

Topsfield Conservation Commission
Minutes of Wednesday, November 18, 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

The meeting was called to order shortly after 7:00 p.m.

HEARINGS:

- 1) **CONTINUATION ANRAD 307-0726: 21 & 9 Towne Lane (Map 33, Lot 061 & Map 41, Lot 073), LeClair/Gove Environmental Services, Inc.** TCC had received a written request from the applicant to continue the hearing to 12/17/2015.
TCC ACTION: HL made a motion to continue the hearing until 12/17/2015. JC seconded. So voted unanimously

- 2) **NoI 307-0724: 57 Perkins Row (Map 58, Lot 025), New Meadows Development, LLC/The Morin-Cameron Group, Inc.** Scott Cameron appeared on behalf of the applicant and reported that the applicant met with the Planning Board to discuss roadway waivers. Peer reviewer, Beals and Thomas, Inc. (B&T) gave the go ahead for Planning Board review of the proposed project in parallel with the Conservation Commission. At the Planning Board meeting, B&T's comments were reviewed and the applicant responded to any concerns with additions to the plans (for example a sidewalk with retaining wall was added). The Planning Board took a straw vote regarding the roadway cross-section waiver and indicated that they were satisfied with the plan. Scott Cameron indicated that a remaining issue is the tree removal. HL responded that some additional work may be required by federal regulations with respect to the tree removal. B&T requested that the removal of a large tree onsite be investigated. Arborist Ben Staples made an onsite evaluation of the tree and determined that the tree system is infected. CJ read Ben Staples' letter into the record confirming that tree is diseased and that preservation is not recommended. The Conservation Commission received a letter from abutter Biermann expressing concern regarding impacts on Topsfield's environment from development.

Stacy Minihane (SM) appeared for B&T and spoke about their peer review. She indicated that most of the concerns raised in their peer review were administrative in nature, but have since been resolved. The remaining issues, in their opinion, are minor. She indicated that The Morin-Cameron Group provided supplemental documentation when requested. B&T did have a question about construction sequencing and couldn't locate the information in the applicant's materials. SC responded that they had provided that information. SM thought a construction sequence would be helpful and that this could be required in the Order of Conditions. She also spoke about the monitoring

requirement that is in the Bylaw. While there is a fair amount of monitoring with respect to invasive species, there isn't comprehensive monitoring. The monitoring doesn't include hydrology, for example. SM went on to discuss the unconstitutional taking /overriding public interest issues that are at play with the waiver request.

The Morin-Cameron Group also weighed in on the public interest topic, stating that flood damage mitigation benefitted the public in addition to the repairs to the culvert and extension of the water main. In particular, they represented that the project would cut the Town's responsibility for provision of water because seven (7) homes would have the ability to connect to the public water supply because of the water main extension. This would benefit neighbors and free up capital for the Town. The cost to the Town would be well over \$300,000 if the Town shouldered the extension.

SM emphasized that, under the waiver provision, the applicant must either demonstrate an overriding public interest or unconstitutional taking. The applicant chose to demonstrate that the project is in the public interest. Regarding invasive species, the applicant will be hand pulling certain species. B&T felt that a little more detail should be provided regarding the methodology employed. The applicant has since provided this. They will be hand pulling only in the wetlands. B&T asked for more detail to protect against a future party impacting the area who was not involved in the permitting process and exceeding the scope of the permitted work. The applicant's response was that MD will remain with the project through construction to provide oversight. SM recommended that the Conservation Commission get a sense of the area in the wetland that would be disturbed. MD indicated that it is a very narrow wetland fringe that would be affected – the purple striped area on the plan – and that most of the invasive plants are in the Buffer Zone.

SM spoke about the issue of wildlife habitat and the discrepancy between state and federal regulations. There is a Bylaw requirement. She noted that the applicant did provide a response re: wildlife habitat and that the narrative provided is sufficient in the opinion of B&T. SM questioned whether bank is involved. SC confirmed that there isn't bank alteration implicated in the project.

