

Topsfield Conservation Commission
Minutes of Wednesday, December 16, 2015
Topsfield Library Meeting Room

Present: Cheryl Jolley, Chairperson (CJ); Dodds Shamroth, Vice Chairperson (DS); Holger Luther (HL); Jim Carroll (JC)*; Jennifer DiCarlo (JD); Lana Spillman, Administrator (LS)

Absent: None

*JC joined the meeting at the start of continued deliberation on 57 Perkins Row.

The meeting was called to order at 7:05pm. CJ chaired the meeting.

ADMINISTRATIVE MATTERS:

- 1) **2016 Meeting Dates:** LS distributed a revised schedule of 2016 meeting dates to TCC members.

TCC ACTION: HL made a motion to adopt the 2016 schedule. DS seconded. So voted unanimously

- 2) **Fees for Document Requests:** LS reported that the Town is developing a policy for compliance with MA Public Records Law and recommended postponement of discussion re: TCC office fees until a new policy is in place. LS reported that, in accordance with MA Public Records Law, at present \$.50 is charged for computer printouts; \$.20 is charged for copies; and the lowest applicable hourly rate is charged for search and segregation. LS will seek guidance for the handling of unusual fees. CJ noted that all TCC members received a copy of the Public Records Law, which includes some exceptions.

TCC ACTION: No action was taken at this time.

HEARINGS:

- 1) **CONTINUATION ANRAD 307-0726 – 21 & 9 Towne Lane (Map 33, Lot 061 & Map 41, Lot 073), LeClair/Gove Environmental Services, Inc.:** TCC received a written request from the applicant to continue the hearing to the first meeting in February, 2016. CS recommended that all TCC members check with LS regarding their attendance at the various hearing dates that have occurred in this matter, in the event any need to listen to a previously recorded hearing.

TCC ACTION: HL made a motion to continue the hearing until 2/10/16. DS seconded. So voted unanimously

REQUESTS:

- 1) **CoC 307-0673 – 31 South Main Street (Map 40, Lot 085), Guido/The Morin Cameron Group, Inc:** John Morin of the Morin-Cameron Group appeared on behalf of the applicant. LS reported that she has made several site visits over the years and recommended issuance of a Certificate of Compliance. HL asked about large holes at the site. LS reported that they were not part of the application. John Morin reported that modifications had been made to the barn and there was an overall reduction in the amount of impervious surface at the site.

TCC ACTION: HL made a motion to issue a Certificate of Compliance for the work completed substantially in compliance. DS seconded. So voted unanimously

OTHER:

- 1) **Violation Notice 2015-03 – 9 New Meadow Lane (Map 74, Lot 007), Marshall/DiChiara:** Mark Marshall, the homeowner, appeared to discuss the unauthorized installation of drainage piping as draining into the Buffer Zone/Riverfront Area with respect to a newly installed heated driveway. LS indicated that nothing had been filed with the TCC at this point and that subject piping is located within the 100-foot Buffer Zone and Riverfront Area. Marshall indicated that drainage was provided by a newly installed perforated pipe that functioned and went with the angle of the driveway. His contractor buried an 89' open-ended pipe for no reason and then when New Meadow Lane was paved, it was pitched toward his driveway. When all the prep work was done, the whole driveway drained. The apron was installed 2 weeks ago. The driveway was installed by the homeowner's company. HL questioned whether or not it would work in a 50- or 100-year storm event and also indicated that because the pipe is not needed it should be removed. LS observed that if some of the water would go into the ground while the rest would pool in the area at the bottom of the slope, that in a large storm it would wind around and go into the wetlands. Marshall indicated that this is the reason it was capped and that they've added more permeable material. Marshall stated that he would rather not remove it until he knows how it is going to function for certain. HL responded that it could be disconnected at the driveway. LS recommended that the situation be documented and that another RDNI be filed to seek authorization for the work to disconnect the pipe with Marshall providing a proposal with a narrative and sketch. TCC agreed that Marshall should file a RDNI.

TCC ACTION: No action was taken at this time.

- 2) **362 Boston Street Conservation Land (Map 26, Lot 001):** Volunteer Walter Harmer reported that he continues to harvest the Japanese Knotweed, an invasive, at the site. HL commented that Japanese Knotweed is a serious problem in the UK, considered hazardous material, and that you can't sell property affected by it unless you have a plan in place for its mitigation. JD questioned whether the site would be appropriate for a management plan to be put in place or the creation of a sub-committee to help manage it. CJ indicated that, while management of the property is a responsibility of the TCC, this would be yet another task for the Commission that already has competing priorities, but that Harmer might be interested in exploring such a course of action.

