

Essex Conservation Commission

March 15, 2005 – Minutes

Meeting held at the T.O.H.P. Burnham Public Library

Present: Wallace Bruce, Chairman, Robert Brophy, Philip Caponigro, Elisabeth Frye, Stephen Gersh, Shirley Singleton; Absent: Philip Lake.

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

A public hearing was held at 7:36 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Todd and Christine Twombly for the construction of an addition to the existing dwelling at 67 Western Avenue.

Mr. Twombly told the Board the proposed project is an addition to the existing dwelling, approximately 800 square feet in size, and with a full basement. The equipment needed for the construction work would be able to enter the property from the side opposite from the wetland area, and therefore, be almost out of the buffer zone. At present, the area where the proposed addition is sited is all lawn. Mr. Twombly noted that no indigenous plants would be removed. The proposed deck to the rear of the addition will be built on sonotubes. The closest point to the wetland from the proposed deck would be 18 feet, and from the addition it would be 26 feet. Mr. Twombly indicated they would increase the size of the house from two bedrooms and one bathroom to three bedrooms and three bathrooms. Erosion control would be put in place between the wetlands and the work area, and any material will be stockpiled near the road. The Board then reviewed the Notice of Intent and plan. The Board will conduct a site visit to the property on Saturday, March 19, 2005, at 9:00 a.m.

Stephen Gersh moved to continue the public hearing for Todd and Christine Twombly, 67 Western Avenue, to Tuesday, April 5, 2005, at 7:30 p.m., seconded by Shirley Singleton, with the Board voting unanimously in favor.

A continuation of a public hearing was held at 7:56 p.m. on an Abbreviated Notice of Resource Area Delineation filed by Peter Van Wyck for land off Essex Park Road, Assessors Map 9, Parcels 5, 5A, 8 and 9.

The Board reviewed the proposals submitted from three wetland scientists to represent the Commission for the verification of the wetland resource flagging done by Mr. Van Wyck's Wetland Scientist, Christopher Gajeski of Apple Associates. The Board decided they would have Mary Rimmer of Rimmer Environmental represent the Commission.

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Stephen Gersh moved to approve Mary Rimmer as the Commission's consultant to verify flagging on the site off Essex Park Road, seconded by Robert Brophy, with the Board voting unanimously in favor.

Stephen Gersh moved to continue the public hearing for the Abbreviated Notice of Resource Area Delineation filed by Peter Van Wyck for property off Essex Park Road to Tuesday, April 19, 2005, at 8:00 p.m., seconded by Robert Brophy, with the Board voting unanimously in favor.

Minutes of meetings – Stephen Gersh moved to approve the Minutes of the meetings of June 15, 2004, July 13, 2004, August 24, 2004, September 21, 2004, October 5, 2004, and October 19, 2004, seconded by Philip Caponigro, with Robert Brophy, Philip Caponigro, Stephen Gersh, and Shirley Singleton voting in favor; Elisabeth Frye voted present.

The Board reviewed the three letters from Wallace Bruce, Philip Lake and Stephen Gersh that will be sent to the D.E.P. in response to their request for information as to how the Commission made their decision regarding the Abbreviated Notice of Resource Area Delineation for Low Land Farm. Shirley Singleton indicated there was a statement in the letter of Stephen Gersh stating that regardless of the cancellation of the site visit to Low Land Farm some members showed up, which to her sounded as though the site visit was cancelled but the members showed up anyway, and which she felt did not happen. Shirley Singleton then questioned whether the letters were going to the D.E.P. as a Board, as they had spoken about doing this at a prior meeting, and not individually. Robert Brophy felt the letters should go through the Chairman.

