



**Town of Hopkinton
Conservation Commission
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Memorandum

Date: 22 April 2004

To: Hopkinton Board of Appeals

From: Brian D. Morrison, Chairman

Re: Stagecoach Heights Comprehensive Permit
DEP File No. 188-1148

Copies: Town Counsel, Board of Selectmen, Planning Board, Zoning Enforcement Officer
Janice Hannert, Stagecoach Heights, LLC

At the request of Stagecoach Heights, LLC (Applicant), the Conservation Commission (Commission) closed the hearings under the Massachusetts Wetlands Protection Act (Act) and the Town of Hopkinton Wetlands Protection Bylaw (Bylaw) on 22 March 2004. The Commission issued a Denial Order of Conditions under the Act on 5 April 2004. The Board of Appeals (Board) was sent a copy of the Denial under separate cover. The following information and recommendations under the Bylaw are respectfully submitted to the Board:

Granting of Waivers under the Bylaw

It is the Commission's position that none of the waivers requested by the Applicant or listed as required by the Commission (see following section) should be granted by the Board until such time as all required information has been submitted to the Commission for its review and analysis. Our fundamental charter is to avoid harm to the wetlands and vernal pools, as is required by both State and local law. Only after the data are submitted and the analyses performed will the Commission be able to assess the measures necessary to avoid destruction or alteration of wetlands, vernal pools, and rare or endangered species habitat. At that point, the Commission will be able to provide the Board with recommendations based upon the Commission's and its consultants' review of the required studies.

Granting waiver(s) and issuing a permit at this time would very likely permit activities that, when performed, would violate State Law as well as local law.

Items Required Under the Bylaw for Review

The following items/information must be submitted to the Commission by the Applicant, and must be reviewed by the Commission and its consultants as required:

1. Wildlife study addressing the impacts of the proposed project on vernal pool habitat and on the habitat of the spotted turtle, as a state-listed species documented to have been found on the site.
2. Wetland replication plan and narrative to compensate for the proposed filling of the isolated vegetated wetland resulting from road construction.
3. Payment of all amounts currently owed to the Commission for work to date.
4. Permission for and payment of consultant costs for peer review of the Applicant's geohydrology and stormwater management reports. Additional analysis and amendments to those reports by the Applicant.
5. Completion of the plan review by the Commission to assess degree of impact to wetlands and vernal pools from site distance clearing, tree cutting, etc.
6. Figures on 100-foot buffer zone impacts, including 0 to 50-foot and 50 to 100-foot portions, along with site plans showing applicable wetland setbacks, and figures on 100-foot vernal pool impact
7. A rationale for the proposed wetland buffer zone disturbance providing a written rebuttal to the presumption that work within the 100-foot wetland buffer zone will impact adjacent wetland resource areas.

Waivers under the Bylaw

Stagecoach Heights, LLC (Applicant) has applied for two waivers under the Bylaw from the Board. These include: 1) work in the 100-foot buffer zone to a vernal pool under Section 10.1(3) of the Town of Hopkinton Wetlands Protection Regulations (Regulations) and 2) work within 50 feet of Bordering Vegetated Wetlands under Section 10.1(3) of the Regulations.

It is the Commission's position that a) waivers are not appropriate at this time (see prior section), and b) if waivers were to be considered, this is an incomplete request for waivers. The following additional waivers would be required if the Board were to approve the proposed project as it currently exists:

1. Section 5.2.4 of the Regulations – No Significant Adverse Impact on Wildlife Habitat

The Regulations state that “no project may have a significant adverse impact – either project-specific or cumulative – on wildlife habitat. Any proposal to alter or impact wildlife habitat must be filed as a Notice of Intent and reviewed by the Commission and expert consultants”.

