

Essex Conservation Commission

March <sup>5</sup>~~19~~, 2002 - Minutes

Present: Edwin Perkins, Chairman, Robert Brophy, Wallace Bruce, Philip Caponigro, Stephen Gersh, Philip Lake, Judson Lane.

Meeting called to order at 7:35 p.m.

A Request made by the Town of Essex Board of Selectmen to Determine the Applicability of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for the removal of underground heating oil storage tanks at the Essex Elementary and Middle School, 12 Story Street, was heard at 7:36 p.m.

The project involves the removal of at least two, or perhaps three underground storage tanks, which will be confirmed during the project. The first tank, a 10,000-gallon tank holding #4 fuel oil was recently taken out of service when the school converted to natural gas as the main heating fuel. Indoor oil tanks were subsequently installed in the boiler room to support a backup boiler that will burn oil, if necessary. The second tank, a 500-gallon tank, has been abandoned for a number of years and supplied diesel fuel for a generator which no longer exists at the school. The third tank, if present, is a 1000-gallon heating oil tank which provided oil for the school water heating system, and was abandoned when that system was converted to natural gas years ago. It was noted that the third tank may actually have been removed when the 10,000-gallon tank was installed, but this has not been confirmed. E. Perkins told the Board that the tank that is in the 100-foot buffer zone is close to the school building, and that a paved area is between the tank and the resource area. The other tank is on the side of a retaining wall.

S. Gersh moved to issue a negative Determination of Applicability to the Town of Essex Board of Selectmen for removal of oil tanks at the Essex Elementary and Middle School, 12 Story Street, seconded by W. Bruce, with the Board voting unanimously in favor.

A Request made by R.J.R.M. Trust for the Conservation Commission to Determine the Applicability of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for soil testing and verification of the wetland boundary at 4 Belcher Street was heard at 7:45 p.m.

Tim Muldoon of Apple Associates represented Roland and Jane

Adams. T. Muldoon said they are requesting the Commission to verify the wetland line as delineated. The cross-hatched area shown on the plan submitted with the Request is where the soil testing will take place. T. Muldoon noted that they have done soil testing beyond the 100-foot buffer, but they are going into this area looking for better soils. S. Gersh requested they install a silt fence prior to soil testing.

S. Gersh moved to issue a negative Determination of Applicability to R.J.R.M. Trust, 4 Belcher Street, seconded by W. Bruce, with the Board voting unanimously in favor.

A building permit application was submitted for the Board's review by Mark Cicoria, 8 Western Avenue, for the construction of a farmer's porch. The Board said they needed to have dimensions shown on the plan as there are wetlands in the area.

A building permit application was submitted for review for Michael Lane, 9 Hill Road, for a second floor addition. E. Perkins said he would make a site visit prior to any sign off.

A building permit application was submitted for review for Brigid Venti, 18 John Wise Avenue, for the construction of a 24'x36' garage. As there were no wetlands issues, Chairman Perkins signed the building permit application.

A continuation of a public hearing was held at 7:55 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Essex Fortune Palace, Inc., for the regrading and repaving of the parking area, and a 6'x10' and 8'x27' additions to the existing building at 99 Main Street.

E. Perkins removed himself from any discussion as he is an abutter. Engineer Clay Morin, Morin Engineering, Inc., represented the applicant. He told the Board he had spoken to the refrigeration company with regard to the addition to the side of the building to be used for an additional refrigeration unit, but he is still waiting to hear back from them. As requested by the Board at their last meeting, he has raised the stone strip above the grade. Filter fabric will be placed on the existing stone and then the stone strip will be built up. At this time, C. Morin did not have the final plan for the Board. He said he would like to raise the strip three inches to the 7.75 elevation. Michael Henderson, representing the Fin and Feather, an abutter, asked what the increased elevation would do for the flooding

Page Three  
March 5, 2002 - Minutes

potential at the Fin and Feather. E. Perkins said although he is not participating in any discussion, he did note that at the last high tide, water came up through the catch basin in front of the Essex Fortune Palace, and flowed to the center of the road. It did not go between the buildings. He said the sea wall prevents water from going into the Fin and Feather. C. Morin also added that he felt the grading would not change the direction of the flow.

