

SEEKONK PLANNING BOARD
Public Hearing & Regular Meeting Minutes
JUNE 11, 2013

Present: Ch. Abelson, M. Bourque, R. Bennett, L. Dunn, D. Viera, R. Horsman, S. Foulkes
J. Hansen, Town Planner, Ilana Quirk, Town Counsel

7:03 pm Ch. Abelson called the meeting to order.

ANR Approval: 615 Read St.

D. Bray from Caputo & Wick introduced himself and summarized that he was representing the Turner Family Trust. He went to say that the submitted ANR consisted of 85 acres with a single family dwelling located in an R-4 zone. The proposed lot amendments would be to divide off 36 acres, labeled as 'not a buildable lot', leaving the single family dwelling on a lot with 361' of frontage and access to the property on an accepted way and a second vacant lot with 375' of frontage and access to the property on an accepted way.

A motion was made by R. Horsman and seconded by M. Bourque and it was unanimously

VOTED: To endorse the Approval Not Required (ANR) Turner Family Trust – Plat 23, Lot 22 and Plat 26, Lot(s) 9-615 Read Street.

**Public Hearing – Definitive Subdivision Modification or Rescission:
Pine Hill Estates – Plat 24, Lots 73, 394- 524 Newman Ave.**

Ch. Abelson read the order of business.

A motion was made by D. Viera seconded by R. Horsman and it was unanimously

VOTED: To waive the reading of the legal notice.

Introduction of Town Planner and Board Members and Town Counsel, Ilana Quirk

Attorney Max Volterra representing the Seekonk Water District (SWD) introduced himself. He passed out a memorandum in support of the rescission of Pine Hill Estates Plan. He went on to summarize that the SWD filed a petition of rescission with conditions asking that the Pine Hill Estates plan be rescinded with the following conditions:

1. The petitioner prepares a groundwater analytical model to determine the extent of the nitrogen contribution by Pine Hill Estates to the Newman Avenue wells.
2. If model determines that the flow of water adds nitrogen loading to cause additional contamination of the wells, the petitioner needs to remedy that contamination.

3. Petitioner to provide an environmental impact statement. (EIS)

He went on to say that the wells closest to subdivision supply over 80% of the water in Seekonk and that any threat to those wells is a threat to the water supply of Seekonk. He said in his opinion the Planning Board (PB) has the power and ability to protect the welfare of the citizens of Seekonk. He said the development is within 15,000' of the wells and the current nitrate load is over 3mg's per liter and if it gets to 5mg's per liter the State would step in and require a nitrate management plan which could cost in excess of a million dollars. He pointed out that if the SWD could not provide the nitrogen management plan the wells would have to be closed and the town would have to buy water from other sources.

R. Bernardo Superintendent of the SWD introduced himself. He passed out data related to the nitrate levels at the middle school to the PB. He went on to summarize as Superintendent his primary duty is to ensure the safety and quality of the Seekonk water supply and that there are three areas of concern with the project; public safety, public health and financial. Concerning public health he said that nitrates are organic compounds and when found in drinking water it is typically from sewage disposal systems or fertilizers; they are colorless, tasteless, and odorless and can't be boiled away. He went on to say that the Mass DEP and EPA have set contaminate levels: max is 10mg per liter or 10 parts per million. Reason for the set levels is because the ingestion of water with elevated nitrogen levels can cause various levels of methemoglobinemia or blue bay syndrome.

Concerning public safety he said if Seekonk were to lose the nearest well to this subdivision, GP4, that would be 400 gallons per minute of capacity lost. He said SWD had to tie into Pawtucket twice last year for water; once for the fire on Maple Avenue and once for the fire at the Grist Mill.

Concerning financial issues he said nitrates are expensive to remediate and the SWD does not have a process to remove nitrates. He said that reverse osmosis and ionic exchange is the only process and cost estimates could go as high as a million dollars.

R. Bernardo then asked the PB to refer to their packets he went over what was handed out to them:

1. A letter from 2002 to the SWD Chairman Robert Fuller.
2. A report from 2004 SWD Source Water and Protection Report
3. A graph of nitrates levels from the four Newman wells

R. Bernardo also referred to a letter that was not in the packets but handed to the PB from Attorney Brainsky dated 6/5/2013. He went on to explain what was in the letter.

R. Bernardo also referred to a letter dated 10/23/12 from P. Carlson to B. Hallal. He went on to read parts of the letter to the PB referring to the nitrate levels and trends.