Peter Van Wyck – Conservation Restriction off Turtleback Road. Kim Jarvis, the Planning Board's liaison with the Conservation Commission, stated that if there were issues for the Board to talk about could it be directed at reality and not what they would have liked it to be. She said that as a result of a court decree, Peter Van Wyck needed to satisfy it by giving a 10-acre parcel to the Town, which was looked at as an extracted conservation restriction, as it was given to the Town by decree and not by the normal method. The Planning Board, being the only municipal Board having an interface with the Courts, was the accepting Board. When presented with possibilities, they had to come to an agreement about the piece of land. Many pieces were identified by site visits by Martha Hoar, but the Planning Board was advised to accept that particular piece of land in lieu of litigation, and to satisfy the court decree. The court decree does not speak about the quality of the land and the wildlife habitat. They are, therefore, at a point with a legally accepted agreement with the Town and Peter Van Wyck. The decree also said the Town will accept the 10-acre parcel – it's a done deal. They could have either

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rejected it or accepted it. Stephen Gersh said he wants to see the trash cleaned up and monuments placed, and feels it is Peter Van Wyck's obligation to give the Town the site in the best possible state. He added that one choice for the Commission would be to say yes. The second choice would be a letter drafted by him and approved by the Commission and sent to the Board of Selectmen. Stephen Gersh said he does not want to approve anything until the trash is removed and the monuments are in place. The third option would be to not vote, but then the Board could be in trouble if they delay the decision for arbitrary reasons. He noted if the Board does not vote in favor, it can be brought up at Town meeting. Wallace Bruce said that upon speaking with Brendhan Zubricki, Town Administrator, they are looking for a yes or a no vote. He added that he does not see the interest in the Town to follow up on this and that the Town could be left with nothing. Ms. Jarvis said the Planning Board had had long discussions as to whether they could go outside of the area that was stated in the legal document, and decided to stay within what was in the document. Stephen Gersh said he found it insulting when the Commission's opinion was not taken into consideration. He thought all Boards would sit and discuss this, but it did not happen. Ms. Jarvis stated that anyone could have attended the Planning Board meetings just as she attends the Commission's meetings. Stephen Gersh asked that whenever there are heavy-duty issues such as Peter Van Wyck that the Planning Board and Conservation Commission formally meet. Shirley Singleton noted that the land is not good and that one cannot walk around the pond because that area has been dug up because of soil testing. She indicated that if the Board were to accept the 10-acre parcel it would be with the clean-up, etc. Robert Brophy felt the Board should vote on it with the stipulation that the area be cleaned up and the monuments in place prior to acceptance. Philip Caponigro said he agreed with Robert Brophy. Stephen Gersh said the fourth issue he had was the liability. He said he told the Town Administrator that money is needed for a sign. Robert Brophy said he felt the whole piece of land should be cleaned and not just the access. Stephen Gersh said he felt the language of the motion was critical, and wanted to draft a letter to be read by the Board. The Board felt a motion should be made at this time.

Stephen Gersh moved to vote on the acceptance of the offered piece of land and conservation restriction, contingent on the following conditions: 1) the removal of the trash pile, 2) installation of monuments, 3) removal of the structure and fire pits, and 4) general clean-up of the property and reciprocity of the drainage protection as required of the grantor, seconded by Philip Caponigro, with Robert Brophy, Philip Caponigro, and Shirley Singleton voting in favor; Stephen Gersh voted present; Elisabeth Frye abstained.

A building permit application was submitted for review by Karen McNiff, 90 Apple Street, for the construction of a 9 ½ by 6-foot addition between the house and garage. Chairman Wallace Bruce had reviewed the site and felt there were no wetland issues. The building permit application was signed.

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A request for a Certificate of Compliance was made by Janet White, 3 Walnut Park, for Order of Conditions D.E.P. File Number 21-179. The Order of Conditions had been denied many years ago and was therefore invalid; a Certificate of Compliance was issued.

Stephen Gersh said he had spoken to the Finance Committee with regard to the hiring of a Conservation Commission agent and felt it may be acceptable to them.

Robert Brophy moved to adjourn the meeting, seconded by Philip Caponigro, with the Board voting unanimously in favor.

Meeting adjourned at 9:45 p.m.

Prepared by:



Gillian B. Palumbo
Administrative Clerk

Attest: