

Testimony to the Hopewell Township Planning Board

Regarding the Berwind Property Group “Technology Center of Princeton” site

May 29, 2008

Bill Wolfe, Director

I am Bill Wolfe. I reside at 23 Gulick Road, Ringoes, NJ 08551. I am the Director of the NJ Chapter of Public Employees for Environmental Responsibility (PEER).

PEER is a private non-profit national support group for environmental professionals in state and federal agencies that seek enforcement of environmental laws, scientific integrity, and government accountability.

In the course of my work, I recently became aware of important regulatory information that is directly relevant to the Berwind Property Group’s (BPG) development application before the Board tonight.

In reviewing the subject application, the Hopewell Township Planning Board should be aware of the following facts:

1. On May 20, 2008, NJ Department of Environmental Protection (DEP) Commissioner Lisa P. Jackson adopted new regulations that legally designate portions of Stony Brook in Hopewell Township as a “Category One waters” (C1) pursuant to the NJ Surface Water Quality Standards (SWQS - NJAC 7:9B-1 et seq, hereafter “C1 rules”).

The new C1 rules designate stretch of the Stony Brook that runs from Old Mill Road to Quaker Road as a “Category One water” pursuant to the NJSWQS (see Exhibit 1).

These adopted rules were proposed for public comment in the May 21, 2007 *NJ Register*.

2. Pursuant to Office of Administrative Law regulations @ NJAC 1:30-6.6(b), the DEP May 20, 2008 adopted C1 rules will become legally effective June 16, 2008, upon publication in the next edition of the *NJ Register* (personal communication, OAL Regulatory Director, Mark Stanton):

§ 1:30-6.6 Effective date and promulgation of adopted rule

[a clip]

b) Any other adopted rule is effective upon publication in the New Jersey Register”

3. Pursuant to DEP stormwater management regulations @ NJAC 7:8-5.5(h), designated C1 waters “**and perennial or intermittent streams that drain into**” designated C1 waters are afforded 300 foot “**special water resource protection areas**” (SWRPAs), where disturbance is strictly prohibited by “major development” (encroachment is allowed in limited cases):

h) Special water resource protection areas shall be established along all waters designated Category One at N.J.A.C. 7:9B and perennial or intermittent streams that drain into or upstream of the Category One waters as shown on the USGS Quadrangle Maps or in the County Soil Surveys, within the associated HUC 14 drainage. These areas shall be established for the protection of water quality, aesthetic value, exceptional ecological significance, exceptional recreational significance, exceptional water supply significance, and exceptional fisheries significance of those established Category One waters. These areas shall be designated and protected as follows:

1. The applicant shall preserve and maintain a special water resource protection area in accordance with one of the following:

i. A 300-foot special water resource protection area shall be provided on each side of the waterway, measured perpendicular to the waterway from the top of bank outwards, or from the centerline of the waterway where the bank is not defined, consisting of existing vegetation or vegetation allowed to follow natural succession is provided.

ii. Encroachment within the designated special water resource protection area under (h)1i above shall only be allowed where previous development or disturbance has occurred (for example, active agricultural use, parking area or maintained lawn area).

The encroachment shall only be allowed where applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable. In no case shall the remaining special water resource protection area be reduced to less than 150 feet as measured perpendicular to the top of bank of the waterway or centerline of the waterway where the bank is undefined. All encroachments proposed under this subparagraph shall be subject to review and approval by the Department.

2. All stormwater shall be discharged outside of but may flow through the special water resource protection area and shall comply with the Standard For Off-Site Stability in the

“Standards for Soil Erosion and Sediment Control in New Jersey,” established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq. (See N.J.A.C. 2:90-1.3).

3. If stormwater discharged outside of and flowing through the special water resource protection area cannot comply with the Standard For Off-Site Stability in the “Standards for Soil Erosion and Sediment Control in New Jersey,” established under the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 et seq., (see N.J.A.C. 2:90-1.3), then the stabilization measures in accordance with the requirements of the above standards may be placed within the special water resource protection area, provided that:

i. Stabilization measures shall not be placed within 150 feet of the waterway;

ii. Stormwater associated with discharges allowed by this paragraph shall achieve a 95 percent TSS post construction removal rate;

iii. Temperature shall be addressed to ensure no impact on receiving waterway;

iv. The encroachment shall only be allowed where the applicant demonstrates that the functional value and overall condition of the special water resource protection area will be maintained to the maximum extent practicable;

v. A conceptual project design meeting shall be held with the appropriate Department staff and Soil Conservation District staff to identify necessary stabilization measures; and

