

**MINUTES- 17 December 2007**  
**Hopkinton Town Hall, Room 216**

**Called to Order: 7:30 PM**  
**Adjourned: 9:40 PM**

**Members Present:** Robert Murphy, Michael Carmody, Andre Griben, Craig Nation, Ellen Chagnon: Conservation Scientist, Don MacAdam: Conservation Administrator

**Members Absent:** Jeffrey Barnes, Steven Radel, David Teitelman

**7:30 PM            Legacy Farms LLC, East Main Street            DEP File No. 188-1390**  
**Abbreviated Notice of Resource Area Delineation Hearing – continuation**

Steven Zieff and Roy MacDowell, Legacy Farms, LLC; David Pickart, VHB; Ray Talkington, Geosphere Environmental Management, Inc.

Mr. Zieff provided an overview of the report submitted by VHB regarding the streams identified as perennial on the USGS map and VHB's subsequent response to Woodard & Curran's review letter. Mr. Zieff stated that VHB had used good science to support their conclusions.

A discussion was held regarding Woodard & Curran's request for VHB to perform further review based on the more recent USGS 2006 model for small watersheds. Mr. Zieff stated that the small watershed model is unproven and not definitive. Mr. Zieff stated that the small model is not needed because of the other supporting information that has been submitted that indicates the intermittent status of the stream channels. Mr. Murphy stated that the Commission understands the limits of modeling and appreciates the inherent drawbacks but is wondering the reason why the small watershed model was not run. Mr. MacDowell stated that the small watershed model could be used but that it is unreliable, according to his consultants. Mr. Pickart stated that VHB did perform the requested small watershed analysis and the results indicate that the streams are intermittent. Mr. Pickart stated that they did not want to submit the results because the model should not be used on losing streams.

A discussion was held regarding the limits of the various models that were utilized in the review of the stream status. Mr. Pickart provided an overview of what he believed the limitations of the wetland regulations are for qualifying the status of a stream. Mr. Talkington stated that this year was not one of abnormally high use of water by Weston Nurseries (WN). He stated that he has report from WN that these stream go dry on a regular basis and that the ponds were installed to intersect the water table to provide irrigation water. He stated that the groundwater levels measure on the site are in line with what the model shows.

A discussion was held regarding the stream channel characteristics that were observed during the Commission's site inspection. Mr. Pickart described the very flat gradient and the silty channels with no evidence of riffles that would indicate intermittent flow. Mr. Pickart stated that they have relocated the point of intermittent to perennial transition from roughly 200 to 300 feet north of the confluence of the north and east streams to a point just below the last pond on the north branch.

Ms. Chagnon asked if the applicant would be willing to submit the results of the small watershed model analysis, along with notation of all the caveats they have relative to the analysis. Mr. MacDowell stated that he will allow Mr. Pickart to submit those results.

Mr. Carmody made a motion to close the hearing and issue an Order of Resource Area Delineation subject to the submittal of the requested report and an amended plan showing the revised Riverfront/perennial stream location. The motion was seconded by Mr. Nation and it passed unanimously. The Commission signed a signature page for the Order of Resource Area Delineation.

**7:55 PM      Town of Hopkinton DPW, 66 Fruit Street  
Proposed Project Change**

**DEP File No. 188-1365**

J.T. Gaucher, DPW Director; Dan McIntyre, Chairman of the DPW Advisory Committee

Mr. McIntyre stated that the DPW has submitted a notice of project change, as required under the Order of Conditions, for the installation of a bridge crossing in place of the box culvert crossing the Commission approved. Mr. McIntyre stated that the amount of disturbance to the resource area will be reduced but the amount of wetland replication area will remain the same. Mr. McIntyre stated that the disturbance to the resource area will be from shading that will occur under the bridge. A discussion was held regarding the difference between the disturbance from the fill for the approved box culvert and the shading disturbance from the proposed bridge. Mr. Gaucher stated that installing the bridge will decrease the amount of disturbance by approximately 940 square feet and that there will be 2,100 s.f. of temporary wetland impact and 1,200 s.f. of permanent impact. Mr. Murphy stated that, since the proposed change will decrease the amount of impact to the resource area and the wetland replication area will remain the same, he believes the Commission can vote to approve the installation of the bridge as an insignificant project change.

