

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

MINUTES FROM THE MEETING
OF
November 30, 2004

PRESENT: George Hauser (Wetland Inspector, Acting Chairman), Susan Anthony, Don Cuomo, Michael Langley, Mary Ellen Tiernan, Peter Tringali and Angela Morelli (AA)

ABSENT: Steve Fasano (Chairman)

ORDER: 7:45 p.m.

AGENDA:

Pledge of Allegiance

Terravest Phase 3 Public Hearing – Ms. Terri Hahn, as well as Mr. Harold Lepler, and Mr. Don Rossi are present to represent this application.

Mr. Tringali makes a motion to open the public hearing. Mrs. Tiernan seconds the motion. All are in favor.

Ms. Hahn: The project is known as Terravest 3 and consists of 87.84 acres located on the northern end on Zimmer Road with frontage on both Holmes and Zimmer Roads. This is an application for a wetland permit for the project to allow construction within the wetland buffer area. There is no wetland disturbance. The property has three wetlands; the western wetland is 0.19 acres. The central wetland corridor is just over 4 acres, and the eastern 1.5 acres in size. The central wetland corridor has a stream that runs through it, that continues down by the NYSEG right of way and out to the commercial property located at the corner of Zimmer Road, and Rte. 312. The drainage does not go to Ice Pond from this property. The drainage from the western wetland goes out through Terravest Phase 2, and out to the commercial property across I-84.

The application is for construction within the wetland buffer itself. There is a total of 8.07 acres of wetland buffer disturbance located in various places. That includes the wetlands buffer disturbance for the Town Park which is located on the western side of

the property, and sixty units of senior housing which is located on the eastern portion of the property.

The property also will have a wastewater treatment plant and sub-surface disposal of treated effluent. The reason I mention this is that there has been discussion in front of this Board, in the past, regarding the potential impact on the wetlands themselves of untreated effluent being discharged into the groundwater. That is not the case on this property.

The buffer disturbance has been minimized. This project has been in front of the Planning Board, the Conservation Commission, and various other agencies for approximately two and a half years. The scope of the project has been reduced continuously. There have been a number of reports: Stormwater Pollution Prevention Plan, Water Budget Analysis – specifically addressing the potential impact of water quality, and those impacts on the wetlands corridors. I think it is important to note that we have been issued a NYC DEP stormwater permit, a NYS DEC stormwater permit and all of the agency approvals in order to construct the wastewater treatment plant and the sub surface disposal system.

The property has been flagged by the Army Corps of Engineers; it has been reviewed by NYC DEP, and has been walked by various members of this commission. In our past appearances in front of the Board, there were a number of letters on file from the public. We were asked to submit a written response, so I am submitting that now.

Mr. Hauser opens the discussion to the public.

Ms. Rebecca Rabinowitz: Where is the marsh at the corner of Ice Pond Road and Rte. 312 located in relation to this map?

Ms. Hahn points out the area where the marsh would be on the map.

Ms. Hahn: There are about 300 to 400 acres of commercial land along Zimmer Road that this stream goes into before it hits that marsh. The Town was particularly concerned about that topic, and we submitted a full drainage report addressing it, which was reviewed by the Town Engineer and NYC DEP. There is an ongoing flooding problem at that location and they wanted to make sure that this project would not cause any additional problems in that location. The stormwater proposed for this project is set at a higher level to ensure that the runoff from this site does not cause any problems at that intersection.

Mrs. Rabinowitz: That's great. That's primarily what my comments are about. I am concerned about the impact this project will have on the water level at the marsh, as well as on the impact this development will have on the drinking water.

Mr. Hauser: Terri, do you have any comments on post-development flow?

Ms. Hahn: The post development flow will decrease substantially from this project because we have a system of water quality and detention basins in series. That was submitted to and reviewed by the Town Engineer. That is why you see multiple basins. Each one of them further reduces the amount of post development flow to below pre-development levels. In addition the multiple basins provide an increased level of water quality treatment. The treatment issue was a significant question raised by NYC

DEP when we first started this process and it has gone through their rather strenuous review process, and they have issued a stormwater permit.

Mr. Hauser: In short, the stormwater detention you have provided will result in a net deduction in off-site flow creating a greater accumulation in groundwater rather than surface water.

Ms. Hahn: That's true.

Mr. Cuomo: You are seriously proposing that, that system of basins is actually going to enhance the pre development water quality on site?

Ms. Hahn: Based on the requirements of NYC DEP, we did a full water quality analysis for this project that showed no net increase of phosphorus, and a slight reduction in phosphorus.

Mr. Cuomo: In your calculations.

Ms. Hahn: That's correct.

Mr. Cuomo: So you're saying, its actually going to be less than if nothing were done on the property.

Ms. Hahn: You know the calculations...

Mr. Cuomo: That's amazing, really.

Ms. Hahn: The calculations continue to show that, that is the DEP standard process for using a mathematical model. I think the overall intent of the DEP, far be it from me to assume that, is that there is no net increase, and that...

Mr. Cuomo: As a hydrologist, I find that amazing.

Ms. Hahn: I can tell you honestly, that having run the stormwater sampling program over at the Highlands for the last three years, the mathematical model is reflected in the actual sampling that we are getting off the stormwater system.

Mr. Cuomo: Did those models give you numbers that were below what would have been there pre-construction?

Ms. Hahn: Yes.

