

## ***Topsfield Conservation Commission***

***Minutes of Wednesday, September 9, 2015***

Topsfield Library Meeting Room

**Present:** *Dodds Shamroth, Vice-Chairperson; Holger Luther, Jen DiCarlo, Lana Spillman, Conservation Administrator; and Dee Wise, Recording Secretary*

**Absent:** *Cheryl Jolley and Jim Carroll*

**Other Attendees:** Dick Gandt; Scott Cameron, The Morin-Cameron Group; Greg Hochmuth, Williams & Sparages; Alex Tatum; Jeanine Cunniff; Mike DeRosa, DeRosa Environmental; Debra Holt; Scott Holt; Bob Hunter; Jen Hutt; Debra DiBenedetto; Jim DiBenedetto; Jeff Gansen; James Love; Bill Guinee; Janet Kmetz; Kim Sherwood; Robert Kmetz; Joe Geller; Margo Levitsky; Carol Decker; and Ralph Stump.

The meeting was opened at 7:05 p.m. by Acting Chair, Shamroth, with a quorum present.

### **HEARINGS:**

**Continuation NoI 307-0723: 199 Ipswich Road, (Map 20, Lot 055), DeIulis/Williams & Sparages, LLC**

Greg Hochmuth, from Williams & Sparages, was present and represented the applicant for this continued public hearing. Spillman explained that arrangements are being made for the removal of the stumps from the BVW. Hochmuth added that in order to get the stumps out, they are going to have to bring in machines; they would need to go into the flagged wetland. Spillman suggested that plywood could be used to help prevent alterations where the machines would be used. The revised plan, which was presented at the last public hearing date, shows removal of unauthorized fill and a stone wall in the BZ resource area as close as three (3) feet from the BVW. Spillman questioned what the restoration would be for that area. Spillman stated that the placement of an above-ground pool apron closer than 25 feet from the BVW would be precedent setting. The plan shows the pool apron 10.5 feet from the BVW and the pool 14 feet from the BVW. Luther expressed his support for a planting mitigation area. Hochmuth explained they are going to dig up the lawn and plant heavily, and he is willing to plant trees in there as well. Spillman asked where the compensatory flood storage area is proposed. Hochmuth pointed the area out on the plan. Spillman added that she would like to see the compensatory flood storage area included on the plan. Hochmuth responded that he would revise the plan to include this. Spillman suggested that the Conservation Commission (TCC) would need to vote on granting a waiver for the setback of the pool, since this would be precedent setting, even with the mitigation.

A motion was made and seconded (Luther/DiCarlo) to issue a waiver for the setback of the pool relative to the wetlands. So voted unanimously

Spillman suggested that the TCC not close the public hearing without receiving the final plan, because the date of the plan would change.

A motion was made and seconded (Luther/DiCarlo) to continue the public hearing to the September 23, 2015 meeting. So voted unanimously

**Continuation ANRAD 307-0725: 116 & 120 Hill Street, (Map 68, Lots 047 & 048), New Meadows Development/DeRosa Environmental**

Mike DeRosa, from DeRosa Environmental, was present and represented the applicant for this continued public hearing. DeRosa stated that there have been some changes since the last meeting, and that a DEP file number has been assigned: 307-0725. He added that Spillman had walked the entire wetlands lines with Tyler Ferrick of DeRosa Environmental. TCC members have been out on the site as well. DeRosa stated that there were a couple of changes to the wetland lines, specifically in the area of an Intermittent Stream. DeRosa requested that the TCC issue an ORAD. Luther clarified, for the abutters in attendance, that this item was a public hearing to establish the locations and boundaries of the Resource Areas.

A motion was made and seconded (Luther/DiCarlo) to close the public hearing. So voted unanimously

A motion was made and seconded (Luther/DiCarlo) to issue an ORAD accepting the Resource Area Boundary flags as shown on the revised plan, dated September 2, 2015, entitled "Plan to Accompany Abbreviated Notice of Resource Area Delineation 116 & 120 Hill Street". So voted unanimously

