

April 5, 2006

Special Meeting

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

MEMBERS ABSENT: Mr. Bedini, Mrs. D. Hill

ALTERNATES PRESENT: Ms. Coe, Mr. Thomson

STAFF PRESENT: Mrs. J. Hill

ALSO PRESENT: Atty. Olson, Atty. Kelly, Mr. Johnson, Mr. Owens, Mr. Sears

Spring Hill Farms, LLC./69 Whittlesey Road/#IW-05-74/Reconstruct, Enlarge, Relocate Building

Mr. Picton called the meeting to order at 6:00 p.m. and seated Members LaMuniere, Picton, and Purnell and Alternates Coe and Thomson for Mrs. Hill and Mr. Bedini.

The maps, "Soil Erosion and Sediment Control Plan," by Mr. Neff, revised to 3/5/06 and "Septic System Repair Plan," by Mr. Neff, revised to 3/4/06 were reviewed and Mr. Picton noted the major features of the site.

First, reasons to deny the application were discussed. Ms. Purnell noted the applicant had responded to Mr. Allan's review and had moved the proposed house 4 ft. back from the wetlands to minimize its impact, but a substantial outside staircase had been added. She also pointed out the size of the footprint of the house had more than doubled and the only reason the amount of impervious surface had decreased was because the driveway was shortened. Mr. Picton's comments included the following: 1) the proposed redevelopment of the site was entirely within the upland review area, 2) on its SE corner the existing house was as close as 28 feet from the wetlands, 3) the new house would be 25 to 80 feet from the down slope wetlands next to the pond, 4) the impervious surface of the house would double, 5) the average grade was 11%, 6) the disturbed area would be a half acre, 7) the proposed activity would occur within an area 1 to 2 feet from the wetlands to 90 feet from the down slope wetlands, and 6) the site was very constrained so most of the proposed work area would have to be utilized. Mr. Picton thought it was well established that this type of activity so close to wetlands could likely have an adverse impact, and so noted that had been the reason for the public hearing. He referred to the EMS letter, which stated some of the proposed activities posed some risk to the environment. Mr. Picton also pointed out that in his analysis of feasible and prudent alternatives, Mr. Majewski said a larger house was not an option due to the site constraints on this property. However, the applicant proposed a house that both doubled in footprint and in use since it would be improved from seasonal to year round use. Ms. Purnell thought because the building would be taken down completely, it should be considered a new structure, noting this was a unique situation rarely encountered by the Commission. She said the Commission had previously allowed owners, Mr. Bransfield, for example, to rebuild on the same footprint when there were severe constraints on the property. She pointed out that all of the consultants had acknowledged there were existing impacts and that based on the construction of only a slightly larger house, they had determined that with the implementation of the proposed mitigation measures there would no significant changes in most of the functional values of the wetlands and watercourses as a result of the proposed activity. Mr. Picton noted the proposed house was not slightly larger; it was a new building, would be in a different location, and would be twice as large as the existing. He also voiced his concern about non point source pollution, which he said was a serious threat to water quality. Mr. Picton noted the Commission's consultant had not answered all of the Commission's questions concerning the proposed increased activity on the property because it could not be quantified. Ms. Purnell suggested a denial without prejudice might be appropriate due to lack of information and