Mr. Cuomo: Interesting

Ms. Hahn: And, the actual samples themselves, especially on the storm sample data, are significantly less than what was there as pre-development because we did both pre, and post development sampling.

Mr. Cuomo: Well that's interesting. Again, as a hydrologist, I find that hard to believe.

Mr. Hauser: You have previously submitted this report to this board?

Ms. Hahn: Correct.

Mr. Hauser: Have you examined it, Mr. Hydrologist? You seem amazed?

Mr. Cuomo: Very much amazed that, that statement can be made.

Mr. Hauser: Oh. Can we go on?

Mr. Cuomo: Please.

Mr. Hauser: Any other questions?

Elaine Gelbert: I am Elaine Gelbert from Coffee Lane. Could you explain to me where the wastewater treatment plant is?

Ms. Hahn points out on the site map the wastewater treatment plant and the subsurface disposal system just uphill of it. She then points out where Coffee Lane is for Ms. Gelbert.

Ms. Hahn: Neither the wastewater treatment plant, nor the sub surface disposal areas are in the watershed that drains to you. It goes out through the commercial property toward Rte. 312 to the wetland along the railroad tracks.

Ms. Gelbert: That wetland runs along my property. I find it difficult to believe that this will not affect the quality of my groundwater. Can you explain a little bit more about the storm runoff you have as that is supposed to protect the quality of our groundwater?

Ms. Hahn: I think it is the quality of the stormwater runoff...

Ms. Gelbert: But what is stormwater runoff?

Ms. Hahn: When it rains and water comes running across the road or through the lawn?

Ms. Gelbert: Yes.

Ms. Hahn: That is stormwater runoff – anything that is not absorbed into the ground. All of the roads, houses, roof leaders, any place that has been graded, have a catch basin system. The stormwater runoff is piped into a series of water quality basins that have been designed in accordance with both the NYC DEP requirements in order to maintain their water quality, and the NYS DEC basins...

Ms. Gelbert: (inaudible)

Ms. Hahn: Yes, they are large areas where the water fills in and than trickles out.

Ms. Gelbert: Where does it trickle out to?

Ms. Hahn: It trickles out to the onsite stream, and then eventually leaves the property.

Ms. Gelbert: The onsite stream that runs into the marsh at the railroad tracks.

Ms. Hahn: That's correct.

Ms. Gelbert: (inaudible) groundwater then?

Ms. Hahn: No, that's considered stormwater runoff.

Ms. Gelbert: So, none of that water enters the well water system?

Ms. Hahn: No. Most of you have a bedrock well right? Probably a couple hundred feet deep, if not more, depending on when it was done. That system uses aquifer water that has been in the rock itself. The stormwater system percolates through the soil and eventually gets into the bedrock, but that takes a great deal of time, like a hundred or two hundred years. The systems are not connected.

Ms. Gelbert: What type of chemicals will be used in treating the water?

Ms. Hahn: We are taking the sewage flow from the senior housing, and sending it through the wastewater treatment plant. Those chemicals that are added are subject to review, removal and continual testing in accordance with DEC requirements.

Ms. Gelbert: Can you tell me exactly what chemicals will be used?

Ms. Hahn: Aluminum sulfate... there are things that take the solids out of the water. It is a treatment process that is highly regulated by the State of New York.

Ms. Gelbert: Are there any by-products that will be emitted into the atmosphere? Any fumes, any odors?

Ms. Hahn: No. I know there have been problems in the past with some of the wastewater treatment plants, but that had to do with when they were transferring from one system to a different system. It is not expected.

Ms. Gelbert: (inaudible) will that affect our air quality? Can you guarantee that our air quality in the area will not change whatsoever?

Ms. Hahn: Again, the wastewater treatment plant itself is regulated under certain, specific standards by the DEC. They are the ones who decides what those standards are, what the appropriate air quality requirements are. I would also just suggest that air quality is not the purview of this particular Board. This is the Conservation Commission, about the wetlands.

Ms. Gelbert: I live in the area right below where you are going to build it, and air quality is an extremely important concept to me. In view of the fact that today, mercury is emitted from all kinds of fluorescent lighting, from buildings, from all over the place, and we have air pollution no matter what. Now if we have a chemical treatment plant that is going to treat the water with chemicals, and purify it before it goes into our precious wetlands, which we have always tried to preserve, and you say its not going to effect that - I am now concerned about air quality. Am I going to wake up on a beautiful morning and open my windows and have a funny smell in my backyard? I am concerned about that, and I am concerned about these kinds of by-products being puffed into the air. Aluminum - I don't want aluminum in...

Ms. Hahn: These are all chemicals that are within the water itself as it goes through, and its not potable water, we are talking about sewage flow. It is not something that is puffed into the air; they are suspended in the water itself.

Ms. Gelbert: Well I have lived in Brooklyn NY a long time ago and I have been across some sewage treatment plants that have been absolutely unbearable.

Ms. Hahn: Unfortunately some of the older treatment plants in NYC that you are using as a reference did not have the technology that these plants use. They also tend to be primary treatment plants. This works all the way to the tertiary treatment level; so this treatment plant would discharge effluent that is acceptable to discharge into a stream according to New York State. In this particular case we are not proposing to do that, we are proposing to discharge it into a conventional septic system in order to further improve the water quality.

Ms. Gelbert: So, right off the top of your head, you can't guarantee that the chemicals - you don't know the chemical process, and how it is going to react with the atmosphere.

Ms. Hahn: It is ... Sure go ahead.

