

MINUTES OF THE PUBLIC HEARING  
SUDBURY BOARD OF APPEALS  
Thursday, January 26, 2012

The Board consisted of:

Elizabeth T. Quirk, Chair; Jonathan G. Gossels; Jeffrey P. Klofft; Jonathan F.X. O'Brien; and Stephen A. Garanin, Associate

Also:

Jody Kablack, Director of Planning and Community Development  
Ed Marchant, Consultant  
Fred King, Schofield Brothers

For the Applicant:

Robert Moss, Madison Place Sudbury LLC  
Peter Tamm, Goulston & Storrs  
Paul McManus, EcoTech, Inc.  
Glenn Dougherty, Tetra Tech

Ms. Elizabeth Quirk, Chair of the Zoning Board of Appeals, opened the hearing. She read into the record the minutes from the December 13, 2011 hearing that were then approved by the Board.

She read the list of documents received for the January 26, 2012 Meeting which included:

- 11/14/2011 – Memo from the Johnson Farm Project Team to the Conservation Commission, received 12/27/2011
- 12/15/2011 – e-mail from Sudbury Resident Siobhan Hullinger, 55 Washington Drive, to the ZBA
- 12/22/2011 – Waiver Request Memo from Peter Tamm to the ZBA
- 12/22/2011 – Memo from Peter Tamm, Goulston & Storrs, to the Conservation Commission
- 12/28/2011 – Site Development Plans from Tetra Tech
- 12/28/2011 – Revised HydroCAD Drainage Calculations and Watershed Maps from Tetra Tech
- 12/2011 – Draft Stormwater Pollution Prevention Plan from Tetra Tech
- 12/2011 – Stormwater Operations and Maintenance Plan from Tetra Tech
- 12/2011 – Porous Asphalt Construction Phasing/Sequencing Plan by Robert Roseen, Ph.D., University of New Hampshire Stormwater Center, received 1/9/2012
- 1/5/2012 – Estimated Site Earthworks Volume Plan
- 1/5/2012 – Letter from Jody Kablack to Robert Moss
- 1/6/2012 – Certificate of the Secretary of Energy and Environmental Affairs on the Environmental Notification Form, Richard Sullivan, Office of Energy and Environmental Affairs
- 1/9/2012 – Memo from Tetra Tech to the ZBA/Jody Kablack - Response to Comments from Joe Peznola
- 1/12/2012 – Memo from Scott Morrison and Paul MacManus, EcoTec, Inc., to the ZBA
- 12/29/2011 – Wildlife Habitat Evaluation from EcoTec, Inc.
- 12/29/2011 – Wetland Performance Standards Evaluation from EcoTec, Inc.
- 1/18/2012 – Memo from Fred King, Schofield Brothers, to the ZBA
- 1/19/2012 – e-mail from Stan Kaplan, 98 Victoria Road, to the ZBA

- 1/20/2012 – e-mail from Stan Kaplan, 98 Victoria Road, to the ZBA
- 1/20/2012 – Memo from Nancy Doherty, Tetra Tech, to the ZBA/Jody Kablack
- 1/23/2012 – Revised memo from Assistant Fire Chief John Whalen to Jody Kablack, Director of Planning
- 1/23/2012 – Memo from Joseph Peznola, Hancock Associates, to the ZBA/Jody Kablack
- 1/24/2012 – Memo from Paul McManus, EcoTec, Inc. to the ZBA and Conservation Commission, Effects of Calcium Chloride as a Road De-icer
- 1/24/2012 – Memo from Paul McManus, EcoTec, Inc. to the ZBA and Conservation Commission, Discharge of Nitrogen
- 1/26/2012 – Memo from Debbie Dineen, Conservation Coordinator, to the ZBA
- 1/26/2012 – E-mail from Sudbury Resident Beth Farrell, 67 Rambling Road, to the ZBA

Paul McManus, President of EcoTec, Inc., walked the Board through revisions to the site plan completed since the December 13, 2011 hearing. Of the changes noted were that the access roadway has been shifted north downstream to avoid temporary work impacts to the intermittent stream. The intersection of the main access road and the loop road has shifted east bringing it further out of the riverfront area. Building 10 was shifted out of the two hundred foot riverfront area which is part of the Adjacent Uplands Resource Area (AURA). Building 5 moved southwest. The facilities office moved to the south to avoid the riverfront and the AURA.

