

# ***Topsfield Conservation Commission***

**Minutes of Wednesday, December 17, 2008**

Topsfield Library Meeting Room

*Pursuant to the 'Open Meeting Law,' G.L. 39, § 23B, the approval of these minutes by the Commission constitutes a certification of the date, time and place of the meeting, the members present and absent, and the actions taken at the meeting. Any other description of statements made by any person, or the summary of the discussion of any matter, is included for the purpose of context only, and no certification, express or implied, is made by the Commission as to the completeness or accuracy of such statements.*

The meeting was called to order by George Hall at 7:02 p.m. with a quorum present: George Hall, Chair; Holger Luther; Jim MacDougall; Mark Erickson; Jennie Merrill

Not Present: Jud Pratt

Also present: Lana Spillman, TCC Administrator; Catherine Tinsley, Minutes Secretary

Abbreviations used:

TCC – Topsfield Conservation Commission

OoC – Order of Conditions

ANRAD - Abbreviated Notice of Resource Area Delineation

NoI – Notice of Intent

DEP – Department of Environmental Protection

EO – Enforcement Order

AOoC – Amended Order of Conditions

BoH – Board of Health

CoC – Certificate of Compliance

NHESP – MA Natural Heritage and Endangered Species Program

7:02pm **OPEN MEETING:**

Signed bills, authorizations and time sheets

**MONTHLY OUTREACH INFORMATION SESSION:**

**“Waking the Map Nap”** – Jim MacDougall, Chair of Mapping Committee and Conservation Commissioner

MacDougall gave a Power Point presentation overview of the GIS (Geographic Information System) and the capabilities of the software to maximize the usage of the program.

The Commissioners will prepare action steps to use the program.

**HEARINGS:**

**Continuation NoI 307-0629: 12 Boston Street, English Commons at Topsfield,** (Map 81, Lot 1), English Commons, LLC – Alan J. Berry/Beals Associates, Inc.

(No representation) A request to continue to January 21, 2009 was received 12/17/08.

*Erickson made a motion to continue the hearing to January 21, 2009. The motion was seconded and carried unanimously.*

**Continuation NoI 307-\_\_\_\_: 207 Boston Street,** (Maps 57 & 49, Lots 4 & 2), James O’Brien, Essex Agricultural Society/DiLuna.

Greg Hochmuth, The Neve-Morin Group, representative, was present.

A written request to continue the hearing to January 21, 2009 was received on December 16, 2008..

*Luther made a motion to continue the hearing to January 21, 2009. The motion was seconded and carried unanimously.*

**NoI 307-0639: 103 Salem Road,** (Map 70, Lot 3), Mooney/The Neve-Morin Group, Inc.

Greg Hochmuth presented. The request is to subdivide the property and to construct a new single-family house with a portion of the driveway, a portion of the house, utilities, and significant grading within the Buffer Zone Resource Area.

A second request is for a reduction in the Bylaw fee. The legal ad was read and proof of abutter notification was collected.

Hochmuth presented the plan as submitted and answered questions from the TCC. The Commission asked how the plan could be modified to decrease Buffer Zone Resource Area impact and asked Hochmuth to explore alternatives that would propose the house outside the Buffer Zone. A discussion followed

including the request for a Bylaw fee reduction. The Commission suggested that reducing the proposed activity in the Buffer Zone would reduce the fee. No action, as related to the requests was taken. There was no public comment or question. A site visit was scheduled for December 27, 2008 at 8:30 a.m. *Merrill made a motion to continue the hearing under the Act and the Bylaw to January 7, 2009 in order to receive information and conduct a site visit. The motion was seconded and carried unanimously.*

**ANRAD 307-0640: 57 Candlewood Drive and 109R Perkins Row,** (Map 43, Lot 7), Skeffington, Jr./Hayes Engineering, Inc.

Elizabeth Wallis, Hayes Engineering, Inc, a wetlands scientist, presented. The Applicant's Attorney, Nicholas Decoulos, also was present.

The legal ad was read and proof of abutter notification was submitted.

The NoI is a request for verification of delineation of Resource Area Boundaries of an undeveloped property and a waiver of the review period as specified in the Bylaw Regulations, R: 10-3. a.1. (Regulations delineation period is April 15 - September 30).

Wallis gave a presentation, referencing the plan, describing the existing condition of the property and the Resource Areas – BVW, Inland Bank, and Riverfront Area – that she had delineated. She explained that she determined the location of Riverfront Area using several factors including bank, stained leaves, evidence of scour, vegetation, and extent of (observed) water. Decoulos offered to research the history of the existing woods road and whether there is an easement. Wallis stated that no calculations were done to determine the MAHW. Spillman stated that it would be precedent setting for TCC to review Resource Area boundaries on an undeveloped property outside of the period allowed in the Bylaw Regulations. Hall suggested a TCC site visit so that Commissioners could decide whether the time of review could be waived.