R. Bernardo then referred to item number 4, a letter from the SWD consultant R. Tryan. He went on to discuss a submittal from Mr. Carlson which shows nitrogen loading calculations and how many bedrooms you can have per allowable land. He said that there is no water quality protection component to the loading calculation.

R. Bernardo went on to say the last item number 5, was an article from 2012, *Drinking Water Blue Nitrates, Pollution from Coast to Coast*. He read the last the sentence and went on to ask the Board to not let this happen in Seekonk.

L. Dunn asked Mr. Bernardo if information from October 2011 was a result from it being an unusually rainy season.

R. Bernardo said he did not have that information but did say from his experience the data did not seem to matter if there was lot of rain; it had more to do with how well the system was operating at the middle school. He thought there was a relationship with how well the septic system was removing nitrates and the relative levels in GP4 well.

R. Bennett asked if the SWD was taking any precautions now since it had been pointed out that the nitrate levels have increased.

R. Bernardo said absolutely, that was why he was at the meeting. He said the SWD had tried to purchase the property.

R. Bennett asked if that was all the SWD was doing.

R. Bernardo said that they were doing education on maintaining septic systems and those types of things.

R. Bennett asked if the SWD was taking steps to remedy the situation at the middle school.

R. Bernardo said they have increased monitoring it for the past 10 years.

Ch. Abelson commented that the middle school system was mandated by the state and it is underutilized.

Ryan Trahan from Environmental Partners Professional Engineer representing the SWD read a letter that was sent to R. Bernardo on 3/25/13. He commented that without knowing specifically how the ground water would flow Environmental Partners would be in agreement to do a ground water analytical study.

L. Dunn asked what a ground water study would cost.

R. Trahan answered around \$50,000.

Brian LaSalle of 228 Burnside, Treasurer for the SWD introduced himself and said he has been a resident of Seekonk for 20 years and is a certified public account. He said he was there to go over the potential costs if there was contamination to the wells. He referenced a study from the Minnesota Dept. of Agriculture, *Drinking Water Protection Series- Nitrate Contamination, What is the Cost?* The article outlined three procedures for remediation of nitrates:

1. New well construction
2. Blending

3. Treatment.

He said the best case scenario would be a new well which could cost around \$400,000. He said blending, which takes water from individual wells and blends them till you get a desired nitrate level generally involves digging a high capacity well which could be expensive. He then went on to describe the third process, treatment which involves either reverse osmosis or ion exchange. He said reverse osmosis maintenance and the equipment could cost \$ 950,000 to a million dollars. He said the ion exchange process could cost up to 2 million dollars. He summarized that spending \$ 50,000 on a hydro-geological study would be a small price to pay to whatever future costs there might be if the water is contaminated with nitrates. He asked the PB to consider these costs in their decision.

Christine Allen 39 Brook Street. Water Commissioner introduced herself. She read from a statement she wrote to the PB.

Atty. Volterra said that concluded the petitioner's comments.

Atty. Eric Brainsky 1547 Fall River Ave introduced himself. He summarized that he was before the PB with an application which is the first of its kind regarding Seekonk in land use in attempting to use a mechanism under State law rarely used. He said that Chapter 81w is not just a mechanism by state law that allows the PB or any other board to rescind a project for any reason they might think is a good reason. He said a good reason in the court means that you have to provide evidence or a change in circumstances that was not presented in the first hearing. He went on to explain there are many examples in case law from the supreme judicial court that say when the PB makes a mistake, despite the PB offering evidence such as a sick member. The supreme judicial court has held that is not a good enough of reason, that is how high the bar is to rescind.

Atty. Brainsky went on to say that his client has met all the regulations according to the subdivision law, all regulations of the zoning bylaw and all regulations of state law and more importantly Title 5. He said if the SWD wanted to appeal they had avenues to do so and they opted not to do that and decided to ask the PB to change their minds based upon the same evidence and statements they made before. He said in regards to the actual petition the SWD was seeking a geo-hydrologic study, ongoing testing and a promise from the developer to correct any water pollution issues plus provide a full EIS study. He said the PB discussed these issues in March 2013 the EIS was discussed as well as the hydrologic analysis went before the BOH and was approved by the BOH.

L. Dunn asked if the analysis was just crunching numbers.

Atty. Brainsky said the special nitrate loading analysis was strictly done in accordance with Title 5 and reviewed by the BOH. He went on to say that there is no evidence that showed any threat to the water from his client's project. He also said the analysis that was presented to the PB and the two graphs omit data from January 2012 on and until most recently 2013 from the middle school septic system, which has been the biggest problem in town, indicates that the middle school shared system has been operating consistently at levels far below the 10mg per liter besides some abnormalities in one or two months over a two year period. He went onto say that

Mr. Kennedy the town's hired consultant to monitor the shared system at the middle school, said that the middle school was not receiving enough carbon and there were upgrades made in 2011 and it has been operating in compliance and is actually below the 10 mg per liter limit with the exception of a few abnormalities. He said that the nitrates did not exceed 1.9 mg per liter.

