

Topsfield Conservation Commission

Minutes of September 12, 2007

Topsfield Library Meeting Room

Commissioners Present: Walter Harmer, Chair; Ralph Stump; John Olcott; John McArdle

Not Present: Dylan Cadwalader; Wade Goldman; Thomas Warren

Also Present: Lana Spillman, Administrator; Catherine Tinsley, Minutes Secretary

Abbreviations used:

TCC – Topsfield Conservation Commission

DEP – Department of Environmental Protection

NoI – Notice of Intent

ANRAD - Abbreviated Notice of Resource Area Delineation

OoC – Order of Conditions

CoC – Certificate of Compliance

EO – Enforcement Order

7:16 p.m. - Harmer opened the meeting.

OPEN MEETING:

Enforcement Order, Violation Notice & Bylaw Ticket #2007-08: 244 Rowley Bridge Road, (Map 80, Lot 10) Dominick DeBernardo.

Bill Manuell, Representative, presented to the TCC. Spillman identified that work performed on the site was done without an Order of Conditions. She went on to say that a drain was installed at the bottom of the driveway; the pipe discharges into the wetlands and needs to be pulled back. It was noted that soil had been altered with heavy machinery into a large area of the wetland, knocking down purple loosestrife, cat nine tails etc. An intermittent stream flows into the wetland. It was observed by Mr. Manuell that the disturbed wetland area is re-vegetating on its own. He suggests creating a swale for drainage into the wetland. Stump moved to ratify the EO. The motion was seconded and passed unanimously.

The TCC asked that a wetland seed mix be used on the disturbed areas; an after-the-fact filing must be filed within three weeks of this meeting date; the pipe must be pulled back about 10 feet out of the wetland. The deadline for filing is October 3, 2007. This will remain on the agenda.

Violation Notice & Bylaw Ticket #2007-09: 244 Rowley Bridge Road, (Map 80, Lot 10) Stephen DiCicco, DiCicco Landscape & Irrigation.

Same violation as above; DiCicco is the company that performed the work. Bylaw ticket has not been paid.

PUBLIC HEARINGS:

Continuation NoI 307-0589: Asbury Street Bridge and Rowley Bridge Road Bridge, (Maps 21 and 55)

Town of Topsfield/Richard Benevento of Jacobs, Edwards, & Kelcey.

TCC received the DEP comment sheet with file number earlier in the day. Stump made a motion to close the hearing on Asbury Street Bridge/Rowley Bridge Road and issue an Order of Conditions with special conditions, including that the distance and length of the guardrail on the eastern side of the bridge at Asbury Street would be determined in the field, during construction. The motion was seconded and passed unanimously.

Continuation NoI 307-0587: 417 Boston Street, (Map 12, Lot 32) Surrey Development Corporation/Neve-Morin Group, Inc.

Written request was received 9/10/07 to continue to 9/26/07. Stump made a motion to continue the hearing under the Act and the Bylaw, at the written request of the Applicant's representative, to September 26th.

The motion was seconded and passed unanimously.

Continuation NoI 307-0594: 116 Boston Street, (Map 69, Lot 13) Cheever Realty Trust/Hayes Engineering.

Written request was received 9/10/07 to continue to 9/26/07. The TCC site visit was August 29th; the engineer, Gordie Rogerson, was asked to re-flag the line nearest the proposed septic leaching system using Topsfield criteria. Stump made a motion to continue the hearing until September 26, 2007, in order to have a second site visit after the new flags have been placed. The motion was seconded and passed unanimously.

Continuation ANRAD 307-0595: 49 Rowley Road, (Map 6, Lot 13) Rolando Rabines/Hancock Associates.

John Dick of Hancock Associates represented the Applicant. The TCC site visit was August 30th. A revised plan dated 8/3/07 was submitted on September 5th. The DEP website comment sheet says, "Please check for any possible connection between WF#A6 - WF#A7 and isolated wetland. Applicant did not request confirmation of BLSF delineation. Field data sheets should be provided to Con Com." Mr. Dick submitted copies of the DEP comment sheet and Field Data Forms. Ms Spillman stated that she does not believe there is a connection in the area questioned by DEP. Dick explained that the isolated wetland is an old borrow pit with hydric soils and vegetation. Bordering Vegetated Wetlands flags B9 adjusted and B3A new flag are on the revised plan dated 8/3/07. Harmer added that the only flags not reviewed are those across Rowley Road. Stump made a motion to close the hearing and issue an Order of Resource Area Delineation under the Act and the Bylaw, approving the Resource Area Boundary flags as shown on the Plan dated Revision 1, 8/3/07. The motion was seconded and passed unanimously.