Public Comments:

Don Cragg – 49 Candlewood Drive – presented the TCC with two recent photos of the site with notes on the back.

Carol Decker, Ipswich River Wildlife Sanctuary Director, stated that, concerning the grassy path, in the TCC's review in 2001 it was a major issue that gravel had been brought into the site.

A site visit was scheduled for December 27, 2008 at 9:30 a.m.

*Luther made a motion to continue the hearing to January 7, 2009. The motion was seconded and carried unanimously.*

**NoI 307-0638: 57 Candlewood Drive/109R Perkins Row,** (Map 43, Lot 7), Skeffington, Jr./Hayes Engineering, Inc.

Elizabeth Wallis of Hayes Engineering, Inc. presented; the Applicant's Attorney, Nicholas Decoulos, and his brother, Robert Skeffington, were present.

The legal ad was read; Wallis did not submit separate (from previous hearing) abutter notification, citing that the abutter notices were sent together. TCC permitted the hearing to proceed.

The proposal is for development of a single-family house and associated activities – Plan shows driveway and grading within the Buffer Zone/Riverfront Area/NHESP Priority Habitat.

Wallis made a presentation referencing the plan and answered questions from the TCC. Luther requested information about the percentage of Riverfront Area proposed to be altered and an Alternatives Analysis.

Wallis explained that the proposal is to disturb 8,688 square feet of over 700,000 square feet of Riverfront Area on the site. This is a 7-acre property, most of which is Wetland Resource Areas.

TCC requested more information about stormwater management, proposed mitigation, and impacts to the priority habitat. The question was raised whether the project would be a limited project filing due since the first 100 feet of Riverfront Area would not be left undisturbed. Stormwater management details were suggested as possible mitigation components for the road being constructed within that first 100 feet. TCC is concerned that the proposed activities not contribute to water quality degradation of the brook. Spillman referred to the Bylaw Regulations R: 10-25. Stormwater Management and Drainage for Construction Projects. The TCC asked for mitigation plans and analysis of potential for/an alternate plan for the location of the driveway off Perkins Row.

Decoulos will submit a written report regarding the deed/title of the property.

Public Comments:

Carol Decker, Director, Ipswich River Wildlife Sanctuary, submitted a December 17, 2008 letter on behalf of MA Audubon Society commenting about the proposed development and requesting that the project be denied for reasons explained, which she summarized for the Commission. She stated that one reason a

previous proposal was denied is because alternative access was not explored and the TCC at that time advised that the access issue would not be revisited without additional information. She added that legal access off Perkins Row might have been lost when the lot was subdivided in 1999. Decker requested that the TCC review the documents associated with the previous filing for the property that was denied and records from 2001.

Leanne Coppola DelGazio - abutter - asked for clarification of the plan and questioned the proposed access. She observed that her yard floods regularly and does not want this to increase.

Hall requested information about back title – including when the lot was created and any other street access to the site after August 1, 1996 (just before the effective date of the Rivers Act).

Robert Skeffington stated that the culvert in the pathway/proposed driveway was installed in the 1950s.

Hall and Decoulos exchanged contact information so that TCC-requested information could be clarified.

*Luther made a motion to continue the hearing to January 7, 2009. The motion was seconded and carried unanimously.*

**NoI 307-\_\_\_: 35 Howlett Street, (Map 33, Lot 24), MacKinnon**

The legal ad was read and proof of abutter notification was submitted.

Richard MacKinnon presented.

The proposed work is replacement of an existing retaining wall behind the house with a brick-faced wall with locking block behind, and reconstruction of a stone wall between the stream and Howlett Street. The wall behind the house would be less than ten feet from an Intermittent Stream. Spillman stated that she has no concerns about the proposed work.

There was no public comment or question. DEP has not yet issued a comment sheet with file number; a more detailed plan was requested and Mr. MacKinnon has submitted it.

*Erickson made a motion to continue the hearing under the Act and the Bylaw to January 7, 2009, at the owner's request, in order to receive information. The motion was seconded and carried unanimously.*

**NoI 301-0642: 15 Howlett Street, (Map 33, Lot 32), Bloss/Professional Land Services**

The legal ad was read and proof of abutter notification was submitted. Bob Grasso of Professional Land Services presented.

This is an after-the-fact filing, following an Emergency Certification, for the replacement of a septic system that was in failure. The BOH Agent determined that the septic system was a public health emergency. Mr. Grasso explained that a gravity system was installed in compliance with the Conditions of the TCC Emergency Certification.