In addition to those changes, a weir system was proposed for inside the box culvert to satisfy stream crossing standards and to alleviate downstream flooding. This replaces the existing culvert below the old cart path. The wetlands replication area was revised to pull away from the rear wood wetlands and has been expanded elsewhere. Where there is temporary construction disruption to the wetlands a restoration plan is proposed.

Mr. McManus said that additional flood storage and bordering land subject to flooding is a wetlands designation. He said that bordering land subject to flooding does exist but is a very small area and most of the designated floodplains on the property are contained within the vegetated wetlands which is a larger area.

He said that there are only two areas of flood plain mitigation on the site and he described the existing system of drainage with the elevated cart path and culvert. He explained that under the Massachusetts Stream Crossing Standards a channel crossing must be kept open for wildlife. The goal is to upgrade existing crossings with a four foot by twelve foot box culvert to span the channel with a rectangular weir included. He then described how a weir works. The calculations have been developed through the HydroCAD process indicate that the flooding characteristics for post construction will ultimately be the same as preconstruction. He said that the channel was being opened as much as it could be without allowing too much water to flow out and affect the downstream areas.

Mr. Klofft asked how the wildlife crossing changes. Mr. McManus said that the weir poses a vertical impediment to wildlife walking on the banks of the channel. Wildlife can still move through the channel. Ramps are therefore proposed at the banks of the channel to allow wildlife to cross over the weir structure and then back down.

Mr. Gossels asked whether there was flooding of the carpath in the pre-build state. Mr. McManus said there was some flooding. Mr. Gossels then asked what would happen with a higher road. Mr. McManus said that in the case of a 100 year storm the water will not go through the weir, as today it cannot fit

through the existing pipe, but rather than flooding the cart path it will cross over the weir which is at the height of the existing cart path.

Mr. McManus then ran through the flood information describing some of the floodplain and other water issues at the property. He said that there would be some flood storage capacity displaced by the elevated road which is elevated above that 100 year flood point. To alleviate problems with the road acting as a dam he showed where a collecting pond would be located that would have a pipe to draw the water downstream to the other side of the road. The collection area is two and a half feet deep with a three to one slope.

Mr. Klofft asked whether there were any safety concerns with the collecting pool location. Mr. McManus did not anticipate safety issues.

Ms. Quirk asked who would be responsible for maintaining the pool to ensure that it does not clog, hindering drainage. Mr. McManus said that the pool was included in the overall stormwater management maintenance plan. Ms. Quirk then asked what recourse the neighbors would have should the retention pool flood if it were not maintained. Mr. Moss said that if neighbors made him, as the owner, aware of any flooding issue due to beavers or debris he would take care of it. There is to be a business office at the site and he said there would be periodic inspections of the pipe.

Regarding the larger floodplain to the north there would be some filling and grading done in the area of the bottom of the replication area.

Mr. O'Brien asked whether any thought had been put into increased water runoff from buildings going into the area of the floodplain and what that meant for the quality of the water that would be going into the wetlands replication area and then through to Hop Brook. He also wanted to know how often Hop Brook floods over Landham Road.

Glenn Dougherty, Tetra Tech, explained that roof drainage goes into small vegetated basins scattered throughout the site which then release the runoff into the wetlands. He said that his drainage calculations show that there would not be an increase in the wetlands system.

Mr. O'Brien asked whether building runoff produces more water than natural rain. Mr. Dougherty said that it does but that the basin infiltration and controlled discharge into wetlands does not allow it to flow into the wetlands uncontrolled.

Mr. Klofft asked whether the basins operate differently in areas that are not so wet already. Mr. Dougherty said that they are maintaining a two foot separation from high groundwater so even in heavy rainfall the water will stay two feet below the high groundwater mark. He said some water would infiltrate the groundwater and some would discharge into the wetlands.

