



**THREE LAKES COUNCIL  
WACCABUC–OSCALETA–RIPPOWAM  
P.O. BOX 241, SOUTH SALEM, NY 10590  
[www.threelakescouncil.org](http://www.threelakescouncil.org)**

July 11, 2014

Town of Lewisboro Planning Board  
P. O. Box 725  
Cross River, NY 10518  
Via email to [planning@lewisborogov.com](mailto:planning@lewisborogov.com)

Re: Petruccelli Application on Oscaleta Road, South Salem, NY. Sheet 33B, Block 11157, Lot 46.

Dear Chair Kerner and Members of the Planning Board:

The Three Lakes Council (3LC) continues to urge you to deny the permit applications from Mr. Petruccelli. The application for building on this parcel is just inconsistent with wetland protections.

In his memo of June 26, 2014, the applicant continues to argue the functions and presence of the local wetland should be disregarded because he asserts it was formed when the berms were constructed. However, he has not provided any evidence that the berm, when built, was not placed in the midst of an existing wetland. He calls the Town wetland “this nuisance of standing water”, expressing contempt for the very concept of wetland protection. The applicant could propose to deal with this nuisance of standing water by breaching his berm on his property, which would connect this pocket wetland to the DEC wetland to the west. That, however, is not his proposal. The berm on his own property is essential for his septic fields, and he intends to fill the portion of the property to the east of this berm, including wetland areas, up to the berm’s height with fill. While the “construction road” on his parcel is integral to his plans, he asserts that the berm on the Three Lakes Council property must be destroyed. His own memo says that this is required because the “largest threat to proper function of the septic system is the standing water in the existing pocket wetland.” The contradictions required to justify this argument are both convoluted and self-serving. The wetland should be protected in accordance with town code.

Mr. Petruccelli’s own words support our assertions that his lot is simply not suitable for building a house and his plan is not compatible with our current understanding of wetland functions, soil requirements, and building standards. As he states, “The bottom line is that the small size of the existing parcel and combination of conditions that led to the ponding of water on the site are the primary issue, not the size of the septic system”. He summarizes very succinctly our concerns with attempting to build a house on this parcel containing both a DEC wetland and a local wetland, constructing entirely within wetland buffers, and contiguous to a drinking water lake. He has provided the Westchester County Department of Health (DOH) with a hold harmless declaration because the proposed septic system is less than 100’ of the DEC wetland, yet states that the greatest risk to septic system function is the local wetland. Mr. Petruccelli’s hold harmless declaration to the DOH about his septic system admits “knowing that it does not conform to the Department of Health’s Requirements or its Rules and regulations, or to the provisions of the Westchester County Sanitary Code...”, and he agrees to

indemnify the DOH from any claims or suits. This non-conforming septic system must be a concern to the Planning Board. To be clear, the Three Lakes Council would not express the same concerns with pathogen and nutrient pollution if this septic system were proposed for a similarly sized upland parcel that did not contain wetlands or wetland buffers, especially not wetlands that communicate with our lakes.

The applicant asserts that this house is too small a factor to take Lake Waccabuc beyond a tipping point. A tipping point is defined as the point at which a series of small changes or incidents becomes significant enough to cause a larger, more important, and often unstoppable change. The change doesn't have to be caused by large events --little things can make a big difference. To defer the tipping point, 3LC has worked to reduce pollution whether big or small. Mr. Petruccelli cannot demonstrate that his development will not be the tipping point for Lake Waccabuc.

Two of the wandering wetland flags have returned to their locations as shown on the July 2012 site plan. This itinerant flag behavior brings into question the rest of the wetland delineation. Although the updated wetland delineation was called "essentially the same", it was 24% smaller in size than the prior delineation, allowing a reduced amount of calculated wetland disturbance and thus smaller required mitigation. Even at this reduced size, the mitigation remains inadequate and cannot be completed on the applicant's lot.

We reiterate that approval of this application would set a precedent that could damage the ability of the Town of Lewisboro to protect its wetlands. This concern is reflected in the Kellard Sessions memo of June 13, 2014 which indicates approval "may set an important precedent" for future projects, and have a "potentially large impact". Memos from the Lakes Committee and the Conservation Advisory Committee, as well as many neighbors, express the same concern. The applicant was unable to present any prior approval that was anywhere close in scope and impact. The Eastbrook proposal on the adjacent parcel, which was a larger parcel but with similar wetland constraints, was denied. No documented precedent exists for this wetland intrusion.

