

Essex Conservation Commission

May 7, 2002 - Minutes

Present: Edwin Perkins, Chairman, Wallace Bruce, Philip Caponigro, Stephen Gersh, Philip Lake

Meeting called to order at 7:36 p.m.

A request made by John J. Jr. and Michele L. Tognazzi for the Commission to Determine the Applicability of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, to clear brush, repair a stone wall and install a 10'x16' toolshed at 24 Harlow Street was heard at 7:37 p.m.

John Tognazzi told the Board his proposed project would consist of trimming brambles, brush, vines and small trees from the rear and side yards. He will remove all yard waste from the property in a waste recycling facility. He will use loam to smooth the area, and then plant hydroseed, flowering shrubs, and add a flower and vegetable garden. He would also like to repair the existing stone wall between his property and Parcel 27A, and install a 10'x16' toolshed on cement blocks. A small amount of grading will be done. No work will be done on the stream side of the stone wall. The proposed project is between 138 feet and 37 feet from the stream. The stream in question is shown as a perennial stream on the wetlands maps, although J. Tognazzi stated that it dries up three or four months of the year. He also noted that he will put the toolshed where the Commission feels is the most suitable place, rather than that shown on the plan submitted with the RDA.

It was noted that Commission members Edwin Perkins and Stephen Gersh had visited the site prior to the meeting with regard to the proposed project. Commission member P. Lake said he could not make a decision on the proposed project until he had seen the site and determined there were no significant impacts to the stream under the Rivers Act. E. Perkins said he did not think the proposed project was so significant that it required holding up the decision for another two weeks. P. Lake reiterated that he would not make a decision until he had seen the site and was satisfied there would be no significant impacts. S. Gersh said he concurred with P. Lake. A discussion followed as to the significance of the project with respect to the site. S. Gersh then told the applicant there was a vernal pool on Lufkin Street, although, he noted, at this time it had not been certified. The distance from Mr. Tognazzi's property to the vernal pool was not stated. Commission member Wallace Bruce said he could understand P. Lake's point, that he felt he had to see the site prior to

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making his decision, but that was not always possible, and therefore, at times, Commission members had to trust the opinion of those members who had been to the site.

After further discussion, Stephen Gersh moved to allow the applicant, John and Michele Tognazzi, 24 Harlow Street, to clear the debris in the yard and to continue the Request for Determination to May 21, 2002, at 7:35 p.m., seconded by W. Bruce, with the Board voting unanimously in favor.

Greg Mahoney, Essex Package Store, 91 Main Street, met with the Board to discuss a proposed project for the construction of an exterior deck and stairs, which will be placed on six footings consisting of 12-inch sono tubes. He added that he needed a place to put his 'empties' for pickup. The Board felt a Request for a Determination of Applicability would be sufficient for the project.

Attorney John Guerin, representing XLO Realty Trust, met with the Board to discuss the additional special conditions, specifically Paragraph 10, which requests a conservation restriction be placed on the bordering vegetative wetlands 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 of March 11, 2002, and that the conservation restriction be incorporated into the deed for lot #2. Attorney Guerin indicated that his clients thought they would just be replacing the 4,740 square feet of wetlands with a conservation restriction within the no-cut, no-build zone. Attorney Guerin noted the amount under the restriction is five times that amount. He then questioned, since his client cannot build in that area, why a conservation restriction was necessary. He felt rather than having a full conservation restriction, they could restrict it now with the no-cut, no-build provision. Stephen Gersh told Attorney Guerin that the Commission was allowing the destruction of a wetland without a replication area. Attorney Guerin then told the Board, "The extent of the agreement is where we are divided. The amount of the restriction is far more than we anticipated. I am asking to make the size of the conservation restriction smaller." He then said he would like to discuss this issue with his client and return to the meeting.

A request was made by Dennis Condon to repair the dock at 10 Ralston Drive. There is a Chapter 91 License for the dock, so the Board said he was able to make the repairs as long as he stays within the footprint of the dock as shown on the Chapter 91

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License.

Two letters from the Board of Health regarding the property of William Allen, 9 Southern Avenue, were reviewed.

Attorney John Guerin returned to the meeting with his client. He stated that they would like to reduce the signage referred to in Paragraph 11, to seven posts and the deed restriction to stipulate the area in question as a no-build area, but to allow cutting. Commission member Philip Lake indicated that the restriction has to be with some governmental entity, such as the Town of Essex, or a charitable organization, to enforce the restriction. He did not think incorporating the restriction into the deed was an effective way to restrict the use of the property. He said he would fax language governing forestry activities to Attorney Guerin for his review.

Stephen Gersh moved to amend Paragraph 10 of the Special Conditions for XLO Realty Trust, 25 Apple Street, to read as follows: It is further ordered by the Commission and with the agreement of the applicant that a conservation restriction be placed on the BVW on the west and north side of Lot #2, including as amended, a managed forest area, and shall be a no-build zone as indicated by the 50-foot buffer line on the site plan of March 11, 2002, and that said conservation restriction be incorporated into the deed for Lot #2. In Paragraph 11, the 50-foot buffer line shall be marked as shown on the site plan with permanent markers consisting of pressure-treated posts, at least 4 by 4 inches, flush with the ground, with signage indicating that a conservation restriction begins at this point on one post, with numbers on the remaining posts, seconded by Philip Caponigro, with Philip Caponigro, Stephen Gersh, and Edwin Perkins voting in favor; Philip Lake and Wallace Bruce voted present.

Board of Health Verification of Jurisdiction Form for Michael and Sarah Rodier, 24 Apple Street - Review of the septic plan indicated that the Rodiers would need to file a Notice of Intent for the upgrade of the septic system. The Board of Health will be advised of this.

Stephen Gersh moved to approve the Minutes of February 19, 2002, March 5, 2002, and March 19, 2002, as read, seconded by Philip Lake, with the Board voting unanimously in favor.

Commission member Wallace Bruce said he wanted to state how

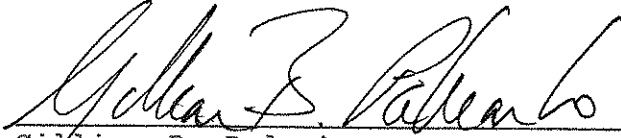
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disappointed he was at the way the Board acted this evening with regard to the request of John Tognazzi, and felt that all Board members should work together.

Stephen Gersh moved to adjourn the meeting, seconded by Wallace Bruce, with the Board voting unanimously in favor.

Meeting adjourned at 9:45 p.m.

Prepared by:



Gillian B. Palumbo
Administrative Clerk

Attest: