

Belmont Conservation Commission Meeting Town Hall Room #4

March 21, 2006 7:35 PM

Attendance: CoChairs Weil and Baskin, Commissioners Bishop, Davis, Moore, Velie

Associates King, McVay, Sanders, Foster

Applicants Gordon and Laurie Low, 30 Howells Road

Abutter Rich Levandov, 40 Howells Road

Chair/ Board of Cemetery Commissioners Ellen O'Brien Cushman

30 Howells Road: Co-Chair Baskin consulted with DEP after correspondence and conversation with the Lows about the Commission's request for stormwater figures and measures stamped by a registered engineer. Message was also left for the abutters, the Levandovs. K. Baskin will compile the report and submit to the Commission and the applicant and abutters.

Baskin discussed three points with Tom Maguire of DEP's Wetlands Program:

1. Proving "no significant adverse impact" within the 200ft riverfront (Section 10.58(4)(d)(1)) requires meeting certain criteria, however, in the construction of a single home, DEP is unlikely to uphold a condition requiring application of the State's Stormwater Policy. Section 10.03 addresses quality and quantity of stormwater from a point source (curb, pipe or swale). Therefore, it is "fair game" to apply conditions controlling stormwater to point sources.

2. According to DEP, Section 10.58(4)(d)(1)(d) gives Commission authority to require attenuation of nonpoint source pollution to prevent impairment of groundwater or surface water quality. Maguire defined "attenuate" as "reduce" and agrees that quantity of stormwater helps define surface water quality.

When proponent commits to installing stormwater control device such as a drywell, then the proponent is committed to the design conditions of Volume 2 of the Stormwater Management Policy. Studies such as draw-down analysis requiring it to empty in 72 hours, sufficient permeability, percolation, above-ground bypass for roof leader system, design stamped by professional engineer to ensure no failure are required.

If a rain garden is selected instead, design conditions of Volume 2 still apply, with professional engineer approval required.

If proponent withdraws plans for Best Management Practices, then the Commission has authority to require measures to control for nonpoint source pollution under the “attenuation” clause. There may be other ways to attenuate that are not subject to the design standards of Volume 2 of the Stormwater Policy.

3. Impacts after construction: Commission authority? If runoff goes to a Town drain, the Town can assert authority under NPDES phase II, to limit the discharge. If affects neighbor, neighbor can file suit and demonstrate damage (trespassing of the stormwater). The generator of stormwater can file in courts under public enemy doctrine to seek allowance to discharge on abutter property. If a stream is impacted but the impact was not previously permitted by Commission, the Commission can take enforcement for alterations, can be appealed in court.

Order of Conditions could require water quality monitoring which might benefit the proponent in case of future appeal. DEP policy is that Orders of Conditions are Commission decisions and if reasonable, DEP will affirm conditions on appeal. (70-75% of Commission decisions have been affirmed.) Dry wells often fail, standards in Volume 2 of Stormwater Management intend prevent failure so it is required that designs conform to design standards in Volume 2. Commission should be sure to refer to the “attenuation” clause in its Order of Conditions if it requires control of nonpoint source pollution. Baskin and Maguire discussed how much stormwater to design to capture. A two-year storm = 3 inch rainfall in 24 hours; one-year storm = 2.5 inches in 24 hours. These may not be “reasonable.” An inch of rainfall capture may be “reasonable.” Hydrology handbook from DEP website gives storm figures.

Mr. Low: Does not plan to appeal unless neighbor causes appeal but then would do it on the argument of quality versus quantity. Would prefer to design to handle an inch of rainwater. If neighbor causes them to appeal, would offer plans to determine meaning of “attenuation”. K Baskin affirms including quantity in quality standard in nonpoint source runoff management. If dry well plan is submitted

and signed by a registered engineer, the plan would have to meet Stormwater Management policy standards. If Low did analysis and MA licensed profession engineer stamped it, K Baskin assumed it would be acceptable.

