

What: Summary of questions posed by attendees at Workforce Housing pre-bid meeting

When: March 13, 2008

Where: Falmouth Town Hall, Council Chambers

Town staff in attendance:

Ethan Croce; Tony Hayes; Theo Holtwijk; Nathan Poore

Workforce Housing Committee members in attendance:

Willie Audet; Tim Bryant; Donna Cheney; Paul Strout;

Abutters in attendance:

Tim Flaherty

Q: Will each prospective purchaser of an affordable unit in the subdivision be required to be "certified" by the Town in order to document eligibility prior to purchasing a unit?

A: The RFP was written to allow developers some flexibility in creating a workable program in this regard. Ultimately, developers will need to document specifically how they are proposing to establish, and ultimately maintain, affordability within the income ranges and price ranges specified.

Q: Will the vernal pool survey, conducted in Spring 2007 for this parcel, satisfy DEP requirements relative to regulatory and permitting purposes for development? Do the results from the Spring 2007 vernal pool survey "expire" at some point in time? If so, when?

A: Town staff will research this issue and provide answers to the attendees at today's meeting.

Q: Will the Army Corps of Engineers impose any different, or additional, regulatory controls relative to the site's vernal pools separate from the DEP?

A: Town staff will research this issue and provide answers to the attendees at today's meeting.

Q: Will the Town consolidate the attendance sheets distributed at the meeting to a single list and distribute the list to the attendees at today's meeting?

A: Yes.

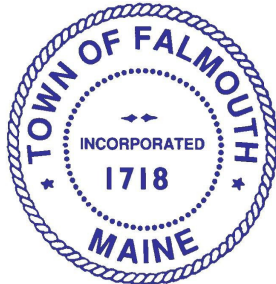
FALMOUTH WORKFORCE HOUSING - Q+A UPDATE, March 25, 2008

**PROPOSAL DEADLINE EXTENDED UNTIL WEDNESDAY APRIL 23, 2008,
3:00 PM**

This is to follow up on the vernal pool questions we received from you at our Pre-Bid meeting.

The questions you asked are contained in the March 17th letter the Town sent to the U.S. Army Corps of Engineers and Maine Department of Environmental Protection (see below). The Town also followed up via phone with these agencies. The response of the DEP is stated below. We are still pursuing a response from the Army Corps but have not received that yet. **Because of this, the Town has decided to extend the deadline for receipt of proposals by two (2) weeks, until April 23, 2008.**

Thank you. Theo Holtwijk, Town of Falmouth



MEMORANDUM

To: Marybeth Richardson, Maine DEP
Jay Clement, US ACE

From: Theo Holtwijk, Director of Long-Range Planning

Date: March 17, 2008

Re: Falmouth Workforce Housing Site

The Town of Falmouth is currently circulating an RFP to area developers for a workforce housing project, off Woods Road in Falmouth. This site currently houses Falmouth's new police station. As part of this RFP the Town included a 2007 Vernal Pool Survey (see attached) and prepared a conceptual site plan. This plan is not required to be followed.

At the mandatory pre-bid meeting last week, several bidders asked questions about this survey and its potential implication for a development program as the RFP submission – due by April 9th - requires a new conceptual site layout.

One bidder wrote: "Rethinking the assumption to use the limitations of the current conceptual layout, it would have a substantial impact to the cost benefit analysis and project economics for a team if some of the area were deemed unusable because of the vernal pool locations/regulatory requirements. It would appear that a position from the regulators would be a key to the project cost determinations by the teams."

The Town wants to be responsive to these developer questions, therefore, we have two questions for you:

1. what are the regulatory implications of impacting *any* of the vernal pools shown on the plan?
2. if development is anticipated, is the Town or developer required to update the 2007 vernal pool report this coming field season, or does that report suffice?

We hope you can help us at your earliest assistance as we are working with a submission deadline of April 9th. We would look for a brief written response that we would be able to disseminate to all parties.

Thanks. This is greatly appreciated.

My contact info is:

Town of Falmouth
271 Falmouth Road
Falmouth, ME 04105
207/781-5253 ext. 5340
tholtwijk@town.falmouth.me.us

Marybeth Richardson of the Maine Department of Environmental Protection Response:

Hi Theo:

Great talking with you the other day. I received your memo and attachments regarding a proposed residential development off Woods Road. I have a few initial thoughts:

- I'd like to answer your second question first, because I think it could affect your approach. If the project triggers Site Law (>3 acres "structure" area) then I think you should seriously consider having the site surveyed this spring to check the vernal pools for significance again. The reason why I say this is that under Site Location, the buffers for significant pools are greater (500 feet minimum) in accordance with Department of Inland Fisheries and Wildlife guidelines. As you know, the vernal pool issue can be an extremely sensitive one, in Falmouth as well as many other towns. The timing seems to be right for additional surveying to add that extra comfort level that the pools are not significant.

If the pools are surveyed again, and the egg masses aren't there to call any of them significant, then they would be considered freshwater wetlands under our rules and the standards of avoidance and minimization would apply. No formal setbacks are typically required unless there is something else about them that could make them "wetlands of special significance." The criteria for these wetlands are listed in Chapter 310 of the Natural Resources Protection Act (NRPA), and generally include wetlands that contain a critically imperiled community, significant wildlife habitat, open water of 20,000 square feet or more, floodplains, or wetlands associated with a stream.

- Also, as we discussed, Site Location projects generally require that the project includes a 100-foot wide undisturbed buffer between streams and disturbance associated with the project. Your plan shows a 75-foot setback with potential encroachments within it, particularly near the Police Station.

- It appears that the crossing of the stream would qualify for a permit by rule under the NRPA.

Keep in mind also that the plan needs to include areas for stormwater management in order to meet the Chapter 500 rules.

