

**TOWN OF HAMILTON  
BOARD OF SELECTMEN  
JULY 14, 2014**

The Board of Selectmen met at Hamilton Town Hall at 7:00 p.m. on Monday, July 14, 2014 with Scott Maddern, Marc Johnson participating remotely, Jeff Hubbard joined meeting at 7:30 p.m. after attending Recreation Board meeting, David Neill and Jennifer Scuteri present. Town Manager Michael Lombardo, DPW Director Bill Redford, and Hamilton Development Corporation board members also present.

**Call to order**

Scott Maddern called the meeting to order at 7:00 p.m. and noted that the HDC would be joining at 7:30 p.m. He explained that Marc Johnson would be participating remotely and every vote by the Board would be by roll call.

**Public Comment**

None.

**Town Manager's report**

Town Manager Michael Lombardo reported that Beauport Ambulance has had a successful year in Town with ambulance and senior van services. Also, Hamilton has received a \$225,695 grant from the Department of Energy Resources for swapping out LED street lights (this could save \$30,000 or more annually), swapping out the exterior lighting at Town Hall and public safety building with LED lights, and HWRSD will receive \$30,403 for exterior lighting. Discussion ensued about how LED lights produce a lot more light and consume much less electricity.

**Chairman/Selectmen reports**

David Neill spoke to his conversation with ZBA Chair Bill Bowler in regard to expansion proposal from Cumberland Farms and that board's ability to reasonably regulate by suggesting the company scale down size of canopy from 100'. The ZBA is making its final ruling on the first Wednesday in August. Scuteri congratulated the Town officials for the DOER grant, reiterated search for Terry Hart replacement, July 22 meeting on feasibility grant for analysis of Patton Homestead being run by a non-profit organization, and that Patton Homestead historical tour is oversubscribed. Marc Johnson concurred with congratulations on DOER grant. Maddern mentioned interest

in working session with other boards including FinCom on three-year forecast as well as Lombardo on next calendar year SMART goals, meeting with EIE directors relative to Planning Director position, meeting with Brian Stein of HDC and follow up on wastewater presentation, meeting with Planning Board Chair Jeff Melick, and pool update with targeted vote for spring Town Meeting.

## **CONSENT AGENDA**

Maddern read items on Consent Agenda.

- **Approve Minutes** – June 30, 2014 Regular Session
- Vote to accept gift agreement re Downtown amenities from the Hamilton Development Corporation
- Sign **Warrant for 2014 State Primary**, September 9, 2014

Maddern entertained a motion to accept the Consent Agenda as read. Neill so moved. Scuteri seconded the motion. Roll call vote: Johnson, yes, Neill, yes, Scuteri, yes, Maddern, yes. Hubbard did not vote because he had not arrived at meeting yet.

## **AGENDA**

### **Discussion e SWMI Water Permit with Bill Redford, DPW Director**

Bill Redford, DPW Director, spoke to state's safe water initiative associated with water permitting that addresses stressed watersheds. Redford summarized Town's use of special counsel as part of process to maintain Hamilton's historic rights to water supply. He described Hamilton's response to state in regard to technical issues associated with proposed regulations and definition of safe yield to safeguard Town's current water rights.

Lombardo clarified that the Town officials object to hijacking Hamilton's water supply in the name of conservation and reallocating it which does not conserve water it reduces access to water for future of the Town. He questioned the state's adherence to true science in deriving terminology and quantifying safe yield. Also, how Hamilton's sub-basin acts differently than its neighbors upstream and other sub-basins relative to the water permitting process where the Town may not get enough credit for the 97% of water discharged back into the aquifer. In addition, that stream flows and patterns do not directly correlate with stream flow in Ipswich River. The Town has asked state for consideration in how the water permit is calculated. Similar responses have come from other communities. Town officials are trying to safeguard Hamilton's water to ensure the municipality is not overregulated and it can use its existing permitted water. Also,

Wenham draws from the same sub-basin and the importance of being able to share water with that community in an emergency.