**ANRAD 307-07???: 21 & 9 Towne Lane, (Map 33, Lot 061 & Map 41, Lot 073), LeClair/Gove Environmental Services, Inc.**

Luke Hurley, from Gove Environmental Services, was present and represented the applicant for this public hearing. DiCarlo read the legal notice aloud and proof of abutter notification was submitted. Luther clarified, for the abutters in attendance, that this item was a public hearing to review the location of Resource Areas and their boundaries. Luke Hurley presented that this application is for two (2) separate lots; the first lot (9) is across from Deer Run and the second lot (21) is located farther up the street by the end of the cul-de-sac. There were a couple of site walks with Spillman about a month ago, and a few wetland flags were moved. He added that an unofficial soil test report was done in November 2014, along with some data plots. Luther asked Hurley if he would describe the Resource Areas for the benefit of the audience. Hurley began with the property at 21 Towne Lane, explaining that there is an Intermittent Stream with slightly forested BVW flowing from east to west, starting offsite. There are signs of scour in periods of heavy rain. A few BVW flags were moved. Hurley spoke in regards to 9 Towne Lane next. There is an Intermittent Stream off to the north that flows through BVW, down into a catch basin, and into a drain system that goes to the west. He reported that Spillman believes there is another Intermittent Stream on the southern side of the property. He added that it was not practical to look underneath a large dump pile of leaves and vegetation adjacent to the BVW to see the status there since any vegetation would be dead. That BVW has not been fully verified yet.

In response to audience questions, TCC clarified that they were only discussing the Resource Areas on the two properties, not proposed development. An abutter to 21 Towne Lane, Alex Tatum of 19 Towne Lane, asked if the TCC was going to ask that what was previously verified as an Intermittent Stream in front of his property be identified and delineated.

Hurley and Spillman both replied that TCC was not requested to delineate that area. Tatum then asked if this was something that would be considered and Spillman replied that it would.

Another abutter, Jeanine Cunniff of 16 Towne Lane, stated that she is a member of the Planning Board/Stormwater Authority and asked about a previous delineation at 120 High Street (Hickory Beech Subdivision). Cunniff stated that there have been a lot of problems there due to a poor delineation, and questioned whether the topography at these sites is similar to that at Hickory Beech. Luther replied that in the case of 21 Towne Lane, he looked at the Resource Areas and concluded that it comes down to a rapid and aggressive Intermittent Stream at the end of 21 Towne Lane; it's a statutory stream that has a Resource Area at the top, so it's not just a Bylaw Intermittent Stream. Spillman added that the Stream flows through BVW. Luther commented that the Hickory Beech Subdivision site has various things, i.e. two Vernal Pools and there are BVWs with lots of Streams. Spillman offered that she sees similarities between 120 High Street and these properties and mentioned that the Bylaw Regulations were modified due to the situation at 120 High Street.

Cunniff stated that she was concerned that the delineation was being done at a dry time. Spillman reiterated that what is before the TCC now is a review of the Resource Areas. Luther commented that 21 Towne Lane was going to be a very difficult piece of land to develop. Spillman stated the soils she observed at 9 Towne Lane were disturbed over a long time and dumping of brush, apparently from the neighborhood, has occurred at the site for a long time as well. Luther stated that the Planning Board should have a peer review done under the Stormwater Review. An unidentified audience member asked about the time frame for a solid delineation. Luther replied it would be a solid determination when the TCC agrees with the delineation. Spillman stated there are 2-3 flags that she could not confirm at 9 Towne Lane due to not being able to see the wetland surface.

Luther asked Spillman what she would do about a second area at 9 Towne Lane and Spillman responded that she believes there is a Bylaw Intermittent Stream there, and it should be confirmed. She added that the decision on how to proceed was up to the TCC; the TCC could verify the flags that already are on the property, and then it would be up to the Applicant's representative to prove there is not a second Intermittent Stream.

Paul Greenaway, 2 Deer Run, stated that with the 100-year storms recently, a lot of volume of rain comes down and after four (4) inches of rain, it becomes a waterfall, comes across his land and into his basement. He stated that he would like the TCC to consider this situation in their process.

Cunniff stated there is standing water all along Towne Lane most of the time, but not now due to the dry period. Water that comes from the southern area of 9 Towne Lane washes over the roadway and down to the drain. She mentioned that there is water that flows behind 15 Towne Lane. Spillman stated there is wet vegetation at 9 Towne Lane along the side of the road, but it did not look like it was connected to the identified Intermittent Stream and it is not a jurisdictional size wetland. Luther stated that the Intermittent Stream on the north side has to go somewhere and asked how efficient the culvert was. Cunniff stated that it was not efficient; this is where they get the flash floods, which go right across the street.

Jen Hutt, 34 Towne Lane, informed the TCC that the water from 21 Towne Lane is the water that goes into her backyard. Hutt added there is also a pipe that runs under the cul-de-sac; she is not sure where it comes from but a "ton of water" comes out of it. Bob Kmetz, 32 Towne Lane, stated that a giant culvert had been installed due to the large drainage system; in the spring there is 2-3 feet in diameter of water in it.

