

# **STURBRIDGE CONSERVATION COMMISSION**

**Minutes for Wednesday, August 27, 2003**

## **MEMBERS PRESENT** –

D. Barnicle, D. Mitchell, J. Hoffman, E. Goodwin, and J. Michalek  
7:00 PM

## **CPA UPDATE, E. GOODWIN**

Yes. Done.

## **MINUTES REVIEW**

The minutes of May 20, June 5, June 19, and July 10 were approved as amended.

## **CORRESPONDENCE REVIEW**

Correspondence reviewed included; MACC fall training flyers, miscellaneous email correspondence regarding the Preserve environmental reports and contractor response time, Integrated water management workshop information, and Correspondence regarding the D. Smith driveway on Falls Road.

## **DISCUSSION OF NEW INFORMATION** –

Lakes Monitoring data was briefly reviewed. D. Mitchell will review the data, write up a short analysis of each lake using two year data, and hold a special meeting for the lake association representatives to explain the data and plan a program for next year. At this point trends can start to be tracked. All the inlets and outlets for Walker Pond were tested. The Commission will look for funding with Cedar Lake to test all the inlets and outlets during next year's session.

## **REVIEW OF SITE VISITS**

J. Hoffman summarized the recent site visits.

104 Paradise Lane – The commissioners met the association representatives on site, discussed not removing the bulk of the trees to maintain soil stability, surface water dissipation and thermo-stability to the lake. The grape vines and some dead/dying trees may be removed. Dock footings can be placed in the location of the current stairs for minimal impact. The expansion of the existing sand area cannot be closer to the lake; impact to the lake must be minimized in the 25-foot buffer. 2:1 mitigation is expected.

Sanctuary – The wet area noted during the erosion control check is potentially a vernal pool. Further evaluation will be conducted and the project on those two lots will be adjusted to leave a buffer. Plans reflecting protection to this area are to be submitted for the 9/4 meeting.

Sturbridge Isle Hotel – The soil pile has been removed from the edge of bank but there are no stabilizing measures in place. This needs to be remedied immediately. K. Rucci asked if mulch would be fine. No, loam, seed, mat and stabilizing ground cover must be installed immediately.

10 Curboy Road – The stream shown and marked on a topo map using the GPS unit, overlays the perennial stream exactly. M. Farrell will need to address the Riverfront Resource Area regulations in his proposal on 9/4.

Falls Road Dam – The basin is silted over, not clean as noted during the previous hearing. Additional details regarding the cleaning of the lower basin, stabilization of the wall and erosion control are needed. The project is not as simple as noted at the previous hearing. Potential down stream impacts are tremendous if the project is

not done correctly. The applicants are expected to make a walk in presentation during this meeting, as time is critical in not losing the funding back to the state especially when the work needs to be conducted.

The Smith Driveway should come in as a letter permit or as an RDA. The water is flowing under the driveway, the proposed procedure for replacement of the culverts should be outlined to be sure there will be no negative impact especially to the dam which is in need of repair. N. Ryder noted that when she contacted D. Smith to let him know a letter permit or RDA would be required, he informed her that the project had already been completed. He had outlined his driveway resurfacing and stated that he had replaced the culvert under the driveway. N. Ryder informed him he would need to speak to the commission at the next meeting.

#### **WALK IN – FOR FALLS ROAD DAM PROJECT –**

Present were N. Applegate, L. Jalbert, B. Soper. Due to the time constraints the SCC had requested they come in to discuss the site visit concerns prior to the public hearing continuation. The notes of the meeting will be available to any abutters who attend the continuation. Details will be reviewed if necessary.

N. Applegate noted that the basin was not as full of silt as it appeared, he showed the commission a photo of the pipe approximately 4 inches below the surface. J. Hoffman noted that once the water started flowing through the pipe, the silt in the basin would be churned up and would wash right through the pipe toward Walker Pond with the discharge water. He noted that as much silt as possible needed to be removed first to avoid this type of potential sedimentation to the lake. The resulting plume of sand would not be small if it started flowing through the overflow pipe. L. Jalbert asked the commission if they could digress to reality; he stated that he felt the SCC was being overly cautious and ridiculous and noted that he had been doing dam repairs for over 40 years and had always done them the same way, no sediments had ended up in the lake. E. Goodwin replied “you’d think you would have gotten it right by now” and asked L. Jalbert to digress to the reality of the need for conservation review and the potential for impact. J. Hoffman noted that this was not the simple repair presented at an earlier meeting. The conditions noted during the site visit outlined the potential for sedimentation of the stream and lake.

