

## **APPROVED MINUTES – SOUTHEAST CONSERVATION COMMISSION**

**December 28, 2004 at Lakeview Manor**

Meeting was called to order.

Terravest 3 – (Continuation of the November 30<sup>th</sup> public hearing). Motion and second was made with unanimous consent to open the continued public hearing on the proposed project known as T3. The Chairman asked the SCC members to comment and discuss. There being no questions or discussion from board members, the Chairman opened the hearing to the public.

Martha Sortlidge (MS) - Will the applicant please identify the location of the wetlands and buffer areas that will be disturbed and provide the total amount of disturbance to these areas?

Terri Hahn (LADA) – The site has three wetland areas: the central corridor, the western wetland, at the intersection of Holmes and Zimmer Roads and the eastern wetland located here at the other side of the property. The proposed buffer area disturbance will occur for the construction of the Town Park, the detention basins in the central corridor, the emergency access road, water quality basins and an area in the proposed soccer field that will contain a detention basin. Total disturbance is 8.07 acres.

MS – So as I understand it, the wetland and buffer disturbance is approximately 10 percent of the entire site.

LADA – Yes

MS – So the two elements causing the major disturbances are the Town Park and senior housing.

LADA – Yes.

MS – The construction of the Town Park would result in a disturbance of about 3 acres of buffer in an area that is about 15 acres in size – resulting in 20 percent buffer disturbance. As I understand it, the applicant will donate this 15 acre piece of land to the Town for a park. Will this land be donated before or after the disturbance to the wetland buffer area?

LADA – Before.

MS – So, the Town would be responsible for any disturbance to the wetland buffer area?

LADA – Correct.

MS – What is the status of the sub division of T3?

LADA – It is part of the overall review in front of the planning board. It is a 4 lot sub division.

MS – So you are applying for a wetland permit before the final sub division approval?

LADA – Yes.

MS – I guess my question really pertains to the level or intensity of development which requires more than 8 acres of wetland buffer disturbance and what alternatives the SCC might ask the applicant that would result in less disturbance?

LADA – Throughout the entire process there have been other alternatives before the SCC which contained greater amounts of wetland buffer disturbance, but this plan represents an alternative to those previous plans.

MS – Yes, but I would like to bring to your attention a plan known as “alternative 1” addressed in the SEIS which contained no disturbance within the 100 foot buffer and limited disturbance to the extended buffer areas. I believe this to be a reasonable alternative for you to consider. I think 8 acres is too large a disturbance... as I pointed out before my property is surrounded on 3 sides and I am concerned about drainage and the water quality basin because of their proximity to my property. Also, I think that we should be aware that some safeguard... a requirement that no more than 5 acres of land be disturbed at a time. The applicant intends to disturb 8 acres at a time...for a Town Park and senior housing. So this is really an indication of what their intent is... that’s an incredible, a huge disturbance...so I would ask you to consider something with a far lower impact on surrounding properties.

Chairman Fasano (CHAIR) – Is everyone familiar with “alternative 1”? What is “alternative 1”?

LADA – The findings statement described alternative 1, stating that the consequences of no disturbance within the buffer would eliminate one large ball field from the Town Park and reduce the number of senior housing units – both considered to be positive benefits to the Town. In the findings statement that the planning board reviewed during the SEQRA process, alternatives were discussed to determine where the public would most benefit...there was not significant public benefit to alternative 1 because one of the things we did do in that alternative was to discuss the pollutant loading characteristics that would have affected water quality associated with that alternative and there was not a significant benefit related to that.

MS – (Presenting a drawing of alternative 1 to the SCC) – What she is saying is that instead of this ball field area here...it would be reduced... and there would be 33 units of housing as opposed to the 60 being proposed. The location of the access road...so that a

lot of the storm water quality basins would not be needed with this lower level alternative.

CHAIR – Are there any other questions from the public?

George Yourke (GY) – (mostly inaudible)

CHAIR – Are you referring to alternative 1?

GY – No.

CHAIR – You are referring to something completely different?

GY – Yes. An alternative not proposed or discussed at the scoping session.

CHAIR – Why didn't the planning board opt to consider...?