With no further questions from the public or the Board, S. Gersh moved to close the public hearing for the Essex Fortune Palace, 99 Main Street, with W. Bruce, R. Brophy, P. Caponigro, S. Gersh, P. Lake, and J. Lane voting in favor; E. Perkins abstained.

A continuation of a public hearing under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by XLO Realty Trust for the construction of a 16-foot wide gravel road at 25 Apple Street was heard at 8:05 p.m.

Engineer Clay Morin, Morin Engineering, Inc., represented the applicant. S. Gersh told the Board he had a site visit on Friday with Jeffrey Orchard, an environmental consultant, who had identified the wetland and flagged it. He then read to the Board the information he found on the site visit and which he would like to have written into the Order of Conditions, as follows: "Twenty-five years the bordering vegetated wetland was a mowed lawn as part of the applicant's property. Both the applicant, as well as several members of the Commission who were familiar with this area of the applicant's property at that time, have testified to this fact. The applicant planted high bush blueberries in rows for harvesting and sale as part of the applicant's roadside farm stand for the last 21 years. The applicant stated, and it has been verified, that he continued to mow the grass between the blueberry bushes during 21 years of cultivation, harvesting and sale. Four years ago, due to illness, the applicant could no longer harvest or maintain the blueberry bushes. In addition, he could not continue to mow the grass between the bushes. It was during the last four years the indicated wetland plant species emerged around the blueberry bushes. The Commission finds that the present BVW in question is severely degraded and marginal at best, and does not significantly serve any of the functions of a wetland as specified in the Act. Further, it was noted during a site visit on February 23, 2002, that a 200'x12' access road would have to be constructed through a mature New England Upland Forest to

allow the replication area as designated on the site plan to be worked on. In addition, 4,860 square feet of the mature forest would also have to be cleared in order to provide a replication site. The Commission examined Lot #2 to determine if a more easily accessible location for replication could be found. No other location could be identified. The Commission feels that the amount of destruction caused by cutting of a significant number of oak, pine and ash, some of which are 80 years and older, the disturbance to ground cover as well as top soil, would result in an unwarranted loss of an established forest. Based on 310 CMR 10.55(4)(c)(3) it is the judgement of the Essex Conservation Commission, as the issuing authority, that it is not reasonable to scale down, redesign or otherwise change the proposed work so that it could be completed without loss of said wetland.

Therefore the Commission does not require the replication of the BVW in question...." Jeffrey Orchard noted that the hydric soils were always there, but the applicant planted blueberry bushes and mowed the grass, and the only reason the wetland became established was that the applicant ceased to mow the grass.

S. Gersh also wanted a conservation restriction placed on the BVW on the west and north side of Lot #2 including a no-cut, no-build zone as indicated by the 50-foot buffer line on the site plan, and to mark the 50-buffer line with permanent markers of either pressure-treated posts or granite. He added that he could not see destroying some very productive upland for a blueberry patch. He noted that the Commission was going out on a limb, but the exchange does give some significant protection to a wetland, the significant wetland being where the upland area is, not where the blueberries are.

S. Gersh moved to continue the public hearing for XLO Realty Trust, 25 Apple Street, to Tuesday, March 19, 2002, at 7:45 p.m., seconded by P. Caponigro, with S. Gersh, Robert Brophy, P. Caponigro, and J. Lane voting in favor; P. Lake and W. Bruce voted present.

S. Gersh moved to adjourn the meeting, seconded by R. Brophy, with the Board voting unanimously in favor. Meeting adjourned at 8:50 p.m.

Prepared by



Gillian B. Palumbo  
Administrative Clerk

Attest: