

**Belmont Conservation Commission Meeting** November 6, 2008 Room 2 at Town Hall at 7:00 PM

**Attendance** Chair: Miriam Weil, Vice Chair Martha Moore, Members: Jim Roth, Margaret Velie, David Webster, Tino Lichauco, Nancy Davis

Associates: Jeff North

Public: Fred Paulson, Ellen Mass, Bruce Jacobs, Michael Baram

Miriam Weil summarized the history of the Residences at Acorn Park Project (the Uplands Project) up to the August 29, 2008 plan changes submitted to the Department of Environmental Protection. She noted that a Superseding Order of Conditions permitting the project has been issued by the Department of Environmental Protection in an Order issued October 31, 2008.

Faustino Lichauco explained the analysis procedure for identifying the potential grounds for an appeal of the Superseding Order of Conditions .

David Webster drew attention to the conclusory nature of the DEP decision and the failure of the Department to articulate a basis for rejecting the arguments of the BCC. Mr. Webster also proposed engaging Scott Horsley to assist in a review of the Superseding Order of Conditions. The Commission reviewed the MACC handbook section 12.11.3, the last paragraph on page 232.

Fred Paulson noted that he believed the decision to be conclusory and that the plan had changed substantially. He mentioned that the decision may be regarded by a court as arbitrary and capricious agency action.

David Webster asked if the 21 day period for deciding which of the two superseding orders would be abandoned would be tolled. No definitive answer was forthcoming.

Discussion of TSS removal rates and implications of the larger stormceptor unit ensued.

Faustino Lichauco noted the argument that compensatory flood storage exactly match removed flood storage was based purely on the text and did not depend on professional judgment.

Discussion included the predevelopment condition and the failure of the DEP to address the evidence on absence of channelized flow collected during a site visit, and the DEP's omission of any consideration of the unrestricted hydraulic connection issue raised by the BCC in the denial.

Faustino Lichauco moved that the chair meet with the Selectmen to provide information upon which to base a decision to appeal the Superseding Order of Conditions. The Motion was seconded by Jim Roth, and carried unanimously.

Jim Roth then moved to appeal the Superseding Order of Conditions. Faustino Lichauco seconded the motion. The motion was passed unanimously.

Meeting adjourned at 10.00 PM  
Submitted by Mary Trudeau, Agent