Neill noted that the situation with the state and Hamilton's water permit has been ongoing and the future is unclear. Discussion addressed if the state's regulations go through then the Town could join a class action lawsuit, it could accept the circumstances, or defend itself to fight for water rights. Town officials are exploring with Manchester an alternate water supply outside of the Ipswich River watershed. Lombardo predicted that the interaction with the state on the matter is expected to take decades. Discussion ensued about the rational, technical response that the Town had provided relative to moving towards conservation, future proposed use for impervious surfaces (i.e., driveways), and how Hamilton is now waiting to hear from the state.

### **Discussion re Facilities Maintenance**

Redford notified the Board that there is a vacancy in part time facilities maintenance position shared with Wenham. Also that the facilities list has grown longer and serious consideration is being given to making this position full time and that the skill set (i.e., carpentry, plumbing and electrical) will complement Wenham and HWRSD staff for a potential three-way agreement and joint strategy on hiring to target needed skills. Lombardo explained that this would be similar to the grounds maintenance contract where staff and resources are shared. The Collins report had noted how few resources the communities have to serve facility maintenance needs. He concurred with Redford about making position full time and asking Town Meeting to fund it.

Johnson reiterated information provided in Collins report and lack of staff resources for facilities maintenance. Jeff Hubbard suggested an assessment be done to determine if more resources are needed or if existing resources should be used more effectively. Discussion ensued about variability of maintenance in Patton and Pingree Parks and impact of vandalism. Johnson suggested that after the proposed review thought could be given to adding more than half a person to maintain facilities. Scuteri spoke to how this pilot position has shown need for a permanent position and recommended that Hamilton consider more than adding to half time position especially compared to similar staff resources in cohort communities.

**Hamilton Development Corporation will present a follow-up to the Board on the Waste Water Treatment Workshop held on 6/17/14; McRae Property update**

Brian Stein summarized consulting engineer's presentation on waste water service for downtown relative to groundwater protection zone and density of area. Three areas in Town were considered for a wastewater treatment site: downtown, Asbury and Highland Street area, and Pingree Park area. Also presented was information on cost of systems (\$9 million to \$32 million), water usage and waste water flows, and acknowledgement of large users such as Hamilton Housing Authority, Hamilton Crossing, and the Boulders in Wenham.

Leaching capacity for a modular treatment system drives treated water into the ground and acreage required correlates with amount of water to be treated. Options for disposal include spray irrigation, and shallow dispersal. Disposal sites could be Patton Park, Pingree Park, HW Public Library field, Cutler School and Winthrop School properties as large undeveloped areas. There are economies of scale associated with number of houses served, and a system can be paid for through betterment charges or debt service. Emphasis was on importance of annual maintenance of a system to reduce long term issues and related costs. The HDC has been doing outreach with public and receiving feedback from Town boards. Next steps are to do technical studies of the areas mentioned and this would involve Town Meeting approval to spend funds for this purpose that is estimated to be more costly than recent consultant study.

Discussion ensued on focus on downtown and how the big picture for Hamilton is looking at a larger area than the downtown for waste water treatment. This is relative to Hamilton having reached septic capacity downtown (i.e., Jolie Tea could not open tea room), so this is driving how the Town can expand residential and business uses in the downtown. Selectmen weighed in and expressed support for moving forward getting economic questions answered as well as definition of scope, and market study done to assess needs and waste water issues beyond the downtown on Lake Street and in Chebacco Lake area. Hubbard acknowledged the work done on matter by HDC and noted that Corporation was tasked at looking at septic for downtown. He suggested that investigation should be done to identify opportunities to tie into neighboring community's sewer systems. He opined that HDC would not be responsible for looking at waste water treatment sites outside of the downtown.

