

## ***Topsfield Conservation Commission***

### ***Minutes of Wednesday, July 13, 2016***

**July 13, 2016 7:00 P.M. – Topsfield Library Meeting Room**

**Present:** Chery Jolley, Chair; Jim Carroll; Holger Luther; Lana Spillman, Administrator; and Theresa Coffey; Recording Secretary

**Absent:** Dodds Shamroth, Vice Chair, Jen DiCarlo

**Other Attendees:** Greg Hochmuth, Joe Geller, Evan Haglund (Chief, Topsfield Police), Dick Gandt, Greg Krom, Gregg Demers, Noah Demers, Carol Decker, Brian Gallagher

The meeting was called to order with a quorum present at 7:10 pm. Cheryl Jolley, Chair, announced that the meeting was being audio recorded.

#### **HEARINGS:**

**Continuation ANRAD 307-0726: 9 & 21 Towne Lane,** (Map 41, Lot 073 & Map 33, Lot 061), LeClair/Gove Environmental Services, Inc.

Written request was received on July 11, 2016 to continue to August 17, 2016. Spillman received a packet from Attorney Johnson. He has hired Gove Environmental to interpret all of the documents that were submitted as part of the packet of information and to give his own interpretation. They are happy to have Mike DeRosa of DeRosa Environmental continue with the environmental peer review. Spillman has not yet reviewed the information or contacted DeRosa. She has requested the information be submitted in electronic format.

Luther moved to continue the hearing to August 17, 2016. Carroll seconded. The vote was unanimous in favor.

**NoI 307-0736: Adjacent to 200 High Street,** (Map 53, Lot 053) Rail Trail Committee/Geller – Rt. 97 Canoe Landing Parking – proposed between Rail Trail and Ipswich River Bridge

Luther read the legal notice; Greg Hochmuth previously submitted proof of abutter notification. Jolley disclosed that she has known Joe Geller for 35 years but does not feel her decision making is compromised.

Hochmuth presented the plan and described the project as proposed off High Street. John Morin did the survey work and the plan preparation so it made sense to have them do the plan again to save the Town money. There is an adjacent wedge of land owned by Dept. of Fisheries and Wildlife so the goal was to keep the work off of that wedge and add parking for people launching their boats. The goal is to minimize disturbance and impact as much as possible. Hochmuth discussed the challenges of working within the Rivers Protection Act; the removal of vegetation is prohibited in this area, within the first one hundred feet of naturally vegetated Riverfront Area. A legal opinion was provided by John Goldrosen of Kopelman and Paige, as the basis of the NoI, and gave a couple of ways, in his opinion, to clear the inner Riverfront Area staying within the Regulations and without breaking any laws. Of the options Goldrosen suggested, Hochmuth felt “limited project” was the best option. Goldrosen suggested in his letter that if this is a “water dependent use”, it is eligible to be treated as a limited project.

Hochmuth addressed water dependent use. He feels the reasoning that Goldrosen came up with makes sense. His interpretation doesn't say it needs to be exclusively water dependent use, as long as it is

predominantly for launching of watercraft. Hochmuth suggested in order to show intent to use these parking spaces for launching of watercraft; signage should be posted indicating parking is for this use.

Hochmuth explained the next step is to minimize impact in the wedge; work has to stay in the right-of-way of the road. They couldn't go too far out into the paved portion of High Street for safety reasons, so that resulted in work being proposed in the Inner Riparian zone, a little over 3000 sq. ft. He finds there is some native vegetation but for most part invasive species and believes if it is stabilized, after it is built there should be no detrimental impact to Resource Areas.

Hochmuth explained that usually they can offer mitigation, but cannot offer that in this area. Finding alternatives is difficult. If they offer something downstream for parking, canoeists would have to paddle upstream. Boat access is already there, on the other side of High Street/Rt. 97, with a ramp going to a stable stone area. He believes there are not alternatives in Topsfield that will provide this amount of space, this close to an existing boat ramp that will have a less adverse impact to Resource Areas. The goal is to get people off of High Street and to use these spaces to make it safe. He believes that this project is a good candidate for a limited project.

Joe Geller, Chairman of Rail Trail Committee addressed the TCC, saying people park on both sides of 97 now. People parking on the opposite of the river side with boats are crossing the road to get to the canoe launch area. They could possibly put up another set of flashing lights. He noted that the Police Chief was in attendance and could speak to safety concerns.

Hochmuth noted a letter he received late in the day from the IRWA.