We have compiled a litany of the areas where this applicant has fallen short of compliance with current practices, regulatory requirements, and mitigation guidelines. The soils tests are inadequate and Mr. Petruccelli has refused to do additional tests for both the DOH and the Town, has not provided documentation to justify his nomadic wetland flags, and has failed the burden of proof. The deficiencies of his site and his applications are extensive: a lengthy summary is attached. Approval of the wetland application would not be consistent with the purposes of the Town of Lewisboro's wetland protection laws.

Once again, the Three Lakes Council strongly urges you to deny Mr. Petruccelli's wetland permit application and subdivision application.

Sincerely,



Janet Andersen  
President, Three Lakes Council

## Deficiencies in the Petruccelli applications as of 7/7/14

1. Subdivision issues unresolved
  - a. Parcel does not meet current subdivision standards
  - b. No variance for subdivision standard deficiencies
  - c. We believe the building inspector incorrectly ruled that the parcel resulting from the subdivision would not be a new lot.
  - d. Subdivision plan lacks wetland delineations
  - e. Subdivision lacks agreement from owner of second parcel
2. Soils information inadequate
  - a. No mottling or color notations provided
  - b. Soils test reports missing
  - c. Soils in and beneath berm unknown
  - d. Soil tests for septic not performed in target March 15 to June 30 timeframe, per NYSDOH guidelines.
  - e. Town engineer requested soils tests performed in infiltration area – not done (refused)
3. Hydrologic analysis inadequate
  - a. Does not reflect current plan
  - b. Conflicting information provided about sources of water on lot – amount from pipe vs elsewhere
  - c. Source of water for wetland expansion area unclear
  - d. No before / after analysis of how much water will flow to adjacent parcel
  - e. Observations of standing water conflict with soils reports
  - f. Months of standing water have been documented in local wetland
4. Stormwater information inadequate
  - a. Infiltrator is within the 100' setback from the septic absorption area
  - b. No soil testing at infiltrator area – refused by applicant
  - c. No maintenance procedures for infiltrator specified
  - d. Stormwater assessment does not include EPA climate assessment update
  - e. Stormwater flows on to adjacent property
  - f. Town Stormwater Permit Application has not been submitted
5. Wetland delineation questions unresolved
  - a. Wandering flag placements lead to great uncertainty about wetland area definition
  - b. 2012 wetland delineation termed “essentially same” yet is ~24% smaller than 2004
  - c. Wetland sizing inconsistent in reports and plans, including mitigation plans
  - d. Wetland observations indicate better habitat than reflected in analysis
6. Wetland protections inadequate in plan
  - a. Fill placed in town wetland – 880 cubic yards will be placed in wetland or buffer
  - b. Local wetland area has 3' wall on three sides, creating unfriendly and inadequate habitat area
  - c. No treatment of water that flows across pitched lawn before it enters the wetland
  - d. No plan for maintenance or inspection of enhanced and created wetlands
  - e. Building and septic activity is immediately adjacent to wetlands
  - f. Applicant admits that wetlands will be impacted if application is approved
  - g. Proposal will affect wetland on adjacent property – not isolated from actions on this parcel

