

# **Sturbridge Conservation Commission**

**Minutes of Thursday, June 19, 2003**

## **MEMBERS PRESENT**

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

6:45 PM

The July meetings will be held on July 10, and July 24 due to the 4<sup>th</sup> of July holiday.

## **PUBLIC HEARING CONTINUATIONS**

**Nol for J&W Company, for 52 Stallion Hill, for Stallion Hill Village. The public hearing was closed to new information on June 5, and a motion made to deny the project for reasons as stated in the OoC denial. The closed hearing was continued to June 19<sup>th</sup> for review, amendment, acceptance and signature of, the final OoC.**

J. Hoffman opened the continuation. The Commission reviewed the final draft OoC denial. Motion to accept the OoC as written and sign by D. Mitchell, 2<sup>nd</sup> by J. Michalek, discussion – none, vote – all in favor.

**Nol for Caron Construction, for 92 Brookfield Road for bridge and driveway installation over a wetland related to a single family home. The public hearing was closed to new information on June 5, and a motion made to deny the project for reasons as stated in the OoC denial. The closed hearing was continued to June 19<sup>th</sup> for review, amendment, acceptance and signature of, the final OoC.**

J. Hoffman opened the continuation. The Commission reviewed the final draft OoC denial. Motion to accept the OoC as written and sign by J. Michalek, 2<sup>nd</sup> by E. Goodwin, discussion – none, vote – all in favor.

**Nol for Caron Construction, for 124 Clark Road for single family home construction and related with a wetlands crossing. The public hearing was closed to new information on June 5, and a motion made to deny the project for reasons as stated in the OoC denial. The closed hearing was continued to June 19<sup>th</sup> for review, amendment, acceptance and signature of, the final OoC.**

J. Hoffman opened the continuation. The Commission reviewed the final draft OoC denial. Motion to accept the OoC as written and sign by J. Michalek, 2<sup>nd</sup> by E. Goodwin, discussion – none, vote – all in favor.

## **MINUTES**

Tabled to July 10

## **CORRESPONDENCE**

Correspondence reviewed included; notice from Lycott regarding planned treatment of Big Alum Lake; an informational flyer regarding compost filter berms; a memo from J. Malloy noting that town's website was ranked 8<sup>th</sup> in the state for municipalities, 1<sup>st</sup> for towns our size and 1<sup>st</sup> in Worcester County; Mass Wildlife News; a memo from EcoTec summarizing the environmental review of the Preserve for June 6; a summary from J. Malloy, of the millyard marketplace meeting of June 11.

## **DISCUSSION OF NEW INFORMATION**

A draft conservation restriction for the Sanctuary Subdivision, was reviewed. A copy has been sent to Town Counsel for review.

## **REVIEW OF SITE VISITS**

Site visits were conducted on Saturday, June 7<sup>th</sup> to; Estates North to review the delineation and detention basin locations (delineation was fine, detention basin location needs discussion); 6&8 Vinton Road to review the delineation and the current cart path location (delineation is conservative, cart path at entrance is within 25 feet of BVW but more than 50 feet from the pvp); 364 New Boston Road for a single family home lot (no issues, the wetland is more than 100 feet from disturbance through heavy brush); and Tannery Road for review of 6 single family home lots, part of the Allen Homestead Subdivision (no issues).

A site visit was also conducted on Wednesday, June 18<sup>th</sup> to Whittemore Woods to review the Fairview Park Road section of the proposed subdivision.

## **CPAC UPDATE**

None

## **PUBLIC MEETING – Allen Homestead subdivision environmental issues.**

Judy Schmidt was to have attended the hearing, she sent two environmental review sheets from the previous two weeks. The meeting will be rescheduled.

## **PUBLIC HEARING – RDA cont. – Thompson, 364 New Boston Road for single family home construction and related.**

J. Hoffman opened the public hearing. The applicant was not present.

The commission had conducted a site visit on Saturday, June 7. The project is 100+ feet from the wetland. The commissioners noted that the 100 foot buffer was heavily vegetated. There were no issues with the project as presented. Approved by unanimous vote. A permit was signed and issued.

## **PUBLIC HEARING CONTINUATIONS FOR CLOSURE AND SIGNATURE**

**Ricard 53 Beach Ave. Nol amendment** – Approved as presented and amended on June 5, by unanimous vote. A permit was signed and issued.

**The Boardwalk, 500 Main St. Nol amendment** – A revised plan showing only the curb cut addition, all disturbance to be outside the 25 foot buffer, had been submitted and was reviewed. The amendment was approved as presented based on the revised plan by unanimous vote. A permit was signed and issued.

**PUBLIC HEARING – Nol cont. – Tighe and Bond for The Town of Sturbridge, for well test discharge adjacent to Hamment Brook.**

J. Hoffman opened the hearing. Present was David Cameron.

J. Hoffman summarized the events of the June 5<sup>th</sup> hearing and noted the SCC was expecting amended plans showing the revised dissipation mat and the location of the installed test wells.

D. Mitchell noted that the primary issue the commission is concerned with is how the water will be dissipated. J. Hoffman added that the location of the test wells, which had been drilled, also needed to be shown on the plan.

