

Topsfield Conservation Commission

Minutes for January 9, 2008

Topsfield Library Meeting Room

The meeting was called to order at 7:15 p.m. with a quorum present: Harmer, Chair; Olcott; McArdle; Warren; Stump; Spillman, Administrator; and Catherine Tinsley, Minutes Secretary
Absent: Goldman

Abbreviations used:

TCC – Topsfield Conservation Commission

BOH – Board of Health

BVW – Bordering Vegetated Wetland

MAHW – Mean Annual High Water

EO – Enforcement Order

NoI – Notice of Intent

OoC – Order of Conditions

CoC – Certificate of Compliance

The TCC signed bills and authorizations.

HEARINGS:

Continuation ANRAD 307-0602: 95 Wenham Road, (Map 71, Lot 1) Peter

Herbert/Wetlands and Land Management, Inc. A request for continuance to January 23, 2008 was received 1/7/08.

Harmer noted that this hearing has been continued for several meetings. It was the recommendation of the Administrator to make a site visit in the spring. Spillman reviewed that at the last site visit with Bill Manuell, he was asked to measure elevations at several spots. There is disagreement about the location of MAHW, and, therefore, the Riverfront Area. Manuell is going to write up his arguments relative to the Riverfront Area boundary.

Stump made a motion to continue the hearing to January 23, 2007. The motion was seconded and passed unanimously.

Continuation NoI 307-0609: 254 Rowley Bridge Road, (Map 80, Lot 12), Diane

Ingraham/New England Engineering Services, Inc. Ben Osgood of New England Engineering Services was present. He identified that the new septic system is proposed in the front yard to the right of the driveway. Abutter John Guinee of 252 Rowley Bridge Road requested to address the Commission and identified that there are wells in the area, but he clarified that these are not drinking wells. It was confirmed that the BOH plans show the wells in the area and it was noted that this needs to be addressed with the BOH. There have been two failed systems on the property and Mr. Guinee noted his concern that because of the location of this system, if it fails it will drain into the wells and the pond. It was confirmed that excess material will be taken offsite. Harmer identified that the DEP comment sheet has been received; there are no comments.

Stump made a motion to close the hearing and issue an Order of Conditions with Special Conditions under the Act and the Bylaw. The motion was seconded and passed unanimously.

NoI 307-0610: 12 Boston Street, (Map 81, Lot 1), Alan J. Berry, South Meadows Homes, LLC/Beals Associates, Inc. Alan Berry South Meadows Homes and Cynthia O'Connell of Beals Associates presented.

Proof of abutter notification was collected; the legal ad was read. O'Connell said that the proposal is to install a water main coming from Rowley Bridge Road, to service the proposed new development at 12 Boston Street.

Berry said that site walks of the relevant areas were made under the ANRAD/ORAD process. Because there is no public water, the Water Department has directed them to connect to the existing main from Rowley Bridge Road. O'Connell explained that the proposal is to have a staging area next to Rowley Bridge Road, bore under the largest piece of wetland and Buffer Zone to another staging area, then to make an open trench through two small wetland areas and Buffer Zone. O'Connell identified to the Commission that the disturbance to the wetland would be about 1200 sq. feet and the Buffer Zone would be impacted about 14,300 sq. feet. It is proposed for two staging areas to be outside 100-foot Buffer, e.g. for equipment, storage, and stockpiles.

O'Connell confirmed the reuse of organic material to fill in the trenches and estimated that it will take less than a week to put in the pipe. An alternative location for the pipes along the abutter's property was identified as possible but not favorable. The abutter, John Guinee, of 252 Rowley Bridge Road, was present and submitted a written denial for access across his property. Spillman advised that the work should be performed during a relatively dry time of the year, or in winter. The permitting process for the development has not begun. Berry estimated that this work will be done next winter, while the ground is frozen

Stump made a motion to close the hearing for 12 Boston Street and to issue an Order of Conditions with Special Conditions under the Act and the Bylaw. The motion was seconded and passed unanimously.

Amended OoC 307-0503: 18 Brook Road, (Map 39, Lot 11), Angel E. Barbosa, Jr.

Stump read the legal ad. Proof of abutter notification had been submitted previously. Spillman identified that this after-the-fact project is to allow a larger area of pavement for the driveway, a small side porch, and impervious sidewalks within Riverfront Area and Buffer Zone. The original OoC allowed a smaller (by about 800 square feet) driveway area, about 15 feet farther from Fish Brook, and no sidewalks were included in the NoI proposal and approved plan. The Commissioners discussed compensation for decreased stormwater infiltration that results from the additional pavement. Mitigation discussed included possibly directing the stormwater from the gutters, removing the work not approved, and the addition of a "rain garden." The Commission had a brief sidebar discussion to determine when the homeowner who does work beyond that approved should be asked to remove it. The owner identified that they recently purchased the property and that he was not aware of the OoC. Mr. Barbosa was invited to suggest ideas to the TCC for mitigation.