because the Commission did not have the correct baseline information for the degraded site. She also said it was unlikely that the Commission would have approved a similar new building so close to wetlands and that it would have looked for feasible and prudent alternatives. Mr. LaMuniere agreed it was a difficult site, but noted the applicant had addressed all of the points raised by the Commission's consultant. He suggested a lengthy list of conditions of approval, which he said, should be filed on the Town Land Records to alert future owners. Mr. Picton questioned whether all of these conditions, such as prohibiting the use of pesticides, herbicides, and chemical fertilizers on site, were enforceable. Mr. LaMuniere suggested a bond be posted and monitoring during construction to ensure work progressed according to the approved plan. Mr. Picton and Ms. Purnell thought construction projects usually deviated from the approved plans and often violated the terms of approval. Mr. LaMuniere said an extremely detailed construction sequence including the establishment of buffers should be required. Ms. Coe agreed with Mr. Picton and Ms. Purnell, saying she considered the project to be new construction and as such there should be improvements made to the existing impacts. She noted the Shepaug River is down grade of the wetlands and so the Commission must be concerned about the larger picture. Atty. Olson asked for specific suggestions. Ms. Coe suggested long term water quality testing. Ms. Coe also asked how the Commission could know whether the activity would be carried out as approved and whether the vegetative buffers would function in the future as they were designed to. Ms. Purnell said the Commission had not asked what the existing impacts were but had asked for additional soil tests; only one of which had been done. Therefore, there was no data or initial assessment of the existing conditions for the Commission to consider. Mr. Thomson thought 1) the Commission should trust the applicant to protect resources and carry out the permit as approved with conditions, 2) part of the Commission's duty is to monitor projects and enforce compliance with permits for as long as necessary, and 3) the process should be used to negotiate the best plan based on the facts and the Commission's knowledge. Mr. Thomson and Mr. LaMuniere thought the Commission had had several months to request additional information and questioned whether it could vote No based on its failure to do so. They also pointed out the Commission's consultant was satisfied with the revised plans. Mr. Picton listed issues the consultant had not addressed such as the effects of non point source pollution from increased human use, malfunction of equipment during and after construction, and the effects of hydrocarbons, antifreeze, deicers, salt, bleach, mildew chemicals, chemicals used in building maintenance, paint, stain, and solvents, fertilizers and pesticides used in landscaping, etc. He thought these might be addressed in conditions of approval, but questioned whether they could be controlled in the long term. Noting that the Commission had not asked for additional specific information in the past, Ms. Purnell asked Atty. Olson if it identified additional material that would help it to make a decision in perpetuity, whether the Commission could deny the application without prejudice in order to seek that additional information. Mr. Picton noted denials must be based on scientific likely impacts, not hypotheses. Ms. Purnell stated the Commission had data such as the statistics from a buffer study, which showed that 95% of required buffers had been encroached upon in some way within 2 to 8 years of approval. Mr. Picton thought there would be an overall lesser chance of adverse impacts to the wetlands if the Commission approved only those activities, which had a good chance of successful implementation. He did not think the measures necessary to protect this constrained site would remain in place over the long term. Mr. Picton asked Atty. Olson if limiting the increase in the size of the house to 10% could be made a condition of approval. Atty. Olson asked him to state how limiting the footprint would address his concerns. Mr. Picton said even if only slightly smaller, the structure and stockpile area could be moved further from the wetlands and the limit of disturbance line, which at present was at the wetland boundary, could also be moved further away so the site could be better managed. He also noted a smaller house would allow for larger buffers. Atty. Olson was concerned such a condition would change the essence of the application and so noted a second option would be to deny the application based on a finding of impact to the wetlands with a suggestion that the footprint be made smaller. Mr. Picton read a list of possible reasons for denial,

which he had prepared prior to the meeting. Ms. Purnell noted a list of ten existing impacts to the wetlands and asked if the minor improvements proposed would still generate an adverse impact to the wetlands and watercourses. She thought the Commission required more information to render a correct decision. For example, she noted the Commission had not asked whether the house was enlarged by going up and best management practices were implemented, would that be an improvement over the current proposal. Mr. Thomson asked if the Commission had the option of going to court regarding the placement of the conservation easement. Ms. Purnell said this was not an option because it had been established in 1993. She added it was the main reason there were limited feasible and prudent alternatives. Mr. Picton worried that the EMS evaluation, which stated there were no changes anticipated in the functions of the wetlands and watercourses, was based on the false premise that the size of the footprint of the house would be only slightly larger, when in fact, it would be two times as large. Mr. Picton, Ms. Purnell, and Ms. Coe thought the existing impacts were unacceptable because due to the proposed complete tear down and enlargement of the structure and the installation of a basement, it would be an entirely new building with a new site development plan and so all the existing impacts should have to be addressed as they would be in an application for a new structure.

Reasons for approving the application were discussed. Mr. Thomson pointed out that the Commission's consultant found the proposed treatment of runoff would be an improvement over what now exists on site. He said the cabin exists and the owners could decide to use both it and the existing driveway year round any time. He again noted the activities proposed would be better than what currently exists. Mr. LaMuniere noted the applicant had responded to all of the points raised by the Commission's consultant and said the Commission had had the opportunity to ask for additional data, but had not done so. Mr. Thomson noted that ideally the cabin never would have been constructed so close to the wetlands, but given the fact that it was there, that the applicant responded to all points raised by the consultant, that the consultant stated the proposal may be a net improvement over the existing conditions, and that the Commission may impose conditions of approval that would improve the proposal, he thought the application could be approved. For example, he suggested a condition to specify the size of buffers to be required. This led to a discussion regarding how wide a vegetative buffer needs to be to remove a major amount of the contaminants in the runoff. Ms. Purnell stated it depends on the topography and proximity to the wetlands, but in general, 25 to 35 feet wide was thought to be adequate. Mr. Picton voiced his concern that conditions of approval would not hold up in the long term. Possible conditions of approval were discussed. Atty. Olson advised the commissioners that every condition imposed must relate to a specific likely impact that must be addressed. Mr. LaMuniere and Mr. Picton reviewed their lists of conditions of approval that they had drafted prior to the meeting. A very lengthy discussion ensued regarding what the conditions should be and how each should be worded. The resulting conditions of approval are found in the motion below.