D. Cameron submitted revised plans showing the locations of the various test wells and the outflow dissipation detail. The outflow is to be dissipated onto a plywood mat the discharge will then flow onto a geotextile mat to prevent severe erosion due to the extreme pumping rate needed to test the well for public use. He noted that as he had not been at the previous meeting, he was not sure how much of the detail had been covered. He reviewed the layout for the SCC. He outlined a natural secondary drainage swale to Hamment Brook. The swale only runs during severe storms and heavy water flow. It is very rocky and scoured and eventually flows into Hamment Brook. He noted that plywood sheet would be placed at the immediate discharge. Geotextile mat would be attached to the end of the plywood to stabilize soils at the discharge. D. Mitchell asked if the pitch would be toward the already scoured area. Yes. D. Cameron noted that while the project seemed excessive, the state required at least 1000 feet distance from the well site to avoid falsely recharging the well. D. Cameron noted that the pumping rate is very aggressive. To be certain any erosion or sediment is controlled the area surrounding the discharge and the scoured area is lined with silt fence and haybales.

D. Mitchell asked who would be on site during the tests to correct and beef up the dissipation mat should it fail. D. Cameron said that more than likely M. Zylich would be present. He noted that the test was not a continuous 5 day test. There are 8 hour step tests spread over 5 days. He agreed that if the dissipation area does not work, it will be re-evaluated on site, and adjusted. He noted that one possibility is to shoot the end of the hose directly onto the base of the stream channel as it is already scoured and rocky. The Commission will be notified if any changes are planned or needed in the field. D. Mitchell agreed, he noted that in the event of a problem, the commissioners may not be able to get out immediately, but would as soon as they could.

J. Hoffman asked if there were any further comments or questions. None. The project was approved as presented. A draft permit will be prepared. J. Hoffman noted that the permit should include a condition requiring spare erosion control materials for safety. The hearing was continued to July 10 for signing and closure. The project is scheduled to start late July or early August.

**PUBLIC HEARING – Nol cont. – Jalbert for Giguere, for single family home construction and related.**

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

J. Teachout noted that the commission had conducted the site visit with L. Jalbert. J. Hoffman noted that while the abutter attending the site visit had issues, the SCC had no wetlands issues with the project. The drainage anticipated had been calculated and an appropriately sized catch basin provided. Flow was diverted away from the roadway. He noted that all the SCC concerns were addressed on the plan. J. Michalek agreed and noted that the stabilization during construction was a major issue and was addressed. He stated that the neighbors concern with the pipe between the pond and the stream was on private property and was the responsibility of the land owner. He noted that he understood Mr. Seguin's issues, and noted that if the Seguin home came for permitting today, it could not be allowed. The home is located on what appears to be a fill area in the middle of a wetland and pond; it was likely wetland before the home was constructed. It is understandable why there is always water in the basement if the pond gets high due to a clogged culvert. He added that unfortunately for Mr. Seguin, that is an unfortunate civil issue with the neighbor.

E. Goodwin noted that although the run-off was diverted he would feel more comfortable if the SCC added measures to prevent severe washout onto South Shore Drive. He noted that every time a new home is built on the away side of South Shore Drive, such as the CMG homes were, the landowners adjacent to the lake have erosion pouring down their driveways. He stated that he felt the commission should require whatever measures are necessary to prevent this from happening. The commission discussed the issue with J. Teachout and agreed. Additional conditions will be added to the permit requiring 150 to 200 feet of good compacting gravel to be placed from the entrance of the driveway up. A line of haybales is to be placed at the edge of the driveway at the end of work every day to control runoff due to storms. Discussion was held regarding various forms of berms including sinking a 12 inch cast iron sewer pipe into the edge of the driveway halfway to create a 4 inch berm, gravel berms and inverted grated channels. Gravel would be removed the first time the driveway was plowed. A paved berm can not be used as the driveway must remain impervious as it is in the 50 foot buffer. J. Teachout and the SCC agreed that the type of berm would be determined by the applicant and engineer based on specific site needs and would be presented to the SCC for review and approval prior to the start of any work.

The draft permit was amended, the project was approved as amended by unanimous vote and the permit signed and issued.

**PUBLIC HEARING- Nol cont. – Jalbert for Matthews for 10 Gifford Road.**

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

J. Teachout noted that although the applicant had agreed to submit an amended version of the plan prior to the hearing and she had notified the commission in writing of this, the applicant is now requesting a continuation to one of the July meetings. N. Ryder noted that the July 10 meeting was completely booked and asked if July 24 was OK. J. Teachout stated that if that was what was available, that would be accepted. The hearing is continued to July 24<sup>th</sup> at 8:30 PM.

