

Town of Swanzey, New Hampshire  
**Swanzey Planning Board**  
Meeting Minutes – December 13, 2012

*Note: Minutes are not final until reviewed and approved by the Board. Review and approval of minutes generally takes place at the next regularly scheduled meeting of the Board.*

The regular meeting of the Swanzey Planning board was called to order at 7:00 p.m. by Chairman Glenn C. Page. Members present: Glenn Page, Scott Self, June Fuerderer, Gus Lerandeau, Joe Smith and Deborah J. Davis, Board of Selectmen representative, as well as alternates Jane Johnson and Paula Miller. Page called the roll, seated Miller for Goller and read the Agenda.

**Absent:** Jeff Goller, Bob Audette

**Others Present:** Sara Carbonneau, Town Planner, Rick Dell'Erba, Stephen Stepenuck, and Michael Morrison representing the Town of Swanzey Conservation Commission, and various members of the public.

- A. PUBLIC HEARINGS – Page opened the Public Hearing at 7:05 p.m.** During the reading of the agenda, the entire text of the proposed amendments was read by the Chair.
- a. Proposed amendments to the Swanzey Zoning Ordinance** - Steve Stepenuck from the Swanzey Conservation Commission asked about the list of wetlands read in the Agenda. Town Planner Carbonneau said the list is from the New Hampshire Department of Environmental Services (DES). Stepenuck then provided documentation from the State of New Hampshire report for Wilson Pond from data collected in 2010. He talked about fertilizers being an issue. Phosphorus is the limiting nutrient. He indicated the report showed Total Phosphorus (ug/L) (min-max) at 13-270. The problem is in the pond, not coming in the inlet. Wilson Pond is about 3rd highest in entire Monadnock region in Phosphorus. He explained that algae will grow with sunlight and nutrients. At night the plants consume the oxygen in the water. If you have too much plant life in the pond, just before dawn there can be no oxygen left at all, creating a fish kill. Water can only hold a small amount of oxygen (saturation). Producing a page from the Waterbody History Report of the US Environmental Protection Agency (EPA) for Wilson Pond, the data shows it cited as "impaired" and the EPA has cited the pond in 2002, 2004, 2006, 2008, and 2010. Some claim that the sewer installation completed in 2008 has reduced the problem, but the problem still exists in 2010. You don't reverse 100 years of impairment within a few years. Stepenuck also pointed out that phosphorus is in the

sediment and will remain there for years. Each time the sediment is stirred up by wind action or man-made activity, the phosphorus is returned to the water. He said the report also shows that the pond has problems with pH and Mercury. He contended that this report is documentation for supporting a buffer of 125 feet. The problem with Wilson Pond is excrement from people, dogs, cats, fish, ducks, etc. And he said that the flushing rate is not very good. Ponds collect nutrients and don't wash them out easily like a river does because the water doesn't move in the same way. Stepenuck stated that the recommended distance for a buffer between buildings and the water is 125 feet for nutrient removal.

As a citizen of the town, Stepenuck says he doesn't like "Big Brother" government. Swanzey told him he had to connect up his home to the sewer system, and it was based on bad science, but he complied. Sometimes you have to do things for the greater good. Nathan Jacobs, a resident of Wilson Pond Rd. asked Stepenuck if the report he was reading from might be junk science. Mr. Stepenuck said he is well educated in sciences and environmental sciences in particular and believes the reports are accurate, but he can't attest to the volunteers taking the samples properly.

A series of questions and statements followed from Jacobs and Paul Daniello about mercury in the water. At that point Lerandeau interrupted the discussion to ask Page for clarification on the process of a Public Hearing. He said he thought the Chair recognizes an individual, that individual does his or her presentation through to completion, then questions are asked by the Planning Board (PB) members, not the public. Self responded that the PB generally does allow public comment during the presentations.

The discussion continued. Stepenuck said that in 2009 the Town voted to put in a 125 foot limit and that he didn't understand why the issue was being raised again. Lerandeau responded that any law can be changed. Town Planner Carbonneau was recognized and she said that she raised the issue with the PB because the Swanzey Zoning Board of Adjustment (ZBA) has had difficulty addressing requests for variances from Wilson Pond residents for a number of years. She felt it was important to look at the issue again. Stepenuck emphasized that the Town just went through this in 2012 and the voters supported the 125 foot setback requirement.

Self asked for a clarification on the Dissolved Oxygen saturation figure in the report Stepenuck provided which is 6.1 - 6.2 and pointed out the number for the Total Phosphorus is 13-27.0, not 13-270. He noted that the printing on the copy wasn't clear, but the figure looked like a 27.0 rather than a 270. He said the measurements are quite small and 13-27 has been fairly consistent. Stepenuck acknowledged his error in reading the report but stated that his concern is about things getting worse. Mr. Stepenuck's documentation for the watershed assessment of Wilson Pond was added to the materials provided to the PB on this issue.

