

## **March 29, 2006**

MEMBERS PRESENT: Mr. Bedini, Mr. LaMuniere, Mr. Picton Ms. Purnell

MEMBER ABSENT: Mrs. D. Hill

ALTERNATE PRESENT: Ms. Coe

STAFF PRESENT: Mr. Ajello, Mrs. J. Hill

ALSO PRESENT: Atty. Olson, Mr. Owens, Mr. Majewski, Mr. Neff, Atty. Kelly

### **Spring Hill Farms, LLC./69 Whittlesey Road/#IW-05-74/Reconstruct, Enlarge, Relocate Existing Building/Con't.**

Mr. Picton reconvened the public hearing at 6:07 p.m. and seated Members Bedini, LaMuniere, Picton, and Purnell and Alternate Coe for Mrs. Hill. Mr. Ajello read the list of documents, which had been submitted to the file since the last session of the hearing. Mr. Picton asked if there was any new information to be submitted and Mr. Owens responded there was not. Atty. Kelly asked if Land Tech's 3/22/06 letter was included. Mr. Picton said it was.

Mr. Picton noted Mr. Allan, in that 3/22/06 letter, had stated all of his concerns had been adequately addressed. Ms. Purnell pointed out that Mr. Allan's item #7 stressed that the natural character and functions of the wetlands were likely to remain unchanged as a result of the proposed house reconstruction and said it was up to the Commission to interpret the impact of the existing structure. Atty. Kelly disagreed, saying if an interpretation was to be made, Mr. Allan should be present to make it.

Mr. LaMuniere thought Mr. Neff, the applicant's engineer, had been very responsive to the issues raised in Land Tech's original review dated 2/23/06.

Ms. Coe questioned whether the application addressed the potential long term impacts of the proposal and wondered how the Commission could be sure the proposed mitigation would be effective and would remain in place as required. She asked how the Commission could guarantee the property would be used as approved and how the difference between the existing seasonal and proposed year round use could be measured. She noted the engineering review had not addressed those questions. Ms. Purnell noted Mr. Allen had been asked what the impact to the wetlands and watercourses would be as a result of the increase in both the footprint and use of the proposed house, but he had told the Commission this was unquantifiable. Ms. Coe said she trusted his findings concerning short term impacts, but said she was still bothered by the issue of long term impacts. Mr. Owens noted the applicant's consultant, Mr. Majewski, had advised the Commission the septic system would perform better with more and year round use and noted the existing cess pool would be replaced with a septic system further from the wetlands. Regarding runoff, he stated there would be a net improvement because although the roof area would be larger, the runoff would be better managed. Ms. Purnell did not think these points addressed the question of the impact of a larger building.

Mr. LaMuniere said the Commission could not legislate the future. He advised the commissioners to assess the physical impacts of the proposal and to make sure its design was sound.

Mr. Bedini noted this was a complex application and that the work done by all the engineers and the back and forth consultation between them had been useful and helpful. He said his only concern was that if an approval was granted there had to be measures in place to monitor the work to ensure it was done in compliance with the permit.

Ms. Purnell noted the public hearing was the forum to receive information and the deliberation by the

commissioners should take place at the special meeting. She asked if the time in which to make a decision could be extended. Mr. Ajello stated the 65 days in which to render a decision would expire on 4/9/06. She asked if the applicant was willing to grant an extension. Mrs. Hill stated the maximum 65 days had already been granted. It was also noted later in the meeting that the applicant was not willing to grant any further extensions.