**PUBLIC MEETING DISCUSSION**

As the commission had time before the next public hearing could start, D. Mitchell reviewed the results of a meeting regarding the Millyard Marketplace, held with J. Malloy, G. Morse, and a DEP representative. D. Mitchell noted that the bids for the project were coming in at \$197,000.00. The grant amount was \$57,000.00. The project estimate had been submitted by CME/CPK and was low for the project specifications. D. Mitchell noted that the project discussion had focused on increasing protection to the river. Some of the work will be done as in-kind service by the DPW. Other work such as the Route 20 pipe replacements will be left to Mass Highway, next time they repave Rte. 20 as that is their jurisdiction. The stone wall, while deteriorating, is not critical, and will be left to the property owner to repair. Other work such as the concrete channel can be altered to a paved berm at substantially lower cost to achieve the same results. DEP and the SCC preferred the paved berm over the concrete channel. An alternative model to the Vortech unit can be used which will do the same job at almost half the cost. Rip rap at the base of the outflow pipe into the side channel can be used in place of the concrete basin with the same results. D. Mitchell noted that the basic project could be accomplished without the fluff and without compromising level or quality of erosion and sedimentation improvements to the river for \$5,000.00 less than the grant amount. This leaves some room for unexpected expenses. The revised site plan and cost sheets are available for review on request.

The SCC also reviewed recent correspondence from the Preserve and Charlie McGregor regarding an unpermitted stockpile. The material is being taken from site but must be screened prior to reuse on a different part of the project. N. Ryder is to ask M. Lev why the material must be screened prior to reuse as it is from the same site and was previously approved.

**PUBLIC HEARING – Nol cont. – New England Environmental for Swiacki for Estates North Subdivision, Hall Road.**

J. Hoffman opened the public hearing. Present were M. Marcus and W. Swiacki.

W. Swiacki opened by noting that the Planning Board had voted to approve the definitive plan as submitted with the condition that the detention basin be on a separate parcel of land.

M. Marcus summarized that the project involved no wetlands alteration but did call for road work and detention basin work in the buffer. He noted that the basins proximity to the wetland boundary was not an issue of space. He noted that the rationale is to pick up as much road runoff as possible. He noted that the low section of the road would be picked up in the stormceptor unit. Although the design calls for additional work in the buffer, the best design is one that captures the most runoff and directs it into the wetland after sediment removal. He noted that there was room to move the basin if the SCC requested. The basin is to be a vegetated basin with a fore bay.

E. Goodwin noted that he agreed with M. Marcus' reasoning, but noted that the 25 foot no disturb buffer was important. He suggested putting the 25 foot buffer around the detention basin and wetland. Except for maintenance access there would be no other disturbance.

W. Swiacki stated that the lot was commercial, as 1/3 was wetland and off limits, he did not want to limit the remaining space, especially since it was along what would be the legal frontage.

M. Marcus noted that if the 3 upper lots were used for single family homes, they would be used as is. If they were to be used for a nursing home though, an additional basin would need to be constructed. W. Swiacki noted that the basin would be constructed in the lower SE corner of the first lot. He noted that the runoff from the nursing home would be accommodated in this second basin. He also noted that the project would need to go before Planning and SCC review. He stated that since the first basin only received runoff from the road, there was no need to expand the buffer around the basin.

E. Goodwin stated that reasonable use was the issue. Crossing the Planning Boards zones is not an SCC issue and did not offer any different consideration. He noted that he had very little problem with the overall plan, but would not approve a second basin in the future if it is within 25 feet of the wetland.

M. Marcus stated that what was before the SCC now was as presented and was drainage facility for the road only. Any future use was speculation. He noted that if a nursing home was built, the second basin would not be anywhere near the wetland.

D. Mitchell noted that the 25 foot buffer was a sanctity issue. If the SCC is going to consider accepting this plan, they need to consider the present and future tradeoffs. He stated that in terms of the project as presented the maintenance access should be away from the wetland, not adjacent to it. He noted that the issue was protecting the goal of the 25 foot buffer by consistently enforcing it and allowing waivers only when the applicant could demonstrate a net benefit to the resource. He noted that if the goal is to protect the wetland and the level of additional treatment offset the disturbance of construction impacts, then he felt they should go toward better treatment.

J. Hoffman asked to have the overall discharge difference explained. W. Swiacki said there would be the same discharge to the same wetland either way.

J. Michalek asked for the nature of the pipe going toward the Comfort Inn to be explained. W. Swiacki stated that it ran into Pistol Pond, which fed into Hobbs Brook. The second discharge pipe fed directly into Hobbs Brook. M. Marcus noted that the wetland flowed in the opposite direction of the culvert. W. Swiacki agreed and noted that G. Morse referred to it as an equalizer culvert. During occasional large storms and peak flows, it reverses flow direction.

D. Mitchell asked if there were any specific reasons for the maintenance road to be on the wetland side of the basin. M. Marcus stated that it is usually on the side of the spillway, and that the fore bay is typically the only place that needs maintenance in the first 20 years or so, with current systems, if they are cleaned out after construction. D. Mitchell agreed it would not be used much more than once every two years. E. Goodwin asked if it was a requirement of the town. W. Swiacki said it was really up to G. Morse. J. Michalek noted that if the maintenance road was on the other side of the basin it created more of a 25 foot buffer as E. Goodwin had suggested. D. Mitchell noted that if the access road was placed on the other side of the basin, the wall between the basin and the wetland could be narrower. M. Marcus noted that the heavier side was typically on the down stream side of the basin. The SCC reviewed the basin profile.

