

Town of Southeast
Conservation Commission
One Main Street
Brewster, NY 10509

MINUTES FROM THE MEETING
OF
May 24, 2005

PRESENT: Steve Fasano (Chairman), George Hauser (Wetland Inspector), Susan Anthony, Don Cuomo, Mary Ellen Tiernan and Angela Morelli (AA)

ABSENT: Michael Langley and Peter Tringali

ORDER: 7:30 p.m.

AGENDA:

Pledge of Allegiance

Public Hearing: Waterview Estates - Mr. Hauser makes a motion to open the public hearing. Ms. Anthony seconds the motion. All are in favor.

Ms. Theresa Ryan (TR) of Insite Engineering and Mr. Rick O'Rourke are representing the project.

The original plan for this project had two private road; Waterview Lane and Sunny Lane with two houses off one road and three off the other. The project has now been reduced to four lots off one driveway and we have ended up with two stormwater basins. Based on recommendations from the Conservation Commission we reduced the amount of fill by about 450 yards and eliminated one of the stormwater basins. We relocated the driveway so that it does not encroach on the wetland at all, and we reduced the length of the road that falls within the buffer. That brings us up to date on the changes that we have made because of the Conservation Commission. From the original plan we have reduced the amount of disturbance by about 6900 square feet.

Mr. Cuomo (DC): When you moved the conveyance to the basin you also moved the rip rap slightly.

TR – Yes

DC – What type of materials will you be using for the retaining walls?

TR – Those are going to be designed later on.

Chairman Fasano (CF) asks if there are any further questions from the Board members at this time. There are none so he opens the discussion to the Public.

Mr. Richard Feuerman (RF) introduces Mr. Ken Scarlatelli and Mr. Franco Montalto as professionals to speak on behalf of the Public.

Mr. Scarlatelli (KS) is a Certified Wildlife Biologist and a Professional Wetland Scientist. He has visited the site twice; once last winter, and again this evening. He observed that just based on vegetation, under the Town Ordinance, it appeared that there were other wetland areas to the entrance of the property that are not denoted on the site map. He feels that this needs further investigation before the project moves forward. He also states that he wants to remind the board that the US Army Corps of Engineers has jurisdiction over wetlands and states that they should be contacted to determine if the wetlands fall farther south than on the plans. He believes that since the Town Ordinance protects wetlands they should not be disturbed when it seems that a viable alternative - accessing the site from Rte. 22 - exists.

Mr. Hauser (GH) asks Mr. Scarlatelli if he has have found wetlands that are not indicated on this map?

Mr. Scarlatelli replies that based on his observance of Skunk Cabbage, Red Maple and other indicative plants it would seem as though there are other wetlands present.

Mr. Hauser asks if Mr. Scarlatelli has tested the soil.

Mr. Scarlatelli replies that he is unable to do so, but based on vegetation there are strong indications that there are additional wetlands.

Mr. Cuomo (DC) states that based on observations on his site walk he would agree with Mr. Scarlatelli. It appears as though the wetland has been interrupted by a homeowner's dump and fill. He would like to have been able to take a bore out there to see if the hydric soils exist.

Mr. Montalto (FM) states that he also made two site visits; one on December 4th and one tonight. His major concern is that the watershed is being potentially modified by the series of culverts that lead the runoff down toward the stormwater basin. This water is bypassing the wetland and causing a difference in the hydroperiod.

He is also concerned with the proposed 15" culvert - he has not seen and is not aware of any maintenance program for this culvert. Since this culvert is the sole means of transmitting water from one side of the road to the other (Inaudible)...from a hydrologic stand point it seems that it would make more sense to access the site from Rte. 22.

TR - We have stated previously with the Conservation Commission and the Planning Board, verbally, and in writing that there is going to be a maintenance agreement and that we have to do that before the PLAT can ever be signed and he needs to be reviewed by the Town Attorney.

FM- It's no small task to clean out a 75 foot long culvert. The terms of this should be pretty specific with some regularity and some type of compliance or enforcement plan as well.

CF- That is a Planning Board issue and there is a performance bond for that. There is an approved NYC Storm Water Management Pollution Prevention Plan.

TR - It has been reviewed and we have only a few technical comments it hasn't been approved yet, but is very close to it.

