

STURBRIDGE CONSERVATION COMMISSION

Minutes for Thursday, March 20, 2003

MEMBERS PRESENT

J. Hoffman, D. Barnicle, E. Goodwin, D. Mitchell, and J. Michalek

6:00 PM

PUBLIC HEARING CONTINUATIONS FOR

NoI cont. - Green Hill Engineering for lot 13 of land previously known as 143 McGilpin Road for construction of a single family home and related.

J. Hoffman opened the hearing, present was M. Farrell. Site visits had not been taken, but snow was down enough to allow site visits during the coming weekend. Site visit scheduled for 3/23 at 7:00 AM. Hearing continued for closure to 4/3 at 9:50.

NoI cont. - Green Hill Engineering for lot 14 of land previously known as 143 McGilpin Road for construction of a single family home and related.

J. Hoffman opened the hearing, present was M. Farrell. Site visits had not been taken, but snow was down enough to allow site visits during the coming weekend. Site visit scheduled for 3/23 at 7:00 AM. Hearing continued for closure to 4/3 at 9:50.

NoI cont. – 145 McGilpin Road for construction of a single family home and related.

J. Hoffman opened the hearing, present was M. Farrell. Site visits had not been taken, but snow was down enough to allow site visits during the coming weekend. Site visit scheduled for 3/23 following, lots 13 and 14 site visits. Hearing continued for closure to 4/3 at 9:50.

NoI – Green Hill Engineering, for Waraika, for 220 Cedar St. SFH and related.

J. Hoffman opened the hearing, present was M. Farrell. Site visits had not been taken, but snow was down enough to allow site visits during the coming weekend. Site visit scheduled for 3/23 at 10:00 AM. Hearing continued for closure to 4/3 at 9:50.

NoI – Green Hill Engineering, for Gosselin, for lots 10 and 11 of 388 New Boston Road, for single family home construction and related.

J. Hoffman opened the hearing, present were M. Farrell, Ed Hovan, Helene Hovan, Carol Yorzyk, and Bill Yorzyk.

Both house lots were reviewed at the same time as they involved the same resource area. M. Farrell outlined New Boston Road, the lots, stream and neighboring properties. He noted the property had been used for logging and outlined two culverts, which directed flow from the stream and from a wetland under New Boston Road, through a stream on the opposite side and into South Pond.

C. Yorzyk stated that the stream on the lakeside of the road was flowing heavily and traced the path into Brookfield and then into South Pond.

J. Michalek asked how the wetland further down and across New Boston Road was impacted by the stream and wetland on this property. M. Farrell noted on the topo map the connections and noted that the two crossings came across near Lane 7.

C. Yorzyk noted that the stream was running heavily and branched. Both branches were also flowing heavily. The stream heading into South Pond was 4 to 5 feet wide. She noted that in August it did dry up. She outlined the location of the vernal pool on her property, which had been certified by Conservation Interns from Tantasqua.

M. Farrell outlined the two lots, the driveway locations, and the 25-foot offset to the wetlands. He noted that one driveway goes up to the back of the property to bypass the front wetlands. For the front lot, he outlined the 100 foot and 200 foot buffer. He noted that most of the septic and house work would be in the 100 to 200 foot buffer zone. For the 2nd house lot in the back, he outlined the same and noted that again most of the work would be in the 100 to 200 foot buffer.

E. Hovan outlined his house lot and asked why anyone would want to build on the property. He stated that the entire thing was wet at times and anyone buying there was going to have severe water problems. He stated that any normal yard use, such as fertilizing grass, would drain immediately into wetlands, the stream, and then the lake. The impact would be automatic.

C. Yorzyk questioned why the driveway was coming in the direction it was and crossing a marshy wet area. She asked why it was not coming in from the back from the far side of the property. M. Farrell said the other possible entrance, a cart path coming in from the back, would require more disturbance to the second wetlands system which was also culverted under New Boston Road. He noted that they were proposing to put two single family homes on one upland area.

C. Yorzyk showed the SCC pictures of the wetland and stream full and running. She noted that the proposed driveway was right over the wetland. M. Farrell reviewed the photos and noted that the driveway and wetland were off to the side of the wetland not through it.

M. Farrell, C. Yorzyk, and E. Hovan discussed at length the issue of a landowners right to use their property in a balance with environmental protection needs.

M. Farrell and N. Ryder discussed the paved driveway in the 50 foot buffer. N. Ryder noted that SCC regulations require that there be no structures within 50 feet. M. Farrell stated that it would not be a problem to leave the driveway as a pervious surface, possible gravel.

C. Yorzyk stated that all the runoff from the property would flow right into the streams. B. Yorzyk stated that their property was 90 feet of sand, everything was going straight down. The SCC asked where the Yorzyk septic was located in relation to the lake. C. Yorzyk stated that it was up hill and behind the home to keep it away from the lake.