P. Carlson of Insite Engineering 1539 Fall River Ave. introduced himself and went on to summarize the project. He then discussed the nitrate loading analysis which falls under the 4-40 rule. He said that this means that one 4 bedroom home is allowed 440 gallons per day per 1 acre lot. He said the nitrate loading analysis was submitted to the BOH and per the 4-40 rule the development could have with the 9 lots proposed, 9 houses built with 4 bedrooms. The submitted application complied with all applicable regulations and was approved by the BOH. This petition is pending DEP approval.

P. Carlson then went on to say that the GP4 well is located northwest on SWD property and dimensional offsets had been provided to the PB. He also said that the GP4 well is separated from the subdivision by Cold Brook a perennial stream acting as drainage divide between the well and the subdivision. He said approximately half the project flows from the north side of the site towards the brook with the remainder flowing to the south and west away from the GP4 well. He said that they were aware of the previous problems with the elevated nitrates levels of GP4 and the septic system at the middle school. He said it was his understanding from information provided by the town's wastewater consultant specialist Mike Monroe of JR Engineering Products that the fast system at the middle school has made tremendous improvements to the overall system and nitrate levels.

P. Carlson went over data and graphs that were provided by the town consultant with the PB. He went on to say that the good news is that when fast systems are used it reduces the nitrate levels as intended to do. He said between 2011 and 2013 three samples have shown elevated levels of nitrates and those happened to be in September and October. He said he did not know why this happened but perhaps other potential sources of the nitrates could have contributed to the elevated levels. He referred to the aerial maps showing other potential sources of existing nitrate pollutants in the area. Those being the middle school 1150' from the GP4, the SWD office building's cesspool 705' from the GP4 well, the filtration building which septic system is 443' from the GP4 well, the cesspool for the concession stands for the ball field and at least 5 other cesspools in the area are within 1500'. He said they were not claiming that the adjacent septic and cesspools are the reason for the elevated nitrates but suggested that the antiquated systems built directly into the ground water have more potential to contaminate the well on that side of the drainage divide than the 9 proposed title 5 compliant septic systems built at a minimum of 5' above the highest anticipated ground water.

N. Abelson asked if P. Carlson had data on how much the nitrates levels might go down if fast systems were put in.

P. Carlson said he believed the levels would be down around 20 parts per million but he was not sure on those numbers.

Atty. Brainsky asked B. Hallal the Health Agent for Seekonk to speak on the BOH methodology and review process.

Beth Hallal introduced herself as the Seekonk Health Agent and went on to summarize that the method used is the 4-40 rule which is a calculation used to get a number that tells you that everything falls into the right calculation. She said in this case the subdivision as submitted complied with the 4-40 rule with the nitrogen loading under Title 5.

Ch. Abelson asked if they use an outside engineer.

B. Hallal said we do not typically hire outside engineers however the BOH did give a request to the Town Administrator, Ms. Nolan, to hire an outside engineer but never heard back from her. She said that she is a registered sanitarian and is capable of reviewing the subdivision plan.

D. Viera asked what she gave to Ms. Nolan.

B. Hallal said she gave her the information they gave her and she assumed it went to an outside engineer but she never received a report.

L. Dunn asked B. Hallal if she would drink Seekonk water after this was built.

B. Hallal said yes she would.

S. Foulkes commented she knew that Ms. Hallal was following the requirements of Title 5 but wondered why the board did not go a little further and asked for an environmental EIS to find out where the flow of water would be going.

B. Hallal said it's not required.

D. Viera said he knew the BOH followed Title 5 requirements but asked if the board had the right to ask for additional information.

B. Hallal said what the client submitted to the BOH was ample information to make a decision.

L. Dunn said that Seekonk doesn't appear have any bylaws to protect their most precious natural resource. She said it was disturbing and that the bylaws do not let the PB protect the citizens even though the stated purpose of the bylaw is to promote the health, safety and well being of the citizens. She said she assumed that the Health Agent and BOH would have considered that their first priority.

B. Hallal said that the health and well being of the citizens of Seekonk was their number one priority. She went on to say that Title 5 and its strict regulations have been above and beyond what is required for years. She said they were in good hands following Title 5 regulations.