Continuation NoI 307-____: 49 Rowley Road, (Map 6, Lot 13) Jensen Development Corp/Hancock Associates.

John Dick of Hancock Associates represented the Applicant. The TCC site visit was August 30th. Spillman noted that the proposed house is out of the buffer zone but suggested phasing the driveway construction. Dick saw no reason to phase the project; he believes that would make the process too lengthy. TCC warned that if resource areas are affected, the project would be shut down. Dick explained that the driveway is expected to be installed before the first frost and stormwater will recharge into the land and not conservation area. Silt fencing will be applied. The DEP comments state, "Applicant should try to move driveway farther away from wetland. (Original plan) Drainage from driveway should not be allowed to flow towards vernal pool." A Modified plan dated 9/04/07 was submitted on September 5, 2007 and shows most of the proposed driveway and all of the house construction outside of Buffer Zones. TCC noted their concern that the vegetation will not be ready for a construction start in six weeks. Dick responded that a Winter Rye will be used and mulched. Stump made a motion to continue the hearing until September 26th in order to receive the DEP comment sheet with file number. The motion was seconded and passed unanimously.

Continuation ANRAD 307-____: 12 Boston Street, (Map 81, Lot 1) Alan Berry/Beals Associates, Inc. Owner Alan Berry was present. The first TCC site visit was September 6th. Some flags were moved. The second site visit is scheduled for Friday, September 14th. Mark West was requested to attend. TCC asked the applicant to mow/clear a few spots for the TCC to access the wetlands and long the brook. Three areas reviewed should be evaluated further and were identified on the plan on file. Stump made a motion to continue the hearing to September 29th in order to have the second site visit and to receive the DEP sheet with file number. The motion was seconded and passed unanimously.

Continuation AbNoI 307-____: 47 Rowley Road, (Map 6, Lot 14) Carl and Beverly Nelson.

The TCC site visit was August 30th. Mr. Nelson was present and explained to the TCC why he does not believe the addition can be built elsewhere. E.g., the front of the garage area is a bathroom. The applicant submitted an amended drawing for the Commission's consideration. It was noted that the soil has excellent drainage and a gravel-filled dry well is proposed to receive runoff from the proposed roof and partial existing roof. In response to a TCC request, Mr. Nelson told the TCC that the existing shed is not in good enough condition to move. After a brief discussion the TCC determined that the shed needs to be moved 50 feet. The plans identified a stone trench alongside the driveway; the trench would be 12 inches wide and filled with ¾ stone and also installed along the drip edge of the house. TCC noted their concern with the impervious surfaces in the Buffer Zone and that they are not in support of any addition beyond the patio line. Composted bales are proposed and could be left in place after construction; these must be located in the work area. The dry well will be eliminated from the plan. Stump made a motion to continue the hearing until the revised plan is submitted in September. The motion was seconded and passed unanimously.

NoI 307-___: 221 Washington Street, (Map 47, Lot 2), Andrzej Galka.

McArdle read the Legal Ad. Mr. Galka was present and submitted proof of abutter notification. This is a court-ordered after-the-fact filing for unauthorized alterations of Riverfront Area to the Ipswich River and Buffer Zone to Bordering Vegetated Wetland. There were alterations of the BVW (cutting) and significant amounts of fill were placed on the slope down to the wetland. Mr. Galka told the TCC that the soil was dumped by the previous owner. The TCC is requiring that the fill and junk be removed and that the slope be reduced; a small wall can be built to lessen the slope. Mr. Galka responded that future plans do include a wall. TCC will conduct a site visit; Galka granted them permission to go onto the property. Stump made a motion to continue the hearing to September 29th in order to make a site visit, and to receive the DEP comment sheet with file number. The motion was seconded and passed unanimously.

NoI 307-___: 78 South Main Street, (Map 49, Lot 25) Anthony Bloxham/Mill River Consulting.