J. Michalek asked how many homes were currently built along the stream. C. Yorzyk said none yet.

E. Hovan stated that the lake did not flush naturally, it is a slow flushing lake. The dam was installed to keep the water from backing up. The four abutters asked if a feasibility study had been done to determine the impact of the homes on the lake and wetlands. J. Hoffman asked what the feasibility study would address. C. Yorzyk stated it would address the down stream impacts from the two homes over the long term. J. Michalek asked if a feasibility study had been done for their home and noted that studies at that level were normally conducted for larger projects.

M. Farrell, J. Michalek, and C. Yorzyk discussed the Ohop property and stream in the back and the flow pattern.

C. Yorzyk stated that she did not want another LaFrenierre situation along this stream. She noted that his home had been built right on a drainage swale and he was having substantial problems. She asked if the SCC was going to tell the landowners they could not plant grass. The SCC noted that there was a requirement that no chemicals could be used within 200 feet of any wetland. C. Yorzyk asked why a bridge could not be installed over the wetland to the north so flow would not be restricted. J. Michalek asked how that would help. C. Yorzyk stated that they would not need to cut so many trees along the road. M. Farrell stated that would cause more impact to resource areas. The slope would exceed 12%, which was not allowed under town bylaw and more trees would need to be cut in the back for the longer driveway.

D. Barnicle asked how much cut and fill would be required per the presented plan. M. Farrell said not much, 1 to 2 feet of cut on the high side and 10 to 15 feet of fill on the low side. C. Yorzyk asked how long the driveway was, ¼ mile? M. Farrell said 400 to 500 feet about 1/10 of a mile. C. Yorzyk stated that it was all on a hill and water would have to come down underneath the driveway to get to the lake. She stated that she was concerned for the wetland, the applicant was putting homes in streams and a road in the wetland. J. Hoffman stated that part of the review process was to verify in the field the flags and the upland areas described in the plans. He noted that prior to the SCC having an opinion on the project they needed to confirm field conditions.

D. Barnicle noted that on the plans there were two wetlands and culverts with a 10 foot gap in between. He noted that it was likely there was some connection and was skeptical that the slope and low point did not have water. D. Barnicle agreed that the next step would be to walk the site check the wetland lines and slopes to evaluate if there might be potential impacts.

The public hearing is continued to 4/3 at 9:30 PM. A site visit will be conducted on Saturday, 3/29 at 8:00 AM.

C. Yorzyk asked if anyone had checked to confirm whether or not a vernal pool was present. D. Barnicle noted that was part of the site visit process.

NoI – Green Hill Engineering, for Tom and Claudia Bill, for 9 Woodside Circle, septic repair.

J. Hoffman opened the hearing, present was M. Farrell.

D. Mitchell had conducted a site visit and reported that the site was as shown. The location of the system was fine, but the existing system had signs of severe breakthrough. Grey water was bubbling up. The system must be pumped immediately. He requested that hay bales and erosion control be installed immediately. The work should begin as soon as possible. The system is to be pumped immediately.

The project was approved as presented by unanimous vote.

NoI – Green Hill Engineering, for Swiacki, for SFH and related at 2 Champoux and 145 Brookfield Road, (aka Rte 148).

J. Hoffman opened the hearing, present was M. Farrell. Site visits had not been taken, but snow was down enough to allow site visits during the coming weekend. Site visit scheduled for 3/23 from noon to one. Hearing continued for closure to 4/3 at 9:50.

NoI cont. – Green Hill Engineering for 24 Old Towne Way for single family home and related.

J. Hoffman opened the hearing, present was M. Farrell. Site visits had not been taken, but snow was down enough to allow site visits during the coming weekend. Site visit scheduled for 3/28 from noon to one. Hearing continued for closure to 4/3 at 9:50.

MINUTES REVIEW

The minutes of December 2002, January 2003, and February 6, 2003 were approved as amended.

CPA UPDATE, E. GOODWIN

Tabled

CORRESPONDENCE REVIEW

Correspondence reviewed included; email correspondence; Quaboag/Quacumquasit Lake Association News; Mass Wildlife News (if you go to www.nu.com and then go to eagles online, you can see the yearly bald eagle nesting site at Bartons Cove); Worcester County Conservation District annual seedling drive; Skill building seminars from the Green Valley Institute; the Opacum Land Trust newsletter; The towns financial status update from J. Malloy; Town Reports summary from J. Malloy.

DISCUSSION OF NEW INFORMATION

N. Ryder noted that she had spoken with Douglas Wolf at Corning. He had stated that there was no new find, the case had changed departments at DEP because the soils aspect of the clean up had been completed and a certificate had been issued. The groundwater contamination remained. The branch of DEP they had worked with was not authorized to regulate and approve groundwater cleanup. The same issue had changed hands within DEP and now had a new number. He stated that he would be happy to come in and speak with the SCC if needed. D. Mitchell noted that was not the story he heard from DEP and asked to have him come in and outline the current situation.

REVIEW OF SITE VISITS, SCHEDULED AT PREVIOUS MEETING

MINOR WALK IN REQUESTS

A request for an amendment for 53 Beach Ave was reviewed and approved. The plan approved at the previous meeting did not show a breezeway between the addition and the main home. The addition of a breezeway pushes the limit of work slightly further from the lake. An amendment permit will be typed for signatures. Approved by unanimous vote.

The Sanderson amendment was signed. It had been approved at the previous meeting.

PUBLIC HEARING CONTINUATIONS FOR

NoI cont. – Brian Caron for single family home construction and related at 92 Brookfield Road

J. Hoffman opened the public hearing, N. Ryder had notified B. Caron that site visits were still pending, as no new information was to be presented, he asked for a continuation to 4/3, scheduled for 9:10 PM. A site visit is scheduled for Saturday morning, 3/29.

NoI cont. – Brian Caron for single family home construction and related at 124 Clark Road.

J. Hoffman opened the public hearing, N. Ryder had notified B. Caron that site visits were still pending, as no new information was to be presented, he asked for a continuation to 4/3, scheduled for 9:10 PM. A site visit is scheduled for Saturday morning, 3/29.

PUBLIC HEARING – NoI cont. – J. Teachout for Jalbert for Giguere for 31 S. Shore Drive.

J. Hoffman opened the public hearing. J. Teachout was present but requested a continuation to May 15 at 7:50 PM to allow time to re-review wetland and stream boundaries and other site issues, after the snow melts completely. Approved by unanimous vote. No site visit is scheduled until after revised plans are submitted.

PUBLIC HEARING – NoI cont. – J. Teachout for Jalbert for Pelski for 102 Gladding Lane.

J. Hoffman opened the public hearing. Present was J. Teachout.

J. Hoffman noted that several members of the commission had taken a site visit and had determined that since the entire structure was being removed and the site was large enough, the home would have to meet current regulations or come as close as possible to that.

J. Teachout reviewed the existing home location, the stone foundation, the resource boundary, the 25 foot buffer, and the 100 foot buffer. She noted that the existing home is slightly more than 25 feet from the lake. She outlined the ledge behind the existing structure. She stated that the existing septic system met Title 5 and was not going to be replaced. As the home must be 20 feet from that system, she outlined the possible area the home could be placed. She noted that she had moved the home as far back from the lake as possible. The proposed home is now 13.2 feet further back or 39.9 feet from the lake. She noted that due to topographical conditions she was also asking for a variance. The SCC reviewed the information and agreed that a variance was in order. J. Hoffman noted that the proposed home was 2335 sq. ft while the existing home was 2330 sq. ft. He noted that the variance request became a non issue if the applicant kept the same footprint of 2330 sq. ft. J. Teachout agreed and noted on the plan that the footprint of the structure was not to exceed 2330 sq. ft. She noted that she would shave a small area off. J. Hoffman noted that with the same footprint and the location more conforming the need for a variance was eliminated. The SCC agreed.

D. Mitchell verified that the leachfield met Title 5 per BoH.

E. Goodwin asked if the home would have a second story. I did not hear the answer given.

The SCC approved the revised plan with the following conditions. The minimum distance to the lake will be 39.9 feet, there will be no change in the existing foot print square footage, permission is granted for the vernal pool shown on the plan to be studied and certified, if the vernal pool is certifiable, there is to be no additional disturbance within 100 feet of the vernal pool, all construction is to be on the non water side of the erosion control line.

The SCC discussed restricting the number of rooms to limit potential residential impact to resource areas. They unanimously agreed that was not a SCC jurisdictional issue and noted that bedroom numbers were limited by the septic systems on site already. D. Mitchell noted that the best thing for lake management was to move activity away from the edge of the lake. J. Teachout noted that the town's 15% lot coverage bylaw should be useful if enforced on the lake fronts.

The motion to approve by D. Barnicle, seconded by J. Hoffman was approved by unanimous vote.

PUBLIC HEARING – NoI cont. – J. Teachout for Jalbert for 10 Gifford Road for proposed new building construction and lot redevelopment.

J. Hoffman opened the public hearing. J. Teachout was present but requested a continuation to May 15 at 7:30 PM to allow time to re-review wetland and stream boundaries and other site issues, after the snow melts completely. Approved by unanimous vote. No formal site visits are scheduled until after revised plans are submitted.

PUBLIC HEARING – NoI - Bertin Engineering for Alsco for a building addition at 174 Charlton Street.

J. Hoffman opened the public hearing, present were M. Loin, Dan Prouty and the Cieslas.

M. Loin outlined the project, which was a repeat of that discussed and noted in the minutes of 2/27. He reviewed the storm water and EPA certification and submitted copies of the EPA Notice of Intent filing. D. Barnicle asked who the monitoring reports would be submitted to. Both EPA and the SCC, as the DEP representatives would receive copies of the report. N. Ryder noted that the storm water regulations for EPA paralleled those for DEP and could be complied with using the same measures. D. Mitchell noted that the EPA office was severely understaffed and review would be minimal. D. Barnicle asked who reported any problems to SCC. M. Loin said likely the contractor or site inspector.

D. Barnicle requested that a special condition be included in any permit issued, stating that the responsibility to report and monitor the site is on the applicant and land owner, not on the contractor. The SCC agreed.

M. Loin stated that the report system would be the same as that required for Leadmine Road. He submitted a revised storm water pollution control plan. The SCC reviewed the plan with M. Loin. D. Mitchell requested that a revision be submitted including specific milestones where verification could easily be made that the project and the protective measures were on track, a matrix showing expectations rather than exact times. D. Barnicle agreed and noted that the SCC did not have a problem with the plan, they were looking for a way to account for the plan. M. Loin and D. Mitchell discussed sign off points, 1 - when the detention basin is installed, 2 - prior to removal of the rest of the trees on site, 3 - verification after step 4, tree removal. D. Barnicle and J. Michalek both noted that there were not really any trees being cut, only brush. D. Mitchell said that a verification step after brush removal would not be necessary.

N. Ryder pointed out that verification of the BVW still needed to be completed. M. Loin stated that he had hoped the SCC would go out on site prior to the hearing. N. Ryder told him hope springs eternal and noted that he was 10th in line for major site visits, the SCC would accommodate him as soon as possible. She noted that even the previous weekend there had been too much snow. She noted that site visits were planned for Sunday, March 23, Friday, March 28, and Saturday, March 29. The SCC would get to the site within a week.

E. Goodwin asked what the time frame was. 3-5 years. E. Goodwin requested a condition that the entire site be stabilized in the meantime. He noted that no plan had been presented for stabilization. He noted that there could be no more stockpiling in the 200 foot wetland buffer. He also noted that he was not looking for landscaping, just basic site stabilization.

M. Loin noted that the planting schedule had been a concern at the last meeting and outlined the seeding plan for the detention basin. E. Goodwin and D. Barnicle asked for a stabilization plan to be added to the seeding plan.

D. Mitchell asked for the limit of cutting to be outlined. Done. M. Loin stated that he would put the limits of clearing on a main site plan and submit that to the SCC.

A site visit is scheduled for 3/23 between 9-10 AM. M. Loin will mark off the limits of work and the erosion control line.

D. Mitchell summarized that the issues to be addressed are; a construction sequence with basic expectations; site stabilization plans; limit of clearing shown on the plan; EPA requirements stated on the revised plan; details of the riprap at the base of the detention basin and seeding of the walls.

The hearing is continued to 4/3 at 10:10 PM. If all information is submitted by 3/23 the SCC can review the amended plans then.

PUBLIC MEETING – M Loin and John Elliot for changes to the approved Sturbridge Isle Truck Parking area. J. Hoffman opened the meeting, present were Carlo Panarelli, John Elliot and M. Loin.

D. Barnicle noted that the SCC had conducted a site visit to inspect the project for a final sign off. The Commissioners observed that the site was not constructed according to plan, there had been additional disturbance in the riverfront area despite the fact that no additional disturbance was to be allowed. The grassed swale was not constructed. The vegetation had not taken. There was a 6 foot difference in elevation between the approved plan and the existing. There is a 6 foot drop off the parking lot into a stone lined swale, which is more of an armored channel, and was not on the approved plan.

M. Loin stated that the changes were due primarily to the fact that the actual grade on site was different from that shown on the topo maps. The pipe under the parking area had been installed and when it came time to finish the outlet and parking area there was a 6 foot drop off. J. Michalek asked why an amendment was not requested. M. Loin stated that he did not consider the swale to be a change.

D. Barnicle and D. Mitchell both questioned that the only solution they could come up with on site was to create a 6 foot drop off into a stone lined channel.

D. Mitchell noted that the invert water level would have to build up and over flow the basin prior to exiting through the pipe. J. Elliot stated that it was supposed to wash into the grass area prior to flowing through the pipe. D. Mitchell noted that the water levels would be high during the coming weekend, he suggested that it would be a good time to take levels. M. Loin stated that it needed to build up before release. D. Mitchell said some flow velocity was necessary for the vortech system to work in removing sand and grit. C. Panarelli stated the slower it goes, the better it gets caught in the vortex.

M. Loin stated that a maintenance plan had been required by the SCC. D. Mitchell noted that some assessment of the effectiveness will be the amount of silt dropped out of the swale before entering the pipe going under the parking lot. Soils on site are 2 minute gravel, water will dissipate quickly. M. Loin noted that if there is a spill on 84, this is the emergency place to stop any contamination. D. Barnicle agreed that they did not want a straight shot into the River.

D. Mitchell stated that there were major issues. Any major changes required the filing of an amendment and review prior to work. A safety fence was needed at the drop off, immediately. The drop from the end of the channel directly into the river on an unstable bank needed evaluation on potential corrections. The bank near the river needed stabilization.

M. Loin suggested a couple of stone check dams or 2 baffles in the channel to diffuse the flow and knock out any solids. D. Barnicle and J. Michalek both noted that with the armor in the channel it was unlikely anything would get by, but in the event of heavy flow it would be good to have extra precaution.

A site visit will be conducted to Sturbridge Isle at 9:00 on Saturday, March 29.