Mr. Lepler: My name is Harold Lepler. The tertiary treatment that Ms. Hahn is referring to, outside the NYC watershed is a level of treatment acceptable direct discharge, outside our area, into a stream; into a trout breeding stream. In addition to that we have great water recycling - so therefore conserving - features that take water after treatment and put it back into our system. That which is left over is ultimately discharged into the ground. According to the DEC and DEP and the monitoring that is done daily...

Ms. Gelbert: By whom?

Mr. Lepler: By independent engineers licensed by the state, and by the city. It is
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clean enough to go into the groundwater, and it is also clean enough to be potable. I am personally involved in a couple of facilities in Putnam and Dutchess that are built within housing projects. The building itself is sided just like a home, and it is done without odor, without contamination, without pollution. The discharge from Harmony Farms in Pawling is directly into a trout breeding stream. There is no odor, and this was built ten years ago. There is a facility we built back in the '80's, when the technology was even less, at Clock Tower Commons on Rte. 22. There is a restaurant there, as well as many homes within a short distance at Scenic Ridge, and there has never been a complaint or any issues. The principal chemical that is used is found in every water treatment facility, that is, chlorine, and it is used in very sparing amounts. Most of it is done with ultraviolet rotating biological contacts - not chemical processes. The one product Terri mentioned is used to settle out solids. These processes are contained within the facility itself. The air that leaves the system has filtration. There are no odors.

Ms. Gelbert: So there is no aluminum let out into the air.

Ms. Hahn: No, it's in suspension. It's in water. There are no air chemicals. It is all maintained within a series of basins inside the plant, and that is the only place the chemicals will be.

Mr. Chris Wilde of Riverkeeper: We have a number of concerns with the intentions to disrupt over eight acres of buffer, but I would like to introduce Ralph Huddelston who is a consultant for Riverkeeper, Concerned Residents of Southeast, Croton Watershed Clean Water Coalition, and Putnam County Coalition for Open Spaces.

Mr. Huddelston: Thank you very much. Since you haven't seen these I brought this just in case you have an interest in who I might be. (Submits CV to Board Members - **See Attached**)

My Name is Ralph Huddelston, Senior Vice-President of Carpenter Environmental Associates. We are an environmental engineering and science firm that has worked in the New York State area for about 26 years. I have been working with wetlands and wetland buffers in New York State for the last 25 years. My experience involved creation, enhancement, mitigation, restoration, and impact assessment of wetland systems. I have served on the Governor's advisory committee for New York City Watershed.

Basically, I was asked to review the documents - FEIS, SEIS, DEIS, Finding Statements, various correspondence back and forth to the DEP, Correspondence and the recent wetland application in preparation for this. I would like to basically start by pointing one thing out. Most of the agencies in my 25 years experience are very reluctant to allow physical structures in buffer zones for very good reasons. Typically these are discouraged because the primary functions, and benefits associated with drainage basins and these structures cannot compensate for the losses, especially in areas where you are talking about natural vegetative systems. Reduced benefits include thermal treatment, which is basically the cooling of water in waterways, and waters as they (inaudible). Nutrient uptake - I have made some previous inputs to this process before, and it is my understanding that the response was that I was attributing values to buffers that

are values associated with wetlands. This simply isn't the fact. Nutrient uptake in buffer zones is a valuable asset of buffers. It actually keeps the wetland system from becoming the total sink. It allows certain things to settle out, especially when you have Loam, Litter, and wood systems. Infiltration of groundwater: you are going to see a difference in infiltration of groundwater. I've looked at what is proposed here; you have a lot of grading, a lot of compacting of soils, you've got the creation of water quality basins, ect... You are going to see a difference. I don't know if it is going to be a reduction or an increase, but you are going to see a difference in the water volume to this system. Any time you have a difference of water volume to a system, especially a small system like this; you see a difference in the system. You see a different inundation period during the season. You see either increase or reductions of weather on the systems, and you get a change in the nature of the system itself. The (inaudible) water treatment abilities change, the infiltration aspects of it change. All these things occur.

Chemical and physical changes themselves: you've got sediment reduction, herbicides, and pesticides. Again, I have not reviewed the Stormwater; it's not something I looked at, but in my 25 years experience - coming in to a natural system made up of wooded areas, fields, et- cetera and replacing it with houses, roads, and water quality basins which are designed to treat some of that, I am kind of like you (Mr. Cuomo) I have never seen anyone be able to make a statement that you are going to have a reduction in the nutrient output to the system. It just doesn't happen. There are too many nutrients and pesticides, (inaudible), automobiles.

Habitat corridors for wildlife movement this type of thing: you are taking down wooded areas and replacing them with water quality basins, buildings, corners of buildings, streets; all kinds of little things in these eight acres. Out of 132 acre system, eight acres is quite a bit of disturbance when you are talking about controlled areas. Areas that you say in your laws you want to protect. Habitat corridors - a recent study from 2001 shows that the upland areas immediately adjacent to wetland areas are the most productive biological areas for aquatic organisms, mammals, and avian species that utilize the water.

Re-grading and re-vegetation will no way enhance the way in which the buffer functions. I've talked about the loam loss, change in flows. Grading and compaction will alter the hydrology. Like I've said you will see a change in the overall system.