McArdle read the Legal Ad. Proof of abutter notification was submitted. The property is entirely within Riverfront Area of Cleaveland Brook, as well as Buffer Zone. The Resource Area boundaries need to be reviewed, but this is an extremely difficult site and there are no alternate places for the tight tank. There is an approved plan from Board of Health. (prior to verification of Resource Area Boundaries). The applicant will restore the existing lawn upon completion of the work. TCC will make a site visit on September 13th. Seekamp noted that the DEP has issued an approval by default. Stump made a motion to continue the hearing to September 29th in order to make a site visit and to receive the DEP comment sheet with file number. The motion was seconded and passed unanimously.

NoI 307-___: 86 Salem Road, (Map 64, Lot, 16), MIT Real Estate Foundation, Inc. /Seekamp Environmental Consulting, Inc./ENPRO

McArdle read the Legal Ad. Patrick Seekamp of Seekamp Environmental and Anne McNeil of ENPRO represented. Proof of abutter notification (copies of certified mail receipts) was submitted. This is a mostly after-the-fact filing following issuance of an Emergency Certification and cleanup of an oil leak from a home heating oil tank – into the soil below the foundation and into the nearby intermittent stream. Ms. McNeil reviewed the cleanup procedure to the Commissioners, saying that the oil tank in the basement leaked but was contained. She was hired on March 24th to clean up the spill, which had leaked into the stream. She explained that the line was capped to prevent additional leaking and oil recovery wells were installed. Water is being pumped for offsite disposal and soil from beneath the basement will be excavated. A long-term monitoring phase will follow the completion of onsite work. The Administrator noted her concern that there is heavy equipment near the stream. Ms. McNeil responded that hay bales were used to stabilize the site. Mr. Seekamp reported to the CC that he walked the area, including the meadow. He said he sees no immediate affects and the area appears robust in nature. He also added that the soil is tight and contamination did not migrate well. He confirmed that the recovery system will be kept in place until it is verified clean (approximately 3-4 seasons). Commissioners will visit the site within the next 5 business days. Mr. Stump made a motion to continue the hearing to September 26th in order to make a site visit and to receive the DEP comment sheet with file number. The motion was seconded and passed unanimously.

PUBLIC MEETING:

Continuation RDA, 2007-08: 1 Morningside Drive, (Map 65, Lot 23) Lori and James Byman.

The Administrator identified that she made a site visit on 9/11/2007. TCC asked that ten replacement trees be planted that are 4-6 feet high in maturity, in locations of their choosing. The tree stumps may be ground, but root systems may not be removed. Stump made a motion to close the meeting and issue a Negative Determination with Special Conditions, as discussed, under the Act and the Bylaw. The motion was seconded and passed unanimously.

REQUESTS:

CoC 307-0531: 2 Birch Lane, (Map 24, Lot 23), Roger Howell.

Spillman identified that there have been several site visits. The most recent was on September 10, 2007, and it was confirmed that motorized equipment, fuel, and chemicals had been moved from the shed that is located next to the wetland to into the garage. Stump moved to issue a Certificate of Compliance with Continuing Conditions under the Act and the Bylaw. The motion was seconded and passed unanimously.

Continuation CoC 307-0467: 32 Brookside Road, (Map26, Lot 39), Brenda Garabegian.

Spillman identified that she made a site visit on September 11, 2007 and that the final post has been replaced. Stump made a motion to issue a Certificate of Compliance with Continuing Conditions under the Act and the Bylaw. The motion was seconded and passed unanimously.

Continuation CoC 307-0540: 96 Parsonage Lane, (Map 17, Lot 5) Joseph Schraffa, Jr.

Ms. Spillman identified that she made a site visit on September 10, 2007. This filing is for the septic system replacement. Stump made a motion to issue a Certificate of Compliance with Continuing Conditions under the Act and the Bylaw. The motion was seconded and passed unanimously.

Continuation CoC 307-0567: 31 Wildes Street, (Map13, Lot 16), Heidi and Kevin Fox.

Spillman identified that she made a site visit on 9/11/2007, and observed that both posts are very unstable. She suggested that the TCC deny the COC at this time, and also suggested that if this requirement has been met and a second inspection requested within 21 days, there would be no additional fee due. Otherwise, an additional \$50.00 filing fee would be due for the costs to the Commission of a second review for a Certificate of Compliance. Stump made a motion to deny that CoC for 31 Wildes Street. The motion was seconded and passed unanimously.

