

seek funds to acquire this property; and they tried to work with Nouvelle to preserve it as the Township did not have the funds to purchase the property.

Mr. Hughes is asking that the Commissioner review all of the facts and not set a precedent of this property being purchased for profit and then breaching the dam.

Mr. Carl Luthman, Open Space and Land Use Board member, questions why this has become a liability problem for Nouvelle now as the pond was existing when they purchased the property and received approval for a 34-lot subdivision; now Nouvelle is concerned about the cost to repair the dam. He said the liability remains even when the dam is breached as the land remains.

Mr. David Muscalo, Open Space member, said the dam is a valuable resource for recharge of the groundwater to the aquifer.

Mr. Kevin O'Leary, Open Space member, said letters were sent to the NJDEP on December 14, 2006 and August 29, 2007 and that water is critical in this area. He asked about the dam's classification. Ms. Lawrence said it is unclassified at this time.

Mr. O'Leary said Nouvelle is marketing the 34-lot subdivision on the internet and referencing the lake.

Mr. O'Leary said an Environmental Impact Study (EIS) was not submitted to the Township and some issues have not been addressed. He said no long-term plan has been provided regarding the soil, wildlife, stabilization, etc. An EIS was specifically requested and not received. Ms. Lawrence said Fish & Wildlife determined it was not needed. Mr. O'Leary said this impacts more area than people feel and should have been done. He does not feel the applicant is qualified to state there are no Bog Turtles in the area.

Mr. John D'Angeli, Township Committeeman, said he did attend a previous meeting. Mr. John Richie was asked about an EIS and said Fish & Wildlife did not find a need for one. Mr. D'Angeli said the other partner, Mr. Bruni, said one was done.

Mr. Bill Macko, Lafayette resident and fireman, said one three (3) fire calls where the pond was the only water source. He said the hydrants in the area did not work and would not have handled these fires. He said the pond was lowered at least 10" for a barn fire on Sunset Inn Road. He asked Mr. D'Antonio how he would feel if this was a house fire and the hydrants did not work.

Mr. Macko noted the applicant bought the property knowing about the pond and dam and feels they have no regard about water for the wildlife.

Mr. John Blackford, Lafayette resident and fireman for 23 years, said the pond is a valuable resource which has shown many times to have saved fires.

Mr. Blackford said the applicant is concerned about the population; but he contributed to the population. The applicant knew about the pond when they bought the property; and they have no concern about destroying the ecosystem.

Mr. Blackford said that years ago signs were posted for no trespassing; however, none are posted at this time. He feels the breaching of this pond would not benefit anyone.

Mr. Bob Canace, Open Space Consultant, said the liability of a land owner for trespassing and an accident is a legitimate concern. He feels this needs to be researched before someone states this is a legitimate liability in this case and allows the breach.

Mr. Christopher Adams, president of Civil Dynamics, said he is a professional engineer with 30 years of experience in dam engineering and was contracted by Nouvelle in 2004.

Mr. Adams said the dam is an earth embankment; and there is no information on the original construction. He feels the dam was built without approval by the State; and it is not listed on the database.

Mr. Adams said the owner of the dam is responsible for the downstream effects if the dam fails. He said the pond is, also, a liability as an attractive nuisance.

Mr. Adams said the dam has now been added to the database; and he would classify it as a Class 2, significant hazard. However, a study should be done to decide the hazard classification.

Mr. Adams said the dam does not meet standards and needs to be rehabilitated or removed. He explained the required standards. Mr. Adams said it would cost approximately \$500,000-\$800,000 to repair the dam. Class 2 dams must be inspected every two (2) years. He said the decommissioning is being pursued due to costs and liability.

Mr. Adams explained the decommissioning plan and said it was approved by the Sparta Township Planning Board. He said this meets the standards of the NJDEP and Fish & Wildlife.

Mr. Tom Walker, a Lafayette resident, said it appears the applicant bought the property just to fill their piggy bank without knowing the cost of the dam repairs. His opinion is it is cheaper for them to destroy the environment rather than preserve it.

Mr. Rick Hughes said the engineer stated he was retained by Nouvelle in the fall of 2004 when the application was still before the Land Use Board. The Commissioner needs to know there was a change of ownership at some point from the previous owners to Nouvelle; and that they knew the dam was there. He asked if the Division of Dam Safety was notified of the change in ownership. This is a clear violation of the standards if they were not.

Mr. Hughes said the Commissioner needs to consider what standards are being looked at, what is being complied with and what is being ignored before she makes a decision.

Mr. Carl Luthman explained the public entities' relationship. The dam is in Sparta Township; and the lake is in Lafayette Township.

With there being no further comments from the public, Mrs. Straub stated the public hearing is completed.

Ms. Lawrence stated the testimony will be given to the Commissioner; and she will review it. She will make her decision based on this and the entire application.

The public hearing portion of the meeting was adjourned; and the Open Space Advisory Committee continued with there regular agenda.

Respectfully submitted,

ANNA ROSE FEDISH, RMC
Municipal Clerk