FM - Those are separate issues though. Stormwater Pollution Prevention is with respect to input of stormwater runoff in to the reservoir and the NYC drinking supply system. Another issue is wetlands and wetlands dependence on a particular hydrologic regime. so the Stormwater Pollution Prevention Plan may be kosher with respect with what it is supposed to do..

CF- I understand that, but let me play devil's advocate for a moment because any development has the potential to affect the hydrological system of the wetlands on a particular piece of property. Our judgment is to what effect. Is it a detrimental effect - a nightmarish situation, or is it something that comes under the normal guidelines under Local Law 9. The SEQR process determines most of that for us. What we are looking at now is - is this going to have a severe detrimental impact on the watercourse or intermittent watercourse, if it is classified as an intermittent watercourse or the wetlands on the property, and I think that what the applicant has done up to this point to reduce the amount of disturbance in both the buffer and extended buffer areas, and being in compliance with DEP requirements with being 51 feet away from the watercourse; they have taken every effort to reduce this as much as possible, including the rezoning from 5 lots to 4 lots. Are you saying that the present collection of groundwater and surface precipitation is going to have a serious, detrimental, deleterious effect on the hydrological functions of the wetlands on the property?

FM - If you look at the topographic map you see the current path of the water. With the conveyance, the water's path will change removing it from the saturated area you are, potentially, having a deleterious impact on that wetland. You can put in wells, measure the water level, do a water budget analysis - there are ways of looking at what the hydrologic inputs into the flagged wetlands are. You can then do a post development hydrologic water budget - subtract out water that won't be making it there and then determine how the wetland will perform under those conditions. I couldn't see that study,

or do that study from here. There are also all rock outcroppings. The roadway is going to be compacted. There could be some fissures in the rock that allow the ponded water - water from the existing seeps and runoff from the lawns - to pass underneath the roadway and make it down just fine, but you don't know that for a fact. My guess would be that because this lawn is pretty saturated there must be high rock without many fissures. This roadway will hold that water here and then the culvert becomes very important. Maybe instead of a culvert a box culvert or bridge can be used so that it is easier to clear and so that there is a clearer passage for that water down slope.

DC – I would like to go over one scenario. I had to hypothesize without taking borings. This is fairly accurate - I am thinking that the homeowner here has essentially dammed this up. In creating a block he has pushed the wetland back further, and caused a break in the hydric soils. There is a clearly delineated wetland area, then a dry area, and then a hydric area.

CF – What would be the difference in size if you substituted a box culvert?

TR - We have a 15” culvert. A box culvert is 2x2.

CF - Will a 2x2 box culvert help?

FM - From a hydrologic standpoint, I don't think there is much of a difference between the two, and they are both difficult to clear. From a hydrological standpoint you would want something large, like a bridge, as a break in compaction so the water that is seeping out can go along the side of the road.

CF - How will that type of remediation affect the property owners that are down slope of that proposed roadway?

FM- It would not in any way increase the flow, there is no impediment now.

GH – Theresa, if you could back track for a moment and explain why you have chosen not to approach this property from Rte. 22

TR – Any watercourse that contributes directly to the reservoir is called a reservoir stem, and is considered so 500 feet back from the reservoir. There is a 300 foot limiting distance from the reservoir and the reservoir stem. There is a 100 foot limiting distance from perennial watercourses that are not reservoir stems and there is a 50 foot limiting distance from intermittent watercourses. We show portions of that on this plan. The reservoirs 300 foot limiting distance encroaches on the frontage of the property which means we would have to get special permission from the DEP to get an impervious access through there. They have already told us that they do not want us to do that. They don't want us to make an impervious road coming off of 22 through their reservoir limiting distance, and they did not want us to put this impervious road within 50 feet of the intermittent watercourse.

CF – Does more water have a deleterious effect on the wetlands?

TR – I would have to ask a hydrologist

DC – It all depends.

FM – It could in terms of the level of the water and the frequency of flooding. Different plants tolerate different levels.

KS – Any increase or decrease we would expect to find a change in plants. There is no doubt there will be a change but whether or not it is deleterious or beneficial is a value judgment.

Gerard Pettit – 359 Allview Avenue – I wanted to find out how much consideration have you given to bridging this area opposed to 2800 cubic yards of fill?

TR-Even if we put a box culvert there, we have to have fill.

GP –You said it is going to be 15 feet high - does it need to be that high?