Atty. Brainsky concluded saying that the project complies with the letter of the law. He said there has been no evidence otherwise and the PB can't change its mind and rescind this project

and impose additional modifications. He said this had gone way beyond what would have been required of any other developer.

Ch. Abelson announced a five minute break

Ch. Abelson asked for proponents or opponents to speak.

Robert Fuller 60 Lincoln St. commented that he spent a lot of time on the SWD board and said what the issue boiled down to was a nitrate problem. He said that an analysis should be done and the development should not be built. He suggested taking the property by eminent domain.

Charles Waddington 799 Read Street asked if someone could explain what caused the three nitrate level spikes.

P. Carlson did not know what caused those spikes he said the last spike was in October 2012.

R. Bernardo speculated that it might be because the start of the school year.

B. LaSalle 228 Burnside Ave. commented he did not think the town should roll the dice and take a chance on the water possibly being contaminated. He said the study would be like an insurance policy and the PB needed to think about it.

S. Foulkes said nothing had drastically changed since the last meeting and asked if the SWD and the developer would share the cost to have the study done.

Atty. Volterra said the SWD would pay for half.

Atty. Brainsky said the a big concern of his client was that there were 6 lots already reserved and the potential buyers had already been waiting a long time but he would ask his client.

Atty. Brainsky consulted with his client and said that if the town or SWD wanted to pay for it and wanted to hire a third party consultant to do it and if it would not slow things down then his client would be okay with it but he intended on proceeding with the project.

Atty. Volterra said that was not acceptable to the SWD and they would only be willing to share the cost.

R. Bennett said he thought if a study was requested the developer would have to be compensated for his lots and time. He also asked if anyone knew how long the study would take.

Atty. Brainsky said in his opinion it would take months.

S. Foulkes said if this study does get done it could answer a lot of questions the potential home owners might have before buying.

D. Viera asked where does the PB stand if the subdivision goes forward and in 5 years the nitrates are elevated and it has been determined it is because of the development.

Atty. Quirk said there would have to be definitive proof that the subdivision was causing the problems.

D. Viera asked if the PB goes forward with this could a stipulation be put in along with the approval that in the event nitrates do elevate and it is determined it is because of the development that it falls back on the developer.

Atty. Quirk said that would be a matter of law, it wouldn't be a condition of the subdivision control law. She went on to say that with definitive subdivisions you look at your subdivision regulations and recommendations from the BOH and in the event the PB finds that the plan conforms to those requirements under chapter 4181U there is a requirement that the PB must give approval. She said that there had been no discussion tonight on that standard.

D. Viera said he was just looking for a way to protect the water supply.

Ch. Abelson asked about monitoring wells.

D. Viera asked the cost of monitoring wells.

Ryan Trahan estimated to put in 4 or 5 monitoring wells would be a total of \$15,000 to 20,000.

D. Kinniburgh West Ave commented that each individual lot could have their own waste water sewer treatment plant it has been done in other areas of Seekonk and worked well and nitrates would not be involved. He said it might be more expensive but it could solve your problems.

Ch. Abelson said that does not seem like there would be enough flow for that.

L. Dunn made a comment that the threat to the water supply could be real and that no one knows until testing is done. She said she thought the PB's hands were tied and there was a real threat of a law suit to them if they tried to defend the town.

D. Viera commented that he thought the PB's hands were tied and he too was concerned about the quality of water, which is why he would strongly suggest the monitoring wells.

R. Trahan commented that it would probably take three days to install the wells but 3 months for the whole thing to be done.

B. LaSalle asked if the nitrates level do increase then what would happen.

Atty. Quirk said the owners of the property of where the contamination was coming from would be responsible.

B. LaSalle said if he were a potential property owner he would be concerned.

A motion was made by R. Horsman and seconded by M. Bourque and it was unanimously

VOTED: To adjourn the Public Hearing

A motion was made by M. Bourque and seconded by R. Horsman and it was

VOTED: to not rescind or modify the Definitive Plan - Pine Hill Estates, Plat 24, Lots 73 and 394, located at 524 Newman Ave, Seekonk, MA.

**Aye- M. Bourque, R. Horsman, R. Bennett
Nay- S. Foulkes, D. Viera, L. Dunn. Ch. Abelson**

Motion does not pass 4-nay 3-aye

A motion was made by D. Viera and seconded by S. Foulkes and it was

VOTED: to rescind and modify the Definitive Plan Pine Hill Estates, Plat 24, Lots 73 and 394, located at 524 Newman Ave, Seekonk, MA

Ch. Abelson said the rationale behind supporting the petition was the PB did not do its due diligence by requiring as part of the decision an EIS /geo-hydrological study.