Luther had no questions: he has visited the area, knows it well and feel this is a good plan. Carroll concurred.

Jolley stated that the TCC jurisdiction is to protect the River and Riverfront Area. TCC is also charged to be aware of Land Subject to Flooding and they have documentation from 2006 where the adjacent area was completely flooded. Jolley read guidelines for limited projects into the record and pointed out that "discretionary" is the key word. TCC may, but is not required, to approve the plan. The TCC's mandated jurisdiction is to protect the Riverfront Area, and there is natural vegetation there and parking on the other side of the road, so there currently is access to the river and ramp. Those are her concerns. Approval is discretionary and the TCC is charged to protect the Riverfront Area.

Spillman read into the record the 310 CMR 10.04 definition of "Water-dependent Uses" and what she felt was the limited project being referred to in the Goldrosen letter. She read aloud 310 CMR 10.53 (3) [limited projects] (1) The construction, reconstruction, operation or maintenance of water dependent uses. She also read the section under "Limited Projects (Discretionary Projects)" of the MACC Environmental Handbook, Page 18.7.

Jolley pointed out that limited projects are not referring to the size of the projects, but rather about the very few types of projects that receive waivers as limited projects. For a foot path, bike path or pedestrian walkway, maximum area would be 10 feet of pavement. Hochmuth thought it was a different limited project being referred to.

Hochmuth said they are not paving, and proposed a surface that will not move but will be permeable. They are proposing stone or some type of recycled asphalt.



Jolley asked if diagonal parking is proposed so people would have to back out onto Rt. 97. How could this be safer? Hochmuth replied that it was. Jolley said she understands safety is an issue but safety is not in TCC jurisdiction. TCC cannot make a decision based on safety but based on Regulations.

Hochmuth read Goldrosen's opinion letter in which he outlined why he feels the area qualifies for limited project status. He believes that even though this doesn't fall into the water dependent uses as Spillman read, there is some discretion to allow it based on Goldrosen's opinion.

Spillman asked if parking is a water dependent use. Hochmuth said in Goldrosen's opinion, it is in the TCC's discretion to allow it. He added that the parking is inadequate and this is an unsafe situation with parking. In the long run, he believes it will be better environmentally by keeping people off of the riverbank. It had been discussed to put signage to prohibit parking on the river side.

Jolley would like to do a site visit to see the extent of the proposed parking. It is naturally vegetated and isn't a disturbed site which was one of the items in some of the language. Members discussed whether or not the area is naturally vegetated. Geller said when they first applied for the grant, an archeologist from DCR did visit the site and noted that it is "disturbed". Hochmuth clarified that the site does not meet criteria (under the Regulations, 310 CMR 10.58) to be considered "degraded".

Evan Haglund, Chief of Police said parking along this area is a safety concern and causes a particular problem. They have had accidents, fortunately not serious, but it is a very popular site and a serious accident is likely. He understands the Commission's view but he has to put safety first and will have to step in if something isn't done.

Jolley asked how parking on an angle backing onto the road could be an improvement. Chief Haglund replied that it is an improvement on what is there now. It won't be perfect, but it is safer than the situation now, with people opening their doors onto the road.

Dick Gandt said "they" [no clarification of who "they" is] worked with the angles of the chevrons to make more room between the parking area and the back out and have modified it to address safety. They are trying to protect Riverfront Area and trying to provide access to the river. If there is a bad accident and a gasoline or oil spill, it will degrade the river. If they improve safety that will be less likely to happen. Gandt added that if they do not do something, they will restrict access to the water, which is contrary to what the intent of what the grant was set out to accomplish.

Gregg Demers said this location has the advantage of the having the road between the parking and the river so this seems to be the preferred location.

Carol Decker, Director Ipswich River Wildlife Sanctuary, stated the IRWS uses this area for river access for children and adults. Oftentimes cars are parked overnight and parking on the left side (opposite the landing) would be an opportunity to have signage to regulate overnight parking by permit.

Jolley asked how the Rail Trail Committee got involved in canoe access.

Geller said this area was Jim MacDougall's idea. People are using the Rail Trail for bicycles, walking, etc. and can park anywhere in town. This is a dangerous situation with folks parking on the side of the road, unloading water craft on the driver's side of the car. The grant is for the river and trails so they are doing something for river access. He mentioned that in the NOI, there is a letter from the DCR Rivers and Trails about the parking area. These parking spots are not for the Rail Trail users, just for river access.