Debra Holt, 26 Towne Lane, questioned when the soils were looked at and when the lots were walked; she heard that it was done in November. Hurley replied that November was when the soil testing was done. Holt commented that November was a pretty dry month and that the water tables fluctuate with the seasons; the water table comes up in the Fall and goes back down in the Spring. Holt suggested having a site walk in the Spring when the snow is melting.

Cunniff presented pictures to the TCC of the water that was flowing on and from the site on Christmas Day 2014. Spillman asked Cunniff if she would like to submit the pictures as information to be included in the file. Cunniff will submit the pictures for the TCC file.

In response to a suggestion by Spillman, Luther agreed that it would be appropriate to have an independent review by an expert, to deal with the issue (of whether there is a second Intermittent Stream at 9 Towne Lane) and resolve it. He asked that Spillman suggest one or more potential peer wetland scientists, to be agreed upon by both parties. Hurley expressed concern that a second Intermittent Stream would have a 100-foot Buffer Zone.

Luther stated that it would be revisited with somebody who knows Intermittent Streams. Spillman agreed. Luther would like to see the water flowing. Spillman stated that not only should the person understand Intermittent Streams, but also know the Bylaw and Regulations definitions and criteria. She is convinced that there is a second Intermittent Stream on the property. Luther asked if there is a peer review process. Spillman replied there is a peer review process that they could use.

A motion was made and seconded (Luther/DiCarlo) to continue the hearing to the September 23, 2015 meeting. So voted unanimously

**Continuation NoI 307-0724: 57 Perkins Row, (Map 58, Lot 025), New Meadows Development/The Morin-Cameron Group, Inc.**

Scott Cameron, from The Morin-Cameron Group, was present and represented the applicant for this continued public hearing. Cameron observed that there were two (2) members of the Conservation Commission not present at the meeting that night. DiCarlo stated that she had not yet listened to the audio recording of the hearing she missed. Cameron responded that due to the absences, he would like to request a continuation to the September 23, 2015 meeting.

Shamroth stated that the TCC office had received a letter, dated August 27, 2015, and photographs from an abutter, Mr. Levitsky. Luther stated that this letter should not be read into the record at this time, due to the absence of the two (2) members.

Spillman suggested that what was transpiring should be explained to the audience, as some members may have questions. Kim Sherwood stated that she did not understand what was going on. Luther explained that in order to proceed with the hearing, a quorum of members that were present at previous hearings and are familiar with the facts presented need to be present. DiCarlo was unable to make the previous hearing and had not had a chance to listen to the audio recording of that meeting, so the TCC needed to continue the public hearing.

A motion was made and seconded (Luther/DiCarlo) to continue the public hearing to the September 23, 2015 meeting. So voted unanimously

**REQUESTS:**

**RDNI 2015-15: 9 New Meadow Lane, (Map 74, Lot 007), Marshall**

Mark Marshall, the new property owner, was present. This application is an after-the-fact filing for unauthorized activities in the Riverfront Area of Nichols Brook. Marshall stated that he had spoken with Spillman when he purchased the house and before he did anything. She had given him some paperwork that he should have read and he admitted that he hadn't. He stated that he had misunderstood what he was supposed to do and that authorization would be needed prior to commencing work. He explained that he began to rip up the driveway, and thought that it would not require TCC review. The concrete driveway was removed and the hard soil was replaced with hard stone.

Spillman asked Marshall to explain the pictures he had submitted. Marshall stated that the green substance was a product for a snow melting system. Luther asked what the product was covered with and Marshall responded that it was covered with stone dust and pavers, and then commented that it could be covered with anything. Spillman stated that there was an area of infiltration proposed on the side. Spillman asked Marshall to explain what was there now and he replied that it is a ¾-inch stone for drainage. Spillman commented that she believes it is better drainage than what was there previously.

Spillman explained that the other part of the project is replacement of the walkway; the owners were asked to wait on the walkway until the TCC has reviewed the proposal, but that they could continue with the driveway since it already had been started. Luther asked about the footprint and Marshall stated that it was the same exact footprint that was previously there. DiCarlo asked if the system worked on electricity and Marshall replied no and added that no salt or any other chemicals will be used on the driveway or walkway.