Neill noted how expensive a waste water treatment system would be for the Town as well as yearly operation and maintenance cost; especially for downtown residents tying into system. He questioned how many businesses would be attracted to the downtown,

and what type of commercial expansion Hamilton would promote, in consideration of connection cost and limits of build out in the area. Bill Gisness described next steps as looking at marketability of downtown Hamilton and the financial benefit. He said that he and Stein would put together massing study information to understand what the community can handle in the downtown (i.e., two to three stories, how much housing and retail). Gisness noted that some of the users interested in renting the HDC's property on Willow Street could not because the septic system could not handle the functions from a retail perspective. So the uses downtown might not be the best for pedestrian, friendly businesses. He added that commercial taxes are the same as residential taxes in Town so there currently is no benefit to having businesses downtown. Gisness emphasized the importance of getting public input at meetings.

Scuteri spoke to the large financial numbers for a waste water treatment system and suggested area A could be smaller scale and mentioned need for pedestrian friendly use in the downtown. Discussion ensued about analysis of potential cost if Town invested in a waste water treatment system. The Urban Land Institute would develop economic modeling to understand the impact of build out on additional tax revenue for Hamilton and to foster agreement on economic feasibility across Town on what landowners and businesses want to see in Hamilton. Also addressed was the need to rezone the downtown with an overlay district for mixed use development.

Discussion was on how Hamilton returns 97% of its water to the basin and return on investment would be based on a study of market need to indicate the business opportunity beyond what has occurred downtown to date where two downtown businesses were purchased by landscaping firms. Hubbard spoke to what would be the economic impact on the community as a whole since it would be more expensive for people who live downtown to tie into a large waste water system. He acknowledged that this change could positively impact property values and reduce tax burden in community if economic development occurs downtown.

Gisness reiterated that septic issues are inhibiting economic development in the downtown so there are service companies versus pedestrian friendly businesses. He recapped that the big users of waste water treatment in the downtown are the Housing Authority and Boulders; housing projects not businesses. Gisness suggested if a larger scale operation were allowed on Hansbury or McRae sites this could promote the downtown businesses in Hamilton and Wenham. Also, the ULI has access to private and public funding. Stein concurred and mentioned that Hamilton needs different types of housing (i.e., condominiums and rentals to attract younger families). Developers had

looked at Hansbury property for housing but the septic issues required that a separate system be on the property.

Discussion addressed how this is a multi-year conversation for the Town. Town officials concurred that keeping momentum going on this matter is essential as well as public outreach. One element is to create visuals about what the Town might look like downtown to drive further discussion and financing in the future. David Carey recommended cost and benefit be identified and communicated to the overall community. Scuteri suggested that self-contained waste water systems such as what is proposed for Patton property housing project could be considered. Also, that the Selectmen could be the vehicle for conveying accurate information on this topic to the public.

Discussion ensued about partnerships and how Hamilton and Wenham could theoretically fund a leaching field in Pingree Park to foster future development in the downtown. Also reiterated was importance of communicating to the community what the benefits of proposed development are and the positive impact on the quality of life for downtown and overall Town's property values.

Discussion was on importance of vision for Hamilton's and Wenham's downtown to connect this area and make it more pedestrian friendly including burying utility lines, as well as installing a bike path not just a septic system and expansion of businesses. Town officials reiterated significance of understanding what the public wants for the area so residents are comfortable with change and development. The HDC is working toward submitting a plan to the Board by September 15 about how development would fit into the Town's vision for Hamilton's future. Hubbard suggested that HWcam could be used for the HDC meetings to reach more of the public to foster understanding of actions being taken such as the purchase of the McRae property. Neill recommended when thought is given to the septic needs that it include what people in Town would like to have such as more places to eat downtown. Stein described how the consultant had built into his numbers twice as much capacity as what currently exists downtown regarding waste water flow.

Carey summarized details about the HDC as a non-profit corporation and how it can take action at the same rate as the market. The three main objectives for the HDC are: 1) to enhance the downtown by making it more vibrant and encourage development through waste water treatment solution, 2) relook at zoning (i.e., parking requirement is currently punitive), and 3) livability factor including aesthetic enhancements such as the flow of walkways and bicycle paths, possibly adding brick sidewalks, and underground

wiring. Hubbard suggested there could be parallel paths for the trees and downtown lanterns done with some of the \$75,000 of Meals Tax annual revenue. Carey concurred that there is support for that as well as to move forward with the three objectives he described.