Hochmuth said he did a site walk today and it is his understanding that the Resources Areas on the West side of High Street /Rt. 97 were found to be okay and the wetland line, one flag reviewed on the East side, looked okay.

Spillman is not convinced that Riverfront Area is shown correctly according to the Bylaw on downstream side, but it is not important to the application.

Jolley would like to do a site walk before the next meeting; after discussion it was decided to do this early the week of July 19. Hochmuth said he would flag the proposed parking area for a site walk.

Geller said the funding expires at the end of this year. Clearing would be done in the fall so the timing will work out fine.

Hochmuth requested a continuation to the next meeting.

Luther moved to continue the hearing to August 17, 2016. Carroll seconded. The vote was unanimous in favor.

**NoI 307-\_\_\_: 196 High Street** (Map 58, Lot 052), Rail Trail Committee/Geller – Rail Trail/Ipswich River Bridge wing wall repair

Spillman explained the delay getting a file number from DEP; there are significantly fewer staff to review filings. Luther read the legal notice aloud. Geller already submitted the abutter notices.

Geller described the project. The bridge was built in approximately 1850. There was work done after that. There are wing walls on north side and the south side; the purpose is to guide ice so it passed underneath the span of the bridge. On the southwest side, the ice has been building and scouring the wing wall. It is completely gone. There are remnants of the wing wall downriver. The supposition is that granite blocks broke off, floated in the ice downriver. They had an emergency repair done by a company that specializes in this and they used hydraulic mortar that sets under water. The task now is to rebuild the wing wall. As part of this same DCR grant, the repair and stabilization is included in the grant. After a lengthy search, they have found an engineer at Gill Engineering, Associates, Inc., who is the chief engineer for the State. They will use gabions as a way to replace the wing walls. Geller sent notice to the Army Corps of Engineers and they provided documentation which is in the NOI to go ahead and do the work. At the point the project is approved by the TCC, they can put out notice to the Central Register for contractors to do the work. He has spoken with one contractor from Ipswich familiar with gabions. Luther asked about vegetation in the area, and said there is at least one cherry tree and an oak tree. Geller said they would do what they can to save them. Geller said there are good conditions to do the work now with river so low. Spillman pointed out that part of the NoI is after the fact; the first emergency repairs were performed without prior authorization, even though an Emergency Certification was ready to be issued to authorize that work.

Geller said sometimes the Planning Board will issue approval contingent upon the number being issued. He is concerned that DEP doesn't have a specific timeline. TCC made it clear that the Order could not be issued without a file number. Spillman said that she hasn't seen DEP take longer than a month. Discussion ensued about the timing of the project if the approval is delayed until August 17.

Greg Demers asked if the TCC could discuss the OoC and concerns so they could incorporate the concerns into the bidding documents and be ready to address them at the next meeting.



Luther said he would like to make conditions intelligent, not pro forma. Spillman said it is helpful for TCC to have the sequence of repairs written out. Geller did write a sequence in the contract that would be helpful for the TCC to understand what the sequence is.

Discussion followed with a brief description of how the gabions will be built and installed, as well as the issues with delayed TCC approval. Jolley responded that without a DEP number they cannot proceed with a vote. Geller asked if someone would be willing to review the contract before it is put out to bid, and Luther raised his hand to do so.

Geller requested a continuance. Luther moved to continue the hearing to August 17, 2016. Carroll seconded. The vote was unanimous in favor.

**NoI 307-0735: 250 Perkins Row** (Map 35, Lot 004), Topsfield Water Dept./Krom – beaver dam removal

Luther read the legal notice. Spillman confirmed receipt of abutter notices.

Greg Krom, Supt. for the Water Department presented. This is the third application regarding the Beaver Dam. The first was on Audubon property and they put flow tubes in the dam; the beavers pushed the dam 30 feet downstream and built a new one. With the second application, they installed flow tubes and the beavers built a dam on the north side of the bridge.

Krom saw the dam today and it looks like there is no water change so it may be abandoned. He reviewed the map and described the effects of the dam.

Krom has been in touch with Spillman over the past year getting emergency certifications to breach the dam. At this point, they both agree that a more permanent approach needs to be taken. Primary concern is flooding of the well fields, poor water quality and classification of what water resource it is. Luther asked why it is a poor water quality. Krom said because manganese level is too high and continued to describe how this happens.

Krom has reviewed several options and has spoken with Mike Callahan from Beaver Solutions; Jim MacDougall sent him a link for a floating frame with an electronic fence controller similar to live stock control. Krom got in touch with Fisheries and Wildlife about permitting issues long term and they suggest just taking it out. If you breach it, the beavers will just rebuild.

Krom described the removal plan to take a 2 foot wide slice, 6 inches deep and let it drain. Takes a few days to level out. Then they will take another 6 inches and incrementally work the way out. The debris will go into the compost pile.

He would do this by hand because equipment would make a mess on the bank and there is a water main there. They will take it apart by hand and carry it up the bank. Krom has talked to the Division of Fisheries and Wildlife but is having a hard time getting something in writing. Spillman said just an opinion is needed, and e-mail is fine, too.

The water will be released onto Audubon property. Carol Decker understands the plan and said incremental is better than all at once.

Krom requested to continue to August 17, 2016 meeting pending the DF&W comments.

Luther moved to continue the hearing to August 17, 2016. Carroll seconded. The vote was unanimous in favor.

#### **REQUESTS:**

**Emergency Certification 2016-03: 1 South Common Street, Topsfield Town Library, Map 33, Lot 038) – ratification**

Spillman received an e-mail from Dave Bond that he needed to take down a diseased and damaged Ash tree on the northern side of the Town Library that was leaning toward the parking lot. She issued an Emergency Certification and needed the TCC to ratify the certification.

Luther moved to ratify the Emergency Certification. Carroll seconded and the vote was unanimous in favor.

**Brian Gallagher, Summer Intern** – Gallagher discussed his progress on the vernal pool map. It is a map of uncertified and NHESP certified vernal pools in Topsfield. If you click on the vernal pool it will give you information and the coordinates of the vernal pool. Gallagher has made edits to the spreadsheet he received from Ms. Spillman, adding the map and lot numbers and directions. He has plotted all the pools from the NHESP website.

Brian has color coded the spreadsheet to show accessibility to public, privately owned, etc. He is also working on a document to enable amendments to the spreadsheet after his internship and will add images to supplement written directions. Spillman suggested he also have pictures of the pools where possible. Gallagher discussed ways to do this linking to the town website. Spillman noted he is also working on a pool certification, just east of the Rail Trail bridge over the Ipswich River.

**RDNI 2016-18: 36 Gail Street, (Map 40, Lot 029), Anastas, Jr. – above-ground pool and shed**  
This is an after-the-fact application for an above-ground pool and shed in Bylaw Riverfront Area of Cleaveland Brook. Spillman made a site visit on July 11. Her only concern was the sod-soil chunks cut out from the area of the above-ground pool and placed in the BVW. Mr. Anastas sent photos yesterday showing that he had removed the sod chunks from the BVW and placed them on a tarp inside the fencing. She instructed Anastas to see the Building Department to request the required building permit. Luther moved to issue an after-the-fact Request for Determination of Negligible Impact for an above ground pool and shed. Carroll seconded and the vote was unanimous in favor.

Jolley asked when Anastas bought the home if they were told there were wetlands on the property. Discussion ensued on ways to reach out to the public and in particular, communicate to home buyers to make them aware of what and how the wetlands will impact their plans.

**CoC 307-0183: 36 Gail Street, (Map 40, Lot 029), Anastas, Jr. – septic system repair**

In the process of review of the TCC file for 36 Gail Street, Spillman found that an old OoC for a septic system repair needs a CoC. Spillman made a site visit on July 11, and she recommends issuance of the CoC.

Luther moved to issue a Certificate of Compliance for 307-0183 36 Gail Street. Carroll seconded and the vote was unanimous in favor.

**RDNI 2016-19: 70 Haverhill Road, (Map 17, Lot 045), DiBartolomeo – chicken coop/shed**  
Spillman said when the DiBartolomeos moved into the house they did a lot of earth moving in jurisdictional areas, resulting in the Enforcement Order. They were supposed to do monitoring reports on their plantings which they haven't done. 12 out of 15 plants survived. They did have the two posts they



were to have installed. While Spillman was there, she noticed the chicken coop. They also had grass clippings close to the wetlands and Spillman instructed them not to do so. This is an after-the-fact filing for the shed and chicken coop. Spillman provided the DiBartolomeos with contact information for the Board of Health Office, especially re: manure management. Luther moved to issue a Determination of Negligible Impact after the fact for 70 Haverhill Road. Carroll seconded and the vote was unanimous in favor.

**Amended Enforcement Order 2012: 70 Haverhill Road, (Map 17, Lot 045)** – request for release  
Luther moved to release the DiBartolomeos from the Enforcement Order 2012 for 70 Haverhill Road. Carroll seconded and the vote was unanimous in favor.