Ms. Purnell submitted articles on the use of road sand and salt for the record since the use of the property would be expanded to year round use. These were "Snow, Road Salt, and the Chesapeake Bay," by Mr. Schueler from the Center of Watershed Protection and "Increased Salinization of Fresh Water in the Northeastern United States," from the National Academy of Sciences of the USA, 2005. Mr. Picton thought there would also be an apparent increase in the use of household chemicals and nutrients from landscaping maintenance chemicals and that the watercourses could experience thermal warming from the roof and driveway runoff. He questioned what affect the increased use of road salt and other ice melting chemicals would have on the wetland biology. Ms. Purnell also submitted a report on pesticide levels in streams, "Pesticides Found in Streams Across the United States" and excerpts of "Site Planning for Urban Stream Protection," by Mr. Schueler from the Center of Watershed Protection, dated December 1995. Atty. Kelly objected to the submission of the articles because he said 1) Ms. Purnell was not qualified to interpret them and she was representing herself as an expert, 2) it was not known whether they were relevant to the application, and 3) the authors of the articles were not present for him to cross examine. Atty. Kelly questioned whether the public hearing had been necessary and said all the qualified experts had stated the proposed activities would cause no significant impact. He also stated Ms. Purnell had misinterpreted Mr. Allan's statement in his 3/22/06 letter. He then said that two commission members who were not experts were "sourcing" the record without Mr. Allan's testimony that the documents submitted were relevant. He accused Ms. Purnell of bias and asked that she recuse herself. Atty. Olson said the commissioners had the right to submit material for the record. Further, she stated they were not restricted by what their consultant said and if the applicant did not agree with the decision made or how that decision was arrived at, he had the right to appeal. Atty. Kelly argued that the commissioners may not decide that a significant impact may exist without expert testimony. Atty. Olson noted the Commission was not limited to the report submitted by any one consultant. She asked Atty. Kelly if he refuted any of the information on the record. Atty. Kelly objected that the applicant would not have time to read the articles just submitted. Ms. Purnell explained she had submitted the articles because the Commission's consultant had not been able to give quantifiable answers to the questions raised and this material might help the commissioners to quantify the long term impacts of a larger house and the increase to year round use. She said she was not biased, she had made no predetermination, and the reports were from reputable sources such as the National Academy of Sciences. She also listed some of her qualifications and work experience. Atty. Kelly stated he thought Ms. Purnell's actions were highly inappropriate. Atty. Olson noted it was not known whether the articles were important evidence at this time and there was no basis for him to assume the Commission would deny the application based on any of them.

Mr. Picton asked Atty. Olson if she thought the public hearing was called properly. She said it was.

Mr. Picton asked if it was true that if the Commission finds the proposed activities may have a significant impact on wetlands and watercourses, the Commission may not approve the application unless a feasible and prudent alternative does not exist. Atty. Kelly noted if the Commission does not find there is a significant impact, feasible and prudent alternatives are not relevant to the Commission. Atty. Olson said that was correct. Atty. Kelly objected to Mr. Picton's use of the word, "may," saying the Commission would have to determine it was likely there would be a significant impact in order to deny the application.

Mr. Picton asked if the applicant would discontinue the farm access road and if he would agree to this

as a condition of approval. Atty. Kelly answered yes to both, saying the road would be discontinued at the house. He added that the applicant was open to any reasonable suggestion.

Mr. Picton asked how many stories were proposed. Mr. Owens, architect, said one and a half stories.

Mr. Picton noted Mr. Owens had previously confirmed the proposed footprint was approximately two and a half times larger than the existing building.

Mr. Picton pointed out what he thought were discrepancies in the information submitted by the applicant. 1) In the January ESM report, the replacement of the house with a "slightly larger" structure, not a structure with a footprint two and a half times larger, was considered. 2) The conclusion had been made that there would be no long term impacts, but non point source pollution had not been addressed. 3) On page 4 of his impact analysis, Mr. Majewski discussed the alternatives that might have less risk of an adverse impact. One alternative was a larger house, but this alternative was discarded due to site constraints, yet a larger house was, indeed proposed. Mr. Majewski said Mr. Picton was exaggerating the increase in the size of the house and noted it had been moved farther from the wetlands.

Mr. Johnson asked how the Commission decided there would be an increase in the use of the building. Ms. Purnell said due to the increase in size and with the septic improvements proposed more people would likely use it. Ms. Coe said the building was being winterized so it would be used all year round. Mr. Johnson said during the last five years two families had lived in the cabin and that the current owner did not expect to use it full time so the use would decrease. Atty. Kelly said the structure could be used now or in the future as much or as little as any other home. Atty. Olson noted the Commission had the right to consider the intensity of the proposed use. Ms. Purnell read a portion of Section 8.4 of the Regulations, referring to factors to consider when evaluating an application. Atty. Kelly objected, saying it was not the residence, it was the construction of the residence that was the proposed activity. Ms. Purnell said there were uses associated with residences such as maintenance of the structure and snow plowing that could be considered.

Ms. Purnell described the 9/20/05 article from the National Academy of Sciences on watershed protection and a recent USGS publication on pesticide levels in streams that she submitted for the record. Mr. Picton noted that if the Commission's decision was based on any of the information contained in those articles, it would first make a determination that it was relevant. Atty. Olson agreed that ultimately the Commission would have to make a determination that they were relevant, but it was not necessary at this point. Mr. LaMuniere and Ms. Purnell briefly explained why they thought the review of this scientific data would help them to determine whether the proposed activity would likely have a significant impact and might help them to render a decision, whether it be to approve or deny or to condition approval in a particular manner.

Mr. Neff, the applicant's engineer, said he understood the Commission's concern about lawn chemicals and salt, but pointed out the amount of finished lawn area would be reduced and the length of the driveway shortened. Therefore, he said, there would be a decrease in the amount of chemicals and salt used. Ms. Purnell noted their proximity to the wetlands, however.

Ms. Coe asked if the road was plowed now. Atty. Kelly said it was. Mr. LaMuniere suggested a condition of approval could be that no salt could be used on the road. Ms. Purnell thought that would be impossible to enforce. Atty. Kelly said there was no evidence the driveway ever had or ever would be salted, so he did not understand why it was critical to the discussion concerning this application. Ms. Purnell stated it was being addressed because the Commission had asked Mr. Allan a direct question, what impact would changing the building from seasonal to year round use have, but had received no answer. Atty. Kelly stated he was sure the applicant would not use salt on the driveway. Ms. Purnell pointed out the decision would run in perpetuity. Atty. Kelly said she could not assume future owners would violate the permit. Atty. Olson noted the Commission was concerned with this application and

its impacts and how it might impose conditions to control those impacts. Ms. Purnell noted that in her experience having served 8-9 years on the Commission, she found the Commission often carefully crafted conditions to minimize impacts only to find later that the owners had encroached somehow. Mr. Picton agreed that in the Commission's experience it was difficult to enforce conditions for wetlands protection in the long term. Ms. Purnell referred to a report from the state of Washington that stated within 2 to 8 years after approval, 95% of the required buffers showed some degree of encroachment. Mr. LaMuniere thought the Commission should focus on implementing conditions to minimize the impacts addressed by its consultant.

Ms. Purnell noted in this case the feasible and prudent alternatives were limited by the historic conservation easement on the property.

Ms. Purnell asked that Mr. Jontos' white paper on vegetative buffers, "Vegetative Buffers for Water Quality Protection: An Introduction and Guidance Document," revised to 2/21/04 be included in the record. She noted it contained information on the buffer widths required for protection from sediment and nutrients and other potential impacts.

Atty. Kelly submitted the 1/11/06 Special Meeting minutes in which Atty. Zizka addressed many questions, which, he said, Ms. Purnell did not understand.

There were no other questions or comments from the commissioners or from the public.

MOTION: To close the public hearing. By Mr. Picton, seconded by Mr. Bedini, and passed 5-0.

Mr. Picton closed the public hearing at 7:22 p.m.

This hearing was recorded on tape. The tape is on file in the Land Use Office, Bryan Memorial Town Hall, Washington Depot, Ct.

#### Special Meeting

Mr. Picton called the Special Meeting to order at 7:23 p.m. and seated Members Bedini, LaMuniere, Picton, and Purnell and Alternate Coe for Mrs. D. Hill.

