

W.B. Mason – \$17.99

### **Special Accounts:**

#### **150% Accounts:**

Upon a motion by Bruce Chappell, seconded by Mary Labbadia, it was:

**VOTED:** Unanimously to approve the payment of \$250.00 to Woodard & Curran out of the 150% account for 2000 Boston Post Road.

### **G. Adjournment:**

Upon a motion by Dwayne Xenelis, seconded by Mike Engels, it was:

**VOTED:** Unanimously to adjourn at 10:23 p.m.

Respectfully submitted:

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Kathleen H. Kelemen, Secretary