PUBLIC HEARING - NoI - Faist Engineering for ExxonMobile for septic system repair at 236 Old Route 15.

J. Hoffman opened the public hearing, present was David Faist.

D. Faist outlined the septic failure on site. He noted the system, which was 10 to 15 years old was never vented so it clogged and failed. He outlined the buffers and wetlands on site and adjacent. He noted that a 36 inch diameter pipe runs under the property and channels the stream. He outlined the hydrologic connection. He noted that the system was within 100 feet of wetlands and the piped stream. Due to the location of 4 public water supply wells, each with a radius of influence of 158 to 159 feet, the only location to construct the system is in the one shown. No work is allowed within the well radius. The ground water is 10 feet below the base of the system. The area contains natural sand and gravel. The second part of the problem is heavy bus and traffic flow. Two years of water use data was collected showing that 1500 gallons per day was the peak flow rate. This is what the system is designed for. He noted that the system received BoH approval on 3/3 with 2 provisions. He submitted the documents, which are available on request. The provisions include ground water monitoring using 3 proposed wells, as well as a catch basin, and that the system be 7 feet above the high water table. He noted that he sampled the water in the pipe to get baseline data. The pipe is 6 feet below the groundwater table. The buffer for leachate will be increased by adding 7min/inch soils below the leach area. The BoH had issued a variance for 50 feet from the wetland. D. Mitchell asked why the system was not moved down slightly. D. Faist stated that he wanted to keep the system further from the drop off to avoid breakout.

E. Goodwin asked what the extent of impervious would be. D. Barnicle asked what the curb elevation would be. 6 inches. D. Mitchell clarified the direction of water flow. D. Faist noted that the wells would be on a quarterly sampling schedule. J. Michalek asked if any testing for volatiles was being done with the testing for septic. D. Faist said none to his knowledge.

J. Michalek, D. Mitchell, and D. Faist discussed at length potential locations of test wells and the benefits and drawbacks of each location. They also discussed what should be tested for and stream discharges and inflows.

D. Faist outlined the erosion control using burlap filled with wood chips. D. Barnicle asked what the timing for degradation was. D. Faist said he would find out and fax the information to N. Ryder.

E. Goodwin would like to take a site visit. The rest of the SCC had already been on site and said a draft permit could be prepared. E. Goodwin will take a site visit on Friday, March 28. The hearing was continued to 4/3 at 7:20 for closure.

PUBLIC MEETING – NoI - Mystic Builders for 6 Vinton Road for single family home construction and related.

J. Hoffman opened the public meeting. Present was Ray Desautels, Michael and Melanie Harrington and Susan Kornacki.

The SCC reviewed the wetlands delineation shown, the buffers required under local regulation and bylaw, they noted that a subdivision that created a self imposed access hardship was not permissible. They noted that the way the owner had divided the lot may eliminate the use of lot 6 due to a self imposed proximity to the wetland. J. Hoffman suggested they get the regulations and bylaws off the internet and reflect the local bylaw requirements in the plans. They discussed the potential erosion issues, the wetlands not shown on the plans and the need to detail issues like cut and fill operations.

M. Harrington noted that a vernal pool had been identified by NHESP and Opacum adjacent to the driveway for lot 6. N. Ryder confirmed that a potential vp was shown on the NHESP map. She noted that if it was certifiable it would raise additional issues.

E. Goodwin noted that there was 400 to 500 feet of frontage so the ability to restructure was there.

The owner was informed that since both lots fell within the 200 foot buffer to resource areas, applications for prior review and approval would need to be submitted and a public hearing review held.

PUBLIC MEETING – Allen Homestead and Preserve for covenant signatures and open space land release.
J. Hoffman opened the meeting. Present was M. Suprenant.

Allen Homestead The SCC noted that the wording was fine for the land covenant. The SCC needed clarification as to whether market value or assessed value was used to meet the bond amount estimated using G. Morse's calculations. After substantial discussion including replication ratios, market vs assessed value, market value fluctuations, and standard bidding policy, (asking for slightly more than needed to offset drops in market value), a vote was taken. It was agreed that a lot value of 1 ½ time the market value for the estimate given by G. Morse would be required for all subdivisions wishing to use lot turnover covenants in place of a bond. The information is to be included in the proposed regulation revisions.

The retaining walls in the detention basin were discussed. Construction will start by the middle of the next week. D. Mitchell stated that water flow would be heavy over the next weekend, M. Suprenant should make sure the area was protected. M. Suprenant said the system as is will handle the 2 year storm; for the 10 year storm he could knock out an opening in the control structure. The propane tank used to try and thaw the soil to construct the wall will be removed.

The filing requirements for the retaining wall along Allen Pond were discussed. After discussion regarding several separate NoI's, the SCC requested that the wall above Allens Pond be brought in as a separate amendment filing to the subdivision infrastructure rather than as parts of single family home lots. That way it could be reviewed as a whole as it should. If the project amendment could not be approved, the applicant did not waste the time and money creating and filing 7 or 8 NoI's. The land clearing at the top of the slope should be addressed in the amendment review.