Mr. O'Brien asked whether anyone had looked at how often Hop Brook floods. Mr. Dougherty said that they did not perform any downstream off-site analysis. He said as part of DEP standards he was charged with ensuring there was no increase in water flow off of the Johnson property. He said that the design point showed no increase in flow.

Mr. McManus then explained two memoranda on nitrogen and calcium chloride discharge he had prepared. He said the project would produce two sources of nitrogen which are typical throughout Sudbury and those would be from wastewater and fertilizer. Nitrogen is an issue because it is a fertilizer

and can contribute to eutrophication, or over-fertilization of water bodies. In Massachusetts phosphorous is in freshwater, which is the limiting nutrient when combined with nitrogen. Without nitrogen there would be no issue with phosphorous in the water. Nitrogen, in high concentrations, can cause health risks. In terms of the amount of fertilizer that would be used at the site there would be approximately an acre of lawn. In comparison most lawns around Sudbury are one third to one half an acre at a single-family house. There will be a wastewater treatment plant on this site that will have standards for treating wastewater and any discharge of effluent. The standard is 10 parts per million, which happens to be the drinking water standard.

A standard Title V septic system numbers would have forty-five to fifty-five parts per million in the effluent. He said that this project would be the equivalent to nine four-bedroom Title V systems in terms of nitrogen.

As for sodium chloride, the concern is that as it makes contact with water it breaks down into sodium and chloride ions which can lead to health issues when too much sodium gets into the drinking water. Because of the issues with sodium chloride there has been a move to the use of Calcium Chloride. Calcium Chloride is more expensive, but has no sodium in it. Mr. Moss would be using calcium chloride at the site. He estimated that this project would use 400 pounds of calcium chloride for approximately fifteen estimated storms. There are no drinking water or ecological standards for calcium but there are standards for chloride. The ecological standards for chloride is 230 parts per million. The drinking water standard is 250 parts per million.

Mr. McManus noted that a document about the Performance Standards Evaluation had been submitted and he walked the Board through that document, pointing out relevant areas on the site plans.

In regard to the habitat evaluation that was submitted Mr. McManus said that the State regulations and Wetlands Bylaw require what is called an Appendix B wildlife habitat evaluation under the State's wildlife habitat mandate. He said that this was done and submitted under the Notice of Intent. He then said the applicant was specifically requested to do more.

Mr. McManus then described how he conducted the wildlife study according to the State's endangered species regulations for the Massachusetts Endangered Species Act (MESA) and followed these standards to prepare a study of mapped species habitat. He then showed the Board a map with habitat polygons marked. He said that a narrative describing habitat characteristics for all of the marked areas was included in the report.

He said that because vernal pools were a concern of the Conservation Commission he focused on vernal pool amphibians as a featured species. In the study summary, it was concluded that ninety percent of the thirty-five acre site may serve as a potential habitat to vernal pool amphibians. He said that approximately twenty percent of the site may be impacted by the proposed project. The ZBA needs to decide if the habitat impacts, which are there, would cause a significant adverse impact. He said that given how the project is clustered the habitat corridors should be maintained. Core habitat covers twenty-five percent of the site.

In terms of vernal pools and vernal pool habitat he said that the State conducted some aerial mapping of the area's vernal pools a few years ago. He said that there were 29,000 vernal pools identified throughout the state. He said that there are four vernal pools on the site, but only one was included in the aerial study.

He also noted that wildlife regulations regulate wildlife habitat, but not the wildlife per se.

Mr. O'Brien pointed out that the Sudbury Valley Trustees mentioned in their letter to MEPA a desire to have certain wildlife studied. Were those not taken into consideration? Mr. McManus responded by saying the analysis is relative to habitat, not species. He did not recall species-specific comments from SVT.

Mr. McManus said that he reviewed the order of conditions for the development at Brookside Farm which was in mapped priority habitat and rare species habitat. There were three birds there identified by the Natural Heritage Program including the Common Moore Hen, Least Bittern, and King Rail. He said that the birds are known to occupy open water marsh areas and since the Johnson Farm site does not have those open water areas on the site then they would not have any data on that wildlife. He then showed a map with priority habitat and vernal pools identified.