**OTHER:**

**12 Boston Street/English Commons CR Property, (Map 81, Lot 001), Auth**  
Spillman got an e-mail from a resident at English Commons. He noticed decline of trees behind his unit. He didn't know where the restricted area is. He is working with the homeowners association. Spillman, Jolley and Gallagher made a site visit and find that the area in question is not restricted. He said the homeowners association has tried to improve access to the trails. Spillman said the trails are within the restricted area and the TCC could work with them to come up with a regular maintenance plan.

**Town Beach Parking Area, 131 Haverhill Road, (Map 05, Lot 015), sedimentation and erosion prevention plan – update**

Jolley was at the Pond on this day and the sedimentation socks were gone. Luther said he was there today with Williams & Sparages and discussed his proposed project with them. Wetlands delineation and funding would be needed. Luther asked Williams and Sparages to give him a clear estimate of how much that will cost. Then based on those documents, how much is contracting going to cost? Luther expects that when done, it will be around \$20K and raised the question of who will pay for this. Spillman said it isn't a Conservation property funds in the Conservation Fund cannot be used. The Board of Selectman are responsible. Jolley put on the record, a thank you to Luther for his work and recommendations. Luther further discussed options at this site. Luther said that Bond will deal with the drainage, and he described how the dry well would be built.

**Board of Selectmen Presentation** – Jolley reminded everyone that the TCC presentation to the BOS will be July 17, 2016.

**General Permit for the Highway and Water Departments – update**

Luther said he got the assurance from Joe Gibbons that they will have the submission by August 3.

Spillman asked if they were contemplating filing for culvert permits. Luther said no, just for general repairs and maintenance. Jolley said she noticed a lot of dead vegetation by Fish Brook. They must have used Roundup there and they were supposed to notify Conservation Office prior to applications. Lana will follow up with them.

**Wetlands General Bylaw Regulations** – further review for amendments

DiCarlo was absent so this was item is tabled until the next meeting.

**MEETING MINUTES:**

Luther moved to accept the minutes of June 22, 2016 as amended. Carroll seconded and the vote was unanimous in favor.

**ADMINISTRATOR'S REPORT:**

- **Temporary Administrative Assistant search** – At the advice of Kelly Hebert, TCC has advertised for a temporary Administrative Assistant. Spillman would like to use a temp agency in the interim.
- **Town Hall Expansion** – The Conservation office got their window back. There have been modifications, but the Committee still doesn't know what they are doing about a septic system.
- **Emerald Ash Borer** – update – Wasp that kills the EAB was found in Boxford. They are on alert.  
There are lots of gypsy moths this year, eating oaks and maples. Jolley asked if TCC needs to think about doing anything with the Conservation Land trees. Luther thought it would be too expensive. It will take two or three years until the moths die.
- **Severe Drought** – Spillman said last week DEP put out a caution drought warning. Agricultural officials have announced that a large part of the state, including the northeastern section is in a severe drought.

**Next Meeting: August 17, 2016**

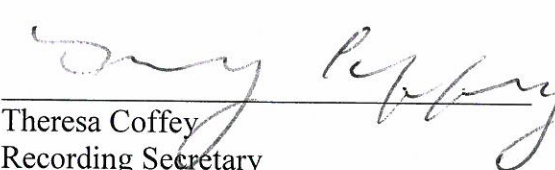
**ADJOURNMENT:**

Luther moved to adjourn. Carroll seconded. The vote was unanimous in favor.  
The meeting was adjourned at 9:37 p.m.

**Documents used for or submitted at the meeting:**

1. July 13, 2016 Meeting Agenda
2. TCC Draft Minutes – June 22, 2016
3. NoI 307-0736: Adjacent to 200 High Street and Site Plan, Morin-Cameron Group June 24, 2016
4. Legal Opinion, E-mail to Joe Geller, Rail Trail Committee Chair, from John J. Goldrosen, Esq., Kopelman and Paige, P.C. – June 2, 2016
5. MACC E-Handbook 16.24.3.3 and MACC E-Handbook Page: 18.7 "Limited" Projects
6. NoI 307-\_\_\_\_: 196 High Street
7. NoI 307-0735: 250 Perkins Row
8. CoC Request 307-0183: 36 Gail Street
9. RDNI 2016-19: 70 Haverhill Road
10. IRWS letter, July 13, 2016

Respectfully submitted,

  
Theresa Coffey  
Recording Secretary

*Minutes approved at the TCC meeting on September 14, 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.