TR – Yes -because we are in front of the Planning Board we have certain requirements to meet for a private road with a certain grade, and we are coming down at 4% grade.

GP – If you put a bridge in there can you put the road farther back? I am simply thinking of myself.

TR – No because that is also impervious surface and a bridge cannot be impervious.

GP- O.K. Thank You.

Frank Lambe – 353 Allview – my main concern is the spring that emerges at our property line. When this gets flowing, it is very forceful - a lot more powerful than a foundation drain. Part of it goes down this ravine that is heavily filled in by leaves, debris, old Christmas trees, and whatever else. On the corner of both our properties is a tremendous pool. I have a shed here, and I can't go behind my shed when this is flowing because the water is deep. If this is filled in I am fearful that this water is going to back up. When it flows now, and it has somewhere to go I still get a big pool. If this is filled in, I really feel that I am going to lose a big deal of my yard, and it does take quite a while to dissipate after it stops flowing.

CF – Is it because of the debris deposited there?

FL - No. It has a place to go.

FL – Can I discuss the drainage pipe?

CF – Yes

FL – I have a problem with dirt and rocks rolling down that hill, and I have a big concern for my foundation, and this whole rocky area rolling down my lawn. I also am concerned about the blasting contaminating my well.

Shelly Pettit(SP) – 359 Allview Avenue – Because there is rock outcrop where you are going to be placing the road are you going to be blasting?

Rick O'Rourke (RO) - There are tests that can monitor the well while they are actually blasting to monitor the well. A comprehensive survey is done of the area, and all blasters will be licensed and insured.

TR - Yes

SP - I received a letter from Insight Engineering stating that there is no watercourse on my property. As Mr. Lambe has said there is plenty of water flowing this way in two directions. One is extremely strong, you can here it flowing, and it pools right where the access road is going to be. Also, are there going to be trees buffering the view of this access road

TR- The property owners are taking that into consideration. They have not made a determination yet.

Tim Radigan (TRd) – 365 Allview Ave - my home lies down hill of the access road for Waterview Estates. For years storm water has been running down Allview Ave. and has been flooding my property, turning my front yard into a quagmire. This section of Allview is cut through and built on solid bed rock. There is very poor drainage with limited options for improvement. In the winter the water freezes over forming large dangerous patches of ice. Additional stormwater runoff onto Allview Avenue cannot be tolerated. These conditions and limitations are well known and documented. I find it hard to believe that building the road there will improve the storm water runoff to Allview Ave.

Will there be changes to this plan?

TR- Yes.

TRd - Will you need to come before this board after the Planning Board meeting if changes are made?

TR - Only if it affects the wetlands or buffers.

Mr. Radigan questions the various lengths of the drainage pipes. Chairman Fasano explains that these are Planning Board questions, and are not the purview of this Board. He suggests that these questions be brought up before the Planning Board or FOIL for the information.

Mr. Rattigan asks about the maintenance on the culverts and drainage pipes, and also the erosion controls during construction.

Ms. Ryan explains that during construction the owner will maintain the storm water system. After Construction it will be the responsibility of the homeowners association. Erosion control will be enforced by the wet.

Mr. Radigan makes his final points:

TRd - I believe that there would be a tremendous amount of excavation and disturbance during construction of this project which would result in significant storm water runoff. A single significant storm event has the potential to carry large amounts of sediment onto neighboring properties and into the diverting reservoir. It seems to me that this project cannot be built without a fairly sophisticated drainage system in place to prevent excess storm water from running down Allview Avenue. It will require a regular maintenance to operate the way it is intended. It is not unreasonable to assume that there will be times that leaves and other debris can and will block these storm drains and catch basins and this system will fail. Neighboring residents will be left holding the bag and have to deal with the mess. I have heard Mr. Lawlor say that his department is hard pressed now to deal with all of the roads and storm drains that they have to clean in this town. Look at Allview Avenue today, the storm drains are all clogged with debris. This does relate to your wetlands because this is what they are relying on to carry water down these culverts and into these catch basins. They only work when they are maintained and I do not have the confidence - and I don't think you should either. I think you as a board a required to protect the rights of the property owners now and twenty years out. The last thing I would like to say is that the developer should be required to form a homeowners association to protect the neighboring residents and they should operate a regular maintenance program, and post a bond of some sort to protect neighboring properties in the event this system failed. Also, this road does not have to be built here. If the applicant were denied access from Allview Avenue, they could apply to DEP for hardship and secure access off of Route 22. Thank You.