Having resolved the issue of bank, SM went on to state that the applicant had addressed all of B&T's plan comments. She also stated that the applicant had addressed all the questions regarding stormwater and catch basins. With respect to stormwater and catch basins, SC indicated that they used software to model overflow at the top of the basin. The program measures a storm event modelling for a high level of error. As a result they made the catch basin larger by adding 30%. SM noted that the applicant has conservatively estimated the size of the drywells for the stormwater management system. A detailed design has not been done since plans for individual house lots have not been developed as of yet. Very minor errors in calculations were reported and, therefore, no revision is necessary. With regard to the list of permits included by the applicant, SM

noted that the Army Corps of Engineers was not listed. B&T considers this a permit. It doesn't really matter for purposes of the Conservation Commission, but it should be added if further revisions to the application are to be made.

LS stated that she was onsite today and that there are several trees in the location of the proposed stormwater wetland and asked whether they had been identified. MD & SC noted that there is a cluster of hickory trees in the location and that a lot of the trees are invasive. The area is dominated by black locust. MD indicated that they ended up saving one (1) hickory tree in the area. SC stated that they would have a lot of trees being planted in the area, which are shown on the plans. MD confirmed that red oak, tupelo, American beech and hickory trees are to be planted.

Abutter Kim Sherwood (KS) appeared at the hearing and asked about whether options regarding bringing in the roadway were explored by the applicant. She wanted clarification on the relocation of the wetland. SC responded that the applicant is following the existing roadway and hugging the centerline of that to minimize impact and that there is less than 500 sq. feet of impact due to narrowing the roadway with waivers and that any shifting of the roadway would cause significant impact. HL questioned why it had to be so large. SC stated that the driveway is going from 8 feet wide to a roadway 24 feet wide and that without the waiver, the roadway would have to be 50 feet wide with sidewalks. He also indicated that the Highway Department, Fire Department and B&T are satisfied with the reduced width. KS also inquired whether each lot will have to come back for review with respect to the stormwater management. SC responded in the negative, but indicated that the entire project was looked at with respect to the stormwater management piece. KS asked what oversight there will be for the individual lots developed. HL responded that lot oversight would be a concern of the Highway Department Superintendent (as agent for the Planning Board) and the Building Inspector, but that the entire infrastructure has to be put in first. SC further responded that if the Buffer Zone is affected as lots are developed, this would require the applicant to come back before the Conservation Commission. KS went on to ask about what kinds of activities could occur in the 200-foot Riverfront Area. LS responded that nothing is supposed to be done in the first 100 feet of naturally vegetated Riverfront Area and that beyond that there are restrictions in size of alterations (square footage/% Riverfront Area).

An abutter's representative, Attorney Philip Lake (PL) appeared and stated that he thought it would be helpful to look further into the removal of the Pin Oak since the disease is slowly moving and indicating that he thought there was more to the arborist's report. CJ wanted to know who was opining that the disease was slow moving – the arborist? PL explained that comments had been made about the tree's gnarly look, but that that was a natural characteristic of the species – it has a bit of a broken down look. HL agreed that swamp oaks have an umbrella look, but elaborated on the concerns that the knot holes were weeping, which tended to indicate that the tree is already hollow.

Nancy McCann appeared for the applicant and spoke about the discussion of the tree before the Planning Board and that the tree was just looked at today. PL agreed that the Planning Board had an interest in the tree and they were planning to look at the arborist's report. He also stated that there had been a fairly large gap between meetings of engineers and that since a lot of information was being presented for the first time that night, the abutters and other members of the public would like an opportunity to respond. CJ responded that the public had had an opportunity to review the materials submitted and that once the Commission decided they had received enough input then the hearing would be closed and the matter deliberated at an open meeting. SM weighed in saying that the public interest issue is outstanding for the Conservation Commission to deliberate and that the letter didn't solicit input from the public. NM stated that they have articulated that the water main is in the public interest both as a cost savings to the town, but also in bringing water to the public as well as all of the other items; this public hearing had gone on for a very long time; the Commission had gotten a lot of hearings and the info had been provided with the public having an opportunity to look at it; the Commission couldn't delay.

