

Topsfield Conservation Commission
Meeting of Wednesday, November 19, 2008
Topsfield Library Meeting Room ~ 7:00 PM

The meeting was called to order by George Hall at 7:08 p.m. with a quorum present: George Hall, Chair; Jud Pratt; Holger Luther; Jennie Merrill; and Mark Erickson (during the 215 Washington Street discussion). Also present: Lana Spillman, TCC Administrator; Catherine Tinsley, Minutes Secretary
Not Present: Jim MacDougall

Abbreviations used:

TCC – Topsfield Conservation Commission	BOS – Board of Selectmen
DEP – Department of Environmental Protection	NoI – Notice of Intent
BVW – Bordering Vegetated Wetland	OoC – Order of Conditions
CoC – Certificate of Compliance	EO – Enforcement Order
ANRAD – Abbreviated Notice of Resource Area Delineation	

Hall noted that it was agreed to take one matter out of order, re: 215 Washington Street
Enforcement Order #2 10/16/2008: 215 Washington Street, (Map 46, Lot 7), Galka – update and discussion with Mr. Galka and Representative

Spillman reported on her follow up site visit on November 4th saying that there appeared to be some additional plantings since the site visit that led to the EO and there was only a very thin layer of mulch on about 1/3 of the area of bare soil. The ground surface had very recently been raked and part of it had been very recently loamed and seeded and she did not observe evidence of significant erosion at that time.

Present: Mr. Galka of 215 Washington Street.

Galka submitted a letter (with today’s date) from Gulf of Maine Research Center identifying that this company has been hired by Galka. Hall explained to Galka that the TCC wants an evaluation of what happened to the wetland area from someone who has expertise. The Administrator will contact Mr. Orzel of Gulf of Maine to specify additional information requested by the TCC.

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.

The Administrator gave an update saying that there is a letter sent last week from the Planning Board addressing Attorney Latham’s letter. The applicant is requesting to continue the hearing due to a review done by the state and he does not want to start the peer review until questions related to the state’s comments are clear. A request to continue to 12/17/08 was received on 11/19/08.

Luther made a motion to continue the hearing under the Act and the Bylaw to December 17th at the written request of the Applicant’s representative. The motion was seconded and carried by majority vote. Merrill abstained.

Continuation NoI 307-0632: 47 Cross Street, (Map 62, Lot 34), Geiger

Mr. Geiger was present. Spillman reviewed that at the meeting on October 15th Geiger was asked to consult with Dan Lenthall about manure storage and removal and information related to general use of the land for a “recreational” horse – and to come back with a plan to present to TCC. The TCC also discussed that the activities are not in compliance with a couple of the Bylaw Regulations (e.g. manure storage, new structure near BVW, newly created paddock in Buffer Zone). Geiger told the TCC that Dan Lenthall made a site visit as requested by the TCC. An animal waste plan/report prepared by Mr. Lenthall was submitted by Geiger who noted an error in dates on the plan that the horse is onsite written as June – July; the horse is present from June through August. Geiger stated that his preference is to take the manure offsite. It was pointed out that while most of the property is land in agricultural use, a

recreational horse does not meet the criteria for an agricultural exemption under the State Regulations. The TCC questioned if Geiger is planning to have additional horses. He responded that the building can house two horses; he only has one at this time and he does not own the horse but rents the space out. Commissioners pointed out that much of the fenced paddock area is wet. Alternative sites for the 12' x 36' shedrow (small barn) with the 15' x 36' crushed stone area in front of it were a part of the discussion.

Geiger signed a modified continuance form to allow the TCC to issue a decision outside of the usual 21 days in order to accommodate the TCC meeting schedule during the holidays.

Luther made a motion to close the public hearing. The motion was seconded and carried by majority vote. Merrill abstained.

Continuation NoI 307-_____: 207 Boston Street, (Maps 57 & 49, Lots 4 & 2), James O'Brien, Essex Agricultural Society/DiLuna. *Request to continue to 12/17/08 received 11/17/08*

The Administrator reported on the status saying that the DEP is requiring a better plan. It is unknown why the plan has not been finalized.

Pratt made a motion to continue the hearing under the Act and the Bylaw to December 17th at the written request of the Applicant's representative. The motion was seconded and carried by majority vote. Merrill abstained.