L. Jalbert outlined the dams with the overflow pipes used to drain the ponds for maintenance. B. Soper stepped in and noted that he understood the commissions concern with silt going down the pipes with the overflow water. He stated he was not going to drain the ponds that way. He noted that he was going to remove a couple stones at a time so there would be a very slow release, sediments would not get kicked up, those that did would be trapped in the pond below. J. Hoffman confirmed that B. Soper was saying he would not be pulling the plug. Correct. B. Soper said he was letting the top of the pond flow off slowly and easily to not stir up sediments. J. Hoffman confirmed that eventually all the water would end up in the lower pond. B. Soper agreed and noted that all the stones were loose; the wall needed repair all the way down. J. Hoffman noted that silt had built up to within several inches of the water level. He noted that the commission had been told earlier that the plug would be pulled to drain the pond. He noted that if that happened the silts would be picked up and would all go right down into the stream. J. Hoffman confirmed a second time that the drain plug would not be pulled during the repair. B. Soper clarified that all the water would not be drained out. Sandbags were to be used to hold back most of the water so they could work under dry conditions and pour the concrete. The only water drained would be that between the sand bag wall and the stone wall.

E. Goodwin asked if the lake association had plans to dredge the ponds since they would be drawn down for repair. That would be the ideal time. E. Goodwin and J. Hoffman noted that the project now included construction of an artificial dam using sandbags in the muck and silt. They both noted that the dredging process should likely be conducted now, since the silt seemed to have built up again, the water would be down and maintenance was being conducted. D. Mitchell asked if anyone had checked the depth of the silt build up. B. Soper stated that he was planning on checking it when the water was drawn down.

J. Hoffman asked how far the pipe was above the base of the pond. L. Jalbert said 6 inches. J. Hoffman stated that the sediments were now at that level, so the pond now had 6 inches of fill. B. Soper stated that his plan was to seal the pipe to prevent sediments from traveling down. He noted that he could muck out the pond also if the SCC wished. L. Jalbert suggested dragging the pond, letting it then sit so the remaining sediments drop down; then when the pond settles they can pull the plug and drain the pond to work. D. Mitchell stated that whenever the pond was dredged, the removed sediments should be placed in a haybaled area. N. Applegate noted there was not much room available. He suggested they be put in a truck to drain. D. Mitchell noted either way should be fine and noted that if they let the dredge material drain before removing it off site, the material will compact down substantially.

J. Hoffman asked B. Soper to summarize the current proposal. He summarized that sand bags will be placed up stream of the pipe, then the small storage area will be drained by lowering the existing dam, not opening the pipe. When the construction is finished, the pipe will be cut and sealed. B. Soper agreed that was correct for the upper dam. D. Barnicle noted that they should add the issue of dredging the pond. L. Jalbert stated that the bid that went out only included upper dam replacement. He noted that it would be up to the association to agree to pay for removal of silt also. D. Mitchell stated that typically it is up to the association to measure the level of silt and to indicate to the contractor how much the silt level is to be taken down by. That way there is no room for discrepancy in terms of how much material has been removed off site. N. Applegate stated that the SCC could determine how much is to be taken out. D. Mitchell noted that there was too much room for contract disputes unless the specific level to be taken down to is specified. B. Soper agreed. D. Mitchell asked how far his equipment would reach. B. Soper noted he could reach in from the bank

B. Soper noted that the lower dam closer to the lake was working fine. E. Goodwin noted that the commission was not concerned that the dam was not working. The concern was that the pond was no longer at or near maximum holding capacity and needed to be maintained. He stated that the commission should make silt removal part of the required maintenance for the project. L. Jalbert stated that there was only 6 inches of silt built up. J. Hoffman noted that silt had built up to the level of the drain pipe, that was too high. N. Applegate and L. Jalbert both noted that if that was the case, then the 2 lower ponds closer to the lake also needed to have the silt dredged. D. Barnicle asked if there was anyway all the maintenance work could be pulled together as one project.

N. Applegate stated that depending on cost, he preferred to dredge the lower ponds as a priority over the upper two; they are closer to the lake. The SCC agreed. In summary, based on funds, the upper pond will be sandbagged and the wall replaced, the second upper (but lower than the first) pond will have the wall repaired. The 4 ponds total will be dredged based on available funds starting with the lower two, (closer to the lake) then the upper two on which work is currently proposed. D. Barnicle asked that the draft permit reflect this in the special conditions. D. Mitchell stated that a condition be added that the silt be deposited in lined trucks and allowed to dewater prior to removal from the immediate area. The SCC agreed with both conditions and asked for a draft permit to be ready for 9/4. N. Ryder noted that a DEP review sheet and number had not yet been received.

### **NEW BUSINESS**

Existing SFH lake front policy changes – reviewed briefly, then tabled to next business meeting.

### **OLD BUSINESS**

Regulations review and update – Tabled to the next business meeting.

127 A Stallion Hill plans – DPW has installed the gravel drive, which is controlling most of the runoff. The safety fence is not in yet. The boulders and further work will wait until safe access is available. G. King is anxious to start a management plan; D. Barnicle and N. Ryder will walk the site with him.

Subdivision Review – The commission has been slacking on site visits. The teams will revisit each subdivision on their own time and make sure all action items are addressed on or before the next business meeting.

D. Barnicle brought up the Preserve subdivision and noted that the homes were packed in very tightly. He suggested that each commissioner should look at the subdivisions going in and evaluate if this is the direction the town should be going in. N. Ryder noted these were a type of cluster development and noted that the commission had pushed very hard for a similar approach on both Sanctuary and Highlands. J. Hoffman asked D. Barnicle to clarify. J. Michalek stated that he and P. Fernandez had walked the site daily and had also looked at housing developments in some of the southern states. He noted everything in Charleston S. C. is cluster with open space spread behind, Sturbridge is more country spread. J. Hoffman noted that in many other areas, he had noticed a great deal of cluster style development. The land is considered more valuable when it is not used as housing lots. He noted that in New England, the preservation of land for other uses is not as important and open space areas not as precious a commodity. D. Mitchell noted that it had a lot to do with local zoning laws. In New England, the standard school of thought that good fences made good neighbors was prevalent while in other areas, development was more compact, and people lived closer. E. Goodwin noted that every area of the country had historical zoning use and character. Although other areas may appear not to, they all have their own zoning issues. E. Goodwin noted that the discussion was not part of the list of conservation issues scheduled but felt it was an important town issue the SCC would need to deal with eventually and should be discussed. D. Mitchell noted that the SCC was out on construction sites more than other boards; they saw and heard how projects were going, and were pivotal in review of land development and use. Despite this, cluster housing and other zoning issues were not under SCC jurisdiction. He noted this brought the commission back to overlap issues with the Planning Board that impacted review.

The SCC discussed the draft letter to the Planning Board regarding overlapping areas of regulations and the conflicts this presented. D. Mitchell stated that the SCC regulations and buffers were just as important as other boards but usually were addressed as an afterthought. D. Barnicle suggested the SCC send the letter proposed. If the Planning Board chose not to respond or work with the SCC, then the SCC should move forward in the direction they needed to. E. Goodwin noted that the Planning Board was just as frustrated as the SCC; they were trying to create better conditions for the town also. He noted that conservation moved forward in a single direction based on universal environmental concerns. The goal and the only goal of the Commission was to protect resources through regulation, public outreach and education and land protection. The Planning Board on the other hand based their direction on the town's individual perception of quality of life. The common thread was that both boards were trying to help make Sturbridge a better place to live.

J. Hoffman asked to go back for a moment to finish the earlier conversation and asked D. Barnicle to clarify his point, was he opposed to cluster development. D. Barnicle stated that what the town was doing was not true cluster development. The housing area was too spread out into the open space, minimizing the value of either. He did not like it. J. Hoffman noted that in spite of the drawbacks it was still in the opposite direction of 2 acre zoning. D. Barnicle agreed and noted that 2 acre zoning scrambled wildlife corridors. E. Goodwin noted that was true, but not as badly as ½ acre zoning with no open space hurt wildlife corridors and resource areas. He noted that D. Szumilas had been a strong advocate of cluster zoning from way back. He noted that for most residents, comfort and quality of life came before other concerns. D. Mitchell noted that it was more philosophical, there was just a difference of opinions, some like a close environment for social reasons. J. Hoffman and E. Goodwin both noted that the concept of cluster homes did not eliminate quality of life based on having open space around you. The whole point was to have 10 homes on ¼ acre rather than 10 homes on 10