Paul Daniello was recognized by the Chair. He submitted a letter to the PB and then read

a copy out loud. In the letter Daniello stated his opposition to reducing the setback requirement for Wilson Pond. He said that Wilson Pond does not meet standard water quality standards. He said he worked for fifteen (15) years as an environmental chemist and nine (9) years as a water quality specialist with the Oregon Department of Environmental Quality. In conclusion he stated in his letter that he is “strongly” opposed to ANY reduction in the primary structure setback because reducing the setback fails to address existing water quality problems and exacerbates other pollutant impact. His letter included facts related to the water quality of Wilson Pond and was added to the documentation provided to the PB on this issue.

The Chair recognized Barbara Skuly. Skuly said that she thinks it is a bit premature to change the setback requirements. She provided materials in the previous meeting. She mentioned people do things around their homes like grow flower gardens and use petroleum products. She said that the 125 foot buffer prevents fertilizers and pesticides and petroleum products from going into the pond. She stated that she felt that unless there is empirical data to support the reduction there should not be a reduction. She recommended that all the materials/documentation provided to the PB on this issue be sent to the ZBA if the reason for the repeated return of the issue is that the ZBA members don't understand the situation.

The Chair recognized Mike Morrison from the Swanzey Conservation Commission. He stated that he has a Masters degree in environmental studies. He talked about the life cycle of a lake. As a lake or pond ages they tend to fill in and get shallow. More sunlight hits the bottom and that encourages more vegetation growth. The vegetation eventually dies and increases the organic base which further depletes the oxygen in the water. Wilson pond is becoming more and more fragile. Upstream there are a lot of paved parking lots and runoff from businesses like Sam's and Route 12 which further add pollutants to the pond. Therefore we have to be more careful with the pond. Lerandeau asked Morrison what happens to a pond at the end of its life. Barbara Skuly said you end up with a swamp or mossy bog - change is only thing that is constant in nature.

The Chair recognized Town Planner Carbonneau. She said she thinks the amendments before the PB should be addressed individually. Number one (1) and number three (3) are mostly housekeeping items. Lerandeau confirmed with Carbonneau that the amendments have been reviewed by Town Counsel.

The Chair recognized Nathan Jacobs, Wilson Pond resident. He said that he thinks the 125 foot setback is not helping the pond. Residents don't want to go through the process for getting a variance so the neighborhood is deteriorating. There are a lot of renters, and they don't care as much as owners. He thinks that the 125 foot setback requirement is hurting the pond more than any harm that might be caused by a reduction in the setback requirement.

The Chair recognized Richard Dell'Erba, Wilson Pond resident and member of the Swanzey Conservation Commission. He stated for the record that the Conservation Commission strongly objects that the PB is raising the issue soon after the public has voted on this issue in a landslide vote in favor of the 125 foot setback. He mentioned that legal action could be taken to court and asked for a poll of the members of the PB. Dell'Erba alleged that members of the Planning Board may have had ex parte communications and may have violated the right to know law. Page said the request was out of order.

The Chair recognized Barbara Skuly. She said that it seemed to her that there is a disagreement on the value of the Pond to residents. She thought that residents buy on the pond because of the resource it is to them. She said it doesn't make sense to her to detract from the purpose of why they have purchased there. The greater the buffer, the greater the protection for the pond that the residents value. She said that blaming the buffer for someone wanting to fix up their house doesn't make sense to her.

The Chair recognized Town Planner Carbonneau. Carbonneau stated that a number of documents were submitted to PB members at the October 25, 2012 and November 8, 2012 meetings and asked that these documents be included as part of the public hearing. Lerandeau **moved** that the documents referenced by Carbonneau be included in the documentation for this hearing, seconded by Smith, all in favor. ***Motion passed.***

The Chair recognized Rick Dell'Erba. He stated that most of the homes on Wilson Pond are already within 50 feet of the pond. He asked how many will be affected by the change in the setback? He stated that only a few would be affected and therefore why make the change.

The Chair recognized Rachel Elkins. She stated that she agreed with Jacobs that water and sewer coming to the residents around the pond has made a difference in the quality of the pond. She said that folks are enjoying the pond more and she sees a benefit to reducing the setback to 50 feet so that homeowners can improve their homes.

The Chair asked if anyone had anything new to add. Lerandeau made a **motion** to close public hearing, Self seconded. All were in favor. ***Motion passed.***

**Public Hearing closed at 7:59 p.m.**

**Discussion by the PB on the amendments being considered -**

Davis said she doesn't understand why the Town should think that 50 feet is inadequate if the State thinks 50 feet is adequate. Johnson said she called the State of NH and learned that a local law trumps the State. Davis said she was struggling with the Town having a more stringent setback than required by the State. Self said that he didn't think the issue was about pollution. He said it is about property rights and the ability of residents to improve their properties as other residents in town can. He said the State

has said the pollution level has been steady for years. There are sixty-seven (67) house lots on Wilson Pond with water frontage - all but one is in violation of the 125 foot setback. There are fifty-four (54) homes in violation of the 50 foot setback. The belief is that the pond will be negatively impacted, but Self said the houses have been there a long time and the situation of the pond is stable. He reads the reports presented as showing a trend that is fairly stable for Dissolved Oxygen. He reads that phosphorous numbers in the report as also stable since 1992. Self said the pond's numbers are well within the State's mean and the pond is stable. Page said that with fifty-four (54) homes within the 50 foot setback nothing would change for them if the setback requirement was reduced. They would have to go to the ZBA no matter what. Net effect is for fifteen (15)(sic) houses.