Continuation NoI 307-0636: 102 River Road, (Map 47, Lot 49), Esposito/Hayes Engineering, Inc. Gordon Rogerson of Hayes Engineering represented. He reviewed the Saturday November 1st site visit of the TCC, noting that the TCC should have a copy of his report of percentages of land built on as related to the wetlands, Riverfront Area and the NoI. Rogerson told the TCC that the excavator cleared 26,400 sq ft and a stop order was issued and a plan was submitted adding that part of the area has reclaimed itself. Spillman noted that the initial clearing of Riverfront Area was without any notice to TCC, as a violation, and Enforcement Order was issued. Rogerson showed the original file plan to the TCC. Spillman read from the TCC minutes of 2/12/03, which state that 120,000 square feet of Riverfront Area were altered. Pratt confirmed that from the site visit the area outside the sedimentation control line is vegetated again and is overgrown. Luther suggested that a driveway straight out to River Road would provide a better line of sight. Spillman explained that a revised driveway location was requested by the owners and was the subject of an Amended OoC; Esposito confirmed this. There was discussion about infiltration of stormwater runoff. Esposito pointed out that there are no downspouts on the house and the TCC did not see a benefit from adding infiltration structures. Rogerson noted that at the site walk it was recommended to remove the wild rose and another thorn type bush growing. The homeowner would like to remove these thorny plants. The TCC said that they are in favor of the proper approach to removing invasive species and discussed adding conditions to the OoC for removal of invasive plant species, especially from the area that has become overgrown. It was noted that no building permit for the screened porch has been applied for yet. There were no public comments; Spillman had no additional comments.

Pratt made a motion to close the hearing. The motion was seconded and carried unanimously.

Hall stated that this discussion would continue later in the meeting regarding the violations.

Continuation, 10:08 p.m. – The TCC talked about the findings for the OoC, violations, and making a recommendation to the Court. Hall discussed that the OoC should include certain findings: this NoI application is cumulative with the first application, the Alternatives Analysis is from the beginning of activities, in the initial NoI alternatives for where to site the house were considered, activities meet the 100 foot requirement for Riverfront Area, the overall house structure is appropriate for the site, Riverfront Area performance standards are met both singularly and in the cumulative, and the fact that there are wetlands on both sides of the house leads to there not being a less impact alternative. With these findings the TCC will issue an order of conditions for the addition. TCC authorized Administrator Spillman to return to the District Court with Luther or Pratt and to propose to the court a 50% reduction in the fines owed based on Esposito's cooperation. *Luther moved to approve the*

proposed OoC with the findings. The motion was seconded and passed by a majority with Merrill abstaining.

NoI 307-0637: 132 Main Street, (Map 25, Lot 4), Doris Kuhn/Scanlon Engineering, LLC
Jim Scanlon represented. Proof of abutter notification was submitted; Erickson read the legal ad. The project is replacement of a failed septic system in Buffer Zone of a BVW. A waiver from the Bylaw Regulation R:10-3 is being sought for out-of-season verification of the wetland line. Spillman reported on her site visit on Monday, November 17th and recommend verification of wetland flags A2 through A5 and A10 through A17. Scanlon confirmed that no trees will be removed.
Pratt 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 carried unanimously.

MEETINGS:

Continuation RDA, 2008-12: 93 Hill Street, (Map 68, Lot 11), Steyer
MacDougall made a site visit on October 30th (report to be submitted) and discussed invasive plant control with Mr. Steyer. TCC concluded that no mitigation would be necessary.
Luther made a motion to close and to issue a Negative Determination of Applicability for invasives control per protocol methods Jim MacDougall discussed with the owner, checking box #3 (work in Buffer Zone) under the Act and the Bylaw. The motion was seconded and carried unanimously.

Continuation RDA, 2008-13: 8 Prospect Street, (Map 40, Lot 89), Ryan
TCC office has received the requested written permission from the direct abutter allowing access by heavy equipment in order to have the trees cut.
Luther made a motion to close and to issue a Negative Determination of Applicability checking box #2 (work in Resource Area – Riverfront Area) under the Act and the Bylaw. The motion was seconded and carried by majority vote. Merrill abstained.

ENFORCEMENT, APPEAL REPORTS, UPDATES:

Enforcement Order #2 and Bylaw Ticket #2007-11: 270 Boston Street, (Map 41, Lot 87) Albright – update and request for extension to EO deadline
Spillman identified that the TCC has not yet received a written request for an extension of the EO deadline (October 31st) for completion of the restoration work. Hall summarized the recent history – Mr. Albright had submitted a drawing calling for a dam-like structure at the outlet. The TCC was surprised by the drawing since the restoration work is supposed to result in replicating original conditions. Spillman showed photographs taken during her site visit of the property on November 12. She found the site only very slightly different than when she made a site visit on October 22nd. There appear to be newly placed tree limbs at the outlet of the created pond; the pond is full of water. The TCC noted many concerns, including stabilization of the site, specifically in the area of the outlet, elevations, and what might happen from winter into spring. Mike DeRosa will be asked to attend the next meeting.