A motion was made and seconded (Luther/DiCarlo) to issue a DNI for the driveway and walkway. So voted unanimously

**RDNI 2015-16: 222 Boston Street, (Map 49, Lot 41), Lawton.**

Ray Lawton, the owner, was present. This application is an after-the-fact filing for the installation of walkways in the Buffer Zone and Riverfront Area of School Brook, and also possibly within Bordering Land Subject to flooding. Lawton presented photographs of the work that was done.

A motion was made and seconded (Luther/DiCarlo) to issue a DNI for the completed walkway. So voted unanimously

**RDNI 2015-17: 52 Bare Hill Road - Topsfield Linear Common/Rail Trail, (Map 17, Lots 017 & 026), Rail Trail Committee/Geller**

Joe Geller, a member of the Rail Trail Committee, was present. He explained that the application request was for filling in of ruts on the Rail Trail and for leveling the trail surface; some of the ruts are outside of the jurisdiction of the TCC. Luther asked if a small bobcat type of vehicle would be used for the work. Geller replied that a volunteer has a Kubota that would be used. Luther asked about the size of the ruts that need to be filled. Geller replied that at most, maybe a foot in width, and 1/2 -inch minus stone delivered from Bentley Warren would be used. Spillman suggested that National Grid, as property owner, be informed by the Rail Trail Committee about the proposed work.

A motion was made and seconded (Luther/DiCarlo) to issue a DNI for the filling of ruts as proposed. So voted unanimously

**RDNI 2015-18: 3 Wilmor Road, (Map 10, Lot 015), Davis/Scanlan Engineering, LLC.**

There was no one present to represent the applicant for this request for a septic system upgrade. Spillman stated that she had made a site visit earlier in the day and agreed with three (3) of the Isolated Wetland flags. She stated that she believes the Wetland is larger than what is flagged and shown, but that it is still less than 5000 sq. ft. (Bylaw jurisdictional size). Spillman explained it is important that the flag that determines the 100 foot setback from the proposed septic system is one of the ones that she agreed on. Her analysis was based on vegetation and topography, and the wetland line was clear. The TCC looked at photographs of the site.

A motion was made and seconded (Luther/DiCarlo) to issue a DNI for the septic system upgrade. So voted unanimously

**Continuation CoC 307-0659: 19 High Ridge Road, (Map 65, Lot 027), Gillis/The Morin-Cameron Group, Inc.**

There was no one present to represent the applicant for this request. Spillman stated there are two items that need to be addressed; the first item is re-installation of the missing Conservation post sign, and the second is removal of the plastic siltation sock. Spillman stated that she had sent an e-mail to the owners regarding these two items, but had not received a response. Spillman reported that the house is for sale and the real estate agent had come into the office to review the file; she is the one who removed the plastic siltation sock that was still there. The placard had been put on the post and the property is in compliance. She recommended that the CoC be issued.

A motion was made and seconded (Luther/DiCarlo) to issue the CoC. So voted unanimously

**Continuation CoC 307-0708: 222 Boston Street, (Map 49, Lot 041), Lawton/The Morin-Cameron Group, Inc.**

Owner Ray Lawton was present. Spillman recommended that the TCC deny the CoC at this time in order to allow the grass to grow in and the site to be stabilized. Once this is done, the TCC office should be contacted and a site visit done to verify stabilization of the site. At that point, she recommended that the TCC reconsider the CoC request at no additional cost to the applicant if it is requested before May 1, 2016.

A motion was made and seconded (Luther/DiCarlo) to deny the CoC at this time in order to allow time for the site to be stabilized, and to reconsider a second CoC request waive the \$100 filing fee, as long as it is done before May 1. So voted unanimously

**CoC 307-0721: 21 Pemberton Road, (Map 49, Lot 021), Smallidge/Scanlan Engineering, LLC**

There was no one present to represent the applicant. Spillman reported on the site visit she made the previous day. There is a huge pile of recently cut brush and debris in the Buffer Zone/Riverfront Area and possibly also within the BVW. Luther stated that the brush and debris need to be removed.