J. Hoffman stated that he did not believe in malicious compliance but noted that other projects were not given a choice. The 25 foot buffer was established for an important reason. Other applicants may have had good reasons to be within 25 feet but were not given options. The only time it had been accepted was as remediation, with the final project impacting less of the 25 foot buffer than existing conditions had. D. Mitchell stated it was not compelling to keep where it is. M. Marcus noted that the basin would end up a vegetated buffer area eventually either way. J. Hoffman noted that the concept in this case may be good, but the policy itself is based on overall wetlands protection based on years of experience and commission observation of the benefits of an undisturbed vegetated buffer, not on one case. He stated that if the SCC was going to start granting exceptions, they should discuss when and under what specific circumstances these exceptions would be granted and amend the policy and regulations. J. Michalek stated that his instinct was to maintain the 25 foot buffer. Unless the applicant was willing to add a 25 foot buffer around the basin, he felt that overall the best protection to the wetland would be to stay farther away from it. He noted that on the flip side of the basin, if the basin is pushed out 25 feet from the wetland than any future work was also that much further from the wetland. The more distance the commission could give the wetland would be better protection in the long run from developed land use impact.

W. Swiacki said that was fine. He suggested that the SCC add a condition that the basin be out of the 25 foot no disturb buffer. Amended plans are to be submitted to the SCC for final review and approval. He noted that if the SCC amended the policy to

allow some types of work in the 25 foot buffer in the future and the basin was not yet built, it could be brought back in for amendment.

J. Hoffman requested that N. Ryder start a revision to the 25' buffer to allow some work that improves water quality and makes allowances for lake front homeowner usage. To be based on case example.

M. Marcus noted that it was not an issue of space. He also noted that if the SCC opened it up to discussion, they may find instances where better protection is obtained by allowing some water quality structures in the 25 feet. The SCC agreed, and noted that in almost all cases before them the 25 foot buffer policy had benefited the wetland and resource area. M. Marcus said he would not disagree.

J. Hoffman asked if there were any other questions or comments. None. He asked if anyone wanted to make a motion.

Motion by E. Goodwin to accept the project as presented with the condition that the 25 foot no disturb buffer be maintained, the detention basin is to be moved out and plans submitted to the SCC for approval, D. Mitchell – 2<sup>nd</sup>, Discussion – none, vote – all in favor.

**PUBLIC HEARING – 6 RDA's cont. – Guerriere and Halnon for Allen Homestead, for 6 single family home lots and associated work.**

J. Hoffman opened the public hearing, present were E. Mainini and J. Nenart. Also present was M. Suprenant.

D. Mitchell and J. Michalek noted that a site visit had been taken and all the lots discussed were fine.

J. Hoffman asked if there were any other questions or concerns.

J. Michalek and D. Mitchell discussed the upper wetland located to the SW of the project. M. Suprenant, in the audience noted that it was located on adjacent property belonging to Corning Net Optix. He noted that it had been a vegetated wetland but was currently holding much more water than it had in the past. J. Hoffman noted that it had been part of the original subdivision discussion, but as it was upgradient of all work and lots, and no chance of erosion moving up hill, it was not discussed as an issue of concern. E. Mainini stated that there were a couple lots within the buffer to this wetland and noted they were not listed as lots, which needed additional permitting in the Order of Conditions for Allen Homestead. She noted that they did not fall under the jurisdiction of the WPA, but did fall under the local bylaw. N. Ryder noted that during the Allen Homestead hearing the commission had specifically requested all the lots, which they wanted additional permitting for. She noted that these were not of concern due to the upgradient nature of the wetland. She noted that while they did fall under the jurisdiction of the local bylaw, the SCC had the authority to waive additional review as they had already been considered under the Allen Homestead Nol permit review. N.



Ryder noted that except for those lots specifically noted in the OoC for the infrastructure, further review of lots had already been waived. D. Mitchell said he would be more comfortable if several of the commissioners viewed the lots again before making any final decision. E. Goodwin and J. Hoffman will take site visits to see the lots and report back to the SCC.

J. Hoffman asked if there were any additional questions or concerns regarding lots 9, 10, 11, 12, 15 and 28. None.

Motion to accept the plans as presented and sign and issue permits by D. Mitchell, 2<sup>nd</sup> – E. Goodwin, discussion – none, vote – all in favor. Permits were reviewed and signed.

E. Mainini submitted the application forms for lots 31, # 34 and lot 32, #32 Tannery Road. J. Nenart and E. Mainini will not be at the July 10 meeting, the SCC reviewed the plans with them in advance. The public hearing will be held on July 10<sup>th</sup>, the hearing will be open to the public and the plans will be reviewed again.

Potential issues for lot 31, #34, include the use of the site as a dumping area, which created unstable surface and deep voids in the ground. J. Nenart and E. Mainini said the debris would be removed and the lot brought back down 10 to 12 feet from the current filled grade now. The soils at that level are naturally existing soils and are more stable. J. Hoffman asked if the SCC had any other questions regarding this lot. D. Mitchell asked for a construction sequence for the lot. E. Mainini said the retaining wall would be built first then back filled to level the grade. A construction sequence will be submitted. Retaining wall details will be submitted.

There were no major issues noted for lot 32, #32.