The Riverfront requirement of 100ft no-build vegetated strip is not a requirement because of neighboring house.

Select Board Chair Paul Solomon called K. Baskin to call the Lows and clarify situation. She consulted with Tom Younger and will issue memo to Tom Maguire to confirm communication, then send to CC and Lows. Defensible decision needed for the Town in case of appeal. Better alternatives analysis needed by the applicant and a plan reviewed and stamped by a professional engineer.

Mr. Levandov attended meeting around 9 PM after the Lows had left and heard K Baskin explain consultation with DEP. He expressed concern re post development conditions. In WPA, redevelopment in previously developed riverfront, stormwater policy would not be applicable. An appeal has to be filed with DEP within ten days of the issuance of an Order of Conditions.

#### Wetlands Bylaw Draft:

C Bishop presented an explanation of the latest three amendments according to the advice of Ken Pruitt of MACC. Intermittent streams with 25' no alter, 50' no permanent structure in a 100 ft resource area buffer zone, removal of vernal pool additional 100 ft buffer since the definition of vernal pool includes a 100ft resource area and removal of the 25/50 foot protected area in the Riverfront since the first 100 ft of the Riverfront is more closely protected already. K Baskin recommended issuing a single draft bylaw and then preparing a response to comments prior to making additional changes to the bylaw.

Peg Velie presented the wetlands maps showing the Charles River Watershed and the Mystic River Watershed, streams perennial and intermittent, culverted and open, bordering and isolated wetlands, land subject to flooding both bordering (FEMA flood zones) and isolated, 6 certified vernal pools, and several potential vernal pools

from infrared aerial photography by Natural Heritage Program~(NHESP). When a stream is culverted and there is a wetland with it, according to K Baskin, the wetland should not necessarily be considered “isolated.”

During the discussion of the bylaw, the Somerset/Muzzioli property came up and it was mentioned that Ruth Foster sent a letter to John Beaty that was critical of the Order of Conditions for this property on Somerset Street, where many trees were removed. Miriam Weil consulted with Ruth requesting her comments on the property tree cutting. The trees were cut are on the “dry” side of the filtration fence, outside of the wetlands and were not subject to the order of conditions. However, the Commission had stressed to the applicant the importance of saving as many trees as possible during the public hearing.

Discussion of hardship clause as applied around Little Pond and potential impact of bylaw on waterfront properties. S Sanders commented on the emergency status of the herrings in the state and pointed out that the herring run occurs in Little Pond. Suggest definition of “hardship” to be put in regulations. Attorney John Giorgio reported that Steve Kidder for McLean requests complete exclusion of McLean projects for all time. Site plan approval or MOA previously adopted by the Town could be exempted from the bylaw. In the MOA the cemetery has made agreements about future development of the project. Ellen O’Brien Cushman pointed out land management trails would also benefit from this language.

Ruth Foster spoke of needing to maintain and prune her raspberries, perennial garden, and vegetable garden. With a house in the buffer zone, she is against the bylaw and has publicly opposed it.

Discussion of the impact of the no-alteration zone, the filtration effect of a vegetated buffer in removing pollutants, especially around Little Pond. Discussion on the effect of “alter” and existing conditions: does the Commission apply the bylaw only when someone files a Notice of Intent or in case of an obvious violation? C Bishop noted the words in the bylaw in reference to the no-alter zone: (31.8.3) “during or after the work” which implies a project application.

Miriam Weil reported that she met with Roger Wrubel who recommended a “campaign manager” to gain public support.

Amended by unanimous vote of commissioners the current 3/10/06 draft to: 1) exclude intermittent streams from the Riverfront protection, and apply a 100 foot buffer zone resource area, 2) exclude a 100 ft buffer zone to vernal pools which have a 100 ft buffer zone included in the definition, and 3) exclude the 25'/50' zone from the Riverfront. Revised bylaw will be dated 3/21/06. Committee awaits legal language about the McLean issue to be added to the bylaw.

Adjourned at 11:05 PM. Submitted by C. Bishop