acres, so 7.75 acres or more remain open space for use of the residents. E. Goodwin stated that there were drawbacks to that plan as well. The owners of the cluster homes could vote to put the open space to any use they wanted, including clear cutting the land for ball fields. Not only that, but the more densely populated an area became, the more pressure there was to develop the remaining land. Zoning changes in the future, could allow what is set aside now as open space to become all ¼ acre home lots in the future. D. Barnicle noted that his original point was that it was interesting to see the houses going up. He noted that despite his concerns regarding the site, the SCC did a good job protecting the resource areas on several of the subdivisions before the town. He noted that Whittemore Woods could be planned as well as the three Moss properties had been. D. Mitchell noted that the key was to look at the quality of the open space and to preserve a balance between use and protection.

The Commission moved back to review of the draft letter to the Planning Board. Rather than summarize the amendments and discussion, please refer to the final letter dated 8/28/03. The consensus of the commission was that they wanted to initiate and foster cooperation between the regulatory boards, not aggression on the part of SCC.

The SCC discussed the Doug Smith letter permit issue on Falls Road. J. Hoffman noted that in reviewing the project details, if culvert replacement was part of the project, he needed to modify his earlier stated opinion. If replacement of a culvert had occurred, it was not a letter permit issue and should have been brought to the commission as a Notice of Intent. The commission discussed permitting requirements for maintenance relating to single family home residences. E. Goodwin noted that each situation had to be looked at on a case by case basis for potential impact. D. Mitchell suggested a standard letter notifying homeowners of the regulations and some type of basic maintenance policy. N. Ryder noted that a summary letter existed and was used, D. Smith had done the project and then notified the commission. She noted also that the Commission had a policy in place. It should be reread and modified if necessary. D. Mitchell noted that the SCC should be careful to not be too overzealous when it came to single family home maintenance issues as it could generate negative publicity. E. Goodwin said the Commission needed to be very careful not to go to the other extreme. He noted that the commission could not avoid doing their job in order to not offend a neighbor or friend. N. Ryder agreed with E. Goodwin and stated that D. Smith could have approached the commission with a letter permit in order to get either a permit or a reason why a formal filing would be needed. A letter permit request is not a big issue, does not require a public hearing, does not involve much time, and there are no filing fees. She noted that wetlands protection issues were independent of who was doing the work and where it was being done. J. Hoffman noted that if there was a potential for impact then the project needed review, the size, and scope of the project dictated the type and level of review. The process was independent of who owned the land and what type of development was on it. N. Ryder agreed and noted that a review for impact was not based on whether the lot was residential or commercial, it is based on the resource area and the potential for impact.

J. Hoffman noted that on the other hand, D. Mitchell had a valuable point, if you give a hard time to someone for one project, then they won't even offer information or come in for a permit the next time. E. Goodwin asked how they recommended defining what to do in specific situations without defining who has to do it. N. Ryder noted that D. Smith had not bothered to come to the commission the first time; his project was brought up accidentally during review of a separate project, which was following the review process. In addition, he did not even bother to wait for a review after he heard one was needed. She noted that the commission needed to balance convenience for residents with fairness and consistency. The commission needed to make sure they would not be following two sets of regulatory rules, one for single family home residents and one for new construction projects or commercial developments.

D. Barnicle stated that there were two separate issues confusing the picture on this project. One was minimal work to maintain a driveway. The second was the fact that the driveway happened to be over a culvert for a

flowing stream. That was different. E. Goodwin asked how it was different; he noted that it was the overall potential impact to the stream that decided the level of review. D. Barnicle stated that driveway maintenance 100 feet from a resource area was not a big deal. Driveway maintenance over a stream and a change in a culvert was a big deal and related to protection of water quality.

The commission will reread the current revised regulation draft as well as the SCC policy. The anticipated action will be to have the commissioners recommend amendments to the current regulations that meet the commission's current level of awareness and knowledge of town resource areas and issues. A commission business meeting will be scheduled for sometime in October or November. It is anticipated that the review of regulations will carry over to the January/February commission business meeting.

## **OTHER BUSINESS**

### **Subdivision Environmental Reports**

The SCC discussed the environmental reports coming in from various subdivisions and noted the apparent lack of communication between the reviewer and the contractor on each site. After discussion it was agreed that a site plan/locus will be required on reviews to pinpoint problem areas, as well as a way of identifying how long issues or requests have been outstanding. The goal is to allow the SCC to ensure that contractors are receiving and complying with the concerns of the environmental reviewer.