I have spoken with the Corps of Engineers a number of times because we are currently creating wetlands in some industrial violation areas where we are taking out old landfills and creating some. They have been recently suggesting a functions and values assessment of the wetlands when you have a small system like this. With and without the buffer changes you are talking about. If you have close proximity buffer changes - a lot of people are going to say functions values are assessed for wetland comparison, reduction, and changes to wetlands well they are, but if you look at the same system before and after close proximity and drastic changes in the buffer areas you ought to be able to see. Especially when hydrology is involved, you ought to be able to see impacts associated with that functions and values loss.

On behalf of the Riverkeeper, CRSE, Croton Watershed Clean Water Coalition, Putnam Coalition for the Preservation of Open Spaces, and Putnam Smart Growth
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Alliance I would like to close by saying that you have a very good law here. I've read your Law, and I like the way you have defined your buffers by soils and slopes is unique. When you set something up like that, and work so hard to put it in place it seems to me to be a real bad idea to come in, when a reduction to development would keep these structures out of the buffers - at least for most of them, not all of them. It seems to me that setting a precedent of eight acres of disruption on a project this size would be a bad precedent to set. It seems to me to open the door. You set this Law, we are going to protect them, but we allowed eight acres here. Those are my statements.

Mr. Don Rossi, attorney for the applicant: George, if I could respond to that. Mr. Huddleston's comments, I think, are appropriate as far as the general, broad overview of potential impacts, but I want this Board to understand, and I think you may be well aware of the fact that all of these issues that he has raised are the subject of extensive environmental review. Environmental impact statements, findings by the DEP, initially, to deny the project, followed by a drastic reduction in the scope of the project, followed then by the DEP's acceptance of the project, and the issuance of a findings statement to approve the project. Each and every one of those potential impacts are all (inaudible) recognized, could flow from a project of this type. They have all been analyzed. Basically, his comments amount to a scoping session, the subject of which - the scoping was done on this years ago, so each and every one of those, although very appropriate to point out as potential impacts, have been analyzed and resolved in favor of the project by all of the approving agencies.

Mr. Wilde: I do not want to get into a debate with Mr. Rossi, but I want to just point out that whatever environmental review was done, SEIS, and whatever subsequent documents, does not all affect this commission's obligation to follow Town of Southeast's Wetlands Law. So while that may have been analyzed for different review purposes you still have an obligation.

Mr. Hauser: Before we go on I'd like to Terri Hahn if she has anything she would like to address in Mr. Huddleston's presentation. I personally did not here anything that was specific to this site. I did not hear anything that couldn't be applied to any other development anywhere. Is there anything there you would like to point out?

Ms. Hahn: I just wanted to point out one thing. The new wetlands ordinance includes what I call the 100 foot buffer area, and then the additional buffer area. It made it sound like we are doing a lot of close proximity disturbance within the 100 foot buffer area. That is not the case. There are only just over 2.5 acres within the 100 foot buffer area. The rest of it is within that additional buffer area, and a large portion of that has to do with an entry road for which we came in at the absolute tightest place that we could come in to avoid further disturbance to the buffer itself. That was my only point.

Mr. Cuomo: Just to clarify, are you trying to make a distinction between the 100 foot and the 133 foot?

Ms. Hahn: Yes, I have continually done that in front of the Board because the 100 foot is where the traditional...

Mr. Cuomo: But it no longer is the 100 foot buffer.

Ms. Hahn: That's correct, so what we do is we now have this additional buffer, beyond the traditional 100 foot, and in our past discussions, as we were getting used to the new regulations, we have always identified that...

Mr. Cuomo: But you are aware of why there is an additional buffer.

Ms. Hahn: Oh, of course, and it's...

Mr. Cuomo: In our eyes it is the buffer. It is the buffer zone we are talking about.

Ms. Hahn: That's correct. I just wanted to make it clear that what we are not talking about is eight acres right along the edge of the wetlands. What we are talking about is eight acres...

Mr. Cuomo: In the wetland buffer.

Ms. Hahn: In the buffer and the buffer varies from 133 feet to 200 feet from the edge of the wetland. It's not close proximity.

Jim Bacon, attorney for Croton Watershed Clean Water Coalition: I would like to point out that approval of this project or a recommendation to the Town Board to grant a wetlands permit would establish a dangerous precedent, allowing a wide variety of uses to occur in the wetland buffers contrary to the comprehensive plan, and the wetlands ordinances of last year. As the applicant has stated there is a potential wetland corridor of four acres with double the amount of disturbance to the buffers of eight acres for this project. Now it is true that DEP and DEC have granted stormwater permits for this project earlier this year, but that decision was highly contested, not only by us, and The Riverkeeper, but also by Jim Tierney, the Watershed Inspector General for NYC watershed, who specifically wrote a letter stating that the applicant had used outdated or defunct stormwater methodology relying on 1993 guidelines instead of the most recent, up to date DEC requirements. That is being highly contested. Although those agencies have their own standards and criteria for issuing their stormwater permits, this board has a different role, and that is to look at the wetlands functions and values those include wildlife habitat, and hydrology of the system, and see what those impacts are going to be on those resources.

The Law states specifically that it is the Public Policy of the Town to preserve and protect, conserve freshwater wetlands and the benefits derived therefrom. This includes the areas that are called control areas - which includes buffer - and that is specifically included in the definition of what needs to be protected. That is why in section 4-4 of the comprehensive plan states: Protection of wetlands requires more than not filling, draining or dredging them. It goes to the heart of this matter because 8.7 acres of buffers where they intend to put detention ponds, steep slope cuts, an access road, and portions of buildings and a parking lot for 16- 17 cars. The criteria in the wetlands ordinance are very clear: the commission must find that this activity will not have an adverse impact on the natural function and benefits of this particular wetland.