Atty. Brainsky said to Ch. Abelson that before the case ended up in litigation there might be an offer from his client to put Fast Systems in, at the minimum, on lots 1-5.

Atty. Quirk spoke up and said that the public hearing had been closed but since no one had left the meeting she recommended that there be a motion to reconsider the motion to close the public hearing.

A motion was made by D. Viera and seconded by R. Horsman and unanimously

VOTED: to reconsider the adjournment of the Public Hearing because no one has left the room.

Atty. Brainsky said that after talking with his client his client said he did not want to go to court and he did not want to lose potential buyers. He said his client would be willing to install Fast Systems to lots 1,2,3,4 and 5 which are all on the northerly portion of the property. The Fast Systems are an extra 7, 000 per septic system.

Ch. Abelson asked what the reduction would be with the nitrate loading with the fast systems compared with the conventional systems.

P. Carlson said at least 50%.

Atty. Volterra commented that the middle school has a Fast System and there could be a serious problem regardless. He also commented that the threat of litigation he felt was way out of line. He said the SWD was not satisfied with the Fast System solution.

M. Bourque asked Health Agent B. Hallal what her experience was with Fast Systems.

B. Hallal answered that Fast Systems have to be monitored she gets a report once a year and in her experience in the past 5 years of her working in Seekonk there has not been a problem with any of them.

R. Horsman commented that with the Fast System the systems will now exceed what they need.

D. Viera made a motion close the public hearing

S. Foulkes asked B. Hallal if testing the Fast Systems is visual and would not disturb the soil.

B. Hallal explained the fast systems for a single family house have a regular leaching bed and depending on the perc rate can have a 5 or 4 ft separation, she said in this case the percs were very good in that area so the systems are 5' away from the water table. She went on to explain it is a regular leaching bed with a regular D box and the fast system has a component that they stick in the septic tank attached to a blower system in which it consistently adds oxygen into the system in order to get the breakdown of the nitrates. She went on to say that a trained inspector or the homeowner can be trained to look at it once a year then the BOH gets a report and files it under that address. The home owner fills out all information required by DEP because it is called an alternative system. In order to have this system it must be recorded at the registry of deeds and they must have a maintenance plan and if there is a problem and it is in violation of Title 5 they can be charged 50 dollars a day if they are not in compliance.

A motion was made by D. Viera seconded by M. Bourque and it was unanimously

VOTED: to close the public hearing

A motion was made by D. Viera seconded by R. Horsman and it was

VOTED: approved the definitive subdivision plan Pine Hill Estates contingent on developer installing fast systems on lots 1, 2, 3, 4 & 5

Vote 6 -1 in favor motion passes.

**Aye - D. Viera, S. Foulkes, Ch. Abelson, M. Bourque, R. Horsman, R. Bennett
Nay - L. Dunn**

Preliminary Plan: Warren Ave - Plat 1, Lot 271 (9:25pm)

P. Carlson from InSite Engineering summarized the proposed property is located just north of Swansea on 5.37 acres of land with a farm field in front and a wooded area to the rear. The property is in an R-3 zoning district. He went on to say they are proposing to create 5 new house lots 20k sq. ft. on a 300' public road ending in a cul-de-sac. Half the land will be left for open space. There will be individual septic systems and wells. He said no wetlands exist on the site and there will 25% max disturbance area. He said the definitive plan would probably be ready in a month.

A motion was made by R. Horsman and seconded by D. Viera and it was unanimously

VOTED: to recommend Preliminary Plan for Summer Meadows to go before the Zoning Board of Appeals for approval of a variance for the limited area of disturbance to be 50%.

A motion was made by R. Bennett and seconded by D. Viera and it was unanimously

VOTED: to approve the Preliminary Plan of Summer Meadows Plat 1, Lot 271 Warren Ave.

Site Plan Review: 76 Leavitt St.

Peter Lavoie introduced himself and said he was representing MTTI . He said the property runs along Mead St. and Leavitt St. He said they were proposing to construct a 2400 sq. ft. addition for training classes with 12 associated parking spaces.

A motion was made by M. Bourque and seconded by D. Viera and it was unanimously

VOTED: to approve the Site Plan

Adjourn

A motion was made by M. Bourque and seconded D. Viera and it was unanimously

VOTED: to adjourn at 10 PM, at the next scheduled meeting go over the remainder of the items left on the 6/11/13 agenda.

Respectfully Submitted by,

Florice Craig