

***Topsfield Conservation Commission***  
**Minutes of April 27, 2011**  
**Topsfield Library Meeting Room**

Present: Commissioners Holger Luther (Vice-Chair), Jim MacDougall, Cheryl Jolley, Jud Pratt, and Mark Erickson, and Lana Spillman, Administrator.

Absent: George Hall, Chair; Lisa Nihan-Demeule, Minutes Secretary

Note: NO DIGITAL RECORDING COULD BE RETRIEVED. These minutes were written from the Administrator's notes.

The meeting was called to order by Luther, Acting Chair, at 7:07 p.m. with a quorum present.

**PUBLIC HEARINGS:**

**NoI 307-0673: 31 South Main Street,** (Map 40, Lot 85) Guido/The Neve-Morin Group  
 Greg Hochmuth of The Neve-Morin Group, representing, submitted proof of abutter notification. Owner Sarah Guido was present. Jolley read the legal ad. The proposal is for several projects within Buffer Zone/Bylaw Riverfront Area of Cleaveland Brook – replace the existing barn with a garage, construct decks and patio, etc., modify the driveway (removing two mature hemlocks and adding some fill in the turnout area), repair areas of collapse of a large drainage pipe in Bordering Vegetated Wetland, and adding landscaping plants and features. The collapsed pipe reportedly was installed in the 1930s and was partly repaired under a previous OoC that received a CoC. Spillman made a site visit on Tuesday and has photos. Three flags, one BVW and MAHW's were moved upslope three to six feet. Hochmuth explained that the house was built in the 1800's and there are multiple resource areas on the property. He described details of the proposed projects: Addition of about a 400-square foot increase in impervious area would allow turnout area for the new garage. A large culvert runs through the back and has collapsed in areas. Portions of the proposed work would be very close to the wetland edge, i.e., a new deck. Most of the backyard is wet; all proposed work would be outside of the floodplain. About 4.3% of Riverfront Area on the lot would be altered. When there is flow through the pipe, some of the earth gets sucked down in sink holes and it ends up in the pond. Photos taken were reviewed by the TCC. DEP had no comment. Pratt asked why they were changing the entrance path into the garage. Hochmuth indicated now it is really tight. It would give them two bays instead of one and Guido added that it would be better in the winter. Luther asked why they were not proposing to use an alternative permeable surface. Hochmuth responded that they could put in perimeter infiltration and it would work well. He added that the septic system is in good shape. *Erickson moved to continue the hearing. The motion was seconded by Pratt and passed unanimously.* A site visit is scheduled for Wednesday, May 4 at 6pm.

**Continuation ANRAD 307-0671: 4 Wenham Road,** (Map 64, Lot 10), Patkin/Hancock Associates  
**Continuation NoI TCC 2011-01: 4 Wenham Road,** (Map 64, Lot 10), Patkin/Hancock Associates  
 [These two hearing continuations were held sequentially, with some overlap in discussions.]

ANRAD John Dick of Hancock Associates presented. Luther and MacDougall had made a site visit with Dick; Luther had submitted a report. Spillman made a separate site visit with Dick on Tuesday, April 26, and observed the same conditions of the site. Dick showed a sketch modification of the plan showing an expanded wetland area based on soil evaluations he had made earlier in the day. No wetland flags had been moved at the site. Dick indicated that when he was out at the site, he was asked to look at the soils. He explained that without any consideration of vegetation and since it is halfway into the season, he looked only at soils; taking the soils into consideration and not vegetation, the line goes off the site then back onto the site. About 230 feet of wetland crossing would take place, almost twice the area of the original crossing at the lot line, which is only 131 feet by that sinuous path. A small device could get around the trees. He added that if it gets to a point of building the driveway, they may look again at the northeasterly route because of alteration there already. He asked that if the wetland as now sketched is acceptable to TCC, he would suggest closing the hearing. Luther asked whether he would have to cross wetland. Dick indicated yes. All were in agreement to come across the wetland where the surface is harder. Dick doesn't have a lot of hopes for the testing. He explained that they would come in with a limited project for the house and it would be very difficult. They would need a water quality certification and to go before the Army Corps because of the wetland alteration. Spillman indicated that the wetland line is reasonable enough and she is comfortable with it. MacDougall had some concerns, but is comfortable with it. Dick said that there is a perched water table, and the groundwater may be much deeper. MacDougall asked if the testing could be done by hand. Dick said by hand he would need to dig down four feet. *Erickson moved to close the hearing for the ANRAD under the Act and the Bylaw. The motion was seconded and passed unanimously. Erickson moved to accept the wetlands delineation flagging as shown on the plan dated 4/26/11, revised soils analysis, and to issue an ORAD under the Bylaw accordingly. The motion seconded and passed unanimously.* One plan was signed.

