

SEC

SCHAUER ENVIRONMENTAL CONSULTANTS, L.L.C.

July 18, 2007

Wetlands Council
Attn: Appeals Clerk
C/o DES Legal Unit
P.O. Box 95
Concord, NH 03302-0095

RECEIVED

JUL 20 2007

07-14 WTC

Re: Petition for Appeal
DES File Number: 2007-00291
Tax Map/Lot #: 28/369,268
Project Name: Courtney Galluzzo
Project Location: Chalk Pond Road; Newbury, N.H.

Dear Members of the Wetlands Council:

This letter is written to appeal the denial for reconsideration issued by the Wetlands Bureau on June 22, 2007. The following information is supporting this appeal:

- (1) *For each appellant, the appellant's full legal name, mailing address, and daytime telephone number and, if available, a fax number and e-mail address;*

Courtney Galluzzo
P.O. Box 205
New London, NH 03257
1-603-927-0311 home

- (2) *If the petition for appeal is being filed by the appellant's representative, the representative's mailing address and daytime telephone number and, if available, a fax number and e-mail address;*

Peter Stanley Schauer
Schauer Environmental Consultants, L.L.C.
138 Cross Brook Road
Loudon, NH 03307
(603-798-4355) (603-798-4357 fax) (e-mail: soilsurfer@comcast.net)

- (3) *If the petition for appeal is being filed by a group of appellants, the group representative's name, mailing address, and daytime telephone number and, if available, a fax number and e-mail address;*

Not Applicable.

- (4) *A statement that the appellant is the applicant for a permit or a person entitled to be noticed in accordance with RSA 482-A: 8 or RSA 482-A: 9;*

Courtney Galluzzo is the person entitled to be notified as the appellant.

Environmental Planning & Permitting

Soil & Wetland Investigations

Septic Designs

138 Cross Brook Road, Loudon, NH 03307 Phone 798-4355 Fax 798-4357
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- (5) *A detailed description of the land involved in the department's decision by street address and municipality, tax map and lot number, and current deed reference.*

The property is owned by Courtney Galluzzo and is located at Chalk Pond Road, Newbury, N.H. (Tax Map/Lot #: 28/369,268). This site is an undeveloped two acre parcel of land with approximately 157 feet of frontage on Chalk Pond Road. The lot was subdivided and approved as a house site in 1973 (Rolling Hills Land Co., Town of Newbury Subdivision approval dated December 11, 1973, NHDES Subdivision Approval #6803). Deed reference (Exhibit 1) is Book 1881, Page 2091 Merrimack County Registry of Deeds (April 16, 1992). Plan reference (Exhibit 2) is Plan #3464, Merrimack County Registry of Deeds (December 12, 1973).

- (6) *Identification of the department's decision on reconsideration and underlying permit decision or order by the names of the parties, permit or order number, and the department's applicable file number and name if available.*

Courtney Galluzzo
Wetland Bureau File # 2007-00291
June 22, 2007 denial letter attached (Exhibit 3)

- (7) *A copy of the reconsideration decision, permit decision, or order and the department's finds in support of its decision on reconsideration;*

Please see the attached copy of Exhibit 3.

- (8) *A clear and concise statement of the relief sought, specifying every ground upon which it is claimed that the decision complained of is unlawful or unreasonable;*

On February 12, 2007 the appellant applied to the Wetlands Bureau for a permit to fill 1,200 square feet of forested wetlands for the side slopes for a proposed loop driveway and house. The Department issued a Notice of Administrative Completeness Standard Dredge and Fill Application letter on February 20, 2007.

On May 04, 2007 (Exhibit 4) the Department issued a denial of the appellant's request for a fill of 1,200 square feet of wetlands for the construction of a house and driveway based on ten findings.

Finding #6 states that *The DES Subsurface Bureau requires into a septic system to be located at least 50 feet for septic setback.* The applicant stated in his request for reconsideration that the wetland impacts requested of the Department were not to satisfy the septic setback, since the lot met the NHDES Subsurface site lot loading a waiver request had been applied for the setback requirement. Since that time a septic approval has been granted by the Subsurface Bureau for this site based on the plan attached (Exhibit 5). Consequently, this demonstrates that the wetland impact fill requested is not for the septic approval on this lot, it is for the driveway fill slopes and water line installation.

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Finding #7 states that *Pursuant to Env-Wt 505.03 (e) Expedited minimum impact permit conditions require that no fill shall be done to achieve septic setback and (f) provides that no "No fill shall be done for lot development".* This application was a standard dredge and fill application and as such is not regulated by the conditions of Env-Wt 500 Expedited Minimum Impact Permits.