GY – I have no idea. The plan was never submitted. Allow me to read a statement. (A prepared statement was read and made part of the official file)

LADA – Two issues. First, this application is in compliance with the rules and regulations of the Town of Southeast. The wetland permit process does not say that there shall be no disturbance of the wetland or wetland buffer. We are clearly consistent with the requirements of the permit process. The other issue... I would have to disagree that during the SEQRA process an alternative was provided to the planning board and answered the particular questions that the planning board asked, fully discussed with the planning board and town planner and reviewed during the SEQRA process.

Ken Jacobsen – (Prepared statement read)

Don Rossi (DR) - I would like to respond. Just so there is no misunderstanding... we keep hearing about the same things regularly and it is appropriate for the public to comment. First, there are no zoning variances applicable to this project. It has never gone before the ZBA. The project complies with all rules and regulations of the Town and all other involved agencies. To imply that comments from the public have not been listened to for the past 4 to 5 years is just not accurate. The project has undergone numerous and continuous revisions and extensive studies...millions of dollars to show that there are no potential significant adverse environmental impacts. There was a comprehensive findings statement prepared which was denied by NYCDEP which resulted in substantial revisions to the project...followed by NYCDEP acceptance of the changes and a complete, reopened SEIS with due process before the planning board to ensure that all mitigation measures were included in the project. Twelve units of senior housing were eliminated as well as other things. So, to imply that the cries of the public are not heard is just not accurate. There are no wetland law violations brought about by the present plan before you. Despite all the protests including an Article 78 lawsuit, expert testimony

provided by the objectors, there is not one instance of significant potential adverse environmental impact from the use of buffer areas or storm water management control.

CHAIR – Thank you, Mr. Rossi.

Marion Rose: (Reads a prepared statement made part of the record)

CHAIR – Thank you Mrs. Rose. Why can't the activities mentioned by Mrs. Rose be removed from buffer areas? Such as the water basins, for instance?

LADA - This was a topic discussed at length with NYCDEP, following their issuance of negative findings. There were activities taken out of the buffer areas to the extent possible. Two issues come into play here...hydro logically... land is lower than the rest of the land surrounding it... ( NYCDEP) wants to go in that direction. Second, in order to provide appropriate pollutant removals, NYCDEP requires water basins to be positioned down stream of any disturbance. Pulling these basins out of the buffer doesn't necessarily mean these buffers wouldn't be disturbed. We did look at and successfully removed several basins totally or partially out of buffer areas. For example, two basins previously located for the Town Park were removed from this portion of the property. Two other dug down basins in this area were placed in discussion with NYCDEP over their concerns regarding ground water infiltration and bypassing the water analysis budget for the central wetland corridor...as they wanted to be sure there was enough water going to these 2 basins for infiltration. There was concern expressed by NYCDEP about pollutant loading and requirements that the land not be compacted, that parts of the basins were aerated, top soil laid and plant material put in to provide additional treatment.

DR – What you just heard constitutes years of site specific analysis and review passed on by NYCDEP and NYSDEC and ACOE, involved agencies looking to make sure that all things were done properly.

John Lord - A question regarding the water basins the architect said needed to be placed there because of NYCDEP requirements. Couldn't they be placed outside the buffer areas? Also, shouldn't all these studies mentioned by the applicant not only satisfy involved agencies but satisfy us as well?

DR - I'm not sure what is meant by the term satisfy us means. An owner of a property has the right to develop the land abiding by the laws and regulations of the municipality. Everyone is lauding the Town's wetland law and it is a good one – one that is being followed. The process begins with an owner who wants to develop a property that he is legally and rightfully allowed to do, complying with the Town laws and regulations stipulating that the property to be developed will not cause significant environmental impact. I have in my hand the comments made by the Croton Watershed and Clean Water Coalition representatives submitted back in April 2004 which before the NYSDEC approved the issuance of a SPDES permit answered these questions and were satisfied with the applicants' designs. So it is not just a matter of being out of the buffer areas..its

what an owner can legally rightfully do within the boundaries of agencies approvals. The plan has been modified and downsized from 72 to 60 houses...

CHAIR – There is no dispute that the project has had a number of modifications and downscaled.

DR - This is simply not about coming here and putting things in buffer areas and desecrating wetlands. Its not about that at all. It hasn't been designed with that goal in mind and we are not doing anything that involved agencies and courts construe to be harmful to the environment. That is the standard under the Wetlands Law. Will there be potential adverse impact to the environment...flooding and other factors that were thoroughly analyzed throughout the review process and found not to occur by the involved agencies, including environmental groups, the Wetland Inspector General and other regulatory bodies.

(Inaudible) Ice Pond Road Resident – I have a concern about the projects basins near Ice Pond Road. There is a connection ...and there has been flooding...over running of these basins with water running onto Route 312.

CHAIR – Is this a fact?

LADA – As far as I know, the basins have not over topped. Last Friday after the rain there were two areas of water breaking out that have been addressed and taken care of.

CHAIR – What is the status of these detention basins that we approved for T2? Are they functioning properly?

LADA – Yes. They were constructed and designed properly. What I was referring to on that Friday was breakout from sheet flow onto Zimmer Road.

CHAIR – I am referring to what the resident saw coming from the basins.

LADA – As far as I know, it is not related to what I saw on Route 312. The NYCDEP looked for the source of the silty water and we did not hear about anything coming from the site.

(Unidentified Resident) – I too have seen the overflowing of these basins onto Zimmer Road and I am concerned about the effect these conditions will have on the adjacent marsh land which is a habitat for all types of birds and wildlife. I have a piece of land that abuts the T3 project site and I am concerned about impact to this land if buffers are encroached upon. There are steep slopes and water cascades down the rock ledge...

CHAIR – Were you satisfied with the applicants' responses to your concerns pertaining to the water cascading down from the rock ledge?

(resident) – I am not. Despite all the experts...if you don't live it...see it

CHAIR – When we had the heavy rain last week was there a problem?

(resident) –Yes.

CHAIR – Are there any other questions?

Bill Heath (BH) –My question is about the Town Park. If it were not to be built there would be no disturbance in that area?

CHAIR – It is my understanding that the land is to be donated to the Town. It will not be disturbed prior to it being donated to the Town. Is that correct?

LADA – That is correct. We are obtaining a permit on the Town's behalf.

SCC Board member Peter Tringali - Could you point out the design of that area?

LADA – Here (points to the area designated on the site map) we gave the Town this area...not enough for what they needed.... (inaudible, tape ends)

BH – My other question relates to senior housing. I thought it was said before that even if the 7 houses partially in the buffer were removed from the buffer – because the wetland/buffer area is down hill that any kind of disturbance on the plateau will have an impact on the wetland and buffer.

LADA – You still end up with piping and associated grading that would direct the water to the water quality basin. The issue is... can I further reduce disturbance here? Again, this was part of the planning board discussions and review during the SEQRA process. They (planning board) found there to be no significant increase in disturbance. There would be no benefit...

Board Member Cuomo (DC) – No benefit to whom?

LADA – To the wetlands. If I start pulling things out of the buffer over here, I have to move (extend) everything over to here. In order to provide some reasonable amount of economic return for the project, I'm going to start to move into places not currently disturbed.

DC – So, you are talking about the economies of it.

LADA – No, not only economies but the wetland buffer, the water quality going to the wetlands.

DC – Okay, let's put it this way. Are you saying that by coming out of the buffer there will be no impact on water quality or will you create a situation where water quality will worsen?

LADA – Worse, but I did not quite look at it in those terms. The reports that were done said there would be no significant benefit...

DC – To whom?

LADA – The wetlands.

DC – Is the statement I just made correct then – that the benefit you are talking about has to do with water quality?

LADA – Yes.

DC – So, by coming out of the buffer what you are saying is that you are not improving water quality at all.

LADA – That is correct.

DC – That is interesting.

Board Member Tringali (PT) – Who reviews these reports?

LADA – NYCDEP, the town engineer, and members of the planning board.

PT – So these agencies found that there would be no significant impact on the wetland and buffers.

LADA – Correct.

Town Resident Bill Heath (BH) – So it is fair to say that whether the houses are in the buffer or not, there will still be some degree of disturbance to the buffer area.

LADA – Yes. I have disturbance upstream...outside of the buffer.

BH – Everything to be disturbed somewhat?

LADA – Because of the water quality issues that required resolution.

BH – My final question has to do with what Mr. Rossi said earlier that the project did not violate any laws, federal or state. But Mrs. Rose stated that it (project) violated the Town Code.