The question is - what is the natural function of this wetland, or what are the benefits of it? Well, there is plenty of evidence on the record that hydrologically, the wetland has positive benefits to the community. (Inaudible) the equation. Another specific benefit is wildlife habitat which is included in the code, section 78-1B -

6B. That is an area where the application is just sorely lacking with information. The SEQR process did include the applicant having a Bog Turtle expert, Michael Clemens, go out to the site, and look for Bog Turtles. His letter specifically said that his visit should not substitute for a comprehensive environmental survey. We submitted comments to the Board which we will re-submit to this Commission from Hudsonia specifically saying that a one day assessment of the applicant's consultants is not sufficient to determine the wildlife habitat and the value of this wetland. In fact, Erik Kiviat the Executive Director questioned whether or not these consultants were qualified to do an endangered species surveys. Specifically, in his opinion, they were not qualified to conduct rare plant surveys, and I don't think a rare plant survey was ever done.

The question becomes how do you determine what the impact is going to be if there is no accurate portrayal of the resource so we would submit that you need to have an accurate portrayal of the resources on the site before you can determine what the adverse impact would be. As this Board probably knows the judicial standard here is whether or not it is rational to issue this permit given the evidence on the record. If there is no evidence on the record that qualifies then you can't make a rational determination of what the impacts will be. I think, most of all, from a local perspective this Commission needs to think about the precedent his will set. If you allow this to go ahead, what developer is not going to say: Look what you've allowed on this project when the Town itself has agreed to use ball fields, and establish a parking lot in the buffers and destroy 8.7 acres worth of buffers. What kind of precedent does that set for other developers? No one in their right mind would avoid buffers after a plan like that is approved. It just wouldn't make economic sense not to use the buffer for roads and detention ponds. I would ask that the board keep a ten day written comment period open so that we can submit our written comments.

Ms. Hahn: It is not eight acres of buffer disturbance in the central wetland corridor that is eight acres in total that deals with all of the wetland buffers on the property. Over time, we have made a substantial effort to reduce those steep slopes and other issues that were previously within the buffer area by reducing the scope of the project, pulling the road out of the wetlands, re-grading basins, and generally looking at the overall project. With respect to the Town Park; the parking lot itself has been changed as part of the review with NYC DEP. It is not a paved parking lot, it is a grass paver parking lot is, so those parking spaces are still parking spaces, but they are not impervious surface.

The issue with respect to the vegetation corridor as part of the discussion during SEQR; the Nationally acknowledged expert, Mr. Clemens, was the one who reviewed the property, and, just as an editorial remark, it is odd to be questioning him. The Bog Turtle issue was raised late in the SEQR review, so the national expert, Mr. Clemens, was the one who came on to the property. Bog Turtles require very, very specific habitats. That's why the Bog Turtle Unique area is such an unusual habitat on Route 22. As Mr. Clemens noticed, this would not be a Bog Turtle habitat, and his investigation clearly says that it was not.

Mr. Hauser: Why would they send a Bog Turtle person? Is there anything, at all, about the site that would make you think?..

Ms. Hahn: In our initial biological review prepared by the people who so our biological review on a regular basis never highlighted that as something to come up. It came up as part of SEQR review, and we addressed it specifically at that time.

Mr. Hauser: You do have a biological report that has all been available...

Ms. Hahn: That's correct.

Mr. Lepler: This expert who was brought in, before he would accept doing this assignment we were required to sign an official document that said whatever his findings may be, whether positive to our proposed development or negative, be released to all parties, all Boards, all agencies - NYC, New York State DEC.

Mr. Bacon: I just want to say that the applicant should be commended for bringing Michael Clemens onto the site. We did make that comment and we appreciate that he was brought on the site, but his letter does say, and we will submit the letters to the board that he looked specifically for that one species and that his letter should not substitute for an environmental survey. His findings are definitive on the Bog Turtle, but not for other rare species.

Mrs. Louise Bisogno: The wildlife I am really concerned about is my family and neighbors. I have some questions. Did you know Paul Young?

Ms. Hahn: Yes.

Mrs. Bisogno: Paul Young was an old timer who knew the Zimmer road area better than anyone. He lived off the land, and was quite eccentric, but his knowledge was incredible. He shared with many of the Boards of this town. His knowledge of the streams - he didn't buy food, he hunted and grew his own food so he was very attentive to nature during all its seasons to survive. He told us that without a doubt, the water ran off that same ridge, which we have on this board today, it ran down yes, into the marsh ultimately. Some of the water went south, some of the water went southwest, but he also said that a good portion of the water went northeast, towards the Ice Pond. He was concerned, and I became concerned with the water quality not just of my own family and neighbors, but the water quality impact of the school system. I have been an educator for almost 40 years, and have grand children in that school. We don't know what is happening under that ground. We do know that occasionally there have been warnings not to drink that water in the school system. Tamper; Tamper with that ridge, and into the valley of our campus where every single child of school age, except for St. Lawrence, and they'll be the lucky ones, depend on that water. It's a very, very dangerous move to expect too much from this land.