Spillman explained that there is a Bylaw Intermittent Stream not shown on the plan, connected to the BVW at flag A-12. The TCC required that the approximate centerline of the Intermittent Stream be shown on the As-Built plan, and that the area be monitored so that it re-vegetates in the spring.

There were no public comments.

*Luther made a motion to close the hearing subject to conditions to be shown on the as-built plan and for re-vegetation of the area prior to the COC. The motion was seconded and carried unanimously.*

**NoI 301-0641: 4 Glen Road, (Map 32, Lot 134), Aulson/Professional Land Services**

The legal ad was read and proof of abutter notification was submitted. Bob Grasso of Professional Land Services presented.

The proposal is to replace the septic system (BOH-approved), in Buffer Zone to Bordering Vegetated Wetlands. Spillman explained that when she made a site visit on December 15, the entire B-series of wetland flags was missing; the closest flag on the site to the proposed system area could not be verified. There is not sufficient information submitted with the NoI to verify the boundary of the BVW offsite to the east. Hall expressed concern about the process – TCC verification of wetland lines should have been the first step in the development of a proposal for the septic system replacement. Grasso explained that the replacement is urgent, which TCC acknowledged. Erickson emphasized the importance of stabilization of the steep slope from the new system during the winter. A discussion of understanding followed including the concern of that the slope be stabilized and that the delineation has not been verified and should not be used for any other purpose beyond this project.

Public comments:

Dick Gandt– 31 Timber Lane – expressed concern that grading for the system does not create “kettle holes”.

*Luther made a motion that the TCC approve the proposal, and that the delineation is for this (septic system) construction only is not to be used for future reference, the temporary access road is to be staked, the B series flags are to be replaced, and stabilization is to be done. The motion was seconded and carried unanimously.*

**ENFORCEMENT, APPEAL REPORTS, UPDATES:**

**Enforcement Order #2 10/16/2008: 215 Washington Street,** (Map 46, Lot 7), Galka, present/Representative Joe Orzel, Gulf of Maine

Orzel made a presentation including the history of the site and details of the work done as communicated to him by Mr. Galka, including the reason that work was done – to remove trash and debris and resolve mudroom flooding on the first floor. Mr. Galka installed roof drains into perforated pipes that run out to the bank of Fish Brook; there are currently 5 pipes discharging onto a big granite block and emptying into the brook. Silt fence and hay bales remain in place. There is some sand into the water beyond the sedimentation line, and there was some erosion from the storm on December 12<sup>th</sup>. Soil borings were done, but not a detailed delineation. Two photos were referenced.

The TCC noted their concern that the site remains stable during the winter, expressed interest in knowing what the pre-alteration conditions were, what Resource Areas, including BVW and Riverfront Area, were disturbed, and requested a proposal to restore the site to a condition that approximates the Resource Area delineation that existed prior to alterations, including re-vegetation with native plants to restore the site. Addressing drainage around the house at the same time is acceptable. Orzel was instructed to return to the TCC with a plan by January 21, 2009. Spillman will write a follow-up letter.

**Enforcement Order #2 and Bylaw Ticket #2007-11: 270 Boston Street,** (Map 41, Lot 87)

Albright/Mike DeRosa

DeRosa referenced photos of the outlet and pond in its current state and reviewed the recent activities and proposal, including the timeline, long-term plans, elevation corrections and winter stabilization. There was discussion about the highly engineered outlet structure that Mr. Albright recently had proposed, the inappropriateness of such a structure, and that the outlet now has 6-8-inch stone added. DeRosa emphasized that it is important not to change the outlet elevation – the water surface is the actual water table elevation. He confirmed that the site is stable and the outlet elevation, 115, is as proposed on the TCC-approved plan. Mr. Albright placed three hay bale check dams in the swale. The plan is to resume restoration work in accordance with the TCC-approved plan in the spring, with restoration to be completed by the end of June.

*Luther made a motion to grant the request to modify the EO to extend the deadline for completion of the restoration from October 30, 2008 to June 30, 2009. The motion was seconded and carried unanimously.*

Spillman will communicate the TCC’s acceptance of the new deadline in a letter.

**Amended Enforcement Order: Off Cross Street,** (Map 62, Lot 2) Nash – update (See next item).

**Enforcement Order 12/2/2008: Off Cross Street,** (Map 62, Lot 2) Nash

Neither Mr. Nash nor any of his representatives were present.

Hall updated the TCC, saying that a new EO was issued at his direction, which required that the revised plans be submitted to the TCC office by noon, December 10 (none received to date). It was noted that the TCC received the signature green card verifying that Bonnie Nash received the E.O. on 12/03/08. Bill Manuel, Nash Consultant, has notified the TCC office that the consultants’ numerous attempts to make contact with Nash have been unsuccessful.