CHAIR – If you are referring to the Wetland Law, there has been no violation of this law. It complies with the law and it is our job to make sure the project is in compliance with the law.

BH – I'm... Is the Code the same as the law?

CHAIR – The wetlands Law, Local Law #9 has been codified and is part of the Town Code.

Lynne Eckardt (LE) – A lot of the previous plans before the SCC contained mitigation measures. Is there a mitigation proposal for this project?

CHAIR – I do not believe so. Other than the scale down which may be construed as a having a mitigate effect. But, I do not believe that is what you are referring to. Keep in mind, that mitigation measures are not always deemed worthy.

LE – Yes. I know that and will address it in my letter.

CHAIR – An example might be the creation of an artificial wetland such as a biofilter which may not necessarily replace the value and functions of a natural wetland.

LE – On the proposed Town Park, if the Town decided not to build recreation or do anything or leave it as open space does the applicant need to put in the fields...irrigation fields?

LADA – What needs to occur is a maintenance proposal as part of the transfer

LE – So, if the Town decides to do nothing and not disturb the wetland/buffer you still need to disturb it?

LADA – No. These are reserved fields where certain infrastructure may be needed. It needs to be available to perhaps be constructed...in the event of a catastrophe...this is treated effluent discharge.

LE – So, these fields will not go in?

LADA – There is no proposed construction...

LE – So, even if the Town did put in the ball fields this... would go in first.

LADA – This is strictly reserved.

LE – You mentioned that the number of houses was reduced from 72 to 60 as a result of DEP's denial. I believe it was done long before DEP put in a denial. I don't know if you know the timeline but I would like an answer at some point because (inaudible)...

CHAIR – The reduction resulted in fewer disturbances, so what is the significance of your question?



LE – I was just concerned about the inference that it was because of the DEP denial that...

CHAIR – Let me clarify for the public who may be unaware that there is a signed memorandum of understanding between NYC and local governments in the watershed area known as the watershed agreement. The Town of Southeast is a party to that agreement and geographically is almost entirely in the watershed area. Developments of property such as this project undergo extreme scrutiny and review by many agencies. This does not mean that when these agencies approve permits that we don't give it equal scrutiny. Our goal is to make sure the environment is not degraded and I might add after reading all the expert testimony and reports – the issue boils down to the fact that the applicants supporters find no significant environmental impact and the projects opponents infer and in some cases state, though the SCC has yet to receive substantive documentation to refute the various findings of the EIS'. It is the charge of the SCC to reach a reasonable conclusion based on the evidence and information submitted.

LE – {Reads a prepared statement on behalf of the Concerned Citizens of Southeast}

CHAIR – Thank you. Response?

DR – Mitigation measures are implemented when it is shown that there has been a significant adverse environmental impact. This project has been reviewed numerous times even a judicial review that gave no indication that mitigation measures would be required over and above what has already been done with the project. Judge Nicolai of the Westchester County Supreme Court is the head of the environmental... and he found that SEQRA was complied with. Second, about the fact that certain people were not able to attend this meeting because of when it was scheduled, well we are here and you board members are here. It seems that only those who vociferously support those who oppose this project, the Riverkeeper and counsel for the Coalition have not deemed it necessary to be present yet saw fit to write a letter on the need for another SEIS which we will be happy to discuss at length. There has been nothing submitted to the SCC to refute Judge Nicolai's decision.

Wetland Inspector George Hauser (WIGH) – On the subject of mitigation, my understanding is that mitigation of a wetland is the creation of a substitute wetland and not anything else. As far as I can see, there is no wetland incursion here at all.

PT – Was there consideration given to stabilize the soils on the steeper slopes where the six or seven houses are proposed before construction is started to prevent erosion and degradation?

LADA – The construction sequence is detailed on the plan before you and has taken into account things that were mentioned by SCC members during the site walk. The recommendations and comments made by SCC members during the site walk resulted in a reduction of the overall buffer disturbance.

CHAIR – Thank you. Are there further questions?

MS - I just want to understand that one of the plans submitted, the sketch you have before you is for only 33 units of senior housing and one ball field and would result in no disturbance of the 100 foot wetland buffer. What modifications can be made to the present plan to reduce disturbance within the 100 foot wetland buffer?