Preserve – No representatives were present. N. Ryder noted the scheduled meeting on 4/17 and summarized the open space protection status with DEM and Opacum (see the packet of email correspondence for details). She noted that the Planning Board had not discussed sharing the lot covenant to prevent double bonding for the same issue. The SCC unanimously agreed to issue a cease and desist on 4/17 if all issues were not resolved. A letter will be sent to B. Moss, C. McGregor, PB, DPW, Opacum, and DEM notifying them of the concerns. The SCC agreed that the conditions had been accepted, the applicant was not meeting those conditions, and the issue is theirs.

PUBLIC HEARING – Quarterly Review for discussion, amendment, addition to, or other action in regards to the Town of Sturbridge Wetlands Bylaw Regulations.

Tabled to April 3.

PUBLIC HEARING – NoI cont – New England Environmental, for Swiacki, for Whittemore Woods Subdivision Infrastructure

PUBLIC HEARING – NoI – New England Environmental, for Swiacki, for Whittemore Woods Subdivision for single family homes and related.

PUBLIC HEARING – NoI – New England Environmental, for Swiacki, for 96 Fairview Park Road for single family home construction and related.

J. Hoffman opened the hearings. The applicant was not expected to attend this hearing. The purpose was to review existing submitted information, review, or create a checklist for the subdivision listing all additional information needed for each hearing application. As the discussion was lengthy, and intense at times, the main points are noted and summarized.

J. Hoffman asked the Commissioners for their initial comments.

E. Goodwin noted that he had many issues; the density of the cutting through the property, the number and density of the homes and disturbance along the slope above the wetland; the amount of upland associated with the wetland, he noted that the SCC had been led to believe that the upland and wetland would be designated as a historic conservation park; He did not feel anything was missing yet because he did not believe the SCC was to that point of review yet.

J. Michalek stated that he had missed quite a bit of information and needed to finish reviewing and catching up before he could make any comments.

D. Barnicle stated that he was opposed to the alternatives analysis. It had been considered a reasonable and good faith effort at the 3/6 meeting. He was not in favor and did not feel it met the SCC requirements. It met planning requirements. He agreed that it was too early for a checklist. The SCC needed to be sure the alternatives and reasonable use had been considered.

Template checklists had been distributed to the commissioners prior to the hearing. J. Hoffman had requested that the plans be reviewed and questions and issues be submitted during the meeting. No return comments had been made for the checklist. A general consensus at the opening of the hearing indicated that the Commissioners were not satisfied with the overall layout of the project and the number of implied impacts. They were not at the point of reviewing concrete details, which implied approval of the crossing, the road, the overall level of site disturbance and impact.

J. Hoffman noted that he did not want to waste the applicants, engineers or SCC's time and two months later deny a project based on items that could have been isolated early on. He noted that in reviewing the overall plan, the roadway and crossings could be isolated as issues that would make or break the project as presented. He had submitted these thoughts to the SCC prior to the hearing and had asked the SCC to consider this as a starting point but not to comment or reply outside of public hearing. He suggested the SCC focus on these and work from there. If the major issues could not be agreed on, there was no point having the applicant spend money and time on details that would not be relevant anyhow. He stated that in making the motion he was not implying approval or disapproval only trying to find a common starting ground.

J. Hoffman made a motion to approve,

1. alteration of 4016 sq. ft of bordering vegetated wetlands (BVW) associated with Woods Road, subject to the following requirements.
 - a. no additional BVW alteration will be permitted for the entire “Whittemore Woods” project.
 - b. minimum replication ratio of 2 to 1 shall be provided.
2. Alteration of an existing scour associated with Woods Road, subject to the following requirements:
 - a. minimum replication of 115 feet shall be provided.
3. This motion does not apply to any other aspects of the project or imply any approvals other than indicated above.

D. Barnicle 2nd.

Discussion:

J. Hoffman stated that he felt these issues were the meat of the project, if the SCC could come to a decision one way or another, they could then move on. He stated that items 1a and 1b were based on the Commission's discretion. He noted that the SCC had the discretion to either allow up to 5000 sq. ft of BVW alteration or not if they felt the impact was excessive. SCC discretion is a legitimate legal reason under the WPA to accept or reject the impact. He stated that for 2a, the 2:1 replication had its legal basis under the ToS wetland bylaw and regulation.

J. Hoffman stated he wanted to get the base issues on the table for discussion. He felt the commission was saying at the same time, that the alternatives effort was ok, but the road and the plan presented was not necessarily approvable. He asked for confirmation that the SCC was saying that the alternatives effort was accepted with the understanding that the road and crossings were not necessarily acceptable. Yes. He noted that if any project went to appeal at DEP, the SCC needed to present justifiable reasons for denial. He felt those reasons stated were justifiable and legally legitimate. N. Ryder noted that the denial would also have to be appealed through superior court at the bylaw level.

