

**Peter Benard: Permit #L-25260-L3-A-N & #L-25260-TC-B-N**  
**// Mckearney Village Sub-division**

- Appeal as submitted by Dr. Mary Dowd
  - September 8<sup>th</sup> appeal of Chair's August 12<sup>th</sup> ruling
  - July 29<sup>th</sup> appeal of DEP Permit (minus attachments)

3September 8, 2011

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To: DEP Board of Directors

From: Mary Dowd

Re: Appeal of Mckearney Village decision

My appeal of the DEP's decision was rejected last month because I had not stated my aggrieved status. While it is true I am not an abutter to the land slated for development, nonetheless I, and the majority of Yarmouth residents living in the many neighborhoods affected by the project, can be considered aggrieved for several reasons.

Let me first address the issues stated in my appeal. I did not cite the discrepancy in soil types simply to point out an inconsistency or a bias in the data collection. Moreover, please be advised that in addition to the discrepancy between the Sebago Technics (ST) report and the Cumberland Soil Survey and the Stockwell report, the the soil mapping done in 2005 by Normandeau Associates is at variance with the study done by ST. It maps most of the southern portion of the site as Scantic and Swanton.

If this development goes through and the soils built on cannot absorb the water displaced from the wetlands, my property and the properties of all the other residents downstream from the site will have to. In fact, residents at the end of the stream channel have already had to make costly efforts to salvage and shore up their home due to erosion problems from the unstable streambed. This problem was raised and ignored at a planning board meeting.

Moreover, there is a stream in the northeast corner of the site, noted on the Stockwell report, but not in the ST documents. It will likewise be altered by changing run-off patterns, altering the hydrology of the wetlands and the installation of drainage basins. With heavy rains or snowmelt, water from this stream already runs through my backyard. With a major disturbance of the wetlands I anticipate major drainage problems on my property and water in my basement. Thus I, and many of my neighbors downstream from this project, are indeed personally aggrieved.

In 2005 Yarmouth had an ordinance prohibiting development on land with a water table within 10 inches of the surface. These would be Scantic or Swanton by definition. Oddly enough, that ordinance has since disappeared. Yarmouth currently has an ordinance stating that a filled in wetland cannot be built on. This project is doing just that and on a colossal scale. I would also mention in passing that of all the surrounding towns, only Yarmouth does not deduct wetlands from the total acreage available for development when planning a cluster development.

Our town wetland rules might have lessened the impact of that defect in the development calculations. But, these rules, which were developed specifically for this property following a citizens' petition in 2005, were waived on 75% of the lots. They were waived without explanation by the planning board, at the advice of the town planner, against the expressed concerns of the conservationists on the land committee. Nor was there any further discussion of why or why not, nor of what the environmental or hydrologic implications of waiving the wetland setbacks for so many lots.

Another issue in my appeal is the mapped boundary and hence the size of the wetlands, which have not been accurately mapped. The wetland clearly extends beyond the Hillside property and this is noted several times in the ST documents.

This brings us to the larger question of whether this wetland or any part of it should be protected and preserved and why I am aggrieved by it. As stated in my earlier appeal. This wetland is the head waters of a tributary of the Royal River. As reported in the last several State of the Bay Reports, the mouth of the Royal River in Yarmouth is currently the most polluted part of Casco Bay. With this development we will be sending runoff from 38 driveways, lots for 62 cars and chemicals from 38 lawns, and a 32 unit apt complex, (and over half the lots with reduced buffers) into a tributary of the Royal River. This will surely have negative effects on the life in the tributary stream, on river and on this part of Casco Bay. How can we ignore the cumulative impact of so many poorly or neglectfully planned developments, especially a subdivision as large as this. I would be surprised if this did not also adversely impact clamming as well.

As a physician and resident of Yarmouth I am obviously aggrieved by the large scale pollution of our river and bay and aggrieved not just for my own sake, but for the lasting detrimental effect it will have on my children's lives and future generations in Yarmouth.

I am also concerned about the vernal pool studies. These were done on 3 days in the same week in the spring of 2010. They were inadequate for several reasons. First, vernal pools are supposed to be investigated several times each year to insure the early and late spawning is accounted for. Secondly, they should be done for several years to insure that data was not recorded from a poor spawning year. We have records from a town-wide vernal pool study, directed by our town planner, that shows the timing of the laying and hatching of egg masses from many known vernal pools around town for 2009, 2010 and 2011. There is no lack of data to show when vernal pool investigations should be done for a forested and shrub dominated wetland.

Moreover in a letter from the DEP to ST it is recommended that a wildlife biologist be brought in to look at the site to evaluate it for the presence of threatened species of plants and animals. There is no evidence in the documents that this was ever accomplished. The spotted turtle, a threatened species documented by Maine Inland Fisheries and Wildlife within a half mile of the site, is mentioned in passing in an email from ST to Judy Camuso at the Grey DEP office. The email states spotted turtles were not found during the vernal pool studies. But, the vernal pool studies were done by a soil scientist and make no mention of actually looking for the turtle.

I would ask the DEP to take a second look at this development because it is one that will have serious long term consequences for the entire town of Yarmouth. The town is proposing to build a major development on a filled in wetland, ***38 houses, a 62 car lot and an apt complex on a filled in wetland!*** All of the residents surrounding this site, especially those like me who are downstream from it, can be considered aggrieved. Moreover, I would venture to state that all of the residents of Yarmouth and of Maine will suffer in time from the major increase in pollutants that will stream into the Royal River and Casco Bay as a direct result of this project.