I hope this helps with your process. Please don't hesitate to call or e-mail me if you have any additional questions or need for clarification.

Marybeth Richardson

Division of Land Resource Regulation

Bureau of Land and Water Quality

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FALMOUTH WORKFORCE HOUSING - Q+A UPDATE, March 26, 2008

This is a second follow up on the vernal pool questions we received from you at our Pre-Bid meeting. Our first update was issued March 25, 2008.

Below is the written response received from the U.S. Army Corps of Engineers on March 26, 2008.

Again a reminder that the deadline for receipt of proposals has been extended by the Town by two (2) weeks, until April 23, 2008.

Thank you. Theo Holtwijk, Town of Falmouth

Jay Clement of the U.S. Army Corps of Engineers Response:

Theo:

Thanks for sending up the preliminary plans for the project. Here are some general comments. Please share them as you see fit and if you have any questions, please contact me.

Jay Clement
Senior Project Manager
US Army Corps of Engineers
Maine Project Office
207-623-8367

1. Jurisdiction. Corps jurisdiction over the design you depict would be limited to the crossing of Scitterygusset Brook. Other than that, the development appears to avoid all other areas of wetlands. If a developer were to bridge the brook and any adjacent wetlands entirely, we would have no jurisdiction and no say whatsoever over the vernal pools. This option, albeit perhaps more expensive, should be strongly considered. You may still have to get a DEP permit for even a bridge but it could perhaps qualify for a permit-by-rule.

2. Vernal Pools.

a. The assessment of the individual vernal pools revealed that none met the DEP's significance criteria. The assessment incorrectly notes that we have the same criteria, we do not. We first ask, does a pool support breeding amphibians. If so, we have to assess a project's effect on that function, regardless of the degree to which the function is served. In the absence of anything better, we use the Calhoun-Klemmens Best Management

Practices guidelines to assess a project's impacts. Most projects involving vernal pools involve a case-by-case analysis.

b. Value. Someone may argue that individually, the pools seem to have limited productivity. This may or may not be accurate because it's hard to assess productivity on one season's observation. Regardless, the fact that you have at least 3 vernal pools clustered together on the site tends to compound their net value. Their productivity may be a function of the fact that the habitat is already constrained by the small size of the parcel and the proximity of nearby development, Woods Road, the landfill, and the Turnpike spur. In other words, this site may be as productive as it's ever going to be. Regardless, is this site any less critical for the species that are now using it, I think the answer is probably no.

c. Setbacks. Falmouth is certainly more progressive than many towns in that you have many of your vernal pools mapped and you've adopted development setbacks. However, the 75' setback that you have and even the 250' setback that the DEP has adopted have no real basis in biology/ecology.

As the Best Management Practices guidelines explain, amphibians generally need much greater buffers in order to protect the pool and surrounding critical upland and wetland habitat. Simply protecting the pools does little to insure their long-term habitat value. The guidelines prescribe limiting actions within a 750' buffer to vernal pools in order to provide meaningful protection. Please note that this is not a prohibition to development, just a guideline to minimize impacts from development to valuable aquatic resources. Many developers think they can't do anything within 750' when in many cases, development and vernal pools can co-exist with careful planning & design.

d. Proposed Design. The proposed design shows no direct impact to vernal pools which is good. However, the indirect impacts could have the effect of eliminating any productivity in the pools. If we naively assume that amphibians disperse in a 360 degree radius from their parent pool, then they can presently do so within the existing limitations noted above. If Marshall Drive is extended into the site, you eliminate or at least impede dispersal to the wetlands and uplands to the north. If the central and western pods of housing are then developed, you've effectively eliminated dispersal to the west and east. That leaves only dispersal to the south, where the development abuts the town garage and aggregate storage area (not particularly conducive habitat for amphibians). Despite good intentions of avoiding/minimizing impacts, I would expect the function of the pools would all but disappear.

It is possible that if the central development pod was eliminated and you designed Marshall Drive with the Best Management Practices in mind, that all function of the 3 pools wouldn't be eliminated. I don't know if this is a practicable alternative for the community. It may be more valuable to assume the worst, acknowledge the impact, and then move to compensation for the unavoidable indirect impacts. You are well aware of Corps and DEP mitigation policies. If the town went down this road, might there be mitigation options in town that would be geared toward vernal pools such as vernal pool restoration, enhancement, creation, or preservation? DEP and Corps staff would be

happy to review these options if you wish but Falmouth is also lucky enough to have an active conservation commission and land trust which can also assist in the site search process.

3. Permit process. If you choose to bridge the stream such that there is no waterway or wetland fill for the project, there is no Corps permit process.

Unlike the DEP, I do not get involved with work adjacent to a protected resource. I do suggest that you see what DEP has to say to your package.

Since Linda Kokemuller is out on extended leave at the moment, I expect Marybeth Richardson will provide you comments at some time.

If a Corps permit is required, we'll have to look at the full scope of project impacts including the indirect impacts to vernal pools. Our review includes interaction with US Fish & Wildlife Service and US Environmental Protection Agency. We also routinely receive comments from Maine IF&W and local conservation groups. We would want the town and/or a third party developer to basically run down the list of Best Management Practices to determine how they are/are not being met to include calculating the percent of forested cover habitat that will remain within 750' of the vernal pools. If it's less than 75% and/or we determine that the design will otherwise adversely affect amphibian dispersal from the pools, it is possible we'll push for compensatory mitigation. Mitigation costs could significantly drive up the overall cost of the project which would tend to defeat the goals of low cost/lower income development.

Please note that the above comments represent a worse case scenario. It may be upon a more detailed interagency review of the project and/or an interagency site visit, that we're able to get past some of these issues. It is premature to predict one way or the other at this point.