Next, Fred King, consultant for the ZBA, presented his response to wetlands issues.

He said that the twenty percent number Mr. McManus is referring to is the potential amphibians and salamander habitat within the Adjacent Upland Resource Area (AURA). The standard in the bylaws states that the project must not have significant impact on those areas. The bylaw standard is site specific. Therefore the ZBA needs to decide whether or not twenty percent is significant. The Conservation Commission's standards say that it is significant and the applicant would need a waiver. In order to determine the significance of the applicant's habitat findings in the AURA the Board would require much more study particularly where there are vernal pools that are time and season specific. He gave the example of Bosse Sports and the process their developer had to go through to study and eventually restore their site on Boston Post Road.

Mr. O'Brien said that the habitat analysis looked at the presence of frogs, salamanders, ferry shrimp, and mosquito larvae. He asked Mr. King whether those species provided a good enough basis upon which to extrapolate a habitat analysis. Mr. King said that now, meaning the winter, is not an opportune time to do a thorough habitat study, but he did add that what was done by Tetra Tech was substantial. He noted that the applicant would need a waiver for this. Attorney Tamm said that a waiver has been sought and noted that the Board needs to evaluate the waiver and whether or not to grant the waiver. Ms. Quirk said that all of the information on habitat is necessary so that the Board can understand what they would be waiving.

Attorney Tamm reiterated that there is no priority habitat on the site and it is not a priority habitat location unlike the Brookside Farm subdivision across the street. There is no conservation management permit necessary because there is no taking of land away from a rare and endangered species, and he said that these are essentially upland areas that would otherwise be regulated under the local bylaw but not under the state bylaw.

Mr. McManus added that essentially what Mr. King is suggesting is doing trapping in the springtime when the vernal pool animals are moving, for which there are set procedures. However he said that the situation under which that gets done is under MESA. And the important distinction is that the local bylaw regulates wildlife habitat but does not regulate wildlife per se. MESA regulations regulate wildlife.

Debbie Dineen, Conservation Coordinator, issued a correction stating that the bylaw does protect wildlife in addition to a wildlife habitat. Mr. King added that the local bylaw does not require the habitat to be priority habitat.

Mr. King said that Eco Tec did address many things satisfactorily. For instance, in regard to the stream crossing the proposed culvert meets the standards. He said that the Town's consultant Joe Peznola had some comments on weir placement still to be discussed, but the overall concept meets standards.

In regard to the wetlands replication areas Mr. King said that the revisions meet the performance standards under the Wetlands Protection Act and the bylaw. However, what needs to be overcome under the bylaw is that the replication areas are being built in an upland resource area. The applicant needs a waiver for this because this work requires mitigation to ensure wetland function.

Mr. McManus said that their goal in locating those areas where they are proposed was to keep the development tight and at the front of the site. He added that the applicant is proposing a two to one wetlands replication which is a bylaw requirement, however if the Conservation Commission felt that it was a larger priority to keep the replication area out of the AURA then the area could be cut down by 5,000 square feet, creating less footprint of disturbance.

Mr. King said that a new item for discussion is the wastewater treatment facility. He noted that on the plan the size of leaching facility has been greatly enlarged. This may be due to groundwater mounding of the system. Before it was located outside of the AURA but now a large portion of it is in the AURA. Under the state law there is an exception for these facilities but under the bylaw there is not one.

Ms. Quirk asked about the implications or impacts of having a leaching field in the AURA. Mr. King said that in respect to the wetlands the edge of facility is fifty-four feet from edge of wetland. He said that he has not yet been presented with the mounding analysis to see why it is positioned where it is and which direction the groundwater would be flowing. He said that this still needs to be looked at to determine the wetlands impact. He said that groundwater mounding would show whether the wetlands and water table would be impacted which could cause wetlands to potentially move upland. Mr. King noted that the abutters to the south have wetlands in their yard. One might question whether changes to the water table would impact the abutter.