#### **PUBLIC HEARING – Nol – T. Buell for septic repair, 176 Podunk.**

J. Hoffman opened the public hearing, present was T. Buell.

T. Buell outlined the wetland, the existing leachfield, which is currently located in a wetland due to wetland expansion, the proposed leachfield and the extent of grading. The entire system is within the 100 foot buffer with some grading in the 25 foot buffer. Due to the slope past the location of the proposed system, the location shown is the furthest from the wetland possible while still maintaining gravity feed. J. Hoffman noted the proposed system was 75 feet from the wetland. Even though there was grading in the 25 foot buffer, the impact to the wetland was being removed resulting in a net gain to wetland protection and a decrease in impact. D. Mitchell noted that he could certainly understand why this system failed. T. Buell noted that the area was not always as wet as it currently is. The SCC reviewed the plan, the existing grades and the proposed grades. J. Hoffman confirmed that the area to be graded as exists drops off into the wetland. T. Buell agreed and noted that they were proposing a 3:1 grade to improve the slope and prevent breakout with the new system. D. Mitchell asked if the tank size was larger. Yes. The system was built in 1971. J. Michalek questioned why the tank could

not be in other locations that were not upgradient. T. Buell stated that the existing pipe outlet from the house was in that location. D. Mitchell asked what the slope would be stabilized with. T. Buell said grass seed, he thought the slope had to be maintained and mowed. The SCC noted that while the leach field location should be maintained, the slope should be left to naturalize. The naturalized vegetation on the slope below the leachfield and above the wetland, would help to mitigate the closeness of the system and reduce any impact. E. Goodwin will take a site visit on Friday, 6/20 to confirm the details. The project is approved pending a positive report from E. Goodwin. The hearing is continued to 7/10 at 7:20 for formal close and permitting. The system should be replaced as soon as possible.

#### **PUBLIC HEARING – RDA – Mass Highway for Resurfacing of I-84.**

J. Hoffman opened the public hearing. Present was Micky Spilaine from the Worcester, District 3 Office. He noted that he was the project designer.

N. Ryder noted that no detailed plans had been submitted with the application, this could be due to the amount of road covered. M. Spilaine stated that the project was a book project. He stated that resurfacing projects did not have detailed plans. J. Hoffman confirmed that the submittal was a scope of work only. D. Mitchell asked if it was a typical resurfacing project, taking the surface off, roughing it for a couple weeks then resurfacing. M. Spilaine stated that the top two layers would be removed, called scarification. The first layer was permeable, the second layer was the first support layer. Removing both would take about 2 inches off the road. J. Hoffman asked if the material removed would be recycled. Yes, it will be brought to the plant recycled and then reused on the same surface. M. Spilaine said the work would be conducted at night. There would be no residue remaining. All areas would be swept off. He identified resource areas shown on the general plan and noted that the scope called for haybales and silt fence to be used along all resource areas. The erosion control will be right off the highway along the shoulder. He noted that this type of project did not create sediment and erosion problems and was fairly quick. J. Hoffman asked for a copy of the spec sheets itemizing the erosion control requirements. M. Spilaine said the document was large, he will send the relevant sections detailing erosion controls to the SCC office.

D. Mitchell asked if the road was mapped in terms of what the numbers mean in relation to wetland areas. He asked if they were mostly culverts. M. Spilaine stated that the wetlands adjacent to the road were fairly expansive. He pulled a colored version of the map included in the filing showing wetlands. He outlined sections of rivers, which paralleled the road. He noted that there was very little chance of erosion or sediment migration. Typically in resurfacing, very little goes off the road.

J. Hoffman confirmed the stations in meters and identified lengths of resource areas.

J. Hoffman asked if there were additional comments or questions.

D. Mitchell asked how long the project would take. M. Spilaine said a couple weeks for the seven mile stretch. The lanes would be scarified in one direction and left a few days. As the first section is resurfaced, the lanes in the other direction would be scarified.

D. Mitchell asked if there were any water quality concerns with the asphalt as it was poured. M. Spilaine said no, the top layer is only 1 inch thick and is designed to be porous. The drainage is set at the second level 1 inch down, which drains and directs the water to the edges and to drains. He noted that nothing comes off the road; when it is laid down, it is compacted right after.

D. Mitchell asked if there would be a site monitor for the environmental issues. M. Spilaine said the environmental monitoring would be part of one person's duties. All haybales and silt fence are installed and inspected prior to the start of work.

J. Hoffman asked when the project was scheduled to start. Possibly by the end of the year or next spring. M. Spilaine stated that the project would have a resident engineer. If the SCC had any problems, they should contact that person directly. The name and number of the contact will be submitted to the SCC prior to the start of work.

D. Mitchell asked if there would be clearing and grubbing during guard rail replacement. M. Spilaine said clearing and thinning, but no grubbing. He noted that some outlets were likely clogged and would be unclogged during the process.

J. Hoffman asked if there were any additional comments or questions. None. D. Mitchell stated that he wanted to see the data sheets prior to approval. There were no outstanding issues. The hearing is continued to July 10, at 7:20 PM to review the data sheets relating to erosion control along wetlands, close and issue a permit if no additional issues arise.

**PUBLIC MEETING – Rick Strauss and Nick Deane for stream status discussion regarding a proposed project at 23 Hall Road.**

J. Hoffman opened the meeting. The applicants did not show. The meeting was not rescheduled

**PUBLIC HEARING – Nol cont. – Todd Girard for Mystic Builders for 2 single family homes and related at 6 and 8 Vinton Road.**

J. Hoffman opened the hearing, present were R. Desautels of Mystic Builders, T. Girard, M and M Harrington, S. Kornacki, and Atty Jeff Chase for the Harrington's.