A motion was made and seconded (Luther/DiCarlo) to deny the CoC without prejudice, pending the removal of any brush, debris, and yard clippings, and also to waive the fee if a re-application occurs within three months. So voted unanimously

**OTHER:**

**Violations 2R Valley Road, (Map 65, Lot 036), Salem and Beverly Water Supply Board – update.**

Joe Geller, from the Rail Trail Committee, and Ralph Stump, an abutter, were present for this discussion. Spillman had sent an e-mail regarding the update as it was presented to the TCC. The Salem and Beverly Water Supply Board (SBWSB) is working with the Army Corps of Engineers (ACE) in lieu of their receiving a fine from the ACE for violations of the Federal Clean Water Act. ACE has asked SBWSB to delineate where the wetlands boundaries were before they filled them in. Spillman stated that the ACE looked at aerial photos and other records to see what was there before, to determine the width and volume of the fill in BVW. Their final determination will be shared with the TCC, but it may take a few months to do this. Luther mentioned that the ACE stated that the Alders proposed are not native and should not be used, but he feels that the proper Alders should be planted on either side of the filled area to stabilize the embankments. Spillman stated that she believes that it would be best to let the side slopes re-vegetate naturally; the re-vegetation has started. Luther stated that the SBWSB might be exempt from State Law but not Federal Law; there is retribution. Joe Geller stated that at the original hearing, the reason SBWSB stated they put the access road in there was for equipment access; the surface is very course, and it would be nice if they would make part of that trail like the Rail Trail. Luther expressed concern about stabilization of the embankments. Geller was concerned about people with bikes riding on the new surface, because it is not for recreation purposes. Luther explained that SBWSB said that the work was done for a second, emergency access, and that the SBWSB should never

have done any of it because this has nothing to do with supplying water to Salem or Beverly, which is the only reason why they are allowed to do things without approvals. Stump was concerned about maintaining the historic purpose of the area and asked if there were any reason the TCC could not keep some bargaining power. Luther believes that the TCC does not have the legal ability to do so.

**Proposal for layout of 255 High Street/Morningside River Estates Open Space, (Map 65, Lot 001), The Morin Cameron Group, Inc. – review and discussion.**

Shamroth asked if there was a proposal for a perimeter survey of this property. Spillman stated this issue was being postponed due to John Morin not being able to attend this meeting.

**MEETING MINUTES:**

**August 19, 2015** - Minutes were not available for approval.

**ADMINISTRATOR'S REPORT:**

**19 Evergreen Lane:** Spillman reported that she had drafted a letter to the Planning Board regarding 19 Evergreen Lane and requested that any TCC comments be sent to her ASAP so that the final letter could be sent. She looked up the effective dates of the OoC and, due to the Permit Extension Act, it does not expire until 2016, and the amended ORAD also does not expire until 2016. Spillman stated that an Intermittent Stream flows across the property at 15 Evergreen, onto 19 Evergreen. A lot of water flows onto the property, and there probably is a ponded area there now. Luther stated that in the winter it will be totally wet. Spillman explained that there is a hockey rink in the back of the adjacent property at 15 Evergreen Lane. The proposal is for a new single-family house. Jeanine Cuniff, a member of the Planning Board, asked if this was coming before the Planning Board and Spillman responded that it was. Luther stated that a Peer Review would settle this issue.

**Town Beach – Erosion problems:** Spillman stated that Town Beach has significant erosion starting from Haverhill Road, across the parking area, and down to the beach. Also, there are issues with the Boy Scouts' projects; creation of a swale with large stone actually made the situation worse. Also, the erosion re-occurred at the stairs recently. The Highway department put a berm in place in the parking area to slow the stormwater. Spillman has asked an engineer if he would do a *pro bono* review of the area to offer a solution and it was agreed upon.

**Fairgrounds, Hydro-seeding:** Spillman reported that she had driven by the site and they were hydro-seeding. There was a huge water truck there and they were spraying up in the air. The Town is in a drought. Luther stated that the area is totally dry, these areas are totally bare, and the owners decided to put down hydro-seed; it does not make sense to do this at this dry time.

**Site visit at Meredith Farm, Cross Street (EPA enforcement, follow-up monitoring):** Spillman joined EPA and Bill Manuell for a site visit today, and all looks good.



**Winter Moth Project, Hannah Smith, Intern** – update: Flyers have been distributed to the Town Library and around Town Hall. Spillman and Hannah Smith, the Summer Intern, visited the Essex County Co-Op about outreach. The Co-Op is enthusiastic about hosting a talk by Smith about Winter Moth, and is willing to provide a 10% discount for Tanglefoot© and other materials for tree banding.

**ADJOURNMENT:**

There being no further business to come before the TCC, a motion was made and seconded (Luther/Carroll) that the meeting be adjourned. So voted unanimously

The meeting was adjourned 9:10 at p.m.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Diane Wise / m". The signature is written over a horizontal line.

Diane Wise,  
Recording Secretary

*Minutes approved at the TCC meeting on January 13, 2016*

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.