LADA – I believe that is the case. The extended buffer was disturbed – there was an overlap...

CHAIR – Excuse me, but I believe Mrs. Shortledges' question specifically relates to senior housing and ball field area. Is there incursion within the 100 foot wetland buffer in both areas?

LADA - In the current proposal? Yes.

CHAIR – How much?

LADA – Approximately 3 acres are within the 100 foot controlled area. A small amount here at these detention basins and here at the emergency access road and here in the parking area.

CHAIR – Are you inquiring whether these disturbances can be eliminated or reduced?

MS – Yes. the point I am making is that with less building you would reduce storm water and the need for disturbance.

CHAIR – By building less units will you eliminate the need to move the road?

MS – They are moving the access road.

LADA – No. It is approximately in the same place.

MS – Not really.

CHAIR – Are you referring to the alternative 1 plan?

MS – Yes.

CHAIR - The gist of the question is that 3 acres of disturbance within the 100 foot controlled area including the access road...

LADA – The emergency access road was moved from the original discussion into an area that is closer to where it is that we were... and pulled it out from...

CHAIR – Creating less disturbance in the 100 foot area?

LADA – It is about the same.

CHAIR – What about the other basin that we discussed?

LADA – That's over here where there will be removal of some parking area.

CHAIR – Can any of the parking area be removed from the 100 foot controlled area?

LADA – If we use retaining walls in that area we could reduce the amount of fill, but I was hard pressed to have the Town spend money on those types of park improvements.

CHAIR – There being no further questions from the public, do board members have questions?

DC – Yes. The question has been raised five or six times this evening about a no encroachment plan. I still did not hear an answer. I'd like to know what the answer is. I'd like to see what a no encroachment plan looks like.

LADA – The no disturbance plan was part of the findings statement generated by the SEQRA process and you all should have a copy. If not, I shall send the SCC a copy.

CHAIR - I have received several letters from the public. This one from Mr. Robert Zubrycki states his concern over the impact of drainage (ground water infiltration) from the project and whether it will enter the Atlantic White Cedar Preserve. Perhaps you can answer this tonight?

LADA - There is no evidence that either ground water or surface water run off would travel toward the Lake Tonetta watershed.

DC – So, there is no continuity between the Lake Tonetta watershed and this property?

LADA – Correct. It goes south

CHAIR – {Read into the record MS letter and questions received during the public comment period} Could you respond to the specific question relating to how you determined that the functions of the wetland and buffer would not be reduced or altered?

LADA – Our project biologist looked at the site specific functions of the wetland and buffer, not just generically or theoretically but what actually happens.

CHAIR – Okay, but what about NYCDEP and NYSDEC?

LADA – They concurred with his assessment.

CHAIR – Which was that there would be no impact on the function and value of the wetland?

LADA – Correct.

CHAIR – You have this in writing?

LADA – Yes and will submit it to the SCC.

CHAIR – Regarding Mrs. Fanizzi's letter and questions on waste treatment, storage and disposal (Read letter into the record), a fax was received from the Riverkeeper regarding waste transfer from one site to another. Although in itself not an activity regulated by the wetland law, the letter states that this action constitutes a significant adverse environmental impact subject to SEQRA and recommends that the Town take a hard look and that an SEIS would be required. Is this going to happen and will it have an impact on our process?

DR – I will write a letter to Mr. Wilde (Riverkeeper) giving him the opportunity to retract his statements which contain a number of falsities and in my opinion has gone over the line in what a person or entity can do regarding a proposal.

CHAIR – Mr. Rossi, for the sake of time can you respond to the Town in writing and copy the SCC?

DR – I would like to respond. The voluminous materials that had to be reviewed, first, the time frames so there is no issue as to whether this was considered as part of the original SEIS. Initially, there was a proposal to collect waste water from the Ace Endico site in a septic area that would be constructed in the area of the sewage treatment plant and designed to the 5,000 gallon per day standard. That was the original plan. We received numerous comments objecting to the 5,000 GPD septic area which in effect would treat and discharge untreated effluent into the ground. As a result, the proposal was changed to detain the effluent from the Ace Endico site into a 10,000 gallon tank on the site and have it pumped as needed. That proposal was first developed, showing up in March or April of 2003. The public hearing on the DEIS was not held until August 2003. A scoping session was held earlier in June 2003 after the Town engineer commented twice in letters to the applicant on the use of the holding tank and it was not included in the scoping document, because, quite frankly, what basis would there be for claiming that detaining effluent in a 10,000 gallon tank and pumping it would have a potential environmental impact, especially when compared with discharging it into the ground directly from a septic system.