Mr. Barbosa was advised to request an extension and reminded that the order expires in March and it is possible he will not be able to get mitigation work done by that date.

Spillman and Harmer will do a site visit with the homeowner on Monday, January 14, 2008.

Stump made a motion to continue the hearing for 18 Brook Road until January 23, 2008. The motion was seconded and passed unanimously.

MEETINGS:

RDA, 2007-15: 87 Perkins Row (Map 51, Lot 21), Carol Decker/Massachusetts Audubon Society

Stump read the legal ad. Proof of abutter notification was submitted.

Spillman identified that this is an after-the-fact filing for treatment of invasive *Glyceria Maxima* within Wetlands Resource Areas at the Wildlife Sanctuary (total area approximately one acre). Decker explained that *Glyceria Maxima* is an invasive species of Asian origin that becomes very dense and matted, and the concern is that it could get into the Ipswich River watershed. She identified that the work has been done after it was detected through aerial photographs.

Decker stated that this work is expected to continue and, therefore, amended the Request to include work to be done within the next three years, with the same organism and with the same methodology.

Stump made a motion to issue a Negative Determination with Conditions for 87 Perkins Row under the Act and the Bylaw. The motion was seconded and passed unanimously.

MEETING MINUTES:

Minutes of June 11, 2003 and November 28, 2007

Stump made a motion to accept the minutes of June 11, 2003 and November 28, 2007 as amended. The motion was seconded and passed unanimously.

REQUESTS:

CoC 307-0571: 155 Haverhill Road, (Map 4, Lot 14), Dr. Chieh-Min Fan/Griffin Engineering Group

Harmer explained that this is not a good time of year for the work to be evaluated.

Stump made a motion to issue a letter explaining that the work area and bioretention area need to be reviewed after vegetation is out, especially to determine viability of plants and overall functioning of the bioretention area and that the letter explain that no additional fee would be due if the follow-up request is made prior to October 1, 2008. The motion was seconded and passed unanimously.

Emergency Certification 07-07: 99 Howlett Street, (Map 34, Lot 74), Leon Budilovsky – ratification

The Emergency Certification was issued for the cutting of two diseased/dead white pines within 20 feet of the house and also within Buffer Zone of BVW and two Intermittent Streams on the property.

Warren made a motion to ratify the Emergency Certification. The motion was seconded and passed unanimously. Commissioners signed the document.

OLD BUSINESS, UPDATES, & MISCELLANEOUS:

Greenscapes North Shore 2008

Spillman informed the TCC that the Essex Agricultural Society (Fairgrounds) generously again offered to pay the \$1,500 program fee for the Town. The proposal is for the Highway Department, the Water Department, and TCC each to pay one-third of the printing and mailing costs for the flyer.

Stump made a motion to pay the Conservation Commission's 1/3 of the print and mailing cost, i.e. \$336.67, from the Bylaw Fees Revolving Account. The motion was seconded and passed unanimously.

Prospect Hill/Gail Street Drainage – update

Spillman suggested that the TCC could write up the easement based on language of other similar Town easements; this draft would be submitted to Town Counsel for review.

Spillman told the Commission that there is no sketch of the area. Mr. Bond will be asked to submit such a drawing.

OoCs 307-0529 and 307-0485, 102 River Road, (Map 47, Lot 49) – update

Regarding the razing of the house at 102 River Road, it was identified that the Selectmen have given their support to the Building Inspector to proceed with his enforcement of the demolition.

Spillman stated that she left a voicemail message for David Rimmer on 1/8/08.

Failing Culvert along High Street (Not on the agenda)

The TCC discussed the Town's responsibility to respond to this matter. Harmer will contact Phil Knowles about repairing the pipe.

ENFORCEMENT, APPEAL REPORTS, UPDATES:

DoA 2006-18 and Violation Notice #2007-15, 41 Surrey Lane, (Map 23, Lot 3), Roy Cheever

The Commissioners discussed their concern that the required pipe is not installed in the driveway and that debris, including non-natural debris, remains very close to the BVW. Spillman identified that Cheever has added a raised driveway in a Buffer Zone, which has potential to cause flooding on an abutter's property. Harmer noted that discarded material from the newly constructed driveway has been left along the wetland. Spillman explained that Cheever has been informed several times of the violations. The TCC agreed that a \$300 daily fine is plausible at this time due to the lack of response of the homeowner.

Warren made a motion to send a letter to the homeowner, along with a fine for debris in the wetland, and if the fine is not paid by the due date, then the Commission can fine on a daily basis, up to \$300/day based on square footage, and file a complaint with the court. The motion was seconded and passed unanimously.

Amended Enforcement Order, 111 River Road, (Map 47, Lot 30), Robert Nadherny –
request for release from E.O. issued 6/2/2006.

Stump made a motion that this item be continued to the April 30th meeting. The motion was seconded and passed unanimously.

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

Stephen DiCicco, DiCicco Landscape & Irrigation – update

Spillman said that this company has been called a third time on 1/7/08. Mr. DiCicco told TCC Secretary Trish Kubaska that he would be getting back about payment of the fine. It was the consensus of the TCC that DiCicco be given notice to pay the fine within the week or it will be sent to court.