CF - Was that last statement of relevance?

RO - No.

CF - It goes to the question that was previously asked - why couldn't you have a northern access?

RO - We are at the point where we have preliminary approval. The issue of what area was to be of service for the access was addressed by the Planning Board. I know that was a matter of discussion before the Planning Board - you can check the minutes, but the bottom line is that this is the proposal that was approved by the Planning Board preliminarily. That is how we got here.

TRd - I have heard Mr. O'Rourke imply that the Planning board rejected access off of Rte. 22. That is not what they did.

CF- The relevance of the question, to this Board is that if this proposal, with this access has a significant, deleterious, detrimental effect on the wetlands it is our obligation to look at an alternative plan with a different access. Before we even go where it should or should not be we need to judge whether or not this particular plan has a serious impact where we would consider referring it back to the Planning Board to consider another road access.

Don Cuomo (DC) - Considering that, I think it is fair game to ask what the situation is with other access. Obviously if that is a viable alternative, we don't know that.

CF - I agree.

RO- I want to make sure that it is clear. If you check the Planning Board minutes you will note that this application was reviewed at the sketch level, the preliminary subdivision level, and there was discussion with respect to alternative access, including off of Rte 22. in fact there was discussion with property owners who have frontage on Rte. 22. The bottom line was that the Planning Board never said to us - go to the City of New York and get a variance to permit you to go forth. To my knowledge they have never asked this of us. Theresa, did they ever ask us?

TR - No. and we also discussed with them that if we did come off 22 we would have an impervious restriction with the city and that there were steep slopes there and we would have to traverse the steep slopes to get into the site. The Board did not tell us to change the access to 22 after those discussions.

TRd - The impression is that they were denied access. The impression is being created that they were told to use this access by the Planning Board.

CF - I did not get that impression tonight. I did not get the impression that DEP denied it. I got the impression that they would strongly prefer that they do not go in from that way. They were strongly discouraged and wouldn't get the DEP approvals if they go in that way.

TRd- That's right. Strongly discourage does not mean denied, it means go look for an alternative. What we are asking this Town is to reject this alternative because we

see lots of problems with this alternative. The idea that they cannot come off of rte 22 is false. If they are denied access here, they can go back to DEP and tell them that have been denied access off Allview Avenue, and ask to come in off 22.

John Kelly - 371 Allview Avenue. I have a couple of questions for Theresa. Has the private road been approved by the Planning Board?

TR - It has preliminary approval and a negative declaration.

JK - I know you have a Neg. Dec. but I didn't know you had Preliminary PLAT approval on this plan.

TR - Not on this plan - on the original application, but there are no major modifications except for the reduction on fill. The layout has not changed.

JK - And the application for the private road has been approved...

Mr. O'Rourke stands to clarify which plan has Preliminary approval and that the road is laid out on the plan.

JK - If you were to eliminate all the fill here, go back farther, and build a bridge would that eliminate this wall here very close to Mr. Lambe's property?

TR - As I stated earlier, the bridge is also an impervious surface, and if we move it here the bridge will be within that limiting distance, and we cannot put impervious surface within that limiting distance.

JK - I would like to make a general statement. Other than the SEQRA resolution of a neg. dec. we were under the impression that there were no other approvals. We certainly did not know that the preliminary was approved by the Planning Board. If the applicant's answer to questions tonight is going to be that the basic design is going to be worked out further, then the Public Hearing, and any decision on your part is somewhat premature if there are going to be changes to the plan.

TR - There is a potential to make some changes. They would be relative to the Stormwater management and Health department. We do not anticipate at all that the configuration of the road or that the wetland disturbance that will change. So far the concept of the Stormwater Management plan has been found acceptable to the DEP and from what I understand the Town has no major issues with it as well.

George Yourke – Doesn't a preliminary PLAT require a resolution?

RO - Yes.

GY - Do you have it?

RO - I am looking through my files for it as we speak.

GY - You will not find it

RO - We will double check.

GY - If you double check and do not find it will you apologize to this commission.

RO - I certainly will apologize...

TR - I will too.