Mr. Picton noted the application was very complicated and would require a carefully worded motion with many conditions to cover long term maintenance, bond, mitigation, implementation of protection measures in perpetuity, no additional impervious surfaces, and abandonment of the farm road, etc. He was concerned such conditions would not be enforceable in perpetuity.

Ms. Purnell said she was concerned about the proximity of the proposed activities to the wetlands and watercourses. She thought the existing building and conditions resulting from it were grandfathered, but since the applicant was proposing to change the footprint, the existing site conditions had to be addressed and improved. She asked whether the Commission would permit the proposed structure in this larger configuration and in this location if it were new. She thought it would be looking to move it further from the wetlands in order to lessen the long term impacts. Mr. Picton agreed, noting one alternative would be the construction of only a slightly larger building mostly on the existing footprint; alternate D as offered by Mr. Majewski.

Mr. Picton said the Commission's consultant had not dealt with non point source pollution. Mr. LaMuniere did not think issues already addressed by the consultant should be reopened. He read point #7 of Mr. Allan's 3/22/06 letter, which stated, "the natural character and functions of the site's wetlands are likely to remain unchanged as a result of the proposed house construction." Mr. Picton thought Mr. Allan had signed off on the engineering, but not on all aspects of the application. He asked Atty. Olson whether Mr. Allan's letter precluded the Commission from discussing any other considerations. Atty. Olson said it did not, but noted the discussion of other concerns should be tied to the premise of the

likelihood of adverse impact. She also thought it would be difficult to formulate conditions of approval based on the Commission's experience with other applicants.

Ms. Coe thought there were so many wetlands surrounding the site that there was a greater chance they would be impacted. Atty. Olson said it was the Commission's job to determine whether there would be unacceptable impacts and whether they could be fixed through conditions of approval. Mr. Bedini said he was bothered by conditions that might not be enforceable over the long term. Ms. Purnell asked if the Commission could require a bond large enough for twenty years' evaluation. Mr. Bedini questioned whether the Commission could ensure the evaluation would be done for that period of time. He thought the conditions should be limited to the period of the construction process since enforcement would then be doable. Ms. Purnell said she could not approve the application in that case because the mitigation areas and planted buffers had to be guaranteed for the long term or it could not be determined there would be no significant impact to wetlands and watercourses. Mr. Bedini asked for the definition of long term. Mr. Picton said it was in perpetuity.

The commissioners discussed whether they would vote to deny or to approve with conditions and whether to try to craft motions tonight or hold another Special Meeting. Ms. Coe and Ms. Purnell were undecided. Mr. Bedini said he would not be able to decide until both motions with conditions of approval and reasons for denial had been drafted. Mr. LaMunier said he would vote to approve with conditions. Mr. Picton asked the commissioners to draft two motions, one for approval with conditions and one for denial with relevant reasons. Mr. LaMunier again noted if the Commission votes to deny the application it must find there would likely be a significant impact, which its consultant did not find. Atty. Olson advised the commissioners to work on their own motions and conditions of approval for discussion at another meeting.

Mr. Picton asked Atty. Olson if one condition could be that the house may not be any larger than the existing structure. Atty. Olson advised him to first determine what the impact would be and if he was convinced there would be a likely impact, then to articulate the reasons based on technical and scientific data.

Ms. Purnell asked if and how the Commission could quantify its experience. Atty. Olson said it could, but that it had to be done within the parameter of its Regulations.

A Special Meeting was scheduled for Wednesday, April 5, 2006 at 6:00 p.m. in the Land Use Meeting Room, Bryan Memorial Town Hall, Washington Depot, Ct. Atty. Olson will attend. The commissioners were asked to draft two motions to be discussed.

MOTION: To adjourn the meeting. By Mr. Bedini.

Mr. Picton adjourned the meeting at 8:01 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill, Land Use Coordinator