Johnson said that the discussion about pollution is moot. Everyone is too close to the water on Wilson Pond. Things won't change much. The residents will still have to do the same engineering work and go to the ZBA for changes to their houses. Self said that it matters to the ones who will be legal after the change and some of the houses across the road will be positively affected. He said that even it is one homeowner; it is a property rights issue.

Self asked Carbonneau about the list of streams and rivers and lakes and ponds being covered by amendment #1 and she said the list is propagated by the State.

Lerandeau **moved** to propose that Amendment #1 be placed on the Town warrant in the spring which deletes Section VII.A. and VIII.B. and replaces with the following:

A. SHORELAND PROTECTION DISTRICT

The Shoreland Protection District is hereby established as an overlay district which is superimposed over the conventional existing zoning. The uses permitted in the underlying districts shall be allowed only if they meet the minimum standards promulgated by the State of New Hampshire Shoreland Water Quality Protection Act, RSA 483-B (as amended). Pursuant to authority granted by RSA 674:14, this Shoreland Protection District is adopted by the Town of Swanzey to further protect the public waters of the Town.

B. TOWN OF SWANZEY SHORELAND PROTECTION DISTRICT includes all those lands defined as "Protected shoreland" in RSA 483-B:4,XV and as may be amended and any related administrative rules or regulations. As of April 18, 2012 the New Hampshire Department of Environmental Services "Consolidated List of Waterbodies Subject to RSA 483-B, the Shoreland Water Quality Protection Act" included the following:

4th order streams and designated rivers:

Ashuelot River - *Designated Segment*;

Ashuelot River - 4th Order;

South Branch Ashuelot River;  
Ash Swamp Brook;  
Martin Brook;

Lakes & Ponds:

Ashuelot River Dam  
Swanzy Lake  
Wilson Pond

**Motion** seconded by Smith that Proposed Amendment #1 be placed on the Town Warrant. All in favor. **Motion passed.**

**Motion** by Self to propose that Amendment #2 as follows be placed on the Town warrant, seconded by Smith. No further discussion. Those in favor: Miller, Davis, Self, Fuerderer and Lerandau. Those opposed: Smith and Page. **Motion passed** by majority vote.

Amendment #2 -

Delete Section VIII.C. and replace with the following:

C. PRIMARY BUILDING LINE/SETBACK:

- a. With the exception of Wilson Pond, no primary structure shall be built, placed or erected within one hundred twenty-five feet of the reference line of the Streams, Rivers, Lakes and Ponds listed in Paragraph B, above.
- b. Wilson Pond Primary Structure Setback: With respect to Wilson Pond, no primary structure shall be built, placed or erected within 50 feet of the reference line.

**Motion** by Self to propose that Amendment #3 as follows be placed on the Town warrant, second by Lerandau - all in favor. **Motion passed.**

Proposed Amendment #3 -  
Add the following new section VIII.D.:

D. DEFINITIONS: The definitions set forth in RSA 483-B shall apply to the terms used through Section VIII, Shoreland Protection District.

**B. DISCUSSION/OTHER BUSINESS**

- a. **Construction Details, Construction Procedures Manual, and Road Acceptance Policy - Motion** to postpone the discussion on the Construction Details, Construction Procedure Manual and Road Acceptance Policy by Self until first meeting in January, 2013. Lerandau seconded. All in favor. **Motion passed.**
- b. Carbonneau raised the topic of the Community Planning Grant and idea of investigating

the district possibilities: civic district, neighborhood heritage district are some possibilities. Maximum to apply for is \$30,000 and the split is 25%/75% meaning the Town would have to put in 25% but some of that can be in-kind service, not monetary. Links can be found on Citizen Planner website. They also have links to towns who have received money in the first round.

- c. Carbonneau provided dates for the PB members to place on their calendars: January 15, 2013 is the budget hearing. The Deliberative Session is February 5, 2013 at the Monadnock Regional High School at 7:00 p.m. The vote is March 12, 2013. Carbonneau said that the dates will also be posted online.

**Minutes - motion** to accept the minutes of November 29, 2012 as presented, made by Lerandeau, second by Fuerderer. Davis and Smith abstained since they weren't at the November 29<sup>th</sup> meeting. The rest were in favor. ***Motion passed.***

**Adjournment - Motion** to adjourn by Lerandeau, second by Smith, all in favor. ***Motion passed.***  
Adjournment at 8:28 p.m.

Respectfully Submitted,

Beverly Bernard, Recording Secretary