RO - Because before we opened the Public Hearing I had this conversation with Theresa because I wanted to make sure that we correctly stated precisely where we were at that point in time, and I am sure that Theresa would not try to mislead me. That is the representation I am making, and if it is not true, I will apologize.

GY – Mr. Yourke presents a map of the soils of the site. Allview Avenue does drain into a wetland which happens to Meadows. That is the low point of Allview Avenue. What I am concerned about is - these are the soils for the site - every one of them except for the wetland is very severe erosion, especially if disturbed by construction. The steep slopes are such that if you just touch them they will pour down into your wetlands. It will fill up the detention basin. While you are trenching and blasting - the pipes and swales all have to be built -all this is going to go down Allview, into the wetlands, and onto property. (Inaudible) will be full of sedimentation.

CF – I am getting from Mr. Yourke that all of this activity is going to cause a tremendous amount of erosion into the wetland. Mr. Hauser, would you address this?

GH – Even erodable soil won't roll if graded in the right direction.

CF - I'm getting from Mr. Yourke that all of this activity is going to cause a tremendous amount of erosion into the wetland so my question is what soil and erosion mechanisms can be put into place to - you've seen the plan so you've seen the soil and erosion - do you have some recommendation to a best practice or...

GY – Boulder are coming down now, these soils erode naturally, and when touched will continue to come down. Boulders will go though your silt fencing or hay. It is a major problem.

GH - The point is that the erosion control is properly maintained and properly

placed. At the very first sign of erosion occurring during construction we stop the job. It's over until that situation is corrected. We can't anticipate because none of us are soil scientists - we say this is worth watching so you need to supply the erosion controls necessary, but we can stop the job.

GY - My gravel driveway is down slope of this proposed entrance. I have two wells there. My house is 200 feet from the site, but it is not even shown on the map.

I've talked to the DEP. That was the original plan, to come in from Rte.22. The DEP said if the Town cuts off this access they have a hardship clause. They cannot have a property inaccessible according to their own regulations. This is going to affect everyone enormously. Maybe, when it is built, it will affect us only half as much. Why build all this? I don't think four houses can afford this type of engineering. This a 15 foot high wall 250 feet across. I don't even want to discuss the future - the blasting. This is an engineer's nightmare.

CF - Thank you Mr. Yourke.

DC - I have a question. You had a conversation with someone at DEP about hardship. Can you provide us with who you spoke with?

GY - No, this was when the plans were first initiated in 1992. The access was from Rte. 22. That was before the new watershed regulations in 1995 became final. During the intermittent regulations they stopped the access because they thought there was another way through Allview. However, they then said that if the Allview access was denied by the Town then they had to be open to another suggestion.

DC - It would be your word that someone gave this information to you. Is there any hardship clause...

GY - (inaudible) that I can tell you.

Richard Feuerman, 366 Allview Avenue - There was a reason Town codes were put in as far as wetlands and wetland buffers - to be stricter than the DEP and DEC codes -to prevent against any encroachment into the buffer zones and causing problems with pollution of the water and the environment around it. The reason these were put in, and the time spent and the money spent was to protect the water, yet now, every time a developer comes up, it is the DEP or DEC as gospel rather than the Town Code. Obviously you have to believe in the Town Codes because there was a lot of money spent and a lot of time spent. These are codes that you will, or should enforce, and yet we are talking about every development having some encroachment into the buffer zones and the wetlands. The second thing I want to discuss is accumulation. Accumulation is the amount of developments because of your comment - what you think is significant encroachment or a problem in the wetlands, or not significant. Accumulation within a five mile radius there are six developments; Axel Developments, Turk Hill East, Weston

Chase, the infamous Meadows, Waterview Estates - All of these developments have some encroachment into the buffer zones and the wetlands, and you have authorities on both sides. Our people say one thing, their advisors say another thing. How do you know what is going to be. There is no way to know what is going to happen by doing all of these encroachments, but one thing is self evident over the last 5-10 years that the water has become more polluted because of development and because of wetland encroachment, and rainwater runoff. We continue to allow, even though we make stricter laws, and want more strict laws. Why do we do it? Why do we continue to have these laws if we are doing to ignore them and allow developers to go into buffer zones and the wetlands? In my estimation they are written not to go into these areas. What you may think is significant or not - someone else may have a different opinion. But the truth and the reality is that the pollution of the water is becoming greater and greater each year. Tests have been done - that is the only thing we do know. A lot of this is done because of the development that has been done and we continue to allow encroachments on the buffer zones when we as a town say lets make stricter laws so it doesn't happen. Each time it's said its only a little bit, but when you add up all of the developments that are doing it, it causes these problems. I think you have to look at the total picture, not each one that comes in individually - a little bit here, a little bit there but it all adds up and becomes a problem. I think we are flirting with disaster with the community, with the environment, with the water.