7. Wetland buffer protections deficient
  - a. Essentially no protection of buffer from activity – all occurs within buffer
  - b. Removal of at least 34 mature trees - possibly more as determined on site
  - c. Deforestation of 0.5 acre
  - d. Construction materials will be placed within buffer
  - e. All construction staging will occur within buffer
  - f. Buffer cannot be remediated to equivalent function if building proceeds
  - g. Applicant considers wetland to be “nuisance of standing water” – long term protections required
8. Mitigation inadequate
  - a. Does not meet 1:1 guideline despite reduced wetland delineation size
  - b. DEC wetland and buffer protection should not count towards mitigation since it is required by DEC
  - c. Seed mix on top of septic system is minimal mitigation, and is already required for septic function
  - d. Mowing restrictions difficult to monitor, report, and enforce
  - e. Kellard-Sessions recommendation for delineation of septic mow area by visible means is refused
  - f. Wetland enhancement – benefits to wetland functions unclear, lacks maintenance plan
  - g. Created wetland lacks maintenance plan and benefits are unclear, future of “nuisance” uncertain
  - h. All mitigation occurs inside wetlands or wetland buffer
  - i. Silent on guarantees. Should have five year goals with monitoring and reporting
  - j. Fails to achieve mitigation goals of replacing the wetlands benefits of habitat, flood control, and pollution control
  - k. Applicant unable to provide suitable on or off-site mitigation to attain 1:1 mitigation guideline
9. Septic systems non-compliant and inadequate
  - a. Distance from wetlands insufficient per 100’ NYSDOH regulations
  - b. Waiver from 100’ regulations based on rare hold harmless declaration that has no fiscal backing
  - c. Existence of hold harmless declaration indicates that risks are present
  - d. DOH requested soils tests performed at ground level – not done (refused)
  - e. Distance from drinking water supply lake insufficient per DOH plan approval requirement
  - f. Test hole information not provided, need substrate info, barrier, percolation rate
  - g. DOH records show that septic fields will be placed in sand, a questionable soil type for both pathogen removal and nutrient reduction
  - h. Elevation relative to lake high water not supported by field tests
  - i. Does not take into consideration closeness to lake and anticipated phosphorus pollution
  - j. No specific mitigation, treatment, or monitoring proposed
  - k. Petruccelli Engineering claims septic expertise yet does not know of residential microbial inoculation treatment systems
  - l. Access for tank pumping and other maintenance unclear
  - m. Access to expansion system and to provide more fill unclear
  - n. Inadequate impermeable barrier (clay) if evaporation system
  - o. Applicant’s memo of June 26, 2014 indicates the pocket wetland is a threat to the septic system
10. Unresolved questions on elevation relative to lake level and implications
  - a. Plans show separation in excess of that shown by ground measurements
  - b. No consideration of seasonal or storm related lake elevation changes shown

11. Engineering report of June, 2012 is deficient.
  - a. Lacks section on soil analysis or groundwater.
  - b. Lacks design calculations for the septic system.
  - c. Lacks hydrology data.
12. Construction plans are deficient
  - a. Approximately 88 truckloads of fill are required, yet path to fill area not specified
  - b. Anti-tracking info limited
  - c. Erosion and sediment control plans and locations not shown
  - d. Plans do not comply with setback requirements
13. Stormwater NOI for Construction is erroneous
  - a. States that parcel does not have a state regulated wetland or body of water onsite:  
DEC wetland L-13 is on westerly 10% of parcel
14. Driveway plans deficient
  - a. Not included in disturbance calculation
  - b. Stormwater information lacking
  - c. Maintenance procedures lacking
  - d. Town Highway approval lacking
15. Development would create risks of further future damage to the wetlands and contamination of surface and ground water.
  - a. Applicant considers wetlands a “nuisance of standing water”
  - b. Hold harmless declaration indicates risk from non-compliant septic system
16. Burden of proof not satisfied because of all of these deficiencies
17. Community concerns unanswered
  - a. Lakes Committee memo on precedent
  - b. CAC memos cite specific concerns and precedent setting impacts
  - c. Many neighbors have expressed concerns about impact and precedent
  - d. Unclear how neighbors and those who use Lake Waccabuc for household water would be protected by hold-harmless declaration; assumes damage can be remedied after the fact, and after delay for lawsuits
  - e. Kellard-Sessions memo (6/11/14) indicates “potentially large impact” to growth and character
18. Parcel retains value even if application is denied, despite assertions to contrary
19. Approval would not be consistent with past decisions
  - a. Eastbrook denial on adjacent parcel upheld despite Article 78 appeal
  - b. Manbeck decision rests on consistent application of town code
  - c. Applicant failed to find any comparable plan approved by Planning Board (new building, filled wetlands, degree of disturbance)
  - d. Kellard-Sessions memo (6/11/14) indicates approval “may set an important precedent” for future projects
20. Approval of a permit would not be consistent with the purposes of the Town of Lewisboro’s wetland protection law.