Having lived on Ice Pond for so many years, I can tell you, that, in the spring or after any storm the water cascades down that ridge, you'd think it was headed for Niagara Falls. It comes through fissures and pours right off the surface. Every little groove and angle is pouring water as if a thousand and tens of thousands of faucets have been opened, and that's all the way north of this project, and all the way down, past Rebecca's home, and Coffee Lane. I can't believe there is going to be 100% control. I know the

experts will try and that they are doing the best they can, but I believe it was Ms. Hahn who said earlier, they are looking into what is expected. They'll do their best with the expected; I have no doubt about that. What I'm concerned about is the unexpected. And that's what laws are for. Laws are not to cover the expected mores cover those. Every day we expect certain things and we all do the expected - the generally understood right thing. The Laws are to protect us from the unexpected. We are a nation of laws. Not of men, of relationships, of friendships, of good ideas - it's the law, and I am asking this Board to please consider the law and the common sense that Paul Young has handed down to this community that none of these experts, as thorough as they have been, know the real happenings under that surface. That is the unexpected we hope you'll protect us from.

Mr. Hauser: Thank you Louise.

Mr. Jerry Halter: I live in Brewster Heights, here in Southeast. I came here tonight with an open mind, really to find out all about this project. The more I whittle it down, the more I listen to it, it sounds to me that we have a law on the books. It is a law that was not written up in Albany or in Washington It wasn't something we all inherited from a hundred years ago, it was written quite recently. Not only quite recently, it's been tested right here in this room, and either what we did, and all the work behind these laws are legitimate, or they are a complete waste of time. As you go through life you have choices. The right thing is the hard thing to do. The wrong thing is the easy thing to do. You guys have a choice. Do the right things, do the hard thing, or do the wrong thing, do the easy thing. I mean this Law is on the books, its here for a reason, its here to protect us. My son is five years old; my wife put him to sleep about a half hour ago. I'd love to be home, I really would, but I'm here for him. I'm not here for myself, I am here for him. I would like to see him grow up in this town. I really would, but it's the quality of life issues. We can talk the talk, can you guys walk the walk.

Mr. Hauser: Jerry, this is a brand new law, and it hasn't been tested. In fact it imposes restrictions and restraints on the applicant that are far more burdensome than the previous law so it is much more difficult to conform when you are designing based on (Inaudible) new definitions of buffers and all that. (Inaudible).

We are still coping with the idea of approaching applications from the stand point of the changes that have to be made in reduction to land use with these adjustments that. So I just wanted to bring you up to date on that, it's a new Law, and it is much tougher, and I want you to just keep that in mind..

Ms. Hahn: I would like to say one thing. The law does not state that there can be no disturbance in the buffer area. It states that the buffer area contributes to the overall function of the wetland itself, and that those areas need to be reviewed and considered with respect to the overall wetland. Plus the buffer areas, just to continue on, the buffer area has gotten substantially bigger, but the Law just doesn't say that you can't disturb the buffer.

Mr. Hauser: The word disruption is (Inaudible) disturbance and I would like to have that clarified, because a disturbance is basically a definition. A disruption is a

physical... I don't have to go any deeper.

Mr. Cuomo: Well, actually, I'd like to read right from your - from the Law. Just one paragraph, I won't read the whole thing, but it might be a little bit in line with what you said. Declaration of Policy: It is declared to be the Public Policy of the Town of Southeast to preserve and protect, and conserve freshwater wetlands and the benefits derived therefrom to prevent the defoliation and destruction of wetlands and watercourses in order to secure the natural benefits therefrom with the protection of Public Health and safety and consistent with the general welfare and the beneficial economic, social, and agricultural development of the Town. That's what it says.

Ms. Hahn: Correct.

Mr. Tringali: It's not a question of right, wrong. It's a question of ...tempering our - its not black and white, in other words because it mentions economics. There are a lot of issues in other words. It's not right or wrong, it's not black and white it's not clear...

Mr. Cuomo: It's pretty clear to me.

Mr. Tringali: Yeah, I understood it.

Mr. Hauser: I think we are all clear on it. Next person please.

Ann Fanizzi, Chairperson, Coalition to Preserve Open Space: I would like to (inaudible) some of the sentiments that were expressed by Jerry, and by Mr. Cuomo. I wish to just simply state that the purpose, and the object of all the revisions that we have seen within four years, and I have in front of me the Master Plan. Inside I have the Ridge Protection Law and the wetlands. And this was done with the express purpose because the Town Board recognized that we have to meet new standards. Stringent standards, and yes they are untested standards, but I am positive when those standards were promulgated they expected the advisory board to advise, and to consent to those, and to see that they were followed. What is the use of me having this if it is not going to be followed? I am a citizen and a resident of the Town of Southeast. When I see this, and I give it to my friends they say, "My God, Ann what a great Law this is" until I sit down and go through project by project by project and I have to say "Yes I know, but. Yes I know, but. Yes I know, but." And then they say to me, why have a law when you are "but" all the time? I have a law. The law should be predictable and consistent. It must be or else we do not have any standard. We have then a subjective standard that will go from case to case to case.

Here I have a letter from Penny Kelly, and this is dated April 17, 2000. Here she writes to Mr. Warren concerning this very project, Terravest 2 & 3. She describes it; she does not describe 72 units of Senior Housing, she doesn't describe 60 units of senior housing, she describes 48. Now this was in the year 2000. Between 200 and 2004 we have had more stringent laws - we have had a more stringent Master Plan, Wetlands, and Ridge Protection Law - we have a Ridge Protection Law that this particular development violates in every single point. We have a Wetlands Protection Law, as Mr. Cuomo just said, and it is being violated. And you ladies and gentleman, you have the responsibility to see that the laws are enforced and upheld. You are the experts, you have the power.