N. Ryder noted that NHESP had certified the vernal pool in question, after the last hearing. She distributed copies of the certification to the applicants and representatives. The SCC also reviewed the certification.

R. Desautels stated that he was seeking a waiver of the 25 foot buffer to use the existing cart path. He stated that due to zoning requirements regarding lot frontage, he

could not move the lot line any higher up. He could move the driveway slightly but to do so would result in more buffer due to tree and vegetation removal. He noted that there was no work proposed in the BVW. He noted that if the SCC allowed the use of the cart path with the understanding that additional plantings would be made along the edge between the cart path and the wetland, protection to the wetland would be increased.

R. Desautels stated that certification of the wetland as a vernal pool was fishy. He noted that his environmental reviewer studied the area and did not find evidence of a vernal pool, the SCC had studied the area at the site visit for over an hour and did not find evidence of a vernal pool, but because neighbors object, suddenly in the middle of a public hearing, it is certified as a vernal pool, immediately adjacent to a 30 year old culvert-outlet. He stated that he had checked NHESP mapping and it was not certified as a vernal pool when he started the project. D. Mitchell and J. Hoffman reviewed the certification and confirmed that it had been certified 6 days earlier on Friday, June 13. D. Mitchell noted that the species listed in the certification was a general mole salamander, while the survey sheet showed spotted salamander egg masses. He questioned the discrepancy. N. Ryder stated that during training and programs, it was commonly accepted that vernal pools could not be certified if they had established outlets. D. Mitchell and T. Girard agreed.

R. Desautels stated that he could bring the driveway through the other side, crossing the wetland and replicating or he could replicate the wetland adjacent to the cart path to move the buffer. J. Hoffman stated that a wetland could not be filled and replicated to create a 25 foot buffer. R. Desautels stated that he felt his request to waive the 25 foot buffer requirement was reasonable in order to use the existing cart path.

E. Goodwin said the issue now was reasonable use and self imposed hardships. Atty Chase asked if the SCC was going to allow impacts to a vernal pool due to the applicants self imposed hardship. J. Hoffman requested that the audience allow the applicant and his representative to finish their presentation, the SCC would then ask questions and discuss the project, the floor would then be opened to any abutters and interested parties. No problem.

D. Mitchell stated that the SCC needed to take one issue at a time. He noted that the commissioners had walked the site and were satisfied that the delineation was reasonable and correct. He noted that they had inspected the wetland carefully and found no evidence or indicators that the area contained a vernal pool.

J. Michalek stated that the area was a little unusual and was possibly man made. He noted that there was an area of wetland which included the culvert under Vinton Road, then an area of ledge about 3 to 4 feet high creating a natural berm, then the rest of the wetland. T. Girard agreed and noted that it was created about 30 years ago, when gravel was excavated from the pond and culvert location.

E. Goodwin stated that although the applicant was not crossing or working in a wetland, they created their own hardship in needing to work within the 25 foot buffer.

J. Hoffman asked what the state minimum buffer was for vernal pools. N. Ryder said the state maximum was 100 feet for non-endangered or threatened species. The town maximum vernal pool buffer is 200 feet with enforced distances being based on the significance and need of the species found in the individual pool regardless of whether they were classified as endangered or not. The regulations state that the town minimum buffer for certified or identified vernal pools is 100 feet.

J. Hoffman stated that no one else had been allowed to violate the 25 foot buffer since it was adopted. The only case where a waiver was given was for a pre-existing project, where the 25 foot buffer proposed and agreed on was less disturbed than it had been before the project started.

E. Goodwin noted that in the past the SCC had allowed a crossing for two houses, based on reasonable use. Reasonable use needed to be determined. He noted that in his mind, for this project, reasonable use may only be one house. N. Ryder noted that although the crossing had been allowed, the applicant had to prove that there were no other alternatives to access the land and that there were no other alternatives that created no impact, or minimal impact. J. Hoffman noted that two homes were allowed in that case because there was no difference in impact for one home vs. two once the crossing was allowed. E. Goodwin agreed. J. Hoffman noted that the difference in this case is that although there is no crossing yet, there is a difference in impact for the second home. The significance needs to be determined. J. Hoffman also noted that the SCC was not discussing resource area crossing, only buffer impact.

J. Michalek noted that the other alternative is to go through the wetland. N. Ryder noted that the subdivision date was after the critical date. She noted that prior to allowing a crossing, the applicant had to prove there were no other alternatives for access, which did not impact the wetland, such as moving lot lines.

J. Hoffman noted that either way the wetland crossing, if proposed, would be discretionary. The commission could say prove no other alternatives or lot configurations, then still deny the project for unreasonable impact to the wetland and reasonable use from one home. He stated that if the SCC was going to ask an applicant to provide additional information or obtain other permits they should be sure that they are willing to seriously consider the crossing or impact in the first place.

T. Girard stated that he had not even considered the crossing since the first step was to see if there were alternatives to crossing. He noted that at the time, there was no issue of a vernal pool. E. Goodwin stated that if two lots are to be allowed, the applicant had come with the right plan using an existing cart path. The issue in his mind is whether the impact within the 25 foot buffer was reasonable and whether 1 or 2 lots could be reasonably allowed.