Stein gave an update on the McRae property that the HDC had purchased from Bob McRae who continues to live in his house that he is leasing from the HDC and has the right to stay in as long as he wants. In addition, barber is still renting space in the shop building. The HDC is looking for a tenant to rent the old shoe shop portion of the building. Some of the interested businesses (i.e., hair salon) could not be supported due to the septic system. The HDC is interested in preserving the property and controlling what happens based on what the neighbors and community would like to see there. It was reiterated that the HDC is interested in better zoning for the area, it does not expect any changes at the property for two to three years, and it is paying property taxes for the McRae site.

**Set date for next Board of Selectmen meeting**

The next Board of Selectmen's meeting will be held on July 28.

**NEW BUSINESS**

**Consideration of topics for discussion at future Selectmen's meetings**

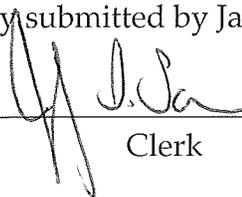
Topics will include Patton Park pool and resolution of associate positions for the Planning Board.

The Board decided it did not need to move into Executive Session.

Maddern entertained a motion to adjourn at 8:39 p.m. Hubbard so moved. Neill seconded the motion. Roll call vote: Johnson, yes, Neill, yes, Scuteri, yes, Maddern, yes, Hubbard, yes.

Respectfully submitted by Jane Dooley, Minutes Secretary

ATTEST:

  
Clerk





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July 09, 2014

Massachusetts Department of Environmental Protection  
Bureau of Resource Protection - Water Management Regulatory Comment Box  
1 Winter Street, 5<sup>th</sup> Floor  
Boston, MA 02108  
ATTN: Elizabeth McCann

Re: Draft Revisions  
Massachusetts Water Resources Management Program Regulations  
310 CMR 36.00

Dear Ms. McCann:

The Town of Hamilton submits the following comments on the referenced draft regulations:

**Purpose (310 CMR 36.02)**

*M.G.L. c.21G, §3* authorizes the Department to adopt regulations necessary for “establishing a mechanism for managing ground and surface water in the commonwealth as a single hydrological system and ensuring, where necessary, a balance among competing water withdrawals and uses.” The proposed regulations distort this purpose by focusing attention away from managing ground and surface water and concentrating exclusively on managing water withdrawals. Yet, when compared to the impact of impervious surfaces, water withdrawals are a relatively minor component of streamflow impacts. Indeed, the USGS Scientific Investigations Report 2011-5193, “Factors Influencing Riverine Fish Assemblages in Massachusetts,” concludes (at page 51) that increases in the percentage of impervious surface within a river basin affect the fluvial fish population five times more than reductions in streamflow. The report also highlights the fact that increases in streamflow resulting from increases in wastewater and other manmade discharges actually correlate with decreased fluvial fish abundance. *Id.* at 35.

It should also be noted that this section does not accurately describe the purpose of sections 36.41 through 36.44, which do not pertain to “comprehensively manag[ing] withdrawals above the threshold volume.”

**Definitions (310 CMR 36.03)**

- Annual statement of withdrawal!: This definition appears to authorize the Department to require both registrants and permit holders to submit “any...information required by the Department” without the need for the Department to set forth its requirements by regulation. With respect to registrants, this is directly contrary to the holding of the Supreme Judicial

Court in *Water Department of Fairhaven v. Department of Environmental Protection*, 455 Mass. 740, 749 (2010) (DEP “may impose conditions on any permit without regulation, but...the Act does not grant the department the same authority with respect to the filing of registration statements and renewals.”). If the Department wishes to require certain information to be submitted by registrants annually, it must do so by setting forth the requirement in a regulation. A regulation that purports to grant the Department unlimited power to require registrants to submit unspecified information violates this principle.