Amended Enforcement Order: Off Cross Street, (Map 62, Lot 2) Nash – updates and Review of Restoration Proposal and Plans.

No representative was available to attend the meeting. The TCC was referred to a letter from Bill Manuell received 11/18/08. Plans are being prepared showing a transition area between the wetland and the constructed pond, and removal of the pipes currently in that area, a planting shelf on the western side of pond, but no other proposed reduction in the size of the pond. TCC was expecting a plan a couple of weeks earlier. The TCC reviewed the activities and violations that have occurred on the property. Spillman was instructed to request that the plan be submitted at least two weeks in advance of the next meeting (December 17th), since TCC needs that time to review it.

REQUESTS:

RDNI 2004-04: 73 Howlett Street, (Map 33, Lot 18), Michel.

Todd Michel, the contractor, was present. There is BVW and an Intermittent Stream in front of the house. The proposal is to construct a deck at the rear of the house, *to pave a* walkway in front (for handicap access), and to cut a dead/diseased mature tree at the side/rear of the house not far from the proposed deck location. Most activities are on the opposite side of the house from the Wetland Resource Areas. Spillman made a site visit on November 3rd and stated that she has no concerns. *Luther made a motion to issue a Determination of Negligible Impact under the Bylaw for the proposed activities at 73 Howlett Street. The motion was seconded and carried unanimously.*

Continuation CoC 307-0603: 240 Rowley Bridge Road, (Map 80, Lot 9) Dyer

Spillman reported on her site visit, saying that the property is in compliance except that the area of the BVW that was cleared to allow placement of a drainpipe has not sufficiently re-vegetated yet. A sedimentation control sock (plastic or mesh sock filled with mulch) was placed at the edge of the BVW so that the wetland no longer would be mowed. She noted that an inaccurate representation of limit of clearing on the as-built plan received November 17, 2008 – clearing actually goes into the BVW. *Erickson made a motion to issue a Certificate of Compliance with Continuing Conditions under the Act and the Bylaw, including findings related to re-establishment of vegetation in the BVW including no mowing. The motion was seconded and carried unanimously.*

CoC 307-0565: 19 Glen Road, (Map 40, Lot 60), Collins

Spillman made a site visit on October 23rd and found the property in compliance. *Erickson made a motion to issue a Certificate of Compliance with Continuing Conditions under the Act and the Bylaw. The motion was seconded and carried unanimously*

CoC 307-0393: 119 Hill Street, (Map 68, Lot 5) O’Keefe

This was new construction on a newly created lot. The house is constructed outside Buffer Zone and there is a driveway in Buffer Zone with Intermittent Stream crossing. Spillman reviewed that the contractor cleared beyond the limit of work line, into the Buffer Zone. The TCC issued an Enforcement Order to restore the Buffer Zone. Spillman presented a photo of the lot and house showing the areas that had been cleared. The E.O. was to restore Buffer Zone that was altered beyond the limit of work on the Plan of Record. Trees were planted but the area has been otherwise kept as manicured lawn. Spillman identified that she made a site visit on October 23rd, the date of the photos. The TCC discussed alternatives. Spillman recommend that the area that was to be restored as BZ be allowed to become a more natural area and not appear as manicured lawn. The TCC agreed on shrub plantings among the planted trees (e.g. rhododendrons, High Bush Blueberry, Viburnums), and making the area a no mow zone. This will be worked out between the Administrator and Mr. Sanidas and will be continued on the next agenda.

Extension OoC 307-0507: 120 High Street (Map 49, Lot 56), Falzone, Hickory Beech, LLC /Beals (and Request for waiver of Bylaw fee)

Joe Falzone was present. It was identified that the TCC site visit was October 29th. Spillman reviewed that TCC has not determined yet whether or not the stormwater management structures have been constructed per the Plans of Record. Falzone explained that he cannot have as-built plans prepared until he has the final coat on the roads and he has not sole a lot for a year and a half; therefore, he is asking for a 3-year extension. *Pratt moved to extend both OoCs (Act and Bylaw) for three years. The motion was seconded and passed unanimously.*

Falzone’s representative from Beals Assoc., Cindy O’Connell, wrote a letter requesting that all Bylaw fees be waived for the Extensions. Discussion followed. Falzone stated that he feels the Bylaw fee for an Extension of the OoC (\$100/lot) is unreasonable. Hall explained that the fee relates to three more years of supervision.