MOTION: To approve Application #IW-05-75 submitted by Spring Hill Farms, LLC. to reconstruct, enlarge, and relocate the building at 69 Whittlesey Road per the map, "Soil Erosion and Sediment Control Plan, Revision #4," by Mr. Neff, dated 12/10/05 and revised to 3/5/06 and "Septic System Repair Plan, Revision #5," by Mr. Neff, dated 12/9/05 and revised to 3/4/06 subject to the following conditions:

1. A \$30,000 bond shall be posted to cover all protective measures and long term mitigation and professional monitoring on behalf of the Commission of water quality, testing pre, during, and post construction according to the guidance of our consultant sufficient to determine the impacts of development and including a minimum testing for phosphorus, nitrogen, fecal coliform, and total suspended solids in a number of locations to address the concerns of the Commission. If there are adverse impacts detected, then further mitigation measures shall be implemented under the direction of the Commission's consultants.

2. A detailed chronological construction sequence and a sequence for implementation, including the vegetative buffer planting, shall be developed by the applicant or at the applicant's expense.
3. All conditions of approval shall be listed on the site development mylar. The mylar and construction and implementation sequences shall be filed in the Town Clerk's Office on the Land Records and referenced in the deed.
4. The limits of disturbance shall be marked in the field prior to breaking ground or clearing (pre construction) using a substantial and durable barrier such as 4 X 4 posts and boards or orange construction barrier.
5. The boundaries of the protective buffer areas shall be permanently marked with durable posts and signs every 30 to 50 feet depending on the configuration of the line prior to the start of work.
6. There shall be monitoring a minimum of two times a week and as needed of the site work and compliance with the permit conditions by the Commission's consultant with a memo to the Wetlands file each time regarding the condition of the site and the compliance with the provisions of the application as approved through final site stabilization.
7. Substantial measures shall be taken to prevent the reuse of the driveway and road areas proposed for abandonment beyond the extent of the stippled driveway titled, existing gravel drive, including removal of the culvert crossing the watercourse to the northwest of the house. The driveway shall not be paved.
8. There shall be no future additions to impervious surfaces or additions to the proposed building or additional buildings within the upland review areas as shown on the site plan.
9. No chemicals, fertilizers, herbicides, pesticides, or fungicides shall be used in the upland review area.
10. The vegetative buffers shall be evaluated for effectiveness by the Commission's consultants and augmented as necessary according to their recommendations.
11. All inspection reports and water quality monitoring reports shall be submitted to the Land Use Office and distributed to the commissioners.
12. A 20 foot wide vegetative buffer shall be installed along the northern portion of the existing stone wall between the house and the pond.

By Mr. Thomson, seconded by Mr. LaMuniere.

Vote: 2-3.

LaMuniere and Thomson: Yes

Coe, Picton, and Purnell: No

Mr. Picton listed the following reasons for denial:

1. The plan presented is not consistent with the basics of what was proposed for development of the site by the applicant's professionals, which was minimal increase in building size due to the constraints of the site and the associated risks to wetlands and watercourses.
2. Alternatives exist, which would have a lesser impact on wetlands, including the one for a new house with a slight or no increase in size, just as recommended by EMS, on the same footprint or one farther from down slope wetlands. Another alternative is to maintain the structure in its present configuration for seasonal use and build a residence in either or both of the other unrestricted areas on the 210+ acre parcel.
3. The likelihood that proposed protective measures and mitigation upon which the conclusion of no

significant impact relies, will be carried out successfully in every respect on such a constrained site is not high and it is not believed they will be carried out in the way they are proposed and there would be nothing the Commission could do about it. This is based on the Commission's experience, logic, and the materials in the file.

4. The long term effect of adverse changes to water quality from human activities in such close proximity to wetlands and watercourses has not been addressed adequately in the application and probably can't be with the limited separating distances available. This is also based on data in the file on buffer functions and distances.

5. Due to the increased building size and use, the contaminant sources that have been cited earlier pose additional increased risks associated with non point source pollution and furthermore, the list of conditions for approval, which the Commission felt was necessary to make this a successful project if the Commission did approve it, is not manageable to the point where there is a likelihood that they will be carried out successfully.

Ms. Purnell referred to her list of existing impacts as her basis for denial, saying the proposal would not result in any measurable improvement and the Commission still had not addressed whether or not there would still remain an impact(s) to this site. The impacts exist now and they have not been evaluated to the best of our abilities. There is still additional information that would help the Commission render its decision.

MOTION: To adjourn. By Mr. Picton.

Mr. Picton adjourned the meeting at 10:15 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

Land Use Coordinator