NoI Luther asked Dick to explain how they propose to get across the wetland. Dick indicated that the soils are very wet and he is not debating the vegetation; if they ever had to propose a driveway, he would propose mitigation along the section next to the Sillari driveway because it is so altered along there. He added that with the NoI they are asking only for the local authority to grant two trips, in and out, to do testing and possibly in and out again to do deep holes. The proposed path is approximately 131 feet by the meander across the wetland and they would use the smallest device they can to do the testing. He has a dozen hay bales on hand so that they can mulch any disturbed areas. The biggest concern he expects is the disruption of leaf litter. Luther indicated that the ground is pretty solid where the path is proposed. Erickson asked how they are you going to cross the wetlands area, and whether they are proposing to do any restoration. Dick answered that they are exempt from state regulations; that they are allowed to drive through the wetlands by the state. Abutter Michael Kane said that there is a lot of water coming from the top of the hill onto Wenham Road; if the proposal is to come from Wenham Road, there is a big ditch and then there is a stone wall that needs to be disassembled. Pratt asked if there was water coming onto the property from their property? Dick believes the actual flow is across 4 Wenham Road. Abutter Anthony Sillari indicated that test holes failed 20 years ago. He added that Mr. Kane's house was only seven years old when it was sold and it failed Title 5. Luther indicated that the testing results are not in TCC's purview; it is up to the BoH. Sillari asked TCC to deny the application and asked for a review of the record of 1990. MacDougall asked Sillari

to cite the law that would allow TCC to deny. Luther commented that TCC had been given no substantive reason to deny the application. Rhoda Patkin owns the property.

MacDougall asked Spillman her opinion. Spillman summarized that if the process of soils testing would result in wetland alteration, TCC could deny; if measures could be taken to prevent the alteration of a wetland, TCC should not deny. Sillari has the paperwork from TCC including that in ~1990 Patkin was fined. Dean Azadorian explained that he owned the lot in the 1980's and Mr. Patkin bought back a part of the lot from him to avoid a trial. He added that engineer Tom Neve found part of the land presented to Julie and John Norris as a way to develop the lot at 4 Wenham Road. The plan was hypothetical and never recorded.

In response to concerns about alterations to the wetland, Dick said that they would use a small backhoe and place planks in the area and put down some rye seed on the surface if necessary. He added that the digging would be in a small trapezoid outside of the Buffer Zone and that both Sillari and Kane refused access across their properties. Abutter and Planning Board member Steve Hall (there with his wife) commented about the disturbance that test pits make and indicated that because Wenham Road is a scenic road, permission is needed from the Planning Board to disturb the stone wall. Luther responded that there is a breach there now but if heavy equipment gets stuck it would be a problem.

Pratt would like to obviate the problems going forward and suggested a bond requirement.

MacDougall still liked hand digging and believes even a small machine crossing the wetland would have some effect and that the proposed testing has potential impact on the neighbors' properties. Dick said it's illegal to dig a 12-foot hole by hand. Luther suggested Dick: 1.) ask BoH Agent Coulon if hand-dug holes are reasonable, and 2.) evaluate the soils to see if they're compact enough for a backhoe. All agree that this is an extraordinarily difficult piece of land.

*Erickson moved to continue the hearing until May 11 for purposes of the two items mentioned (1. and 2., above). The motion was seconded and passed unanimously.*

Luther explained to Mr. Sillari that the front area of this property is wetland and should no longer be mowed. Sillari acknowledged that they don't own the land and that he understood the request.