Finding #8 states that *The fill as proposed would provide the necessary setback for the applicant's septic system.* The applicant did not need the wetland impact for the setback as stated in the answer to Finding #6 above, just for the driveway construction and water line installation.

Finding #9 states that *A retaining wall could be constructed at the toe of the driveway to further reduce the amount of fill in wetlands and to minimize the impact to the wetlands.* The placement of a wall in this location may reduce the direct amount of impact to the wetland, but in the long term the consultants believe that treatment of sand, salt and other treatment materials used on the driveway and walks would be attenuated to a greater degree by moving over a vegetated fill slope rather than flowing over a wall directly into the wetland without any treatment. The fill around the house is for access with equipment and for stability of the foundation.

Finding #10 states that *Env-Ws 302.04 (e) provides that the department shall not grant a permit if the project proposes fill of a wetland to achieve septic setback from wetland to meet department or local requirements.* This has been addressed in the answer to findings #6 & #8.

- (9) *A concise and explicit statement of the facts and the statutory provisions upon which the council is asked to rely in granting relief;*

The Findings in Support of the Denial (June 22, 2007 denial letter on page 2 of 2) states in #18 that *"the applicant has not addressed Env-Wt 302.01 (b) to the Department's satisfaction, and therefore is denied in accordance with Env-Wt 302.04 (d) (3) as the project causes unnecessary destruction of wetlands.* The appellant does believe that the need for the wetland impact on this site has been avoided and minimized within reasonable measures by proposing the following actions:

- Constructing only a 2-bedroom home on the site
- Getting an approved septic design with appurtenant waivers
- Using a state of the art septic system (Clean-Solution) that provides biological treatment (aeration) of the effluent within the tank system prior to being dispersed to the leach bed
- Providing a circular driveway that accomplishes two goals; the homeowner will not have to back out onto Chalk Pond Road to exit the site (a safety hazard) and the interior of the circle provides a safe and accessible location for the septic system
- Providing a vegetated slope beyond the driveway for the treatment of runoff and filtering sediment from reaching the wetland system
- Providing adequate support material for the house foundation during and after construction, as well as providing area to work with equipment while building the house.

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In addition, Findings # 19 and #20 state that the appellant has failed to address sections of Env-Wt 302.03, 302.04 (b) (5) and 302.04 (d) (2). The appellant disagrees with these findings as stated above and believes that although there may be other alternatives to avoid and minimize wetland impacts that the plan that has been prepared is a reasonable use of the property (considering the disturbed nature of the wetlands and the fact that the wetlands were created by a previous owner). Also, this project will not cause or contribute to *significant* degradation of waters of the state or cause random or unnecessary destruction of waters of the state because mitigating steps such as a "Clean Solution" septic system and vegetated side slopes have been proposed to treat and attenuate any sediment or effluent produced by the construction of this residence.

Loss of wetland functions and values will not be significantly degraded by the wetland fills on this site. The wetland areas are marginal poorly drained areas that have been created by over excavation of original uplands.

Finding #21 states that *The proposed effluent disposal system does not meet the requirements of Env-Ws 1008.04, and therefore the application is denied in accordance with Env-Wt 302.04 (e) (1).* This is not true as stated above and evidenced by a permit issued by the Subsurface Bureau on July 20, 2007.

- (10) *A brief statement indicating the complexity of the issues presented to the council and the volume of the record below;*

The appellant or his wife has owned this property for approximately 19 years. Prior to appellant's ownership the site was altered by excavation activities that produced wetland environments, in areas that originally were not wetlands when the site was subdivided. These man-produced wetlands have very limited functions and values (possible wildlife habitat) due to their disturbed condition and close proximity to Chalk Pond Road. In fact, the impacted wetland areas were still relatively unvegetated due to the prior disturbances and lack of a growing medium for plant growth when the wetland mapping was performed.

The denial of these impacts is based on the fact that the fill was being placed in the wetland to satisfy the septic setbacks required by the Subsurface Bureau. This is not the case, as is stated above and supported by the plan. The appellant feels that this request is a reasonable use of the property that he has paid taxes on as an approved building lot for many years. The size of the house has been minimized by the exclusion of a garage, further minimizing the wetland and site impacts and the septic system has been designed and approved as a state of the art system to further protect the existing wetland habitats and streams on site.