TCC ACTION: No action was taken at this time.

- 3) **NoI 307-0724 – 57 Perkins Row (Map 58, Lot 025), New Meadows Development, LLC / The Morin-Cameron Group, Inc.:** John Morin appeared on behalf of the applicant. Resident/abutter Kim Sherwood appeared and indicated that she would be recording the meeting and notified the TCC of this. CJ reminded attendees that the hearing had been closed and the application was now being deliberated, that proposed findings had been submitted by LS and HL, and that the findings would need to be reviewed by the TCC in light of whether to approve or deny the application. HL indicated that the application was a little more complicated in that it would have to be reviewed in more detail than typical, under both the Bylaw and the Act. CJ agreed and

clarified that under the Act the Buffer Zone is a jurisdictional area while under the Bylaw it's a Resource Area. John Morin indicated that he was authorized to request that the hearing be re-opened in order to deliver additional information if any of the TCC members still had questions. Jeffrey Garber on behalf of New Meadows Development, LLC stated that he thought HL still had some questions, to which HL responded that he did not and that he did not want to short circuit the process. John Morin indicated that the applicant could re-notify or re-advertise the hearing if the TCC still had questions. CJ indicated that the conclusion of the review had been pending for a long time and scheduled for further deliberation, and recommended that the TCC review the findings taking each one individually.

The following is the TCC's review and proposed revision of each finding prepared by LS:

Finding 1: this finding deals with the differences between the Bylaw and the Act. No changes proposed.

Finding 2: This finding describes the various submissions. No changes proposed.

Finding 3: This finding discusses the fact that the parcel doesn't include identified habitat of rare wildlife. TCC agreed to change the word, "contain" to "show."

Finding 4: No changes proposed

Finding 5: No changes proposed

Finding 6: No changes proposed

Finding 7: No changes proposed

Finding 8: No changes proposed

Finding 9: No changes proposed

Finding 10: No changes proposed

Finding 11: No changes proposed

Finding 12: TCC agreed that HL's finding be incorporated here re: the fact that possible existence of a vernal pool could not be eliminated given time of year that it was inspected.

Finding 13: No changes proposed

Finding 14: No changes proposed

Finding 15: No changes proposed

Finding 16: No changes proposed

Finding 17: No changes proposed

Finding 18: No changes proposed

Finding 19: No changes proposed

Finding 20: No changes proposed

Finding 21: TCC agreed to change “pooled” to “pool”

Finding 22: No changes proposed

Finding 23: No changes proposed

Finding 24: No changes proposed

Finding 25: No changes proposed

Finding 26: No changes proposed

Finding 27: No changes proposed

Finding 28: No changes proposed

Finding 29: No changes proposed

Finding 30: No changes proposed

Finding 31: No changes proposed

Finding 32: No changes proposed

Finding 33: No changes proposed

Finding 34: No changes proposed

Finding 35: No changes proposed

Finding 36: No changes proposed

TCC agreed that deliberations from 12/16/15 would need to be added to the findings.

Following TCC’s review of LS’ findings, HL recommended that the TCC take up the issue of whether to grant the permit/Order of Conditions (OoC) under the Wetlands Protections Act

(WPA), then going on to the OoC conditions, assuming that the permit could be granted under the WPA. Then having disposed of that piece, the TCC could take it up under the Bylaw and discuss HL's findings. CJ inquired whether HL's findings were relative only to the Bylaw, which was confirmed by HL. HL indicated that he could make a motion to grant the permit for the work under the WPA and that the waiver issue would be simply an aspect of the Bylaw review.

TCC ACTION: HL made a motion to grant a permit (Order of Conditions) for the work under the WPA. JC seconded. The motion was on the table for discussion.

HL summarized that Mr. Cameron and the applicant demonstrated that they have stayed within the confines and been consistent with the Wetland Protection Act with respect to the wetlands, wetlands pocket, work on the street and crossing, and that that is all done within the confines of appropriate stormwater management. The WPA doesn't consider Buffer Zone a Resource Area, and 310 CMR 10.02 (d) allows work with respect to stormwater management BMPs in Buffer Zone.

CJ indicated that there being no further discussion, the TCC could take a vote.

TCC ACTION: TCC took a vote on HL's motion. So voted unanimously

HL commented that the TCC would need to attach some conditions to the Act Order of Conditions and that TCC should go through them to see if they are sufficient.

The following is the TCC's review and proposed revision of each condition:

Condition I.1.: No changes proposed

Condition I.2.: No changes proposed

Condition I.3.: JD recommended including a reference to the OOC in all purchase agreements, but ultimately no changes were proposed.