- Baseline: For the past 25 years, water suppliers have not needed to provide justification to the Water Resources Commission in order to maintain their permitted water withdrawal volumes. Rather, the Department typically used permit holders’ 20-year projections for water demand, submitted pursuant to 310 CMR 36.20, only when reviewing requests to increase withdrawals.

Now, however, the Department has calculated a “baseline” withdrawal volume for each permit holder that, in Hamilton’s case, is less than what is currently authorized. Any permit renewal application seeking authorization for a withdrawal volume above this new “baseline” will be treated as a request for an increase in withdrawals, even if it is the same as or less than what is currently authorized. This punishes permit holders that have worked diligently to foster conservation and to manage their withdrawals at levels less than their permits allow. Water suppliers that have kept their withdrawals below authorized levels should not be stripped of their access to water volumes that have already been authorized. Nor should water volumes that are currently being conserved rather than utilized, be summarily transferred to other applicants who will, by definition, not be conserving that water.

- Existing withdrawal: This definition is no longer needed as written. The Department should define existing withdrawals simply as the amount specified on the applicable registration statement.
- Minimization: This is an unfortunate choice of terms, made worse by its unworkable definition. How can one say that impacts to a sub-basin have been “minimized” when there are always additional steps that can be taken to reduce impacts further? No minimization plan target other than zero has been expressed or implied, and there is nothing in the regulations that will protect permit holders from the imposition of a never-ending list of further reductions. The Department must specify goals, targets and parameters for minimization plans, so that water suppliers can understand what will be required and be assured of their compliance therewith.
- Redundant wells: The definition of redundant wells infringes registrants’ grandfathered rights by precluding withdrawals at levels above the registrant’s annual average or the 3 years prior to filing a permit. This is antithetical to the purpose of the statute because it punishes registrants that are withdrawing below their registered level.

The definition also precludes classification of the Town’s Plateau Well as a redundant well, because it was constructed prior to the effective date of the regulations. The Town was required to obtain a permit for the Plateau Well at the time, even though it was not seeking any increase in water withdrawal volume. The Town believes that there should be a mechanism for wells that would have qualified for authorization as redundant wells at the time they were permitted to take advantage of the new procedure retroactively. For Hamilton, this would allow the Town to give up its permit entirely and operate its public water supply system exclusively under its registration.

- Safe Yield: *M.G.L. c.21G, §4* defines “safe yield” as:

...the maximum dependable withdrawals that can be made continuously from a water source including ground or surface water during a period of years in which the probable driest period or period of greatest water deficiency is likely to occur; provided, however, that such dependability is relative and is a function of storage and drought probability.

The proposed regulations incorporate this definition *verbatim*, and then directly contradict the statute by stating that “[t]he Department’s method for calculating and applying safe yield is described at 310 CMR 36.13.” Since, as discussed more fully below, that methodology is inconsistent with the statutory definition, the definition of “safe yield” is contrary to the statute.

- Water source: *M.G.L. c.21G, §4* defines “water source” as “any natural or artificial aquifer or body of surface water, including its watershed where ground and surface water sources are interconnected in a single hydrological system.” Again, the proposed regulations incorporate the statutory definition *verbatim* and then contradict the statute (“For the purposes of 310 CMR 36.00, water sources are the river basins delineated by the Commission at 313 CMR 4.03”). This is contrary to the statutory requirement that each natural or artificial aquifer be treated as a separate water source. It is also a poor policy choice, since it ignores the diversity of sub-basins within each river basin.