- (11) *Certification that a copy of the notice of appeal was delivered to all persons as required by Env-WtC 203.01(c), specifying the name and address to whom each copy was delivered and the date and manner sent;*

Please find attached a copy of the certified letter receipts (Exhibit 6) mailed on July 20, 2007 to:

Environmental Planning & Permitting

Soil & Wetland Investigations

Septic Designs

138 Cross Brook Road, Loudon, NH 03307 Phone 798-4355 Fax 798-4357
Email: Soilsurfer@comcast.net

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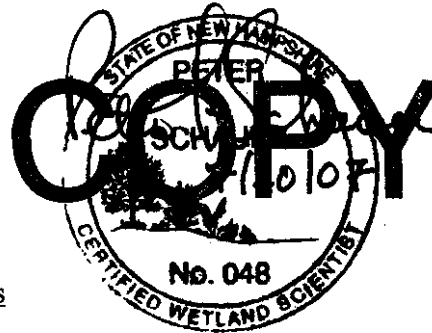
SCHAUER ENVIRONMENTAL CONSULTANTS, L.L.C.

Town of Newbury
Newbury Conservation Commission
P.O. Box 296
Newbury, NH 03255

Town of Newbury
Municipal Clerk
P.O. Box 296
Newbury, NH 03255

Blakeman Engineering, Inc.
P.O. Box 4, Route 114
North Sutton, NH 03260

This document was prepared by
Peter Stanley Schauer
For Appellant: Courtney Galluzzo



Attachments

- | | |
|-----------|---|
| Exhibit 1 | Record Deed |
| Exhibit 2 | Plan Reference #3464 |
| Exhibit 3 | June 22, 2007 DES Reconsideration Denial Letter |
| Exhibit 4 | May 04, 2007 DES Denial Letter |
| Exhibit 5 | Site Plan/Septic Plan (dated October 11, 2006; Revised July 12, 2007) |
| Exhibit 6 | Certified Mail Receipts |

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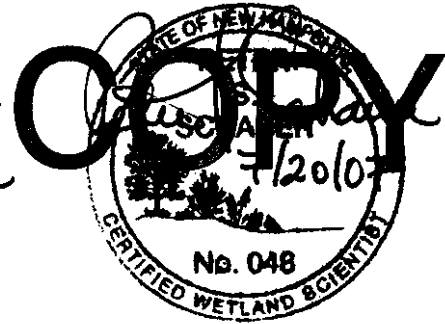
Town of Newbury
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P.O. Box 4, Route 114
North Sutton, NH 03260

This document was prepared by
Peter Stanley Schauer
For Appellant: Courtney Galluzzo

COPY COPY
Peter Stanley Schauer



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Email: Soilsurfer@comcast.net

7/20/2007

7/20/07

QUITCLAIM DEED

KNOW ALL PEOPLE BY THESE PRESENTS, that I, Melinda O. Galluzzo, formerly Melinda D. Martell, married, of New London, New Hampshire, for consideration paid, grant to my husband, Courtney S. Galluzzo and myself, Melinda O. Galluzzo, of New London, New Hampshire (mailing address: P.O. Box 205, New London, New Hampshire 03257), as joint tenants with rights of survivorship, WITH QUITCLAIM COVENANTS, all my right, title and interest in a certain tract of land situate in Newbury, County of Merrimack and State of New Hampshire, more particularly described as follows:

A certain tract of land in the Town of Newbury, County of Merrimack, and State of New Hampshire, being described as Lot #11 on Map 3464 as recorded at the Merrimack County Registry of Deeds, which is incorporated herein by reference.

This conveyance is further made subject to and with the benefit of the easements, reservations, rights and restrictions set forth in deed from Kearsarge Land Co., Inc. dated May 1, 1981 and recorded at the Merrimack County Registry of Deeds in Book 1395, Page 132.

MEANING AND INTENDING to describe and convey those same premises conveyed to Melinda O. Galluzzo (formerly Melinda D. Martell) by Quitclaim Deed of James J. Martell, dated October 9, 1990 and recorded in the Merrimack County Registry of Deeds at Book 1848, Page 448.

At the time of the conveyance of James J. Martell to Melinda O. Martell, dated October 9, 1990 and recorded in Book 1848, Page 449 of the Merrimack County Registry of Deeds, the said James J. Martell and Melinda O. Martell were husband and wife.

The within is a non-contractual transfer between husband and wife and no transfer tax is due.

Witness my hand this 15th day of April, 1992.

