



**THREE LAKES COUNCIL
WACCABUC–OSCALETA–RIPPOWAM
P.O. BOX 241, SOUTH SALEM, NY 10590
www.threelakescouncil.org**

February 24, 2014

Town of Lewisboro Planning Board
P. O. Box 725
Cross River, NY 10518

Subject: Petruccelli Applications for Subdivision and Wetland Permit
Oscaleta Road, South Salem, NY 10590.
Comparisons to Prior Wetland Approvals

We appreciate the opportunity to continue to present facts relating to this application.

You have heard from us directly and through our legal counsel and our wetlands/environmental expert, as well as from many others in the community, about environmental and other concerns with this wetland activity permit application and with the many questions that remain unanswered by the applicant.

Near the close of the last public hearing, Mr. Petruccelli's counsel provided six Planning Board resolutions, asserting that they were examples that refute the argument that approval of his client's application would be unprecedented, and that they provide precedent for your approval of his client's application. We are submitting this memo to address the applicant's assertions concerning your actions in other cases. A review of the facts fails to make a case for approval of this application. In fact, it bolsters our view that the approval of Mr. Petruccelli's applications would be contrary to your past actions.

1. The Current Application by Mr. Petruccelli

In order to provide a basis for comparison, here are key parameters of the current application.

- This is a vacant lot, consisting entirely of local and DEC wetlands and wetlands buffer.
- The house is to be entirely within wetlands buffer, directly abutting the wetlands themselves.
- The buffer and wetlands communicate directly with a lake used for recreation and as a source of drinking water.
- The house is to be entirely new construction on what is now a vacant lot.
- The house is to have three bedrooms, with an adjacent garage, driveway, and deck.
- All the activity appears to take place within 50' of a wetland.
- The applicant proposes to fill in a wetland area.
- The house is to abut the wetland area that the applicant proposes to fill.
- The applicant also needs fill to install a septic system.
- The septic system is to be less than 40' from a wetland that communicates with Lake Waccabuc.

- The proposed mitigation is less than 1:1.
- The applicant has provided only the most cursory information on soils and hydrology, with none of the hydraulics or soil analyses needed to meet his burden of proof or even establish a reasonable basis for you to accept his contentions.

2. Actions Involving Modifications of Existing Structures

Of the six significant construction applications approved by you during the past decade involving wetlands, three dealt with repairs or modifications to existing structures. Obviously, the considerations that go into decisions about existing structures are very different from those involved in the construction of a new home on a vacant lot, as Mr. Petruccelli proposes.

Nevertheless, here is a summary, which we hope you find instructive:

- (a) Cal #7-10 PV. Brown's Reservoir Dam rehabilitation was mandated by an update in New York's dam-safety regulations. As a high-hazard dam, the work was required to diminish the potential loss of life and property and to ensure drinking water to the residents of Norwalk. Not only was this work mandated by NYS DEC for safety and human health, but the applicant provided significant mitigation (above 1:1), including 12 months of groundwater monitoring and 5 years of annual monitoring reports. This has little to do with what the applicant here is requesting.
- (b) Bocklet, Cal #96-05 WP. Rebuilding the "boathouse" on Lake Waccabuc is also not an application that provides a valid comparison in Mr. Petruccelli's favor. The house was in existence, and its structure was precarious. At the Planning Board site walk, the house actually shifted while everyone stood on the dock. The rebuilding put new pilings under the home and replaced and improved the septic system, including the installation of a White Knight System. The house had been on that site since 1929, and repair was the only way to stop it from falling into the lake. Your approval avoided environmental problems: it did not result in the direct net loss or degradation of any locally or State regulated wetlands; the impervious surface was reduced; the septic system was improved; and a structure was removed from the wetlands area. This is no precedent for what Mr. Petruccelli would have you approve.
- (c) Kola, Cal # 40-07 WP. The third rebuild application is also not a useful comparison. Rather than for new construction, it involved a house that existed before the wetland application. The house and other structures were in need of significant repair. (One report described the site as having "sadly dilapidated structures that ramble across this property.") When the Planning Board made its determination, it had obtained the kind of information one would expect – but is lacking in the current application – such as soil-boring information that contained Munsell color notations. Significant mitigation occurred, including removal of a barn/workshop and a pavilion, removal of debris in the wetland and buffers, and the acceptance of restrictions on any future land disturbance. The entire disturbance associated with the wetland permit occurred within previously disturbed wetland areas. It should also be noted that some of the application background provides a telling contrast to Mr. Petruccelli's application. At one point, the proposal included a small amount of fill adjacent to the building foundation in previously disturbed wetland areas, but the Planning Board allowed the application to proceed only after the applicant withdrew the proposal to place that fill on the property. No areas of fill in the wetlands were on the approved plans. Mr. Petruccelli's application requires fill of wetlands.

3. New Construction

The remaining three actions involved new construction. Each is easily distinguishable from Mr. Petruccelli's application.