E. Goodwin stated that he felt very strongly that the main issue was that reasonable use was exceeded at the expense of the resource areas. He felt that the applicant could back up and make this a project that had less impact and still met reasonable use.

J. Michalek asked the SCC to briefly review the overall plan submitted. This was done. The plan is available through the SCC office.

J. Hoffman asked the SCC to review how much would be lost if the crossing was not allowed. He stated that the 5000 sq. ft. of BVW is discretionary.

D. Barnicle and E. Goodwin discussed moving the motion, all discussion would end, a yes vote would allow the alteration and further review, a no vote would deny alteration and require the applicant go back to the drawing board or appeal. J. Hoffman asked if the SCC understood that to be the result of moving the motion and voting. Yes. The request to move the motion was not made. J. Hoffman stated that the SCC needed to take the discussion a step further.

D. Mitchell stated that the scope of alternatives showed reasonable review of alternative plans. It did not guarantee the plan presented would be approved.

E. Goodwin stated that the SCC had been given 1 alternative not many. While the analysis effort was sufficient, the SCC had not committed to approving the 1 alternative formally presented to the SCC.

J. Hoffman questioned why the applicant had not been told the alternatives were not acceptable. D. Barnicle asked for the discussion for the meeting of 3/6 to be reviewed. Done, see those minutes for details. Following that discussion. D. Barnicle stated that his issue was and always had been the unknown middle swath. If that space had been preserved as open space, then the unknown wetlands would be preserved. His major issue would be eliminated.

J. Hoffman asked if the SCC had approved the delineation. Yes, by unanimous vote. D. Mitchell stated this was a hydrological issue and impact issue not a delineation or wetland location issue. J. Hoffman confirmed that the SCC understood that the prerogative was not the wetland delineation anymore. The SCC could deny the crossing but had approved the delineation. All agreed. J. Hoffman stated that he had not heard any further questions at the previous meeting. N. Ryder disagreed and stated that she had many questions. She noted that E. Goodwin had many concerns also, that had not been addressed, only presented.

D. Mitchell stated that he had not understood the alternatives analysis approval to mean that there would be no questions or issues. He stated that the goals and regulations of the Planning Board and those of the SCC would lead to potential conflict over the alternatives overlap. He said that compromise, in dual review, would be needed. Review of potential impacts could be made and measures taken to prevent negative impact.

J. Hoffman stated that alternatives are supposed to address wetland impact, an SCC issue. E. Goodwin noted that was his point, that an alternatives analysis had been done, but for Planning, not for Conservation. D. Mitchell agreed but stated that there were still other issues such as resource impact, greenway protection, open space, and others. He and J. Hoffman questioned the legal authority to regulate those. N. Ryder noted the legal authority came through the local wetland bylaw.

The plans for the NOI filings were reviewed and re-studied.

D. Barnicle asked to go back to the lower wetland. He stated that it had been clearly delineated. The flows into the wetland came from many seeps, channels, scours, and streams across the entire property. He noted that the main inflow seemed to come through the middle of the property. The flow kept popping in and out. The hydrology was constant and traceable. He noted that the middle section needed to be preserved to protect the lower wetland from impact. He stated that he was very disturbed with the bulldozer type presentation made. He stated that he felt the SCC was being boxed into a corner. They were being told what they could not look at rather than given alternatives to protect the wetland from imminent doom due to the disruption caused by densely packed homes and a through road.

E. Goodwin noted that he had brought up the 25 foot buffer and the 50 foot no structure buffer. He stated that he did not even feel his concerns had been acknowledged. The applicants had simply continued to move forward without addressing the basic issues of reasonable use and protected buffer zones. He stated that he did not see the need to alter the flow of water. Leaving it in its natural state makes sense for this property as there are too many unknowns associated with it.

N. Ryder stated that she agreed with the 25 foot and 50 foot buffer issues. This was a new filing. She understood that the project concept had started prior to the adoption of the regulation, but the filing occurred well after. There was no reason not to comply and certainly no reason, with all the land available, to request or to be granted so many exemptions and waivers.

The SCC held a side discussion regarding the swath clear cut down Fox Run. E. Goodwin asked the SCC to take a look at the Old Farm Loop, when out on a site visit and consider those impacts also.

J. Hoffman asked if there was any other discussion, if not then the SCC should vote and move on from there.

N. Ryder stated that reasonable use and protection of the resource areas and hydrologic flow would not preclude reasonable use for the property. She noted that W. Swiacki already had 6 single family home lots under construction on the property being reviewed. She noted that many more could be realized from access on Fairview. If a through road and a cul-de-sac could be put in then two cul-de-sacs could also be that did not require impacts. She noted that locating 7 of the lots along Fairview prior to review by SCC was a self-imposed hardship if it prevented the number of lots desired from being obtained. In addition, as presented the wetland should be held through a homeowners association and not the SCC. The SCC could control a conservation restriction on it to protect what remains but the town should not take the land off the tax role to benefit the residents of the subdivision only.

E. Goodwin and D. Mitchell discussed hyporheic flow (flow which surfaces and then goes underground repeatedly) through the property to the lower wetland.