I would ask to further address these concerns an accurate and complete mapping of this wetland, its soil types, and it's wildlife be done by a third party, so that the neighbors, the town and the state will know better what the problems are and how to go about solving them.

TO DEP

DEP Portland T2

07-29-11 P04:00 RCVD

July 29, 2011

I would like to appeal the licensing decision on the McKernan Village Development proposed for Aldside St in Yarmouth, Me.

I am basing my appeal on a question of soil types. When this parcel project was first slated for development in 2005 Stockard Environmental Consultants did a preliminary report. The consultant believed the soils to be primarily Scantic & Swanston & therefore unsuitable for development. Since that time the wetlands have only gotten wetter. The consultant also believed the extent of the wetland was minimized at that time. I would need further research to evaluate this.

I am obliged to make this appeal in writing due to the late date & my inability to see the documents at the town, despite requests. Thank you for your consideration.   
Maurice Dore

To: Lisa Vickers  
 Maine DEP  
 Portland, Me  
 Re: McKearney Village  
 Yarmouth, Me

Lisa, I am faxing you documents to support my appeal request which was submitted on Friday July 29<sup>th</sup>. My concerns with the project are as follows:

An independent study done by Stockwell Environmental Consulting in 2005 points out that the wetland in the northeastern corner of this property may meet criteria for a wetland of special significance. It contains a stream channel and needs a 75 foot setback. This stream does not appear to be marked on maps done by Sebago Technics for the current wetlands study. The Stockwell report goes on to note that this northeastern wetland may well be a wetland of special significance by containing 20,000 square feet of open water, aquatic vegetation or emergent marsh vegetation. Moreover, it needs to be evaluated taking into account the extent to which it spreads onto the contiguous parcels of land. The National Wetlands Inventory Map shows an emergent, persistent, semi-permanently flooded wetland in the area between Fieldstone and Applewood on the site. I do not see in any of the reports that this has been considered or accomplished. Also, there is no indication that a second look was done to adequately evaluate the vernal pools. Frog and salamander egg masses were observed in the pools in the spring of 2006.

Another concern is the discrepancy between the report's impression of soil types and those found in the current soil survey. I realize Ms. Stockwell's report is not a formal survey, but she references Cumberland County Soil Survey maps which list large portions of the property as Scantic and Swanton, soils which Dave Wilkinson, Soil Research Specialist with the USDA-NRCS, characterized as Hydric/Wetland soils with a water table within ten inches of the surface for at least three months of the year. These barely show up on the current survey. One reason for this may be that the current survey investigated only 25 of the site's 58 acres. Nevertheless, even this limited Class "B" High Intensity Soil Survey, conducted by Sebago Technics, identified the following negative effects relating to the development:

"Jurisdictional wetland areas exist throughout the property. These areas are not sufficient to support residential dwellings, and are not suitable for development in their current state. These soils are fine textured in the substratum, which limits their permeability. **Permitting from the Maine DEP and the US Army Corps of Engineers may be requested for any soil disturbance in these areas.**"

Throughout the planning board review process, the applicant applied for and received waivers on the required wetland and storm water management buffers on 75 % of the 23 lots abutting wetlands, despite the admonitions of the Yarmouth Parks and Land Committee that waiving the protective buffers will negatively impact wetland function, wildlife, and water quality.

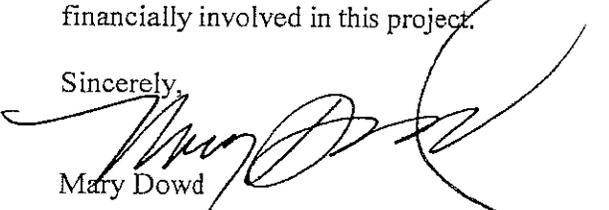
This exceedingly dense development will have a huge impact on the wetlands. It crosses them, it builds right next to them, it, in fact, wraps around the whole wetland. These wetlands are the headwaters of a stream that empties into the Royal River. The reduced buffers will mean more sunlight on these wetland pools and swales, increased opportunity for dumping yard wastes from backyards - regardless of the towns marking the boundary - since there is a very poor record of Yarmouth tracking environmental impacts let alone in 30 separate back yards. I am concerned about the impact of invasive species

especially common buckthorn which thrives in edge and open habitats and Morrow's honeysuckle which to some extent are already present.

What is potentially more damaging to the wetlands is the way the runoff from the adjacent uplands will be diverted away from the wetlands into a storm water detention basin that drains in another direction. Changing the nature of the wetland's hydro-period so dramatically by shunting most of its upper watershed to a different watershed will likely decrease the flushing rate of those added nutrients from yard waste, decrease the time pools are inundated - regardless of whether they classified as state-significant the single time the consultant observed them, and increase the stagnation. I foresee more algae and mosquitoes, less groundwater infiltration, and degradation of a pretty stream that drains to the Royal River.

Enclosed are copies of the Stockwell report and the Parks and Land recommendations. I would ask you to please review the pertinent parts\* of the documents carefully to decide whether it is possible that these wetlands are more significant than heretofore claimed and deserve a closer look by someone not financially involved in this project.

Sincerely,



Mary Dowd

\*Please ignore the parts of the Stockwell report that refer to the flagging and boundaries as these apply to the earlier development, not this one.