**NoI 307-06\_\_\_: 17 Towne Lane, (Map 33, Lot 63), Scarpaci**

Jared and Maija Scarpaci were present and represented themselves. Proof of abutter notification was submitted previously. The legal ad was read. The proposal is to create a yard where several large mature trees were cut in the Buffer Zone of BVW and an Intermittent Stream. The tree stumps remain. An after-the-fact DoA was issued for the tree removal.

The current proposal includes removal of the trunks with root systems, bringing in fill to restore the topography, regrading, construction of a stone wall adjacent to the BVW, and installation of a lawn. There is no DEP number and a duplicate of the filing be sent to DEP-NERO. Spillman made a site visit of the property on Tuesday, 4/26, and presented photographs.

Jared explained the proposed project to take out the stumps and regrade the area. To the rear and north of the house, they would like to put a lawn in and would regrade the area. Jared got an estimate of four loads of soil needed but doesn't know the volume. Erickson asked if it would be better to grind the stumps adding that over time, they would create a depression. They probably would need a tracked excavator to pull these very large stumps. Spillman commented that because of the amount of soil disturbance, a single row of entrenched silt fence would not be sufficient, and suggested a second row of silt fence as well. TCC agreed. A TCC site visit was

scheduled for Wednesday, May 4, at 6:45 p.m. *Erickson moved to continue the hearing to May 11, 2011. The motion was seconded and passed unanimously.*

**REQUESTS:**

**RDNI 2011-02: 207 Boston Street, (Map 57, Lot 4), Essex Agricultural Society (Topsfield Fairgrounds)**

The proposal is to install three slabs for HVAC units in Riverfront area of School Brook. Work would involve removal of 12 inches of soil with final level of concrete to be six inches above the original grade.

*Erickson moved to issue a DNI with a condition that the soil be trucked away from the wetland area. The motion was seconded and passed unanimously.*

**Continuation CoC: 307-0598: 47 Rowley Road, (Map 6, Lot 14) Nelson/Hancock Associates**

The project was construction of an addition in Buffer Zone of BVW and a large vernal pool.

Spillman made a site visit April 14 and found the property in compliance with the OoC. *Jolley moved to issue a CoC for 47 Rowley Road with special conditions under the Act and Bylaw. The motion was seconded and passed unanimously.*

**Continuation CoC: 307-0624: 59 Main Street, (Map 41, Lot 25) LeClair/Millennium Engineering**

The project was construction of multi-unit housing to replace the previous structure, with activities in Buffer Zone and Riverfront Area of School Brook. Spillman made a couple of site visits, most recently this week. Although there is a small amount of erosion in the backyard, it's not significant. The site is stable and it appears that the rain garden is functioning sufficiently well to warrant a CoC. *Erickson moved to issue a CoC with special conditions including a continuing condition for operation and maintenance of stormwater/drainage structures, including the rain garden, under the Act and the Bylaw. The motion was seconded and passed unanimously.*

**Continuation CoC 307-0669: 12 Boston Street/English Commons – Boardwalk, (Map 81, Lot 1), English Commons LLC/Beals Associates**

Spillman reported that the project is not ready for a CoC, so no action was taken.

**Emergency Certification TCC 11-02: 47 Rowley Road, (Map 6, Lot 14) Nelson – ratification**

The emergency certification was issued for cutting of seven mature, diseased and/or leaning white pines that pose a threat to the house and human safety. Work would be in the Buffer Zone of a large vernal pool and BVW. A follow-up RDA is required and may include proposed cutting of additional mature trees. *Erickson moved to ratify the emergency certification. The motion was seconded and passed unanimously.* Members signed the certificate.

**MEETING MINUTES:**

*Erickson moved to accept the minutes of March 30, 2011 as amended. The motion was seconded and passed with four voting in favor, with Pratt abstaining.*

Spillman explained that Nihan-Demeule is not sure about the new meeting minutes arrangement. Erickson added that Nihan-Demeule explained to him that it is a definite handicap not being at the meetings, especially when the recording stops or is not available.

**OTHER:**

**19 (Map 6, Lot 23) and 19R (Map 11, Lot 2) Pheasant Lane, Land Swap Warrant Article and Town Meeting** – update and discussion

A plan meeting ANR criteria and an appraisal have been submitted. Brigitte O'Malley told Spillman on Monday that they are prepared to submit the ANR application. Luther will be presenting at Town Meeting. Hall has offered to assist at the state level. Luther explained that the appraisal for \$8,000 is a very detailed appraisal. MacDougall added that the ecological significance is the connector to other open space. Luther agrees that it is a win/win situation now having a connection to the state forest and Greenbelt property, and there is a large stand of pignut hickories.