### **Registration Conditions (310 CMR 36.07)**

The language of Paragraph (1) of this section<sup>1</sup> was effectively invalidated by the Supreme Judicial Court’s decision in *Water Department of Fairhaven v. Department of Environmental Protection*, 455 Mass. at 751, since it purports to authorize the

Department to impose conditions on registration statements that have not been established by properly adopted regulations or that “infringe the registrants’ entitlement to existing withdrawals.” See 455 Mass. at 749 (“[T]he department did not issue regulations requiring registrants to satisfy these conservation measures. Instead, they were listed as new conditions on the plaintiffs’ registration renewals. The failure to issue regulations authorizing these conditions renders their inclusion in registration renewal statements unlawful.”). Rather than defy the Supreme Judicial Court by insisting that it may impose conditions on registrations without limitation, the Department should be proposing to modify Paragraph (1) to be consistent with the Court’s decision.

The Town also objects to paragraph (4) of this section, because registrants do not “request” a renewal of their registration. Rather, they file a renewal registration statement and, upon filing, are entitled to continue their withdrawals. See *Water Department of Fairhaven v. Department of Environmental Protection*, 455 Mass. at 747 (“Because the registrant’s entitlement to existing withdrawals is grandfathered, the registrant is not required to obtain permission to continue existing withdrawals; it is simply required to provide information in the registration statement specified by the department’s regulations.”). Paragraph (4) should also be revised to conform to the Supreme Judicial Court’s ruling.

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<sup>1</sup> Formerly 310 CMR 36.06(1).

### **Safe Yield (310 CMR 36.13)**

The primary reason that the DEP has had such a hard time developing a safe yield value for the basins in Massachusetts is that the term "safe yield" was never originally intended to apply to entire basins. Rather, it was intended for water sources (aquifers or bodies of surface water).

The statutory definition of "safe yield" (quoted above) requires that it take into account "the probable driest period or period of greatest water deficiency is likely to occur." The methodology set forth in Paragraph (1), however, does not conform to this definition. Instead, it is based on the 90% flow probability (Q90), which is worse than the drought of record in most instances, and therefore not "likely to occur."

The proposed regulation also requires application of a 55% factor to the calculation, which obviously is completely arbitrary. In the Ipswich River Basin, this factor results in a safe yield calculation of 29.4 MGD, less than the current total of registered withdrawal volumes in the Basin. As a consequence, the Department will be required to deny all applications for permits within the Basin that are above registered volumes.

This consequence is not compelled by any scientific need. The Department has offered no sound scientific or policy rationale for choosing 55% rather than any other percentage. Instead, the Department appears to have capitulated to relentless pressure of private interest groups who apparently wish to prevent public water suppliers from performing their essential function. There is no justification for withholding so great a volume—nearly half of the Basin's yield—from use for essential public health, safety and economic development purposes.

### **Streamflow Criteria (310 CMR 36.14)**

Streamflow criteria are based on the hydrologically distinct sub-basin from which a particular withdrawal is made. This regulation defines the streamflow criteria of each sub-basin, based on conditions from 2000-2004, on a scale from least to most altered for five seasonal "bioperiods" that correspond to recognized fish life stages: early summer (May-June), late summer (July-September), fall (October-November), winter (December-February) and spring (March-April). The three categories of streamflow criteria are:

- (a) Biological Category based on modeled (not observed) 2000-2004 conditions of the aquatic habitat for the fluvial fish community;
- (b) Groundwater Withdrawal Category, based on the ratio of 2000-2004 groundwater withdrawal volumes to the modeled (again, not observed) unimpacted median flow for August during the late summer bioperiod; and
- (c) Seasonal Groundwater Withdrawal Category based on the ratio of groundwater withdrawal volumes to the modeled unimpacted monthly median flow for the other four seasonal periods.

The Town objects to the proposed regulations' heavy reliance on the classification of sub-basins by "Biological Category," based on fluvial fish community characteristics. The Department should be reminded that the word "fish" appears in the *Water Management Act* only sparingly: Specifically, in section 7, "fish and wildlife" is one of 12 items listed in one of the ten factors to

be considered in formulating its regulations.<sup>2</sup> Yet the regulations exalt fluvial fish characteristics above nearly all other factors, making impacts on their communities' one of two principal determinants of the conditions that will be placed on water withdrawal permits. Performance of a municipality's essential public health, safety and economic development functions through the provision of a safe and reliable water supply should be given primary importance by the Department.