Mr. King said that a groundwater analysis would be needed. Mounding analysis has been requested previously. Mr. Moss said that he is still working on the final application with DEP which includes this analysis and he will submit it to DEP shortly.

Ms. Quirk said that the ZBA needs that analysis, including the hydrology calculations and mounding plan, so that the experts can make recommendations. Mr. Moss said he could provide the requested information by Friday, February 3, 2012.

While he did not have the final plans before him Mr. McManus said that the groundwater does flow to the west toward the wetlands and the stream. He said that at the wetland boundary the study showed one tenth of a foot, or one inch, of mounding. This rise would mean movement of the wetland boundary one foot to the east.

In regard to the alternatives analysis, Mr. King said that the applicant has submitted additional information however these alternatives need more clarification and study to determine whether they might be feasible instead of the proposed plan and whether alternatives would alleviate the need for certain elements currently on the table.

Mr. King then discussed the crossing of the stream. With respect to what it does to stormwater impacts by flowing upstream, he identified an issue with the HydroCAD model. In fact there was a problem with model but applicant is working to fix it and therefore the issue may be a non-issue.

McManus noted that Mr. King raised an issue about the restoration of access ways to the replication area. He said that the applicant did not specify that those would be restored but he said that was a valid point that still needs to be worked on.

Ms. Quirk asked Conservation Coordinator Debbie Dineen to discuss a memorandum dated January 26, 2012 from the Commission that was submitted to the ZBA. Ms. Dineen explained that the premise of the memo was to show the ZBA the approach that the Conservation Commission would take to permit the proposed project.

She said that difference between the Wetlands Protection Act and the Wetlands Bylaw is that with the local Bylaw the Uplands Resource area is recognized as being ecologically important whereas the Wetlands Protection Act only recognizes the AURA to the degree that it protects the wetlands. This project alters 6.9 acres of the AURA. She said that this project has the largest amount of wetlands alteration that the Town has seen since 1983. This amount of alteration is beyond the scope of what the Conservation Commission has dealt with under the current Wetlands Protection Act in almost thirty years.

She said that in order for the Commission to permit work under the wetlands bylaw the applicant has to present evidence to overcome the assumptions of the importance, or value, of that upland area. She said that the Conservation Commission does not feel that enough evidence has been provided by the applicant. She agreed that the Eco Tec's habitat area analysis was thorough but it does not give the ZBA or the Conservation Commission enough evidence to make a decision.

She reminded the Board that Mr. McManus said that it was unknown what animals or mammals might be in the area. According to Ms. Dineen Sudbury has many mammals including mink and otter. She then noted several studies that she had included in her memo as reference for the ZBA that speak to the importance of wetland function and the integrity of upland resource areas. Other studies focus on the animals found in those habitats and the buffer zones the animals need in order to thrive. Wetlands are necessary for regulating chemicals, trapping sediment, etc. The question is whether or not that upland area is important to wildlife and wildlife habitat, not just wildlife habitat alone. She said that local Sudbury studies say that it is. She does not feel that the applicant has provided enough specific information to say that it is not.

Ms. Dineen also said that she does not think that aerial studies of vernal pools are comprehensive. She noted that Mr. McManus pointed out one vernal pool on the site. She said that the Brookside Farm aerial map only showed four when in reality there are thirteen vernal pools at Brookside Farm. Therefore she said that it is possible that there are more at the Johnson Farm site. She questioned what is the population in those vernal pools. She said that EcoTec did a good job with their assessment for this time of year, but to do a most thorough study would require a migration study and this has not been done here. A migration study would determine what species are there and which direction the species are going to migrate. It would also determine whether any protected species are located there. She said that the Conservation Commission would be looking for site specific information, and this information can only be acquired during migration time which begins in mid-March. She said that it was critical information to have to see if the development's impacts are critical to the AURA when there is a large scope of disturbance. With

that information the Conservation Commission would be looking at the impacts within the 100 foot buffer at the site.

Ms. Dineen said that under the bylaw the wastewater treatment plant is not exempt from the riverfront area.

She asked the applicant for a copy of the groundwater mounding analysis for the Conservation Commission.

Ms. Dineen also said that she did not feel there was enough analysis on the intermittent streams at the site.