COPY
Melinda O. Galluzzo
Melinda O. Galluzzo

STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK, SS

The foregoing instrument was acknowledged before me this 15th day of April, 1992 by Melinda O. Galluzzo known to me or satisfactorily proven to be the person whose name is subscribed above, who acknowledged to me that she executed the within as her voluntary act and deed.

COPY
Notary Public in and for the State of New Hampshire

SUSAN CHIAPELLA, Notary Public
My Commission Expires January 22, 1993



MERRIMACK COUNTY RECORDS

Karen L. Murray, Registrar

Exhibit 1

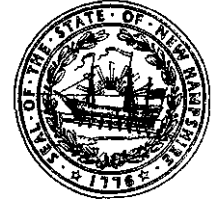
Exhibit 2

Too Large to Scan

Exhibit 3



The State of New Hampshire
DEPARTMENT OF ENVIRONMENTAL SERVICES



Thomas S. Burack, Commissioner

June 22, 2007

Courtney Galuzzo
PO Box 205
New London, NH 03257

Re: File #2007-00291 - Tax Map/Lot # 28/369,268

Dear Ms. Galuzzo:

The Department of Environmental Services (DES) Wetlands Bureau has completed its review of your request for reconsideration on the above referenced application. Based on this review DES reaffirms the May 04, 2007 denial of the application to dredge and fill approximately 1120 sq. ft. of wetlands adjacent to the proposed house and driveway on a lot dominated by poorly drained wetlands adjacent to Blodgetts Brook in Newbury with the following findings:

Findings of Law:

1. This is a Minimum Impact Project per NH Code of Administrative Rule (Rule) Env-Wt 303.04(f), projects involving alteration of less than 3,000 square feet in swamps or wet meadows that are not in prime wetlands or do not meet the requirements of Env-Wt 303.02(k), provided that no previous department permit has placed restrictions on the property of the applicant
2. Approvals must be consistent with the findings of public purpose set forth by RSA 482-A:1.
3. The need for the proposed impacts shall be demonstrated by the applicant prior to Department of Environmental Services Wetlands Bureau (Department) approval of any alteration of nontidal wetlands per Rule Env-Wt 302.01(b).
4. The applicant must provide evidence which demonstrates that his/her proposal is the alternative with the least adverse impact to areas and environments under the Department's jurisdiction per Rule Env-Wt 302.03.
5. The applicant must demonstrate by plan and example that each factor listed in Rule Env-Wt 302.04(b), Requirements for Application Evaluation, has been considered in the design of the project.
6. In accordance with Rule Env-Wt 302.04(d), the Department shall not grant a permit if the applicant fails to document that the proposed alternative is the one with the least adverse impact to areas and environments under the Department's jurisdiction, the project will cause or contribute to significant degradation of waters of the state, or the project will cause random or unnecessary destruction of wetlands.
7. In accordance with Rule Env-Wt 302.04(e), the Department shall not grant a permit if the project proposes fill of a wetland to achieve septic set back from wetlands to meet department of local requirements.
8. In accordance with Rule Env-Ws 1008.04, Table 1008-2, requires that effluent disposal system septic tanks, be located 75 feet from surface waters, 50 feet from poorly drained wetlands, and 50 feet from culvert openings.
9. In accordance with Env-Ws 1008.04(c), the distance between a septic tank and surface water, open drainage, or a private on-site well may be reduced to 50 feet if pipe having an SDR of 26 or equivalent is used and the tank is sealed and grouted to prevent infiltration and exfiltration.
10. In accordance with Rule Env-Ws 1008.04, Table 1008-2, requires that effluent disposal system leach bed trenches, be located 75 feet from surface waters, 50 feet from poorly drained wetlands, and 75 feet from culvert openings.

Findings of Fact:

11. The Department received a Standard Dredge and Fill Application on February 12, 2007, to fill 1,200 square feet of forested wetlands for side slopes for proposed loop driveway and house.
12. The Department issued a Notice of Administrative Completeness Standard Dredge and Fill Application letter on February 20, 2007.

DES Web site: www.des.nh.gov

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

Telephone: (603) 271-2147 • Fax: (603) 271-6588 • TDD Access: Relay NH 1-800-735-2964

Page 2 of 2
Findings Cont'd
2007-00291

13. The DES Subsurface Systems Bureau issued a letter dated November 01, 2006, which states, "Due to new construction, per Env-Ws 1008.01(d)(2), waivers shall not be granted for new construction. Please revise plans accordingly."

14. On May 04, 2007, the Department issued a decision to deny the requested impacts. DES reaffirms findings one (1) through ten (10) of the original denial.