CoC 307-0570: 73 Howlett Street, (Map 33, Lot 18) Herman A. Schulte.

CoC 307-0568: 75 Howlett Street, (Map 33, Lot17) Robert P. Marchand.

Spillman identified that she did a site visit earlier in the day. No one was home at either address. Stump made a motion to issue Certificates of Compliance with Continuing Conditions for 73 and for 75 Howlett Street under the Act and the Bylaw. The motion was seconded and passed unanimously.

CoC 307-0556: 10 Gail Circle, (Map 40, Lot 20) Lori Thurber.

Spillman identified that this is a CoC request for the septic system replacement. TCC has not been informed that the OoC-required posts have been installed, and bare soil needs to be vegetated. Therefore, she suggested the TCC deny the CoC at this time and that if these requirements have been met and a second inspection requested within 21 days, there would be no additional filing fee due. It was noted that the Thurbers no longer own this property but were the applicants. The new owner has been contacted and informed of the situation. Stump made a motion to deny the CoC at this time. The motion was seconded and passed unanimously.

CoC 307-0369: 478 Boston Street, (Map 7, Lot 4), Our Savior Lutheran Church.

Spillman told the TCC that she needs to make a site visit before any action can be taken.

Stump made a motion to continue the review to September 26, 2007, in order to have the site visit. The motion was seconded and passed unanimously.

OLD BUSINESS, UPDATES, & MISCELLANEOUS:

120 High Street, (Map 49, Lot 56), Hickory Beech Realty Trust/Joseph Falzone, Trustee – Planting of native species and control of invasive plants update, violations at Lot 23, work completion update, and request for final BSC inspection.

Harmer provided an update for the TCC, saying that the culvert repair along High Street upslope of the 120 High Street project has not been started, noting that the Highway Department will provide the pipe. A lengthy discussion followed concerning whether this is the homeowner's responsibility. No action was taken. A final inspection for this phase of the 120 High Street development is scheduled for Monday, September 24, 2007.

High Street Open Space Conservation Restriction

Spillman noted that she had provided the Commissioners with the most recent draft of the Conservation Restriction as edited by Kopelman and Paige, dated August 30, 2007. She stated that the restrictions have not been changed; several sections were added but may not be necessary; wording was altered. The original was written by Harmer and Spillman, based on the MA Executive Office of Environmental Affairs model. The Commission asked Spillman to send a copy of the August 30th version as well as the redline version from Kopelman and Paige to Martha Morrison, Planning Board Chairman, asking for her opinion. Harmer thinks another lawyer should review the deed for the Open Space.

OoCs 307-0422: 44 Prospect Street, (Map 40, Lot 95) – Update and Discussion.

Spillman said that the weekly reports from Hochmuth indicate that the detention ponds have been constructed. TCC requested a copy of the As-Built plan.

Prospect Hill/Gail Street Drainage – Discussion.

Spillman confirmed that a voicemail call was received yesterday from John Ingalls of Prospect Street – he wants to know what progress has been made. Spillman will get updates from the parties involved.

102 River Road

The house was scheduled to be removed September 1st, but as of today, has not been removed and the house is still occupied. The demolition is conditioned under an Order of Conditions. Action from the Building Inspector is expected.

OTHER:

Spillman announced that Catherine Tinsley is the new minutes secretary for the TCC and noted that she will be paid from the Wetlands Fees Fund. Spillman added that Ms. Tinsley also does the minutes for the Board of Health.

ENFORCEMENT, APPEAL REPORTS, UPDATES:

Violation Notice and Bylaw Ticket #2007-10: 249 Rowley Bridge Road, Alfalfa Farms, (Map 80, Lot 2), Carpenter Costin.

Harmer made a site visit earlier in the day; they were asked to move pallets nearer to the storage area. Carpenter Costin has prepared an as-built plan and a request for an Amended Order is being prepared and reportedly will be submitted by September 26th.

Enforcement Order, Violation Notice & Bylaw Ticket #2007-11: 270 Boston Street, (Map 41, Lot 87) Bear Albright.

Mr. Albright had notified the Commission that he would not be able to attend.