*Luther made a motion to ratify the E.O. dated December 2, 2009. The motion was seconded and carried by a majority, with MacDongall abstaining.*

Discussion followed. It was the consensus of the TCC for the Administrator to contact the DEP and prepare documents to request that DEP take over the enforcement.

**REQUESTS:**

**Continuation CoC 307-0393: 119 Hill Street,** (Map 68, Lot 5) O’Keefe/John Sanidas

A letter drafted summarizing discussions with John Sanidas directing them of what needs to be done was reviewed by the TCC.

*Ericson made a motion to deny the CoC without prejudice and to authorize the Administrator to issue the letter dated December 17, 2009 to John Sanidas. The motion was seconded and carried unanimously.*

**OLD BUSINESS, UPDATES, & MISCELLANEOUS**

**Amended OoC 307-0586: 249 Rowley Bridge Road, (Map 80, Lot 2)**

Richard Adelman, property owner, was present.

TCC discussed with Mr. Adelman that about the recent citing of heavy equipment in Wetlands and that clearing for the wetlands plants nursery greatly exceeds that shown on the TCC-approved plan, and questioned stabilization for the winter and potential for spring runoff.

Carpenter Costin Company is doing the work; Paul Marsan is the owner/manager of the company and the project.

Adelman responded that they are creating a wetlands nursery. The size of 5,000sq ft was arbitrarily selected. He assured the TCC that the site is stable and spring thaws and storms would not create problems with runoff. Grass, leaves, woodchips have been placed for stabilization.

Jim MacDougall will make a site visit with Mr. Adelman and report to the TCC at the January 7, 2009 meeting.

**Asbury Street Bridge Project, OoC 307-0589 – update**

The Asbury Street Bridge construction is completed and the bridge was opened December 16, 2008. Spillman will make a site visit on December 18<sup>th</sup>.

**ADMINISTRATOR'S REPORT:**

**Results of District Court continuance re: 102 River Road**

Spillman updated the TCC regarding the court results from today's hearing. She and Holger Luther attended, as did Mr. Esposito. The Clerk-Magistrate dismissed the first two items on the first Bylaw ticket and the third item was taken under advisement, as was the entire second ticket. It is anticipated that a written decision will be issued within the next few weeks.

**TCC Budget for FY2010 – Due January 9; Discussion & vote**

Spillman went over the details of the proposed FY'10 budget with the TCC. A lengthy discussion of understanding followed. Luther will review the budget and make comments. TCC will have a vote at the January 7<sup>th</sup> meeting.

**FY 2008 Annual Report** –Spillman will prepare a draft.

**MEETING MINUTES:**

*Luther made a motion to approve the minutes of August 27, 2008, October 8, 2008, and October 22, 2008 as amended. Approval of these minutes constitutes the date, people present, subject matter, and the notes taken are a summary of discussion and are for context only. The motion was seconded and carried unanimously.*

**Proposed Revisions to Filing Requirements**

Spillman reported that as a result of her inquiry, all e-mail addresses in Town Hall now are in the address book on the main photocopier, so documents can be scanned (pdf) to e-mail addresses. She went on to propose, starting January 1, 2009, that the TCC require only two paper applications and the same number of full size plans as now (if there are full size plans as part of the application). TCC added that projects stamped by engineers can be CAD. MacDougall volunteered to write instructions for engineer representatives. He, Hall, and Spillman will re-write the Application Instruction Page for the January 7<sup>th</sup> meeting.

**Conservation Properties**

Spillman discussed the role of TCC in monitoring and managing Conservation Properties under their management. Properties managed by the TCC have no written rules and regulations. The TCC talked about possible regulations, and stewardship of open space in general. This discussion will be continued to the beginning of a future TCC meeting – on January 7<sup>th</sup> or 21<sup>st</sup>. The Open Space Committee members will be invited to attend.

**OTHER:**

Hall noted that at their last meeting the TCC did not vote on special conditions for the OoC for 47 Cross Street. Discussion followed.

*Luther moved to make a finding that whereas the activities are within an agricultural area that is governed by an agricultural farm plan, and whereas the plot of land on which the paddock is located is currently being used for agricultural purposes – haying – therefore, the TCC waives the requirements that otherwise would prohibit granting the OoC, and the Commission, therefore, grants the OoC subject to the requirement that Mr. Geiger construct and manage manure on the site in accordance with the Federal Agricultural Service and other requirements that are boilerplate. The motion was seconded and carried unanimously.*

11:21 PM – Erickson made a motion to adjourn and it was unanimous to do so.

Respectfully submitted,

Catherine Tinsley, Minutes Secretary

*Approved at the TCC meeting on January 7, 2009.*