The Town also objects to the proposed regulations' use of Groundwater Withdrawal Category and Seasonal Groundwater Withdrawal Category classifications based on "unimpacted" conditions predicted by a USGS model merely by setting the value of "withdrawals" at zero. The result seems to suggest that a zero-withdrawal condition is something to which real-world conditions should be compared, when in fact it would represent an environmental catastrophe that would endanger public health and safety.

### **Withdrawals Requiring a Permit (310 CMR 36.16)**

The Town objects to subsection (1)(d), which makes redundant well withdrawals subject to a permit. As defined in section 36.03, redundant wells are used only "to withdraw groundwater pursuant to a registration." For this reason, a permit is inconsistent with the Supreme Judicial Court's ruling.

### **Permit Tier (310 CMR 36.19)**

Under this section, a groundwater withdrawal applicant's Permit Tier will be calculated based on the amount of water withdrawn over the applicant's baseline, which is based on ten-year-old withdrawal data, plus the effect the withdrawal over baseline is expected to have on the sub-basin's Groundwater Withdrawal Category, Biological Category and/or Seasonal Groundwater Withdrawal Category. The assigned Permit Tier impacts the requirements associated with the applicant's groundwater withdrawal permit, such as the need for a minimization plan, mitigation plan, or a demonstration that there is no feasible alternative water source. Permit Tiers should not be based on the categories for the reasons noted above.

The proposed regulations provide that applicants for WMA permit renewals will be assigned a Permit Tier (Tier 1, Tier 2, or Tier 3<sup>3</sup>), based on whether they are requesting a withdrawal volume above their "baseline" and, if an increase in volume is requested, whether that increase results in a change in the streamflow criteria, described above:

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<sup>2</sup> In section 8, the same twelve items are listed among the nine essential information requirements to be included in a permit application.

<sup>3</sup> Permit Tier 1 Applicants will have fewer conditions on their permits than Permit Tier 2 and Permit Tier 3 Applicants. In addition to the standard conditions applicable to Permit Tier 1 Applicants, Permit Tier 2 Applicants will be required to submit a plan to offset a portion of withdrawals (determined by the Department) above the baseline and to mitigate withdrawals that are not offset pursuant to such plan. 310 CMR 36.21(3)(b). Pursuant to 310 CMR 36.21(3)(c), Permit Tier 3 Applicants must file a mitigation plan and also demonstrate that there is no feasible alternative source, from which the proposed withdrawal could be made, that is less environmentally harmful.

- An application for a withdrawal volume equal to an applicant's baseline will be assigned to Permit Tier 1.
- If the proposed withdrawal volume will be above the baseline, but will not result in a change in the streamflow criteria, the application will be assigned to Permit Tier 2.
- If the proposed increase in withdrawal volume will result in a change in the streamflow criteria, the application will be assigned to Permit Tier 3.

The assignment of a Permit Tier impacts the requirements associated with the applicant's groundwater withdrawal permit, such as the need for a minimization plan, mitigation plan, or a demonstration that there is no feasible alternative water source. For example, according to the state's modeling, the Idlewild Brook Sub-basin, from which most of the Town's water is withdrawn have greater than 65% alteration of the fluvial fish population (Biological Category 5) and a groundwater withdrawal ratio greater than 65% (Groundwater Withdrawal Category 5).<sup>4</sup> Because Category 5 is the worst classification, any additional withdrawal cannot result in the "backsliding" into a worse category and an application to increase withdrawals (if not barred by safe yield exceedances) will be given a Permit Tier 2 classification.

In contrast, the Miles River Sub-basin, a secondary source of the Town's withdrawals, has a fluvial fish population alteration (again, according to DEP's modeling) between 35 and 65% (Biological Category 4), and a groundwater withdrawal ratio between 3 and 10% (Groundwater Withdrawal Category 2). If water withdrawals above baseline in the Miles River Sub-basin will degrade the sub-basin's Biological Category and Groundwater Withdrawal Category, the sub-basin will likely be classified under Permit Tier 3, and Hamilton's entire WMA permit renewal application would be assigned to Permit Tier 3. Otherwise, the application would be assigned to Permit Tier 2.