D. Barnicle stated that if this development goes in as presented, he did not believe water connections would be preserved or the wetlands survive as a functioning wetland. D. Mitchell stated that he was hearing many different terms, scour, channel etc. He stated that what the Commissioners were really referring to was water flow and hydrologic connections.

J. Michalek agreed that based on the review and discussion, he did not believe the isolated wetland would survive. He noted that the roadways and houses right on top of the resource areas with little buffer would have a long term impact. While it may survive the construction it would not hold up to a home within 25 feet over the long term. He noted that it was not shown on the plan, but there was evidence of water buildup in a depression that when high enough, flowed out between lots 16 and 15.

J. Hoffman asked what other areas were of concern if the crossing was not allowed. J. Michalek stated that he had concerns with the Whittemore crossing. He felt that the majority of water to the lower wetland came down through that connection from the upper wetland.

E. Goodwin stated that a site visit to the wetland off Whittemore would be in order soon. He stated that it was knee deep in muck.

J. Michalek stated that he also had concerns with the level of impact created by 96 Fairview, the access road and lot 30 would have on the stone ponds. He noted that those areas and the wetlands off Whittemore were the major components of water connection. Reasonable use should not allow impact to these areas. J. Michalek also stated that no homes or disturbance should occur on the ridge or the slope above the wetland.

J. Hoffman asked what the consequences to the site would be if W. Swiacki appealed any decision to DEP, and they overturned the SCC decision. N. Ryder stated that was not the end of the permit approval or denial. The

developer also had to deal with and appeal the bylaw aspect of the hearing process, which included all the WPA review plus more stringent local review under bylaw. A DEP superceding order did not invalidate a decision made under the local bylaw. N. Ryder noted that greenways and conservation land had a legal basis for protection under the town bylaw and the regulations. She noted that while a DEP review could refute those, they would be protected under bylaw, which went through a different appeal process. She noted that they were different rules with the same basic strength. She noted that the local bylaw was designed to be stricter than the WPA. The law stated that they could only be more strict not less. She noted that the WPA did not supercede the local bylaw where the bylaw was stricter with the exception of a few areas such as pesticide and utility ROW's. The NoI review process was for two sets of laws, both parallel both with the strength of law, both reviewed at the same time but appealed through different processes. She noted that it was entirely possible for parts of the project to be approvable under WPA but not under local bylaw. If that is the case that would need to be clearly separated and stated in any permit or denial issued.

N. Ryder also stated that approving or denying the motion made did not preclude the revision of the plan or the submittal of additional information to overcome the SCC's issues.

D. Barnicle and E. Goodwin called for the motion to be moved. Discussion was ended.

Vote: In favor – none

Opposed – J. Hoffman, D. Barnicle, J. Michalek and E. Goodwin

Abstaining – D. Mitchell.

N. Ryder is to write a letter informing the applicant of the SCC's vote. The SCC does not feel there is any purpose continuing the current efforts with the present submittal. The applicant can revise the plans, can submit new information and ask for reconsideration, can withdraw and resubmit, or can ask for a decision based on the information given to date with the intent to appeal any decision.

PUBLIC HEARING –New Forestry Application Review

NEW BUSINESS

N. Ryder noted that Mass Highway held the public hearing for the Route 15 bridge. The plan did not mention the NoI public hearing required under the WPA. She noted that she had sent a certified response to the hearing noting one should be filed for.

OLD BUSINESS

OTHER BUSINESS

The SCC held a lively discussion on the interrelation ship between Vernal Pools, Oxbows, and Streams. It was quite enlightening.

No response has been given from J& W company in regards to the 3/6/03 letter. By unanimous consent and approval, a certified letter will be sent stating that since the SCC has not heard from the owners, the hearing will be resumed on May 15, but the environmental review and therefore any decision regarding the NoI filing will need to be held until spring of 2004. The letter will be cc'd to the applicants lawyer, NHESP and the ZBA.

LETTER PERMITS

D. Barnicle had conducted site visits to 266 Big Alum for tree cutting for a lake association beach. The project will need to be submitted as an NoI.

A shed on 272 Big Alum was questioned as it was half the size of the home. D. Barnicle requested a second opinion from another commissioner. He noted that while no trees were to be cut or soils excavated, he could not see how it would have no impact. Those attending the site visits on Friday noon, will recheck the site.

C. Mazeika of 100 Allen Road had requested a letter permit for the same trees the SCC had asked for an explanation as to how erosion control will be handled. They did not see how the removal of the trees would dry out the home area as the canopy was not changing much. The potential impacts from erosion were high and required some thought. He will be asked to file a Notice of Intent with the SCC with an emphasis on erosion control and protection measures for the lake. J. Michalek noted the steep slope to the lake could create severe erosion. The removal of one of the trees would likely cause the shed to fall as it was holding it up. D. Barnicle noted that there were severe scours in the bank already, the trees were the only things dissipating the water.

CERTIFICATES OF COMPLIANCE

Motion to close at 11:50, approved by unanimous vote