Mr. McManus said that during the ANRAD process the issue was addressed and the streams at the site were identified as Type II, which are the more dry streams. But Ms. Dineen said that none of that information has been submitted to the ZBA. Mr. McManus said that the applicant could clarify that.

Ms. Dineen also said that the Conservation Commission would be looking at further alternatives analysis and how a buffer gets established.

Ms. Dineen also then clarified for the Board what the determination “not a priority habitat” means. She said that priority habitats get mapped according to specific site criteria or they get added through investigation. She said that simply because there is not a mapped habitat does not mean that there is nothing there. She referenced the two year study on Brookside Farm that showed certain species across the street and suggested that they were also perhaps at the Johnson site. She suggested that specific vernal pool habitats be investigated.

Ms. Kablack asked who would typically investigate and map a priority habitat area. Ms. Dineen said the study would be done through Natural Heritage Endangered Species Program.

Ms. Dineen said that MEPA will not require an Environmental Impact Report from the applicant.

Ms. Quirk asked where the Conservation Commission stood on the project. Ms. Dineen said that they have continued their hearing to February 6. They had requested up to thirteen items from the applicant and to date have received four or five.

At this point Ms. Quirk asked whether any members of the public wished to comment on the proposed project.

Stan Kaplan, 98 Victoria Road, said that he had submitted two e-mails to the ZBA dated January 19 and January 20, 2012 stating public safety concerns. He said that he had obtained data from the Sudbury Public Schools and has examined the number of children attending SPS from the apartments at Longfellow Glen and discovered that there are .8 students in two bedroom apartments at Longfellow Glen, which has fifty-eight two bedroom units. Therefore, Longfellow Glen has 46.4 children in the Sudbury Public Schools. The equivalent at Johnson Farm would be approximately forty school-age children, with none of the one-bedroom apartments counted. He took issue with the numbers of school children estimated by the applicant at the last ZBA hearing because the applicant said that there would only be between thirteen and fifteen additional school-aged children. He noted that Longfellow Glen is also a 40B and has nearly four times the number of children that the applicant for Johnson Farm claimed. He questioned whether the number of children could be safely serviced with the existing infrastructure. If

not he asked what improvements should be added to aid children. Ms. Quirk thanked Mr. Kaplan for his comments.

Colleen Labib, 9 Stagecoach Drive, explained that she is the direct abutter on the north side of the proposed project. She said that she was not comforted by the stormwater data provided to date. She was also concerned about the applicant's stated approach to handling the drainage pipe that could potentially be blocked by beavers since she felt that once a problem was noticed at her property it would be too late to find a solution as the damage would already be done. She expressed concerns about snow melt and wastewater. She was concerned that it was not yet known which way the water would run and she questioned why the applicant was essentially experimenting in this area of Sudbury. She was glad that Ms. Quirk had asked what the recourse was for neighbors should there be a problem. And she added that once the damage was done at the site it would be damaged forever. Ms. Labib also asked about any progress with the Fire Chief's comments from the last hearing.

Ms. Quirk said that in regard to the stormwater issues the ZBA's consultant Joe Peznola would be presenting his response to be discussed at the next hearing. She said that the ZBA did get a subsequent memo reiterating the Fire Department's concerns and the Fire Chief still maintains the same position on the issues.

Jon Danielson, 37 Landham Road, said that the Board is missing one critical issue and that is that the floor plan for the one and two-bedroom units will have a self-enclosed study. He suggested that those studies could be used as bedrooms which would alter all of the data affecting stormwater, wastewater, parking, and traffic. He said that the assumption given to MEPA was for one- and two-bedroom units but the studies change this since the units could become two- and three-bedroom units.

Attorney Peter Tamm said that Mr. Danielson was misrepresenting the fact that the proposal is for one- and two-bedroom units. Tenants would not be permitted to utilize the studies as bedrooms. He said that the ZBA can restrict this also in the conditions of the comprehensive permit.