Pratt made a motion to reduce the fee by half (to \$1,100). The motion was seconded. It was noted that in previous years, the TCC reduced fees but historically did not waive a fee. The motion was seconded and carried unanimously.

Emergency Certification #2008-07, 15 Howlett Street, (Map 33, Lots 32), Bloss – ratification Project is replacement of a failed septic system. Spillman reviewed that there are significant wetlands and there was no TCC review of the Resource Areas prior to Board of Health/Agent approval. The Board of Health Agent found the failed system to be a threat to public health and ordered that it be replaced. A follow-up NoI is to be filed with TCC by noon of December 3rd.

Pratt made a motion to ratify the Emergency Certification for 15 Howlett Street. The motion was seconded and carried unanimously.

OLD BUSINESS, UPDATES, & MISCELLANEOUS:

Amended OoC 307-0586: 249 Rowley Bridge Road, (Map 80, Lot 2) – discussion about recent activities. Richard Adelman and representative from Carpenter Costin, Paul Marsan, were not present. Spillman gave a status update on a report of heavy equipment on the property. There is a current OoC allowing part of the Alfalfa Farm to become a wetlands plant nursery. The owner, Mr. Adelman, was contacted and agreed to a site visit. Spillman observed that the plowed area created for the plantings is larger than proposed on the approved plan. Costin and Adelman were asked to appear before the TCC to explain the work being done. Spillman reviewed that the Agricultural Commission is interested in the wetland plant nursery on this site. This was a change of crop from hay field to wetland nursery.

NoI 307-0629: 12 Boston Street, English Commons at Topsfield, (Map 81, Lot 1), English Commons, LLC – Alan J. Berry/Beals Associates, Inc. – Response to Brad Latham letter. The TCC reviewed a draft response letter; there were no revisions.

57 Candlewood Drive, (Map 43, Lot 7): Response to inquiry
ANRAD and NoI for single-family house have been received for the Dec 17th agenda. Mr. Cragg of 49 Candlewood addressed the TCC with his concerns, saying that a 50-gallon oil drum and a caterpillar have been stored on the 57 Candlewood site for five years, a barn on property burned down, illegal backfill and other activities have been ongoing for 18 years. Cragg questioned if there was permission granted for any work done at 57 Candlewood Drive. He stated that three weeks ago a contractor was onsite with a chainsaw and backhoe. Hall said that the TCC cannot go back 16 years, but will address new issues and would be amenable to whether there is remediation required to the extent violations could be proved. Spillman reported that an ANRAD and NoI were received about a week after the inquiry and help to explain, although not necessarily justify (tree cutting), the recent activities.

Vernal Pool Letters from Boxford Students

The TCC was referred to copies in their packets. It was noted that these are 6th grade students who would like more vernal pools certified in Topsfield. A letter will be sent in response.

MEETING MINUTES: There was a discussion of the minutes' contents and the need for inclusion of a disclaimer.

ADMINISTRATOR'S REPORT:

Assist Applicants/Update TCC records letter

Spillman stated that there are numerous OoCs that have not received Certificates of Compliance. The TCC approved the letter she had drafted to send to property owners. The owners of properties with the most recently expired Orders will be contacted first.

Review Filing Deadlines and Meeting Dates for 2009

Approved

Erickson made a motion to accept the 2009 meeting dates as presented with the exception to amend the July 25th date to July 22nd. The motion was seconded and carried unanimously.

TCC Budget for FY2010

Spillman reported that as of the end of October, about 30% of the Bylaw Revolving Budget had been used. Two budgets will need to be prepared for FY 2010, to be announced at December 1st meeting with Finance and Advisory Committee.

COMMISSIONERS' REPORTS:

Discussions with Planning Board: Hall reported on the meetings with the Road Commissioners and Planning Board. Thoughts about issuing a joint RFP and open space matters were part of the discussions.

10: 26 PM – Luther made a motion to adjourn and it was unanimous to do so.

Respectfully submitted,

Catherine Tinsley, Minutes Secretary

Accepted at the TCC meeting on January 21, 2009.

<p>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.</p>
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