Ironically, therefore, a Town that makes withdrawals from a "healthier" water source with lower Category classifications (such as the Miles River Sub-basin) would have a higher risk of a Tier 3 assignment, accompanied by more permit requirements and conditions imposed, than an applicant with water sources in Category 5. This result reflects DEP's failure to test the real world consequences of its policy choices. The entire Permit Tier classification process needs to be rethought and revised.

### **Site-specific Evaluation (310 CMR 36.20)**

Much of Hamilton's opposition to the restrictions in its WMA Permit over the years derived from the fact that the Idlewild Brook Sub-basin does not appear to have flow characteristics that correlate well with streamflow of the Ipswich River generally or match the results of DEP's modeling. Specifically, in the summer, the Brook's flow ends in the Wenham Swamp, rather than discharging into the Ipswich River. Thus, what the model (which looks only at discharges from a sub-basin into the main stem of the river) sees as a cessation or near cessation of flow appears within the sub-basin to be a retention of water volume. Accordingly, groundwater levels at the Town's wells do not rise and fall in a pattern that reflects streamflow levels recorded at the Ipswich gauge.

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<sup>4</sup> The Town vigorously disputes this characterization of the sub-basin.

Hamilton had hoped to be able to document these specific local conditions and to seek modifications of its permit requirements based on those conditions. Specifically, the Town believed that it would have the opportunity in the new regulations to refute DEP's modeling results that suggest that Hamilton's water withdrawals affect the Idlewild Brook or Miles River sub-basins by showing that existing sub-basin flow conditions are not, in fact, diminished by current withdrawal volumes to the extent suggested by the modeling. Such a showing, it was hoped, would enable the Town to argue that one or more of the standard conditions imposed on a Permit Tier 1 applicant would be unnecessary.

The proposed regulations make this prospect seem remote. While 310 CMR 36.20(1) would allow an applicant to submit data regarding well use, sub-basin boundaries, hydrologic/geologic considerations, and refinements demonstrated through groundwater modeling, the regulation states that the Department can consider such information in re-determining a sub-basin's Groundwater Withdrawal Category, which would be relevant only in the context of assigning the applicant to a Permit Tier, not for re-consideration of the standard permit conditions required for Tier 1 permit renewals.

### **Permit Application Denials (310 CMR 36.30)**

This section permits the Department to deny a permit application or impose additional conditions based solely on any one of the numerous factors that the Department must consider in issuing a permit. Instead, the Department should be required to consider and balance each factor in making a permitting decision.

Moreover, pursuant to 310 CMR 36.30(2)(a) as currently drafted, all permit applications and renewals in the Ipswich River Basin must be denied because the safe yield of the Basin is exceeded by registered withdrawal volumes. This is inconsistent with 310 CMR 36.13(2), which specifies only that, if registered volumes alone exceed the safe yield of a water source, "no additional volumes of water will be available through permitting." If section 36.30(2)(a) is not rewritten to conform to section 36.13(2), it apparently would require that Hamilton stop using its best performing, most efficient well, even though the Town is currently withdrawing less than its registered volume.

This result is obviously contrary to common sense, and will cause serious damage to the Town of Hamilton, its residents and its businesses. Public health and safety will be threatened and the Town's economic development agenda will be crushed. The Town cannot stand by while the Department wreaks such havoc. Hamilton's long-standing commitment to recycling, composting, and its investigation of solar power and anaerobic digesting on the reclaimed landfill evidence the Town's and its residents' support for the natural environment. Yet commitment to the environment is just one of the factors that enhance its residents' quality of life. The Town requests that the Department reconsider its proposed regulations to reflect a more balanced approach to the needs of the Town's residents and businesses.

Michael A. Lombardo



Town Manager