- (a) Cal #28-03 WP. The first by calendar number is a home built by Elide Building at 54 Twin Lakes Road. Residents expressed concern over building on this lot, but that does not mean that the environmental impacts are equivalent to the application now before the Board. Approval of this application came with significant restrictions and mitigations. The residence is deed-restricted to two bedrooms (unlike Mr. Petruccelli's three, which of course has an impact on the septic system). As the approving resolution states, building this home did "not result in the direct net loss or degradation of any locally regulated wetlands on the site." Not only were no wetlands touched, let alone filled, but the limit of construction disturbance was no closer than 75' to a wetland. The resolution also documents that the residence maintains a minimum distance of 100' from the regulated wetland, and the deck is 86' from the wetland resource. A conservation easement applies over an area that reaches 75' from the wetland, or about 40% of the lot. In addition to being 100' from the wetland, the house is elevated about 20' above the wetland area. The septic system is *entirely* outside the 150' buffer, and only the future expansion area at one end extends about 15' into the buffer. The contrast with the Petruccelli application is dramatic.
- (b) Joseph, Cal #28-03 WP. The second new building application was at 71 Post Office Road. According to the resolution, this application did not result in the direct net loss or degradation of any locally regulated wetland on the site. Again, not only were no wetlands filled in, but the limits of the disturbance were entirely outside the wetlands. The site was legally subdivided in 1989, and this application was reduced by limiting the size to the house footprint at the time of subdivision. The site disturbance was 30% of the lot, less than what had been proposed at the time of the subdivision. Mitigation included permanent protection for 70% of the site in the form of a deed restriction (Fain, Oct 12, 2004), extensive native plantings, a stormwater basin that treats water before it enters the wetland and new and repaired catchbasins. The Board received three different wetland delineations prepared between 1989 and 2003, and the most restrictive wetland delineations were used (Barrett Jan 14, 2004). Unlike the information provided by Mr. Petruccelli, in that case, as part of the wetland delineation, detailed soil borings were logged, mapped, and descriptions with Munsell color notation were provided. The house was built at an elevation about 25' above the wetland area and is 80' away from the wetland. The septic system is completely outside the 100' buffer line (Barrett April 5, 2004). The wetlands on the property are a quarter mile (1300 feet) from Lake Waccabuc.
- (c) Rinna, Cal #61-07 WP. The third new building application was on Lake Path Road in the Lake Kitchawan community. The wetlands on the parcel were 44 square feet at the lower end of the lot. No fill was deposited in this small wetland during construction. Restrictions were put on the limits of disturbance. The house is restricted to a two-bedroom with a maximum 1400 square foot footprint. The house is about 400' away from and 100' above the level of Lake Kitchawan, and other houses and a road come between the lot and the lake. Groundwater was shown at least 15 to 30 feet below grade. On this parcel (again, unlike in Mr. Petruccelli's application) extensive hydrological studies were done to assess the impact of the site disturbance, including soil analysis at various depths with Munsell soil color and mottling notes, surface water runoff analysis and mass balance of water usage (HydroEnvironmental Solutions, 6 reports in 2008). One consideration the Board took into account was that post-construction, stormwater velocity leaving the site would actually be reduced. Simply because this house is in a lake community does not make it comparable. The physical setting is far different and the multiple hydrological studies and care regarding the wetland show that the applicant provided the burden of proof, to the satisfaction of the Planning Board, of the impact the construction would have.

4. Eastbrook Applications

What Mr. Petruccelli's counsel did not mention are your denials of applications, the most relevant of which are the two denials regarding proposed construction on the property adjacent to his property, property now owned by the Three Lakes Council. That property, part of precisely the same DEC and local wetlands and buffer systems involved in the current application, has basically the same topology and hydraulics issues. The Three Lakes Council's Memorandum submitted to you in November 2013 addresses that situation. The applications in that case were denied twice by this Board, with the denials supported in court. Denying those applications and approving Mr. Petruccelli's would be simply inconsistent.

In summary, all of the referenced prior approvals differ significantly from the Petruccelli application before the Board. Indeed, they support our contention that the Planning Board has never to our knowledge approved an application under the kind of circumstances and parameters involved in this case, summarized in "The Current Application," above. The potential for environmental degradation, the lack of supporting soil and hydraulics analysis, the fact that even the footprint of the home, deck, garage and driveway would eliminate protective buffer from a lake used for recreation and drinking water, all line up to beg the question raised in public hearings by one member of the community: why wasn't this a non-starter?

The approval would be unprecedented. Because of the extreme facts and circumstances this application entails and because of the lack of scientific data supporting it, we are very concerned that if you approve this application you will limit Lewisboro's ability to protect its wetlands and you will be setting a precedent that makes it legally difficult to deny future applications for wetland activity permits.

Sincerely,



Janet Andersen
President, Three Lakes Council