The Bylaw ticket has not been paid. Spillman read from the E.O. that there was “extensive clearing of vegetation & removal/movement, of soil from Bordering Vegetated Wetland & Intermittent Stream, exceeding 28,000 square feet (based on observations at this site visit, previous site visits, and review of previous filings with TCC).” The E.O. states that Mr. Albright is required to attend this meeting “to discuss the violations that occurred and actions necessary to prevent further alterations, and necessary restoration measures to restore the functions and values of Resource Areas that have been affected.” Mr. Albright will be sent the TCC list of Consultants. He will be advised to put his appeal in writing. Stump made a motion to ratify the Enforcement Order. The motion was seconded and passed unanimously.

Stump made a motion to extend Mr. Albright’s time to appear and discuss this matter before the TCC to the September 26th meeting. The motion was seconded and passed unanimously.

Violation Notice & Ticket #2007-04: 5 Fox Run Road, (Map 47, Lot 28), Jeffrey and Lynn Evalul – update, appeal of fine

Harmer made a site visit earlier in the day and did not see that the owner has clean any more of the brush and junk out of the wetlands. It was noted that the owner has made a written appeal of the \$300 fine. Spillman will call Mr. Evalul.

Enforcement Order, Violation Notice & Bylaw Ticket #2007-03: 43 Cross Street, (Map 62, Lot 2), Christopher Nash – update.

Ms. Spillman reviewed the violations – alterations of Intermittent Stream, BZ, and BVW without TCC review/permit. Approx. 10’ x 350’ x 4-5’ deep new trench was dug in what looks like hydric soils (wetland). Perpendicular to the trench, a pipe containing flow of an Intermittent Stream was “replaced.” Trees were cut in Buffer Zone, etc.

Mr. Nash never responded to any attempts to contact him – by phone and by mail (TCC has the certified mail green cards signed). Harmer and Spillman met Mr. Nash at District Court on September 10, 2007. Mr. Nash refused to file with the TCC. Spillman told the CC that the pipe replacement may be exempt under

State law, but upon her review of 310 CMR 10.04 and the MACC Handbook, she did not believe other activities, including the open trench construction or cutting of trees within 25 feet of the stream would be exempt.

Harmer and Spillman explained that the Assistant to the Clerk Magistrate took the matter under advisement and will send her written decision to TCC. It is expected that Mr. Nash will be given until November 5th to settle this issue with the TCC.

3rd Amended Enforcement Order: 64 Wenham Road & 255 High Street, (Map 71, Lot 22 & Map 65, Lot 1), Stephen Bernstein.
See Executive Session

Enforcement Order: 50 Prospect Street, (Map 48, Lot 12), John Molloy/Hancock Associates – update.
No update was given.

Amended Enforcement Order, OoC 307-0462, 39 Prospect Street, (Map 40, Lot 97), Eliot Sherr & Mary Ellen Gardiepy – update.

Dan Ottenheimer, Engineer, contacted Spillman on 9/11/07, saying that he now is working on the engineering to bring the property into compliance. Spillman will meet with Mr. Ottenheimer and talk about bringing the land into compliance.

Amended Enforcement Order, Violation Notice & Ticket #2006-20: 221 Washington Street, (Map 47, Lot 2), Andrzej Galka – update.

The TCC office has not received notice that Galka paid the \$500 fine.

ADMINISTRATOR’S REPORT:

Spillman made the following announcements:

The Statehouse Conservation Commission Day, is Wednesday, September 19th

MACC Fall Conference, Saturday, October 20th

Chairman Harmer briefly reviewed the Town Flood concerns saying a new beaver dam has been located under Perkins Row and is above the old Horse Bridge.

EXECUTIVE SESSION:

Discussion – Current Litigation, 64 Wenham Road/255 High Street

Stump made a motion to enter into Executive Session for the purpose of discussing ongoing litigation and to return to open session for the purpose of adjournment. Seconded.

Roll Call Voting in favor: Walter Harmer, Chair; Ralph Stump; John Olcott; John McArdle

Opposed: None

MOTION CARRIED

10:47 pm – McArdle made a motion to adjourn and it was unanimous to do so.

Respectively submitted,

Catherine Tinsley

These minutes were approved at the TCC meeting on October 24, 2007.