Ms. Quirk and Mr. Klofft both asked how the use of the studies would be policed. Mr. Tamm said that restrictions on use of the studies would be a term of the lease. He said that all analysis has been done on proper and sufficient calculations. He suggested that there is skepticism but this is simply a non-issue. Mr. Moss added that owners do not want additional occupants at their properties because they do not want additional cars and they do not want additional wear and tear on the buildings and he said property owners can vigorously enforce the terms of the lease if a tenant were found to be in violation. He said that the proposed project at Johnson Farm is high-end housing and it would be unlikely that the tenants would use the studies as bedrooms because that is not what the units were designed for. The studies are being offered as a marketing feature, or amenity, because many people work out of their homes. He said that routine maintenance calls are also a way that owners can observe what is happening inside units.

Attorney Tamm said that if this remains a concern this issue has been addressed in leases in the past and this Board can condition appropriately. In regard to the issue of children he said that the applicant has provided information to the Board. He said that in the ongoing discussion of children the number of units speaks for itself.

Mr. Marchant said case law is clear. The number of school-aged children would not be a valid factor to consider in the decision. He said that it would take some skill to draft a decision that addresses what would happen with a studio unit. Ed would agree that owner would like fewer occupants. Mr. O'Brien asked whether a condition could be written to say, "The study cannot be used as a bedroom." Mr.

Marchant said that it could be written that way. Again Mr. Marchant said that numbers of school children are not valid arguments, however when numbers of children are related to public safety then there might be some valid public safety issues that do need to be taken into consideration in terms of the design of the project or the traffic report. Those would be relevant issues.

Mr. Marchant added that the wastewater treatment plan was sized per bedroom and if the studies were used as bedrooms then it would create a problem with the conditions of the permit.

Peter Anderson, 113 Landham Road, requested that the ZBA widely publicize waivers and asked that the waivers be listed in the *Sudbury Town Crier*. Ms. Kablack noted that the documentation can be seen at the Library, Town Clerk's Office and at the Planning Office. Documentation related to this proposal has been posted on the Board of Appeals page of the Town's web site and documents will continue to be added. Mr. Anderson said that his point was that hundreds of people passed the Town's Bylaws at Town Meeting with the expectation that they be followed. He wanted to ensure that people knew what the waivers are and what they would mean if granted.

Ms. Kablack said that the ZBA will be discussing waivers at a future hearing. She said that the ZBA's legal counsel has been working hard to review the requested waivers. She said that the waivers will clearly be part of the ZBA's deliberation on a decision. She said there is a current waiver list that is part of public record that can be put on the web site. She said that there has been an enormous amount of information submitted to the office, much of which is not in electronic form, so not everything is on the web site. She added that more will be added as it can be.

Attorney Tamm said that there are seven waivers to the local bylaws being sought.

Ms. Kablack wanted to clarify a point that had been brought up early on in this application process and has also been stated in the Wildlife Study dated December 29, 2011 which is that the Town of Sudbury had previously declined to act to acquire the Johnson Farm property. For the record, Ms. Kablack said, that statement is not factual. The Town has never declined to purchase the property and, in fact, was working to purchase it in 2006 when the issue was included as a warrant article for the 2006 Town Meeting. The Town had obtained a property appraisal and was considering the use of Community Preservation Act (CPA) funds to purchase it for preservation. Ms. Kablack said that she had been working with the senior Mr. Johnson when he passed away and the Johnson heirs then declined to negotiate with the Town. Ms. Kablack said that the Town had made repeated requests to negotiate to purchase the property from 2007 to 2010. It was not until Mr. Moss procured a binding purchase and sale agreement with the property owners that the Town was left with no option.

Mr. McManus, whose firm had written the wildlife study, said that Ms. Dineen had also mentioned this at a Conservation Commission hearing. Mr. Tamm explained that Mr. McManus had received incorrect information from him which led to his statement in the Wildlife Study.

Mr. Klofft said that he has been involved in Zoning and in the 40B process for several years. He said that over the course of several meetings a number of potential impacts have been raised on this project, including the length of the access road, inadequate access to the rear of buildings, porous pavement, disturbance to the wetland buffers, impacts on the water supply, and other concerns that have not yet received full documentation such as groundwater mounding and safety concerns so he asked the applicant whether he would be amenable to having discussions about making any alterations to the proposed project to address those issues.