PL stated that none of the homes to be built need to come back to the Commission because all activities are expected to be outside of the Buffer Zone. SC responded by stating that if the work encroaches on the Buffer Zone, the applicant will have to appear before the Conservation Commission. PL then went on to inquire whether maintaining the status quo – the single house lot – was explored and he had concern about how developing multiple house lots that don't comply with zoning and require wetland replication is in the public interest. He also noted that there are a lot of cases where replicating wetlands does not succeed. MD responded that the intent of the mitigation and stormwater design is to improve the conditions on the site, which is overwhelmed by invasive plants in the wetlands and the Buffer Zone and that the project will facilitate provided ecological services that don't presently exist. PL inquired whether it will be an ongoing obligation to monitor the sediment in the catch basins and removal of the invasives. SC confirmed that at the Planning Board level it has not been determined who is going to execute the plan. PL acknowledged that the plan is being designed by professionals, but was concerned about long-term maintenance. He indicated that he thought the Operation and Maintenance (O&M plan) could be integrated into the OOC if it impacts one of the 8 interests of the Act. He also repeated his concern about the public having an opportunity to provide their input. NC indicated that she was happy to discuss any outstanding issues but acknowledged that the public has had the opportunity to weigh in.

In response to PL's public input concerns, DS responded that a lot of members of the public have attended the hearings and that the hearings have been delayed. LS indicated that it is the applicant's choice whether or not to continue. CJ solicited final comments from the applicant. SC responded that the applicant had nothing further to add. SM weighed in stating that other than the construction sequence and monitoring plan, B&T is

satisfied. SM further stated that while the applicant didn't specifically address the evaluation of the hydrology or plants and how they will develop over the years, that information is clearly addressed in the Regulations and that the Commission has the option of asking for a comprehensive plan addressing how they will be transferring plants, or the Commission could consider a condition referencing the aftercare and maintenance plan. MD indicated that they did just that on another project at the Ferncroft Country Club. SM went on to state that any issues raised tonight were only outstanding issues. They could be deemed closed out depending on how the Commission wanted to address them.

HL inquired about previous activity on the site to which LS referred to a historic file for the property. LS read a summary from a 2009 site visit to the property into the record relating to proposed reconstruction of a dock on 8 pilings and removal of understory from Buffer Zone/Riverfront Area. LS also discussed a site visit that occurred on 9/18/2012 with DeRosa Environmental present at which time it was noted that a large area of understory in the Buffer Zone and first 100 feet of Riverfront Area was removed in violation of the Act and Bylaw. LS noted that unauthorized clearing remains obvious and that the understory has never been restored. HL weighed in, noting that given the steep slope of the property removal of the understory can cause erosion. PL inquired whether this could be addressed in a condition. He also inquired whether the property has been conveyed to the developer. NM confirmed that it has been. HL indicated that if there is regrowth it would probably be best to leave it alone. PL expressed concern that if the lots are sold off, the homeowners would need notice of the conditions affecting them. HL responded that once a COC is issued, the job is done and anyone who wants to do something new would have to file a NOI. LS stated that any COC would contain continuing conditions.

KS directed questioning to SM regarding their review of the alternative proposing a common driveway. NM responded that the common driveway is not a possibility due to insufficient frontage. KS inquired about the possibility of obtaining a variance. SM responded that they didn't review the project with respect to zoning and limited their review to what was provided by the applicant. SM went on further to say that peer review is limited to the purpose of reviewing for inconsistencies and that they were not charged with reviewing the individual lots. SM further stated that the letter filed by B&T today with the Commission documented the status of comments received from the applicant late the previous week. This letter builds on the prior B&T letter regarding construction sequence, calculation differences, etc. NM stated that she appreciated the public comments regarding the newly filed information and requested the hearing be continued to 12/2/2015 in order to have an opportunity to meet with the Planning Board one more time.