Chairman Fasano asks if there are any more questions or comments from the board members, the public, or the developer. There are none. He asks for a motion to close the public hearing and allow for a ten day comment period.

Ms. Anthony makes a motion to close the public hearing and allow for a ten day comment period. Ms. Tiernan seconds the motion. All are in favor.

Fox Lane Subdivision – Mr. Harry Nichols is present to discuss this piece of property that is being subdivided. The Zone line runs through the property. Half of it is OP-1 and the other half is residential. There is a house on the residential side, and a barn/workshop/office on the other half. They are splitting it so that both lots comply with the zoning and all of the zoning requirements. All activity is outside of the wetland, the wetland buffer, and the watercourse buffer therefore no permit is required from this board.

Wetlands Inspector Report - With Mr. Nichols present, Mr. Hauser would like to note that he has spoken with Mr. Alan regarding this violation. The wetlands inspector report will continue after the Board discussion.

Board Discussion – The Board members would like clarification on the DEP's opinion on accessing the site from Rte 22, as well as a way to determine if there are other

wetland areas on the site.

Mr. Fasano asks if the members would be able to forward their concerns to him via e-mail so that he can draft a letter to the Planning Board. He also states that this board has never asked Army Corps of Engineers for jurisdictional responsibility, and he is unsure about the board doing so now. They were an interested party in the SEQR process, and they have been notified by certified mail. Either they responded and said it wasn't their jurisdiction, or they did not respond at all because it is not their jurisdiction. He tells the Board members that if they feel they need further clarification from ACOE, even though they have never done it in the past, it does not mean they cannot do it now.

Mr. Hauser does not think it should be done because it will set a precedent.

There is further discussion about the Board requesting a soil scientist to make an additional review of the site to ensure that the current delineations are correct and to check the area at the entrance to the site. Mr. Fasano notes that if additional hydric soils are found it will not preclude work in that area, only that it will also need to be permitted.

Mr. Fasano also brings up the issue of water budget analysis regarding wetland hydrology issues pre and post construction and how it will affect the habitat. He asks the members of the Board their opinions on the topic.

Mr. Hauser states that since this issue was directly challenged at a public hearing by an expert hired by the public the board is obligated ...He also makes a counterpoint on a reference to Terravest and states that the water budget analysis for that project was presented done by a professional, Licensed person, and was not challenged by any other professional licensed professional.

Mr. Fasano asks that if the expense is incurred to have the analysis done, who here, besides maybe, Mr. Cuomo is qualified to determine whether or not the outcome will have a detrimental effect on the wetland or not. It is a very subjective area.

The board members agree that this is going to be a good week to go out and make some more observations due to the extensive amount of rain forecast.

Wetlands Inspector's Report Continued -

Supervisor Dunford received a complaint on the old Equestrian Center, now (Inaudible) and has requested Mr. Hauser to inspect the property. Mr. Hauser is waiting on specific information from those that made the complaint and he will then follow- up and visit the site.

There was a filling operation occurring on Rte. 312 that was completely out of the wetlands.

Mr. Cuomo is concerned about the extensive work being done on the County Property at Tilly Foster at the corner of Rte 312 and Prospect Hill. The work is being done in close proximity to a watercourse.

Mr. Hauser will go out to look at it.

Mr. Cuomo is also concerned about the work being done at Meadows at Deans Corners. He notes also that it appears that they are disturbing more than the allowable five acres and he would like to have that information passed along to the proper department.

Mr. Fasano has seen it and believes it is the beginnings of the access road. At that point he is not sure that it is in the permitted area and no one from the project contacted Mr. Hauser to notify him that they will be starting the work.

Mr. Hauser will also check on that site.

There is no new business. Ms. Anthony makes a motion to adjourn. Mr. Hauser seconds the motion. All are in favor.

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