4. On August 20, 2007, Pepper Hamilton, LLP, attorneys for the applicant BPG, submitted comments on the DEP May 21, 2007 proposed Category One amendments (see Exhibit 2). BPG counsel stated that the impact of the proposed regulation to designate portions of the Stony Brook as a C1 water:

“If adopted, the [C1] rule would have a devastating affect on BPG’s ability to redevelop its property because of the imposition of a 300 foot special water resource protection area (and riparian zone if the proposed amendments to the Flood Hazard Control Act rules are enacted) (collectively, “buffers”) adjacent to the Stony Brook and its tributaries.” Such buffers will prevent BPG from implementing the 1999 [Hopewell] Township approved plan, possibly including BPG’s ability to discharge from its wastewater treatment plant.” (Exhibit 2, page 2-3)).

5. The Flood Area Control Act regulations and new “riparian zone” requirements noted above by Pepper Hamilton were adopted by DEP, published in the November 5, 2007 *NJ Register*, and became effective on that publication date, November 5, 2007.

6. Any development approval issued by the Hopewell Township Planning Board would be required to comply with the NJ Surface Water Quality Standards, including

a) the new DEP C1 designation of the Stony Brook and **perennial or intermittent**

streams that drain into all those designated stretches (@NJAC 7:9B-1 et seq.);

b) the DEP stormwater management rules, including the SWRPAs along the designated portions of the Stony Brook and **perennial or intermittent streams that drain into** all those designated stretches (@NJAC 7:8-1 et seq); and

c) the new stream encroachment rules, including the new “riparian zone” requirements along the designated portions of the Stony Brook and **perennial or intermittent streams that drain into** all those designated stretches (@NJAC 7:13-1 et seq.).

7. Hopewell Township is a “permittee” and bound by the terms and conditions of a Tier A “municipal stormwater permit” issued by the DEP to the Township pursuant to Section 402(p) (6) of the federal Clean Water Act and NJ DEP “NJPDES regulations @NJAC 7:14A.

Enforceable conditions of that DEP issued municipal stormwater permit mandate that permittee Hopewell Township adopt a stormwater management (SWM) plan in accordance with N.J.A.C. 7:8-4. (see Exhibit 3 *)

The stormwater management plan content requirements of NJAC 7:8-4 include the water quality provisions of the DEP stormwater management requirements, particularly the SWRPAs at NJAC 7:8-5.5(h).

Actions of Hopewell Township, including approvals issued by the Planning Board, are subject to the requirements of that municipal stormwater permit.

Accordingly, the Planning Board is obligated to enforce the SWRPA of the stormwater management rules (@ NJAC 7:8-5.5(h) in the course of review of the BPG development application currently before you.

Statement of qualifications as environmental regulatory policy expert on C1 rules

From 2002-2004, I worked at DEP as former Commissioner Campbell’s policy advisor. In that capacity, I

- A) Advised the Commissioner and was tasked to direct the DEP department-wide scientific work group that developed the new Category One Waters designation methodology, known as the “Integrated Ecological Assessment”;
- B) Advised the Commissioner and represented the Commissioner’s Office on the Category One regulatory development team that drafted Category One rule proposals and responded to public comments on those proposals;
- C) Advised the Commissioner and represented the Commissioner’s Office and participated in the development and drafting of the Special Water Resource

- Protection (SWRPA) provisions of the Stormwater Management rules @ NJAC 7:8-5.5(h)
- D) Advised the Commissioner and represented the Commissioner's Office on the "Big Map" rule development team. This team was tasked by the Commissioner to develop comprehensive revisions to NJDEP land use and water resource regulations;
 - E) Advised the Commissioner and represented the Commissioner on Governor McGreevey's Highlands Task Force. Assisted in preparation of the Task Force Report;
 - F) Advised the Commissioner and represented the Commissioner on the legislative team that drafted the Highlands Water Protection Act.

(see Exhibit 3 for related experience and education)

List of Exhibits

Exhibit 1 – May 20, 2008 adopted rule text

Exhibit 2 - August 20, 2007 comments by Pepper Hamilton, LLP on behalf of client Berwind Property Group

Exhibit 3 – DEP Tier A Municipal Stormwater permit – Basic Requirements matrix

Exhibit 4 – resume, William E. Wolfe