TCC ACTION: HL made a motion to continue the hearing until 12/2/2015 with the stipulation that nothing else be added to the agenda. JC seconded. So voted unanimously

REQUESTS:

- 1) **Partial CoC 307-0688: 78 Alderbrook Drive (Map 68, Lot 023), Iovanella/Hayes Engineering, Inc.** LS reported that the applicant is aware that the Building Inspector does not require a CoC for an OoC in order to issue a certificate of occupancy and that in any event, because there is a 2-year monitoring requirement for the planting areas, a CoC couldn't be issued.

TCC ACTION: HL made a motion to accept the applicant's written request to withdraw without prejudice and waive the fee when the applicant re-requests a CoC. DS seconded. So voted unanimously

- 2) **RDNI 2015-22: 15 Howlett Street, (Map 33, Lot 032), Popielski** LS reported that the proposal is for removal of 2 large willow trees next to a stream/BVW. The applicant had applied (after the fact) for an above-ground pool a year ago and now wants to remove and replace the trees. The applicant was directed to bring the matter before the Commission because the trees are adjacent to the stream. LS indicated that she did not have any concerns with this.

TCC ACTION: HL made a motion to determine that the project as proposed does not have a negative impact and to issue a Determination of Negligible Impact. JC seconded. So voted unanimously

OTHER:

- 1) **362 Boston Street Conservation Land (Map 26, Lot 001)** Walter Harmer reported that he has cut almost all of the Japanese Knotweed since the Commission visited the site and that the previously untouched area where the mats were placed has also been cleared. HL inquired whether some rye grass should be planted to stabilize the area. Walter agreed that this would be an appropriate measure. HL indicated that it would have to be planted before frost appears. LS suggested that the Commission would pay for the grass seed. Harmer stated that there is still some Knotweed that needs to be removed at the corner of Ipswich Road. He also indicated that he would like some assistance moving the mats and that he would be placing blue tarps at the site. DS offered to give Harmer some garden fabric she has. HL noted that any plans to develop the site into a garden or for other use would be out since all or almost all of the site is Riverfront Area.

TCC ACTION: No action at this time

- 2) **Winter Moth Update** LS reported that Tanglefoot (put on tree bands) to control winter moths is no longer being manufactured, but alternatives are being experimented. These include Vaseline and flypaper.

TCC ACTION: No action at this time

- 3) **107 Wenham Road, Koliass:** LS received a message from Gene Benson, Executive Director of MACC, regarding the 310 CMR 10.58 maximum 10% Riverfront Area alteration. Mr. Benson indicated that they do not provide opinions, but stated that he would send the inquiry to one of their experts to weigh in on. LS will follow up with the homeowner.

TCC ACTION: LS will follow up with the homeowner.

- 4) Upcoming seminars/conferences: On 12/1/15 PIE-Rivers will be holding its annual meeting. It is free, but RSVP is requested. The Essex County Greenbelt is also holding a meeting that was advertised by way of a postcard that should have been sent to all of the Commissioners.

MEETING MINUTES:

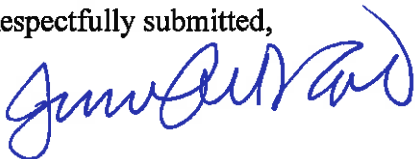
- 1) Minutes from TCC meeting held on 11/4/2015

TCC ACTION: HL made a motion to adopt the minutes from the TCC meeting held on 11/4/2015 as amended. JC seconded. So voted unanimously

ADJOURNMENT:

TCC ACTION: HL made a motion to adjourn the meeting. JC seconded. So voted unanimously The meeting ended at 9:35 p.m.

Respectfully submitted,



Jennifer DiCarlo, Commissioner

Minutes approved 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.