T. Girard stated that if the applicant uses the minimum 12 foot width driveway and plants along side it, the impact would be reduced. In addition for most of the driveway

length, the driveway can be pulled out of the 25 foot buffer. It is only the first 6 or 7 feet that must be within the buffer due to frontage.

??? asked how close the vernal pool was to the cart path at the westerly edge. 50 feet. N. Ryder and the Harrington's discussed vernal pool characteristics, including the location of the outlet, and the lack of a metes and bounds map. N. Ryder noted that any area with an outlet could not be a vernal pool. In addition, any time students in the SCC program had submitted an application without a metes and bounds map, it had been rejected for lack of necessary information. She noted that this was inconsistent. She stated that the hearing should be continued to check with NHESP and get answers to the questions. She noted that they may be unaware of the culvert. She stated that she was a proponent of protecting vernal pools, but only if they clearly met the necessary criteria, otherwise, any vernal pool protected by the SCC would be in question. Protecting a wetland as though it was a vernal pool due to abutter objection would be as wrong as not protecting a vernal pool that was certifiable. J. Hoffman agreed. D. Mitchell noted that he did not see the area as a vernal pool. There may be a pocket vernal pool in the eastern wetland, but even that area showed clear flow patterns.

J. Hoffman asked the SCC to move back to the 25 foot buffer issue. He noted that the vernal pool issue needed clarification from NHESP before any decisions could be made. J. Michalek said ignoring the vernal pool issue for the moment, if two homes is reasonable use, then the entrance as proposed is the best use as it requires less impact to the wetland and to the buffer. D. Mitchell no crossing, no replication and no alteration were all positives, but the SCC had not allowed the abutters and opponents to speak yet. He did not want to make a judgement until he heard what the abutters had to say. He noted that the next issue was whether two house lots were reasonable use for the property, in his mind, yes.

J. Hoffman agreed but noted that standard procedure allowed the SCC to finish questions and discussion relating to the applicants presentation first. In many cases the abutters questions are answered by the discussion.

J. Michalek said that if the vernal pool is a vernal pool, it is near a road, not in the middle of the woods, where protection might be more important. He noted that the project was similar to others the SCC had permitted. Two homes on five acres was reasonable. He noted that a deed restriction could be added not allowing any further disturbance.

D. Mitchell asked if the SCC needed to confirm no other entrance options. J. Michalek said the should. E. Goodwin noted that he had seen the wetland and felt it should not be crossed. J. Hoffman noted he had not, he felt all alternatives should be clearly reviewed. J. Michalek agreed, he noted that in all past cases, applicants had to have proof overcoming alternatives on record as part of the application file. If a variance to the regulation is going to be allowed, proof of no alternatives needs to be on record.

T. Girard, J. Michalek and D. Mitchell discussed the need to have the entire wetland flagged and numbers placed on a plan. T. Girard said the entire back wetland is a channel with a stream. E. Goodwin and D. Mitchell said it should be staked in the field and checked. J. Hoffman noted that to put a driveway on the other side with no crossing, they would need 12 feet along the boundary. T. Girard said that would not be possible. They would have to cross the wetland and cut down established Mountain Laurel and large Maples. E. Goodwin said 5 acres was reasonable for 1 house lot also. J. Hoffman said it would be nice, but he was not sure it could be considered reasonable to require only 1 home be built on 5 acres when there was an existing cart path disturbance.

J. Hoffman asked if there were any other questions or comments from the Commissioners. No. Audience.

Atty. Jeff Chase stated that he was representing the Harrington's. He noted that the hardship was self imposed. The land had been bought in 2000 and subdivided. The applicant can not meet the 25 foot buffer because he chose to buy one house lot and make it into 2 house lots. He can not meet SCC regulations due to frontage requirements but all the regulations were in place prior to his subdividing the property. It is clearly stated in the regulations that the SCC will have no sympathy for self imposed hardship. He noted that there was also the issue of the vernal pool and the commissions regulation of a 100 foot buffer. He noted that he would not mind a continuation to confirm NHESP's certification considering the outlet.

M. Harrington stated that if the vernal pool is not a certifiable vernal pool, then is it true that the SCC does not consider this a self imposed hardship.

J. Hoffman stated that the provisions for limited projects state that if the only way to access a lot is through a wetland, then the commission can allow up to 5000 square feet of alteration if the use is reasonable. He stated that the WPA is a protection for resource areas not a denial of land use.

M. Harrington replied that in spite of the commissions regulations, self imposed hardship is not a consideration.

J. Hoffman replied that the commissions regulations on no self imposed hardships referred to subdividing a property and cutting off one part of upland with no access other than through a resource area. He stated that the applicant did not cut off access to an upland area by a wetland. The applicant is asking for a waiver from the 25 foot buffer, which is allowed in the regulations.