That is what the Town Board put you there for, because they said you have experts to advise us, and to see that the Law is carried forward. We cannot continue this way. I was part of this Master Plan. I sat here; maybe some people were with me during that particular time, and they saw that there were deficiencies, and they wanted the deficiencies covered. They wanted the deficiencies stopped. If we continue to have contingencies, and loop holes and butts then we do not have a Law.

Ms. Lynn Eckhardt: I have a couple of letters to read. One is from Robert Zubrycki who could not be here tonight. (Reads letter, **See Attached**)

I am going to read a letter from me; I am wearing a little bit of a different hat tonight. Those of you, who know me, are probably worried that this is going to be a little caustic, and I apologize for that. (Reads letter, **See Attached**)

Ms. Hahn: I would like to respond to Mrs. Fanizzi's comment on Penny Kelly's letter from 2000. That is sort of taken out of context. The 48 senior housing units were located in a building complex that was located here, and there were actually three commercial buildings located down in this area. I just wanted to make sure that... and that had substantially more disturbance and that is the one in 2000 that Penny Kelly & NYC DEP said - Not Happening. So that is part of why the project changed in nature substantially and had the substantially reduced wetland buffer disturbance.

Mr. Rossi: In response to Ann Fannizzi and several of the other comment; I feel that there is a smoke screen building up here. This application before you deals with this project. The Law that is so well drafted and appropriate, as far as protecting the environment, has laudable policies, but that Law also sets forth a permit issuing process. It does not say it is our policy to protect wetlands and buffer areas, and therefore nothing can ever be done in those areas. It says that your board is, I believe, obligated to issue an approval and a positive recommendation if it is shown that there are no potential substantial adverse impacts. On the developer's side are reams of documents indicating that there are no potential substantial impacts; a finding that has been upheld by the court in the litigation that involved this project. On the other side there is no evidence of any substantial impact. There are statements as to loss of buffer areas and impacts on wetlands, and democratic processes before the Town Board, and how the Town Board uses your commission. Your commission, as you well know, looks at these projects, goes through the record, and makes a determination. There is no meat on the part of those that say a permit should not be issued on this project. The issue of whether there's substantial potential damage has been reviewed for years, reviewed by the court, and a findings statement that found just that - no potential substantial impact - was upheld on judicial review. That is what your Law says. It does not say you cannot do anything in these areas. It says that a permit is needed for it. What is interesting to note before that the DEP and DEC were categorized as agencies that are reluctant to grant approvals that allow buffer disturbance? Nonetheless, reluctant as they are, they have done so after years of review of this project. That is the standard for your Board to apply. There is nothing that has been presented other than conjecture and general comments throughout this process, before your Board and the other Boards, to speak of potential impacts of this

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project; nothing -no studies, no reports that speak of substantial impacts.

Mr. Hauser: Thank you Mr. Rossi. Thank you for defining that for the public (inaudible). Before I... you have already spoken on this. This is not a debate. What we are going to do is have another Public Hearing on this. There is way too much public comment, after we have all these other people speak, if there is time...

Martha Shortlidge: I am a resident of 60 Holmes Road. This is my property right here. (points it out on the map) I believe that there are potential substantial impacts from this development. Because I am an adjacent property owner, I received a notice of this Public Hearing by certified mail. I have heard that this project has been greatly improved. The impact on disturbance to the wetland has been decreased, but still it would result in a disturbance of more than eight acres of wetland buffer. Outlined in this letter are eight different elements of that wetland buffer disturbance. (Ms. Shortlidge reads the items of disturbance from the notice of public hearing, **See attached**) I have heard that the legislation is more stringent, but I would like to draw your attention to the access roads that are within the 100 foot buffer. They include 420 linear feet of access and maintenance, 140 linear feet of the maintenance drive, 220 linear feet of maintenance drive, and 210 linear feet of access road. That is within the 100 foot buffer. And I have one question. That is, have any portions of this proposed wetland buffer disturbance been, in fact, already constructed?

Ms. Hahn: I think the only portion that you are referring to...

Ms. Shortlidge: The T2 maze perhaps?

Ms. Hahn: The T2 maze was relocated outside of the buffer area, and the only other place that I think you are probably referring to is; several years ago, there was an access road that was improved to its current standing out on the back side of the property to allow a fellow from Pawling to remove some rock on the property, but the Boards were notified at that particular time.

Ms. Shortlidge: Because the application for Terravest 3 does say that .4 acres of wetlands disturbance was being applied for the maze for T2.

Ms. Hahn: That's correct.

Ms. Shortlidge: and it is my understanding that it has been constructed.

Ms. Hahn: That's correct.

Ms. Shortlidge: I urge you to reject this wetlands permit.

Ms. Hahn: I would just note that the construction of the stormwater maze for T2 was required by NYC DEP at the time. That maze was redesigned, and relocated after the staking of the buffer area to make sure that it was out of the buffer so that there would be no construction in buffer areas without a permit. So that was mashed together to run along the road, and was re-oriented. So, although it remains on the plans, and we did not remove it from the application because the process was too far along, it was actually constructed following the staking by the surveyor of the buffer area itself.

Mr. Tringali: Would you show me which houses are within the wetlands buffer?

Ms. Hahn: (points out on map) In the buffer area, there are portions of these five houses, and there is one building located over here.