Another falsity and it is important to point out because of its implications on the waste treatment facility (WTF) that are mentioned. Mr. Lepler does have an interest in other WTF's that have been built in the area, but there was never any commitment to pump into these facilities. These facilities have to be analyzed for capacity and have permits in place that would not allow them to dispose of septic waste off site. Standards exist, and

the fact is that this would be pumped out by a licensed sewage disposal company. So, it is false to imply and to open up a potential hornet's nest and to set the stage for more, in legal terms vexatious litigation based on the proposal that was implemented in this plan in response to comments from numerous people, agencies and ultimately approved by Putnam County. So, I state for the record, that Mr. Wilde will have the opportunity to retract these statements. I am happy to go through each of these things but I think it is a letter grounded in absurdity that to think this would have the potential for impact and require that a new SEIS review should be undertaken when the initial SEIS included this plan and you know what maybe someone missed it and they did not seize that as an opportunity to cause some more problems and road blocks for this project. Part of the approved plans that were approved by all of these involved agencies.

CHAIR - Thank you. I just want the SCC to understand the legal and procedural ramifications, if any, so that the SCC can proceed.

Harold Lepler (HL) – We will ask Mr. Wilde to retract his statements. If not, we will file a libel suit, this has gone far... over and beyond...

CHAIR – If there is another SEIS, we must look at it and in light of the questions and concerns mentioned in the statements and letters from Drs. Kiviat and Huddleston, I have further questions that, the SCC feels need to be examined further, unrelated to the SEIS issue, but if another SEIS needed to be done could include these questions.

DR – Legally, the SCC is authorized to act on this application by virtue of the SEQRA process that has been completed and the findings statement that were adopted. You are not legally obligated to wait to see what this letter might bring down the line, but obligated to continue the process. The planning board as lead agency under SEQRA determines if this is a significant issue, that is the standard for an SEIS...changes to the project... if there have been changes to the project... you can see the logic...if there have been changes that have the potential for significant impact then an SEIS could be required by the lead agency.

CHAIR – So, the planning board will make the determination.

DR – Yes.

CHAIR – So, until the planning board makes its determination, the SCC stands in abeyance.

DR – You do not have to wait. You are obligated to continue the process.

CHAIR – Yes, but as an involved agency the SCC has questions that would be addressed if another SEIS was required and would be answered if there was another SEIS review.

DR – Your board would be included.

CHAIR – Are there any further questions from the public? No, then from the members of the SCC?

Member Sue Anthony motions to close the public hearing. Member Cuomo initiates discussion before the motion is seconded.

CHAIR – Excuse me, is there a second?

GH – Second

CHAIR Very well, discussion?

DC – I still have a problem with what was said about reducing the scope.....(tape ends)

I find the statements made by Ms. Hahn to be incredible and to contradict the basic principles of surface water quality hydrology. The notion that a reduction of the project scope by reducing incursions into the wetland buffers would have an adverse affect on the quality of water coming off the site is simply outrageous.

CHAIR - My sense from the public's comments, questions and concerns is that there should be some way to further reduce or limit wetland buffer disturbance and the applicant has indicated that that the plan can be looked at again and modified to incorporate further suggestions from the public and the SCC. All in favor of closing the public hearing? (Unanimous vote to close the public hearing)

CHAIR – Motions to allow for a 10 day written comment period.

Member Anthony – Second.

The vote was 4-1 to allow for the 10 day written comment period. Mr. Hauser voted against.

## WATERVIEW ESTATES

A preliminary sketch review was presented by the applicant's representative Theresa Ryan of Insite Engineering along with revised plans based on the new zoning law.

Due to the fact that several changes were made to the plan and the SCC did not receive these changes until this evenings meeting, it was decided that the SCC required time to review the plan and placed the applicant on next month's agenda. Flagging and a soils report were requested from the applicant.

The meeting was adjourned.

Respectfully submitted,

Stephen V. Fasano  
Chair, SCC