J. Hoffman noted to M. Harrington that the ultimate goal was protection of wetlands. They discussed 500 Main Street. J. Hoffman noted that if the applicant was talking about cutting a driveway through virgin woods within the 25 foot buffer, it would not be allowed. In this case there is an existing cart path, which must be considered as an existing disturbance. He noted that if the vernal pool was certifiable, the situation

changed. He felt the SCC definitely needed to talk to NHESP. M. Harrington stated that he did not know about vernal pools, but he did not like outsiders coming into town and building where they don't and will not live. D. Mitchell noted that while the point was good and he hoped more people in town would speak up, he did not see anyone at the present meeting attend the hearings for the 6 subdivisions before the commission in the last two years. J. Hoffman agreed and noted that everyone wanted to protect the environment on everyone else's land. E. Goodwin noted to the abutters that the purpose of the SCC is to protect the resource areas, not stop construction.

S. Kranecky noted that she did not have much information on Mystic Builders and asked if a future building restriction was agreed to, would it be passed on to the next owner. J. Hoffman stated that once an Order of Conditions is accepted, it must be recorded on the property deed. It then becomes a lien on the property and carries with the title. If the applicant never files the permit or starts the project, but sells the property, the next owner can come back in with any plan they want which meets regulation and start the process over again. E. Goodwin noted that if the SCC grants 2 house lots now, they will not grant a crossing for additional homes in the back later.

J. Hoffman asked the applicant for a continuation. He noted that it was entirely up to the applicant, but stated that information from NHESP would be important. He noted that if the applicant chose the commission could act on the information currently available. E. Goodwin said he felt it was important to check the wetland again, he did not feel the vernal pool was relevant. N. Ryder noted that if it was certified, it was relevant in that it carried a required 100 foot buffer unless a waiver was applied for and granted. J. Hoffman instructed N. Ryder to call NHESP and obtain clarification based on the discussed information. R. Desautels stated that he was hesitant but would grant the continuation to check with NHESP and to revisit the wetland. J. Hoffman noted that it was entirely his call. R. Desautels agreed to the continuation.

D. Mitchell stated that to clarify the issues for the continuation so everyone had the same understanding, the continuation was to verify the vernal pool with NHESP, recheck the wetland boundary and identify any curb cut or driveway alternatives. E. Goodwin added that if the vernal pool was certified and held, then the SCC needed to consider if it would be better to cross the wetland further down than it would be to disturb upland habitat or to not allow either alternative.

J. Hoffman asked for the driveway edge to be clearly staked.

The hearing is continued to July 10 at 10:10 PM.

T. Girard stated that he would look to move the driveway and disturbance outside the 25 foot buffer.



**PUBLIC HEARING – 3 – Nol's, 1 – RDA – Jalbert Engineering for Paquette Realty Trust for 4 single family homes and related at 335, 337, 339 and 341 Trail Road.**

J. Hoffman opened the hearing, present were J. Teachout, Laura Eliason, Donald Alarie, Jean Campbell, Joe Campbell, Stephen Murphy, Pat Murphy.

N. Ryder noted that the lots appeared to be within Riverfront Resource area, but no riverfront buffer was shown on the plans.

J. Teachout stated that the lots were created in February of this year, 2003. The centerline of the brook is 72 feet from the edge of BVW. All work is outside the riparian area. She stated that all buffer lines will be shown on revised plans. Lot 4 is outside the 100 foot buffer to the BVW also and is an RDA filing. Lots 1-3 are Nol filings. The haybale line is the limit of clearing, there will be no disturbance beyond that.

J. Hoffman clarified that the 100 foot wetland buffer is the 200 foot riparian buffer. J. Teachout agreed and noted that all work would be outside the riparian buffer. J. Hoffman stated that a site visit would be needed for the projects. J. Teachout agreed.

E. Goodwin asked if the lots would have town water and sewer. J. Teachout said they would and outlined the sewer treatment transfer station adjacent to the driveway for lot 1. D. Mitchell noted that there were wells proposed on 2 of the lots but not on the other 2. Members of the audience noted that there was not town water for Trail Road. J. Hoffman noted that lots 3 and 4 showed no proposed wells. The site plan will need to be corrected prior to further review to show riparian buffers, and for clarification as to whether there would be public or private water supply.

J. Hoffman asked if there were any other questions at the moment from the SCC. No. He asked if the audience had concerns or questions.

D. Alarie stated that he represented the Trail Association and noted that they had hired an attorney to explore the legality of splitting the lots. He stated that the land was under a restricted covenant which states that the original lot cannot be divided without a consenting vote of the Association. He submitted a copy of the covenant for the file. He noted that the subdivision of the lots was in violation of the restrictive covenant on file with the registry of deeds for all the land in the association.

J. Hoffman stated that while subdivision of land is not an SCC issue, the SCC order does not allow a project that is in violation of other laws.

E. Goodwin stated to the Association that with town sewer comes ½ acre lots around the lake. The Association should be looking for ways to encourage or require larger lot sizes for all areas but especially lake front. L. Eliason stated that the lot was subject to a restricted covenant, with the purpose of preventing lot subdivision. L. Eliason and E. Goodwin discussed the importance of limiting the amount of new construction due to sewer especially along water front areas in order to protect the lakes.

J. Teachout stated that she was completely unaware that the land may be under the protection of a covenant and asked for a continuation to July 24<sup>th</sup> at 9:10 PM to straighten out the issue and to revise the plans. Agreed.

**Motion to close at 11:10 by all, vote unanimous.**