The Applicant has not provided the Commission with a wildlife habitat study assessing the impact of the proposed construction within the 100-foot vernal pool buffer zone and within the 100-foot buffer zone to a bordering vegetated wetland. Without a study showing evidence to the contrary, the Commission is required by law to assume that the proposal to work within either of these buffer zones will result in impacts to wildlife and vernal pool species, and that those impacts cannot be allowed.

2. Section 5.3.4 of the Regulations – Groundwater Flows, and Impact to Water Quality and Groundwater Recharge

The Regulations state that “In cases where significant amounts of bedrock or ledge are present near the surface, or where naturally occurring springs exist, or where the project involves substantial potential for changes in groundwater flows (i.e. construction of wells, groundwater diversion trenches, etc.), or in large subdivision projects, the Commission shall require as part of the application for permit detailed information on pre-and post-construction groundwater flows. In such cases, the Commission shall review the information to ensure there are no detrimental impacts to water quality, groundwater recharge, or wetland resource areas as a result of the proposed project.”

The Applicant has submitted a geohydrologic study to the Commission. Upon review of that study and accompanying site plans, the Conservation Scientist and the Commission determined that a professional peer review of that study was necessary to allow the Commission to understand fully the impacts of the proposed construction on site geohydrology, particularly as it pertains to the water supply to the wetlands and vernal pools on the site. The Applicant refused to pay for that review (as required under the Bylaw) or to allow the Commission the time to have its consultant conduct that review.

3. Section 5.6 of the Regulations – Replications

The Regulations state that “... the Conservation Commission discourages any plan that requires replication. In those instances where replication is required by State Law and/or approved by the Commission the following conditions must be met... The area of replication must be at least 1.5X as large as the area of the original resource that will be destroyed”.

The Applicant proposed to fill 795 square feet of isolated vegetated wetland, which is considered under the Bylaw to be a wetland resource area. No proposal for replication of that wetland was made to the Commission in the Notice of Intent filing for this project.

4. Section 10.3 of the Regulations – Replication of Wetland Resource Area

The Regulations state that “It is the policy of the Hopkinton Conservation Commission that there shall be no net loss of wetlands in the town. When wetlands are destroyed by fill or other means, compensatory replication must be provided. Further, as replicated wetlands carry no assurance that it will serve the function of the destroyed wetlands as effectively, it is the policy of the Commission that the replication of a destroyed wetland shall be compensated on a greater than [sic] 1.5:1 basis and installed according to specific guidelines”.

As stated in item 4, above, the Applicant has not proposed the construction of a wetland replication area for the proposed filling of 795 square feet of isolated vegetated wetland.

5. Section 10.5 of the Regulations – Consultants

The Regulations state that “The Commission, at its discretion, may choose to hire a consultant for projects of such a scope as to warrant in independent review and/or an on-site construction monitor, in order to protect and preserve wetland values and to monitor adherence to Orders of Conditions and/or Enforcement Orders. It is the policy of the Commission to request that the applicant reimburse the Commission for the cost of such a consultant, and that failure to agree to such request may, at the Commission’s discretion, be considered as a factor when reviewing the Applicant’s submission or performance under an Order of Conditions”.

As stated in item 2, above, the Applicant refused to pay for the geohydrologic peer review required by the Commission and further refused to allow the hearing to remain open so that that review could occur.

6. Section 11.1.2 of the Regulations – Fees

The Regulations state that “Should an applicant choose to proceed the Commission shall require the applicant to pay the reasonable costs and expenses borne by the Commission for these consulting services as listed below..... The amounts shown represent the initial minimum amount charged; the Commission reserves the right to require the applicant to pay additional amounts to cover the reasonable costs and expenses borne by the Commission for these consulting services, should the initial estimate prove insufficient”.

As stated in item 2, above, the Applicant refused to pay for the services rendered to this point and to pay for continued review of the project proposal. The Commission is required by the Town to have all Applicants bear the costs associated with each project review, and has no general budget to support these costs. There can be no waiver of this requirement unless the Town votes at a Town Meeting to assume the financial obligation for an Applicant.