Condition I.4.: No changes proposed

Condition I.5.: No changes proposed

Condition I.6.: No changes proposed.

Condition I.7.: No changes proposed

Condition I.8.: No changes proposed

Condition I.9.: No changes proposed

Condition I.10.: TCC agreed to include reference to a relevant mitigation plan. Also, inclusion of language allowing for appropriate replacement plants if some of the proposed plants do not survive.

Condition I.11.: No changes proposed

Condition I.12.: No changes proposed

Condition I.13.: No changes proposed

Condition I.14.: No changes proposed

Condition I.15.: LS discussed instances where curbing can inhibit wildlife, but ultimately no changes were proposed.

Condition I.16.: TCC agreed to move this condition under the construction activities section.

Condition I.17.: No changes proposed

Condition I.18.: No changes proposed

Condition I.19.: No changes proposed

Condition I.20.: No changes proposed

Condition I.21.: LS to combine sections b and f

Condition III.22.: No changes proposed

Condition III.23.: No changes proposed

Condition III.24.: No changes proposed

Condition III.25a.: No changes proposed

Condition III.25b.: No changes proposed

Condition III.25c.: No changes proposed

Condition III.26.: No changes proposed

Condition III.27.: No changes proposed

Condition III.28.: No changes proposed

Condition III.29.: No changes proposed

Condition III.30.: No changes proposed

Condition III.31.: No changes proposed

Condition III.32.: No changes proposed

Condition III.33.: No changes proposed

Condition III.34.: No changes proposed

Condition III.35.: No changes proposed

Condition III.36.: No changes proposed

Condition III.37.: No changes proposed

Condition IV.38.: No changes proposed TCC asked to ensure that there is a reporting requirement with respect to the operation and maintenance plan.

Condition IV.39.: This is to be made into a finding rather than a condition.

Condition IV.40.: No changes proposed

Condition IV.41.: No changes proposed

Condition IV.42.: No changes proposed

Condition IV.43.: No changes proposed

Condition IV.44.: No changes proposed

Condition IV.45.: No changes proposed

Condition IV.46.: No changes proposed

Condition IV.47.: No changes proposed

Condition IV.48.: TCC agreed to replace “development” with “construction.” HL, CJ, JD and LS also discussed the possibility of a report compiled in concert with one required by the Planning Board and agreed to include reference to “In coordination with the Planning Board as appropriate,” and replacing “may” with “shall.”

Condition V.49.: No changes proposed

Condition V.50.: No changes proposed

TCC ACTION: HL made a motion to attach LS’s “Attachment to Order of Conditions” and incorporate it into the Act OoC/permit as modified during deliberations. Seconded by JC So voted unanimously

TCC took a break from deliberations at approximately 9:00pm. Deliberations resumed at 9:06pm.

TCC ACTION: HL made motion to deny approval of the work under the provisions of the Topsfield General Wetlands Bylaw. Seconded by JC So voted unanimously

HL read his prepared findings relative to the Bylaw into the record. TCC agreed to number each of the unnumbered paragraphs submitted by LS, 1 through 6. CJ read LS' prepared findings relative to the Bylaw into the record.

The following is the TCC's review and proposed revision of each of LS' prepared findings:

Finding 1: No changes proposed

Finding 2: TCC agreed to change "habit" (typo) to "habitat."

The following is the TCC's review and proposed revision of each of HL's prepared findings:

Finding 1: TCC agreed to combine this finding with LS' Finding 1.

HL and CJ discussed the fact that the vernal pool expert didn't find the obligate species necessary to certify the pool as a vernal pool, such as wood frogs, fairy shrimp, etc., and without them there is no vernal pool verification. CJ indicated that while they do not have a wildlife habitat certified, TCC still has concerns about the habitat and its proximity to the Mass. Audubon property, which does have verified rare and endangered species habitat. TCC concluded there would be no changes proposed to Finding 1 of either draft.

The following is the TCC's review and proposed revision of each of LS' prepared findings:

Finding 2: HL conceded that the findings regarding the tree are pretty much moot, but there are at least 3 meters of root ball that would have to be removed and that's right on the embankment of the stream. CJ indicated that this would disturb the soil. HL conceded that this may need to happen in any event. DS recommended leaving the tree in place as long as possible. JD indicated that the tree provides habitat for birds. LS indicated that it shades water, moderating temperatures.

Finding 2: No changes proposed

Finding 3: No changes proposed HL argued that there is a requirement for an alternatives analysis and that TCC did not hear much from the applicant in the way of certain alternatives, such as improvements to the existing dwelling. JD indicated that she felt that any alternatives were glossed over.