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

The Notice of Intent has not been received yet. TCC asked Spillman to call the representative, Mike DeRosa. They want to see something by the first meeting in February.

Violation Notice & Ticket #2007-04: 5 Fox Run Road, (Map 47, Lot 28), Jeffrey and Lynn

Evaul – update, Spillman identified that there is currently an appeal filed to the fine. She reviewed that this property backs up to a perennial stream. Harmer explained the violations – that the BVW between the yard and the stream was filled in by the homeowner with brush and yard waste. Evaul has not responded sufficiently to the TCC to clean up the area.

Warren made a motion that the Administrator write a letter to the homeowner stating that the violation is punishable by a fine of up to \$300 a day. The motion was seconded and passed unanimously.

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

Russell Warring was asked to submit a letter explaining past and proposed work and evidence of farming activities on the subject property by the first meeting in February. Spillman will write a follow-up letter to Waring, including a request for a site visit.

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

Spillman reported that the settlement check was submitted to the Board of Selectmen.

The Commission discussed making a proposal to the Selectmen of how the Resource Areas on the property could be (partly) restored. Stump believes that the area is restoring itself and will

continue to grow. Warren thinks it would be worthwhile to get rid of some of the invasive plants; he would like to see this or another property improved. Harmer would like to create a trail to the other side and at the same time do some cutting of invasives. It was suggested that MA Audubon may provide a licensed applicator to reduce the invasive plants. Selectmen Gandt, who was present, explained that the settlement money is to cover legal costs and to fix what harm was done to the environment. McArdle said that any amount beyond that needed to pay legal fees would need to go before Town Meeting for approval. Olcott suggested that there would need to be a statement of proposed work and it would need to be put out to bid. A lengthy discussion followed.

Some Commissioners will walk the property next week, on Wednesday.

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

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

Spillman stated that the TCC has not received the promised plan (NoI) for restoration to bring the property into compliance with the OoC and EO. A site visit will be made.

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

The TCC is waiting for a response from the District Court.

ADMINISTRATOR'S REPORT:

TCC Budget

Spillman reported that the Proposed Budget from General Fund has been submitted.

Administrator Compensation – the TCC will submit a letter requesting an increase from 37.5 to 40 hours per week due to mandatory meeting attendance and other added responsibilities.

Stump made a motion that the TCC send a letter to the Personnel Administrator to request that the TCC Administrator be paid for 40 hours per week. The motion was seconded and passed unanimously.

Annual Report

Spillman had distributed a draft for Commissioner's review. There were no edits offered.

DEP Unwritten Policy Concerning Comment Sheets and File Numbers

Spillman told the Commissioners that after hearing a rumor that DEP is no longer sending out paper versions of the DEP comment sheets, she spoke with the new Circuit Rider, Pam Merrill, who responded that the rumor is false, but that the DEP does expect Conservation Commissions to be able to close hearings based on a DEP file number and comments on their website.

Since DEP comments can need follow-up, e.g. discussions with the reviewing person at DEP, Spillman suggested that a good TCC policy would be that if all TCC questions and concerns have been addressed to close the hearing if there is a file number and "no comments" is posted on the DEP website. If there are DEP comments, any discussions and issues should be resolved before the hearing is closed.

Bylaw Regulations Changes

Draft proposed Bylaw Regulations Changes were provided and reviewed by the Commissioners. The Commissioners considered the following for a public hearing:

- New filing category – for very minor projects in Buffer Zone on a developed property:
 - E.g., Fence that would not be in Riverfront Area: a project where no soil would be disturbed, work would be by hand and with hand-held tools only, and no vegetation would be removed.
 - Would have a small fee, e.g. \$50.00, to cover TCC expenses.
 - No abutter notification necessary
 - No legal ad requirement
 - A letter with the TCC's decision would be issued.
- Fees:
 - Fee for Emergency Certification, \$50.00
 - Not require follow-up filing if it meets the criteria for the New filing category, above (e.g. a tree cut at least 75 feet from the Wetlands Resource Area).
 - Increase minimum RDA fee to \$75.00
 - Fee for copying, secretary's time
 - Fee for duplicate original documents (OoC, CoC) = \$25 + .25/page (+ postage and secretary's time as needed)
 - Fee for compliance letter (e.g. explaining compliance with CoC for a house closing) requested less than 14 days prior to the date it is needed.
- Move *Annual High Water* from the Resources Section to the Definitions Section

Commissioners will review the Bylaw Regulations to determine if there are other Regulations that should be modified.

OTHER:

Harmer updated the TCC regarding the MACMAPP ArcGIS training attended by himself and the Administrator in Boston today; they have another training session tomorrow.

9:52 PM – McArdle made a motion to adjourn and it was unanimous to do so.

Respectfully submitted,

Catherine Tinsley, Minutes Secretary

Approved at the TCC meeting on February 27, 2008.