Mr. Carmody asked when the work will be done and how they will deal with the water in the work location if the stream is flowing. Mr. McIntyre stated that the Order requires that the work be conducted during low or no flow conditions.

Mr. John Craycroft, Cedar Swamp Conservation Trust, submitted documents and provided an overview that the shading from a bridge is considered an impact to a resource area under the regulations relative to the Wetlands Protection Act, Outstanding Resource Waters (ORW), and Area of Critical Environmental Concern. Mr. McIntyre agreed that shading from the bridge will be an impact to the resource area.

Mr. Brian Morrison, Piazza Lane, stated that the resource area is an ORW and that 314 CMR 10.06 prohibits degradation of an ORW by filling or other alteration. Mr. Morrison stated that the bridge shading will equate to a permanent alteration of the resource area and should not be allowed by the Commission. Mr. Murphy stated that the project change will create less impact to the resource area than was originally approved by the Commission. He stated that the DEP issued a Superceding Order of conditions and a Water Quality Certificate, indicating that they didn't consider the shading as degradation.

Mr. Morrison stated that he is aware that the matter is subject to ongoing litigation but requested that his comments be noted in the Commission's meeting minutes. Mr. Murphy stated that the minutes will reflect that an open discussion was held on the proposed project change.

Mr. Carmody made a motion to approve the proposed project change as an insignificant project change not requiring the filing of an Amended Notice of Intent. The motion was seconded by Mr. Nation and it was approved by everyone except Mr. Griben, who opposed.

Following a discussion relative to whether a Commission quorum was present at the meeting, Mr. Carmody made a motion to rescind the Commission's preceding vote. The motion was seconded by Mr. Nation and it passed unanimously.

The discussion was continued to 14 January 2008.

**8:15 PM            Lippman, 32 North Mill Street  
                         Notice of Intent Hearing – continuation**

**DEP File No. 188-1393**

Robert Drake, Drake Associates

Mr. Drake stated that he has reviewed Ms. Chagnon's memo dated 10 December 2007 and will submit the requested information.

A discussion was held regarding the potential vernal pool on the property. Ms. Chagnon stated that she agrees with the assessment by Oxbow Associates that the area is not likely to be a vernal pool.

Mr. Murphy stated that he is concerned with the amount of resource area and buffer zone disturbance (approximately 30,000 s.f.) that is proposed to reach the small amount of upland located on the property and with the steepness of the lot and the ability to prevent erosion from impacting the resource areas. Mr. Drake provided an overview of the benefits of the stormwater management system and the proposed retaining wall in preventing disturbance creep toward the wetland

Mr. Murphy stated that the submittal of a buffer zone rationale will be a critical portion of the Commission's review. A discussion was held regarding the similarities of this filing with the application for Murphy, Ash St. (DEP File No. 188-1021). Mr. Drake provided an overview of the inventory and review that he will perform for the area of the buffer zone that is proposed to be disturbed.

Mr. Keith Pomeroy, 4 Cold Spring Brook Road, identified that some of the attachments from the Oxbow Associates wildlife report were not included and stated that there was little mention of the existing wildlife. Mr. Drake stated that he will submit the omitted attachments from the wildlife report. Ms. Chagnon stated the wildlife report is based on habitat value and not on the actual wildlife of the area. Mr. Pomeroy stated that he is concerned that the 200-foot wall will obstruct the migration of turtles and other wildlife to the resource area. Mr. Drake stated that he has spoken with Mr. Scott Smyers, Oxbow Associates, regarding that issue. Mr. Drake stated that he believes he has allowed for wildlife migration in the most suitable area. Mr. Pomeroy stated that Mr. Smyers recommended in his report that an appropriate seasonal review of the potential vernal pool area may be warranted. Mr. Drake responded that the wetland hearings will remain open during the Water Quality Certificate process, and that the timing will work to review the area in the spring.

The hearing was continued to 28 January 2008.

Eric Olson, Tetra Tech Rizzo; Peter Cavicchi, MA Turnpike Authority

Mr. Olson provided an overview of the drainage report dated 11 December 2007.

Mr. Cavicchi stated that the location of two fiber optic lines affects the ability of the MA Turnpike Authority to implement storm drainage improvements.