Mr. Tringali: If I might ask, the stormwater runoff, the roof drains, the footing drains, all still from these houses, go into a freshwater quality basin?

Ms. Hahn: Yes.

Mr. Tringali: And I notice that there is a steep slope behind the houses. I assume that that runoff would be within the buffer as well?

Ms. Hahn: That is located within the buffer itself. The idea is that there will be drains along the top of the slope to collect any of the runoff, and direct it to the water quality basins.

Mr. Tringali: Prior to going down the slope?

Ms. Hahn: That's correct.

Mr. Tringali: and all your impervious surfaces flow into these freshwater quality basins?

Ms. Hahn: That's correct. There are no impervious surfaces that are not directed to catch basins, and then into the water quality basins. There is no direct discharge from impervious surface into any wetlands at all.

Mr. Tringali: When you calculate out, say you get nine inches of rain over a certain period of time - these freshwater quality basins are capable of holding sufficient amounts of water?

Ms. Hahn: The standard for the design of the basins is the water quality basin under NYC watershed and you have to be able to capture and treat the two year storm which is 3.5 inches of rain. In addition, in order to maintain the DEC requirements, so that there is no excess discharge into any stream corridors, or wherever it goes into, the detention basins are designed to capture up to the 100 year storm which is approximately 10 inches of rain, I believe, for Putnam County. So between the two of them they handle the one, two, ten, 25, 50, and 100 year storms.

Mr. Tringali: Before anything overflows down to the Ice Pond Road Swamp.

Ms. Hahn: That's correct, and in this particular case, in coordination with DEP and their requirements, the discharge rates from the detention basins are substantially lower than what they might have been, even two years ago under the regulations, because the DEP requirements for what they call stream bank scour requires a significantly reduced rate of flow in order to make sure that you don't have the receiving streams have any negative impacts.

Mr. Tringali: The basins are located where on the property?

Ms. Hahn points out the water quality and detention basins on the map.

Ms. Hahn: These two collect the water from this area. These two discharge into the detention basin, which discharges into the maze. In this location the upper terrace discharges into a water quality basin into a detention basin, then discharges out. On the Town Park, in order to address concerns about the 100 foot buffer, because we had some concerns about water quality basins located on the Town Park, this area is now all piped, and under agreement with the owner of the property on T2 is being discharged into a water quality basin on T2 then into their detention basin, out through the maze and then

discharged. It is all being piped off the Town Park site.

Mr. Tringali: Thank You.

Mr. Hauser: We can go on with the questioning. I would like to point out that there were things brought up by Martha Shortlidge that are exactly what we are here for. We want to hear things that are specific to the wetlands issues, and this site. We do not want to use this as a forum for political debate. We don't want to have any other (inaudible) because all that does is deprive people who are here for information gathering purposes such as the people at this table and members of the public. It deprives them of what a public hearing should do; so only questions that are relative to the wetlands issues only...

No other questions? O.K. I am going to entertain a motion that this be opened again next time, at our next meeting.

Ms. Anthony: I'll make that motion.

Ms. Tiernan: I'll second it.

All are in favor.

Vita Subdivision: Mr. Paul Lynch of Putnam Engineering is present to represent this project. Mr. Lynch states that he has been successful in removing the entire primary septic system from the buffer. Only the expansion area remains designated in the buffer, but that is likely to never be built.

Mr. Cuomo states that as long as that is the stipulation on the permit he has no problem with it.

Mr. Cuomo makes a motion to waive the public hearing. Ms. Anthony seconds the motion. All are in favor.

Ms. Anthony makes a motion to notice the application complete. Ms. Tiernan seconds the motion. All are in favor.

Bucaj Property: Mr. Stefan Karlson of Arborscape is present, as well as Mr. & Mrs. Bucaj. Since that last meeting, Mr. Karlson has submitted the wetland report that was requested by the board for the property. Mr. Karlson notes that he is aware that some of the Board members have visited the site.

It is a Gunnite pool with a 12 inch cast of concrete and reinforced steel every six inches. It is a substantial structure, not a liner pool or a shell. It is all one continuous piece, and although anything is possible, any leaks would be noticed right away by a drop of the water level in the pool or in the skimmers.

The filter is a DE Filter, and it is a self contained unit. There is no backwashing. A 1,000 dry well is proposed as an added precaution to the coping in the pool in the event of excessive rain. The pool deck is pitched away, and is of a pervious material - irregularly spaced flagstone in a stone dust base that has a drainage coefficient similar to gravel.

There are areas in the wetland that can be used for planting, but if the board prefers not to have any activity in the wetlands it can be avoided. The materials being proposed in the pool area are all indigenous to the wetland areas.

Where the ground slopes off, the pool will be recessed into the grade, and the plantings will be married into the slope. No fill will be brought in, and the soil - about 100 yards of fill - will be taken off site.

Mrs. Tiernan notes that there was a lot of activity even for this home to be built, and she has very strong reservations about allowing this much more activity on this piece of property.

Mr. Karlson points out that the lot is 10.6 acres. With the house and the impervious surface and driveway, the pool they are about 4,000 to 5,000 square feet of disturbed area.

The board members ask about flagging and who they can contact to do a site walk. Mr. Karlson states that the flagging will be done this week, and he can be contacted to do a site walk.

Ms. Anthony makes a motion to notice the application complete.

Mr. Tringali seconds the motion.

All are in favor.

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