Finding 4: No changes proposed

Finding 5: No changes proposed HL argued that the roadway would be public, requiring snow removal. While sand is fine, that is not the case with salt, which

cannot be removed from the water. CJ noted that this finding refers to lot development. JD noted that she wasn't persuaded by the presentation that 5 lots would reduce the impact on the area.

Finding 6: TCC agreed to modify this to include that the standard is the same as the state standard for vernal pools.

TCC agreed to renumber the findings from 2nd paragraph 10 on.

Finding 7: No changes proposed

CJ noted that replications are always tricky. What makes them tricky is the soil.

Finding 8: No changes proposed. TCC agreed that #8 of HL's and #5 of LS's findings are virtually the same. Regarding the taking argument, the roadway is the issue. If you have the driveway, you're using the envelope that's already in place. JD responded that the TCC just recently dealt with the nearby property located at 67 Perkins Row where the building footprint has been made smaller and the same mitigation could have been accomplished at 57 Perkins Row, but the developer chose a different path. DS agreed.

Finding 9: No changes proposed. HL indicated that he was not convinced that a full inventory of what's in the pool was obtained. Not having that, he questioned how the TCC could permit activity in the absence of that knowledge. CJ noted that the ORAD was in May, which would have been an ideal time to assess the pool. HL agreed, noting that there was no reason it could not have been assessed in April or May. CJ agreed this showed a lack of pursuing that resource. JD noted that the applicant perhaps could have done their due diligence prior to purchasing the property with respect to the vernal pool. HL recommended adding language to the effect that vernal pool certification wasn't sought at the time of the ORAD application.

Finding 10: HL noted that while there's a depression in the pavement that indicates that weird things are happening below, that alone doesn't indicate a clear and present danger at the current driveway crossing. JD recommended limiting this finding to the evidence provided. CJ observed that there's no disagreement about what the applicant claimed. LS noted that was part of the final letter from The Morin-Cameron Group – "structural integrity of the culvert is compromised." LS agreed to confirm the language. HL suggested using the word "probable" instead of "imminent" with respect to any collapse of the culvert and to reproduce the statement of The Morin-Cameron Group regarding structural integrity and find that there is insufficient evidence provided to support that. TCC agreed to this.

Finding 11: TCC agreed to change all references from "I agree" to "TCC finds" in HL's findings.

CJ: In conclusion, the NoI proposal was approved under the Act and denied under the Bylaw. LS agreed and that she would produce the 2 separate decisions and utilize

a combination of the 2 sets of findings for the Bylaw Denial Order based on the discussions of the TCC, and issue by next Wednesday.

MEETING MINUTES:

1) Minutes from TCC meeting held on 9/23/2015

TCC ACTION: HL made a motion to adopt the minutes from the TCC meeting held on 9/23/2015. JC seconded. So voted and passed by HL, JC and JD; CJ and DS abstained.

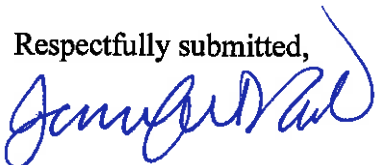
MISCELLANEOUS:

- 1) Essex County Greenbelt Conference Regarding Chapter 61 Agricultural and Conservation Lands** – CJ reported that she attended this conference, which also was heavily attended by municipal assessors. A large part of the discussions concerned a municipality's right of first refusal as well as the hearing process and documentation as well as contingencies. CJ elaborated that towns have a very short timeline to decide whether or not to purchase the subject land and that they should have an open space and recreation plan in place in order to be proactive about prioritizing parcels subject to Chapter 61 so that they can be ready to purchase in the event one comes up for sale. A town only has 90 days to exercise its option to purchase. There are rollback taxes, which could go back into the open space acquisition fund. If a town purchases Chapter 61 land they could opt to develop it. Also discussed at the conference was the Nason property located in Boxford, which the Essex County Greenbelt helped the Town of Boxford to purchase. LS indicated that this same scenario occurred on Ipswich Road at the location of the first certified Vernal Pool in Topsfield. The State contributed funding in that situation as well.
- 2) Annual Meeting of PIE (Parker Ipswich Essex) River Association** – LS reported that she attended this meeting. The main topic of conversation was the value of partnerships, with Hurricane Sandy and efforts to reconstruct as an example. Other projects covered were dam removals.

ADJOURNMENT:

TCC ACTION: HL made a motion to adjourn the meeting. JC seconded. So voted unanimously

Respectfully submitted,



Jennifer DiCarlo, Conservation Commissioner

Accepted at the TCC meeting on January 27, 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.