Ms. Chagnon stated that the drainage report was submitted this afternoon and that she has not had time to review it.

The hearing was continued to 14 January 2008.

Tim Briggs, GZA GeoEnvironmental, Inc.; Michael Healy, attorney for Valpey Fisher Corporation

Mr. Healey stated that the proposed wells are being installed to comply with a Massachusetts Contingency Plan (MCP) for monitoring a plume of volatile organics that has migrated underneath Route 495 from the applicant's property on South Street. Mr. Healey stated that the plume comes from a volatile organic compound pit that was used in the 1970s. He stated that the primary pollutant is tetrachlorethylene and that the scrubber installed at the South St. plant has had good removal results.

Mr. Briggs stated that the bedrock monitoring wells will be located 30 to 40 feet from the resource area at one location and 15 feet from the resource area at the second location. Mr. Briggs stated that the first well location is close to the existing cart path and the second well location will require minimal clearing of shrubs and small trees to provide access for the well drilling equipment. Ms. Chagnon stated that the area to be cleared for access consists mainly of invasive plant species.

Mr. Healy stated that copies of the well test results will be submitted as public record to the Board of Health under the MCP.

Mr. Briggs stated that the well tailings will go into a tub during and drilling process and that the solids will be disposed outside of the wetland buffer zone.

Mr. James Kelly, 60 Lumber Street, asked what threat the volatile organics posed to his personal property. Mr. Murphy stated that the Commission is just reviewing the proposed installation of the two test wells and that the Board of Health may be the Board to adequately address Mr. Kelly's concerns.

Mr. Carmody made a motion to close the hearing and issue a negative Determination of Applicability with the standard and noted special conditions. The motion was seconded by Mr. Nation and it passed unanimously. The Commission signed a signature page for the Determination of Applicability.

**9:00 PM          LeBlanc, 8 Nicholas Road  
Request for Determination of Applicability**

**RDA 2007-22**

David LeBlanc, applicant/owner

Mr. MacAdam stated that Mr. LeBlanc submitted an after-the-fact Request for Determination of Applicability for the installation of a shed. A discussion was held regarding the existing site conditions.

Mr. Carmody made a motion to close the hearing and issue a negative Determination of Applicability with the standard conditions. The motion was seconded by Mr. Nation and it passed unanimously. The Commission signed a signature page for the Determination.

**9:10 PM          Commission Business**

- The Commission signed the following documents:
  - Toll Brothers, Inc., 0 & 18 Overlook Road – Amended Order of Conditions (188-1395)
  - Fischer, 12 Fruit St. – Determination of Applicability (2007-20)
  - McKinnon, 8 Glen Rd. – Certificate of Compliance (188-1215)
  - Rosewood Development Corporation – ERO Certificate of Compliance (188-1215)
  - Takacs, 9 Cedar St. Ext. – Certificate of Compliance (188-1255)
- Mr. Carmody made a motion to approve the Request for Payment dated 17 December 2007. The motion was seconded by Mr. Griben and it passed unanimously.
- Mr. Carmody made a motion to approve the Minutes of 19 November 2007. The motion was seconded by Mr. Griben and it passed unanimously.
- Mr. Carmody made a motion to authorize Ms. Chagnon to finalize the draft comment letter regarding the ENF submitted by Legacy Farms for Mr. Murphy's review and submittal to MEPA. The motion was seconded by Mr. Nation and it passed unanimously.
- The Commission determined to issue an Enforcement Order to Bethoney & Burton Builders, 182 and 184 Fruit Street for violation of the Enforcement & Restoration Order.
- Mr. Carmody made a motion to authorize Ms. Chagnon to send comments via e-mail in response to the Planning Board's request for comments regarding 79 Hayden Rowe Street. The motion was seconded by Mr. Nation and it passed unanimously.
- Mr. Griben made a motion to extend the 31 December 2007 deadline for the wetland delineation required under the Enforcement and Restoration Order for LePage and Sisco Timber Co., 112 East Main Street, to 30 April 2008 or sooner if seasonal conditions allow. The motion was seconded by Mr. Carmody and it passed unanimously.

**Minutes Approved:** 11 February 2007