15. On May 25, 2007, the Department received a request for reconsideration stating, "I would like to herewith apply for reconsideration. It seems the gist of your denial was based on the fact that the application was applying to fill wetlands to achieve septic systems setbacks. This is incorrect." The reconsideration also states the applicant has applied for a waiver from the DES Subsurface Systems Bureau and the requested wetlands impact is required for fill adjacent to the house and for the driveway.

16. The plans provided in support of the application illustrate impacts to jurisdictional wetlands within 15 feet of the proposed effluent disposal system.

17. The size of the proposed home and structure appear to exceed the capacity of the lot.

Findings in Support of Denial:

18. The applicant has not addressed Env-Wt 302.01(b) to the Department's Satisfaction, and therefore is denied in accordance with Env-Wt 302.04(d)(3) as the project causes unnecessary destruction of wetlands.

19. The applicant failed to address Env-Wt 302.03 and Env-Wt 302.04(b)(5), and therefore is denied in accordance with Env-Wt 302.04(d)(1), as there may be practicable alternative that would have a less adverse impact on the area and environments under the department's jurisdiction.

20. The applicant has failed to address Env- Wt 302.04(b)(3), and therefore is denied in accordance with Env-Wt 302.04(d)(2) as the project would cause or contribute to significant degradation of waters of the state.

21. The proposed effluent disposal system does not meet the requirements of Env-Ws 1008.04, and therefore the application is denied in accordance with Env-Wt 302.04(e)(1).

You are hereby informed that further appeal of this decision is to the New Hampshire Wetlands Council. Appeal must be made within 30 days of the date of this letter, in accordance with RSA 482-A:10, IV. Filing of the appeal shall be made by certified mail to the chairperson of the council, with a copy to DES, and shall set forth fully every ground upon which it is claimed that DES's decision is unlawful or unreasonable.

Sincerely,

COPY

Collis G. Adams, CWS, CPESC
Bureau Administrator
DES Wetlands Bureau

CGA/bdc

cc: Newbury Conservation Commission
Newbury Selectmen
Blakeman Engineering, Inc. ✓

Exhibit 4



The State of New Hampshire
Department of Environmental Services



May 04, 2007

Courtney Galuzzo
 PO Box 205
 New London, NH 03257

RE: File #2007-00291 - Courtney Galuzzo - Newbury - Tax Map/Lot # 28/369,268

Dear Ms. Galuzzo:

The Department of Environmental Services (DES) Wetlands Bureau has completed its review of your application and has determined that the proposed project to dredge and fill approximately 1120 sq. ft. of wetlands adjacent to the proposed house and driveway on a lot dominated by poorly drained wetlands adjacent to Blodgetts Brook does not comply with the Wetlands Bureau regulations and statute. The application has therefore been denied.

This decision was determined based on the following findings:

1. The parcel was subdivided as house site in 1973.
2. The applicant states that the proposed impacts are necessary in order to build a house and appropriate amenities on the site.
3. The applicant states that the proposed house and driveway location is the least wetland impacting area.
4. The applicant states that most of the parcel is poorly drained wetland.
5. The applicant states that the "driveway is designed as a 'horseshoe' shape in the interest of safety."
6. The DES - Subsurface Bureau requires into a septic system to be located at least 50 feet for septic setback.
7. Pursuant to Env-Wt 505.03 (e) Expedited minimum impact permit conditions require that no fill shall be done to achieve septic setback and f) provides that no "No fill shall be done for lot development."
8. The fill as proposed would provide the necessary setback for the applicant's septic system.
9. A retaining wall could be constructed at the toe of the driveway to further reduce the amount of fill in wetlands and to minimize the impact to the wetlands.
10. Env-Wt 302.04(e) provides that the department shall not grant a permit if the project proposes fill of a wetland to achieve septic setback from wetland to meet department or local requirements.

You may apply for reconsideration with respect to any matter determined in this action within 20 days from the date of this letter. A motion for reconsideration must specify all grounds upon which future appeals may be based, and should include information not available to DES when the decision was made. DES may grant reconsideration if, in its opinion, good reason is provided in the motion.

Sincerely,
COPY
 Kirsten Pulkkinen
 Wetlands Inspector
 DES Wetlands Bureau

KAP/bdc

cc: Newbury Conservation Commission
 Newbury Board of Selectmen
 Blakeman Engineering, Inc.

P.O. Box 95, 29 Hazen Drive, Concord, New Hampshire 03302-0095

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DES Web site: www.dts.nh.gov

Exhibit 5

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