J. Michalek noted that the fish ladder at the Preserve in no way addressed the issues it was intended to address. The drop is nearly vertical and creates a serious hazard to children playing there. It is not a gentle angle and there is no way any little creatures will get up it. The SCC needs to address this. N. Ryder is to contact A. Allen and C. McGregor for a review and response on the viability of the fish ladder.

J. Michalek noted also that the water in the vernal pool is 15 to 20 feet further back than it used to be. D. Mitchell stated it was likely due to construction, it may be seeping through disturbed soils and draining if it is not flowing the way it used to. J. Michalek noted that based on his observation, he was not sure it would ever flow.

The SCC requested that A. Allen and C. McGregor be contacted and asked to evaluate the wetland and vernal pool above the fish ladder to see if it is receding and the viability of the fish ladder.

The Commission requested N. Ryder draft a letter noting J. Michalek had resigned the commission and asking the BoS to recognize his service at an upcoming meeting. In addition, J. Malloy should note to the audience that there was a vacancy on the commission and asking if there were volunteers wishing to fill the position. N. Ryder noted that J. Michalek should submit a letter to J. Malloy, she did not feel it was appropriate to resign for him. She noted she would ask Jim to have the BoS recognize his efforts and note that a replacement was needed.

### **Alternatives Analysis-No Negative Impact**

The commission discussed the analysis issue and when it applies. Additional discussion and resolution is needed. No consensus opinion was arrived at.

J. Hoffman requested the commission reconsider the use of the term "No Negative Impact" used in the regulations and in public hearing review. He noted that he had conducted extensive research and could find no basis of fact in state law or scientific data to support use of that term. He noted the term used by the State and in regulatory documents was "No Significant Adverse Impact". He noted that negative impact was a discretionary determination and not based on science or written regulation. The commission discussed the point and unanimously agreed with J. Hoffman's evaluation. A unanimous vote to replace the phrase "No negative

impact” with “No significant adverse impact” in keeping with state terminology and avoiding subjective review was made.

**State Regulations vs Local Regulations, applying both, keeping clear separation in review and permitting.** Tabled.

**Use of Enforcement vs Emergency Permits, Cease and Desist or Warning letters, which is appropriate and when.**  
Tabled.

**Commission workload issues**

E. Goodwin noted that the commission was reviewing too many project submittals where applicants needed to go back and revise plans substantially to meet regulation. He noted that the commission should require applicants to have all their ducks lined up in a row, before public hearings are even open. D. Mitchell noted that there seemed to be two standards for submittals, one for professionals, and a second for homeowners with minor projects. E. Goodwin noted he was not concerned about the level of minor submittals, they did not take much of the commissions time and made the commission available to the taxpaying residents. He was more concerned about many of the “engineered” submittals, several of which completely ignored the town bylaw and regulations and even some state regulations. He said he was tired of spending valuable time getting caught up reading and reviewing basic regulations with people who should know better. N. Ryder agreed with him and noted that when certain documents had been submitted, the commission then had a set amount of time to open a hearing and follow process. She noted that she used an extensive checklist to let applicants know what aspects of a project did not meet regulation and also spent a great deal of time going over projects in advance, reminding applicants of various set regulations. Applicants had the option to require review of what they wanted anyhow, even if it violated regulations. She suggested that rather than allowing multiple continuations over and over and playing a “meet in the middle game”, the commission should simply deny outright, any projects that did not meet the basic criteria. The denial should make specific reference to the regulation, section of bylaw, or WPA being violated and to what additional information was needed. She noted that way applicants would have to reapply, pay a second filing fee and would get the message quite quickly that the commission was tired of the same game being played. The financial and time inconvenience of having to appeal and/or reapply would help eliminate many of the repetitive continuations and would definitely alleviate much of the commissions wasted time.

**SCC’s Community Service Programs, ways to find volunteers and program leaders so these programs can continue under SCC leadership**  
Tabled.

**Attracting new members –**

N. Ryder is to speak with J. Malloy regarding advertising for new members. A letter requesting that the BoS acknowledge J. Michalek's contribution and noting to the general public during their weekly meeting that new members are needed for SCC is to be sent.

**Letter Permits**

Tabled to the next public meeting.

**Certificates of Compliance**

Tabled to the next public meeting.

The next business meeting date was set for November 19<sup>th</sup>, Wednesday from 7-9 PM.

The meeting was adjourned by unanimous vote at 9:25 PM.