Mr. Tamm said that all of those issues have been identified and discussed, some addressed to the Board's satisfaction and some perhaps not. He said that in talking with the Director of Planning and Community Development prior to this hearing and based on her expectations about holding a subsequent session there will be additional information that would be provided to the ZBA to address the items Mr. Klofft listed.

Mr. Klofft said that the totality of the concerns is broad-ranging, particularly in regard to public safety and environmental issues. He asked the applicant whether or not the proposed plan is the best design that would meet the needs that 40B is set to address in a way that minimizes those impacts.

Mr. Tamm said that in the applicant's view the issues have been satisfactorily addressed. Additional materials will be delivered to the ZBA by February 3.

Mr. Tamm said that Mr. Moss had attempted to reach out to the Fire Chief but he said that the Fire Department has indicated a lack of willingness to have a follow-up discussion with him and the Fire Department has since issued a memorandum summarizing the concerns that they had previously raised.

He said that Mr. Moss's consultants will be providing more information for the Board. As for porous pavement he did not feel that he could give any more information since a lot has been provided. They will respond to Joe Peznola's memo and will respond to Mr. King's memo. He said that the applicant's consultants have spent a considerable amount of time on the wildlife study and he felt that the information provided was exceptional and it does not have the impacts that are designated priority habitat under Natural Heritage so he understands that he is in disagreement with the Conservation Commission but he said that ultimately it is the ZBA that would be determining whether waivers would be granted there.

In regard to health and safety he said that a traffic report was submitted which was also peer reviewed and does not identify any issues of substance and further information has been provided at the request of the Board. He said he would wait to see whether to Howard Muise, the ZBA's consultant, has further requests and would try to meet them. But he said he would need to have that memo from VHB soon if the applicant is to respond to it.

Mr. Tamm said that in its totality the project has been positively affected, for example by moving buildings out of wetlands, so there have been substantial changes made to the plans.

Mr. Klofft said that he respectfully disagrees with that since the changes appear to him to be minor modifications based upon the numerous projects with which he has been involved.

Attorney Tamm then said that the proposal that is before the ZBA now is the proposed project. He said that the applicant would provide final reports by February 3 so that the Board can make its determination. He said that the applicant is being open-minded but the Board has 180 days to conclude this process and that time limit is ending soon.

Mr. Gossels echoed Mr. Klofft's concerns. He said that the number of units and scale of the buildings are definite issues and he said that nothing has been done to address those concerns. He said that the buildings are too high and there are too many units on the site. He said that the fundamental problems with the site have yet to be addressed.

Ms. Dineen asked Mr. Tamm that if all final reports are to be submitted by February 3, then is the applicant not going to do a study of the vernal pools to provide the necessary habitat evaluation. Attorney Tamm said no, the applicant would not be providing any more information as far as wildlife habitat.

Ms. Kablack said that due to the scope of the project and the run time all of the peer reviewers have depleted the funds in their budgets. She said that she has requested additional funds in the amount of \$15,000 from Mr. Moss through the 180 day process. Mr. Moss said that he would submit funds by February 3.

Mr. O'Brien asked whether any material change to the plan would be uneconomic. Mr. Tamm said he was not in the position to make that judgment. He said that the Board is in the position to approve the plan or condition it appropriately and if the conditions bear an undue burden then that would determine what would be uneconomic. He said that in regard to the number of units proposed, this is the plan that works with the proposed budget.

Mr. Marchant noted that a pro forma was included in the pre-application materials. Mr. O'Brien asked whether a revised pro forma has been submitted to the ZBA. No revised pro forma has been submitted since the pre-application.

There being no additional comments from the Board or the public, a motion was made to continue the hearing.

The hearing was continued to Wednesday, February 15, 2012 at 7:30 p.m. in the Town Hall.

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Elizabeth T. Quirk, Chair

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Jeffrey P. Klofft

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Jonathan G. Gossels

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Jonathan F.X. O'Brien

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Stephen A. Garanin, Associate