**ADMINISTRATOR'S REPORT:**

**270 Boston Street, EO, Restoration Plan, Albright**

Bear Albright wants to cut down the large, now dead, white pine that is adjacent to the vernal pool in the large area that is under an Enforcement Order. The tree is valuable wildlife habitat in that it contains a nest that could be a great horned owl nest or could be an old red-tail hawk nest. Eventually it would become an owl nest. Spillman will send a letter tomorrow with TCC's instructions to leave the tree where it is and stop mowing the area around the vernal pool.

**OoC 307-0663: Rail Trail Summer Street to Wenham Line, (Maps 49 & 58; Lots 44, 88 & 2, 52)**

Town of Topsfield/Rail Trail Committee – update

Spillman will be making a site visit with Bill Manuell and Joe Geller at 10:30 tomorrow morning. The first activity is expected to be removal of the remaining ties. The RTC apparently is short on funding for sedimentation control and is seeking to do some work without it. Spillman will evaluate relevant areas tomorrow. They cannot do the proposed activities in jurisdictional areas without sedimentation controls. Socks can be recycled from spot to spot. A suggestion was made that they talk with Alan Berry (12 Boston Street development) about using the socks that he is getting rid of.

**Enforcement, Cross Street, Nash**

The engineered restoration plan has not yet been received. Spillman received a phone call and an e-mail from the EPA and discussed relevant documents concerning a question about the TCC's approval of part of the proposal. TCC agrees that it would be fine to go with the original restoration plan.

**72 Hill Street, OoC TCC 2006-01, Malinowski**

Luther discussed his site visit and submitted a report with photos. Ken Stowe, abutter at 80 Hill Street, sent a letter. Luther saw no evidence of stream flow erosion or sedimentation; the only area of concern found was at the Hill Street area, where there was slumping. His suggestion for that area is to stop mowing. Luther found that there is no indication of surface water heading down to 80 Hill Street. Stowe had told Spillman that there was new sand coming onto his property that looked like sand from the septic leaching structure. Luther indicated that Stowe may have an issue with Dave Bond/the Highway Department and water coming down Hill Street. The stone ditch stops right at Stowe's driveway. Luther reported that Dave Bond put a layer of riprap into the ditch, and it elevates the water. He believes that if the slumping is fixed in the section near High Street, then all would be fine; it is stable. He believes that whatever happened

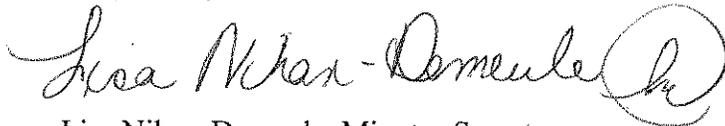
there is no longer happening, although something subsurface could be going down to Stowe's property. Spillman indicated that there is evidence that water still is coming from above 72 Hill Street across the site and into the trench. TCC asked her to send a letter directing the owner to have a two-foot strip of vegetation adjacent to the trench from Hill Street down to the second weir and to seed the area with meadow mix and not mow it. Luther noted that there is a problem with Asian bittersweet on the other side of the trench and Mr. Malinowski has removed some of it. TCC will make another site visit in the summer.

**Beaver Activity in Topsfield**

TCC discussed reports of unauthorized trapping. MacDougall indicated that 11 beavers at Wenham Road have been taken out almost at the Wenham line. He looked at the water control structure built there in the 1980s. Joe Downing designed it. The beavers have re-plugged it, so there obviously are 12 beavers. The lodge is huge, about five feet tall. There is knowledge of one emergency permit.

*Erickson moved to adjourn the meeting at 9:06 P.M. The motion was seconded and passed unanimously.*

Respectfully submitted,

A handwritten signature in cursive script that reads "Lisa Nihan-Demeule". The signature is written in black ink and includes a circular flourish at the end.

Lisa Nihan-Demeule, Minutes Secretary

*Accepted at the TCC meeting on February 8, 2012*

*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.*