

Essex Conservation Commission

May 24, 2005 – Minutes

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

Present: Wallace Bruce, Chairman, Robert Brophy, Philip Caponigro, Elisabeth Frye

Meeting called to order at 7:43 p.m.

A continuation of a public hearing was held at 7:45 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Peter Van Wyck for the construction of two dwellings, driveway, septic components and grading within the buffer zone at Low Land Farm, Assessors Map 9, Parcel 12(1).

Chris Gajeski, Wetland Scientist at Apple Associates, represented the applicant. Mr. Van Wyck also attended the meeting. Mr. Van Wyck was told that the Administrative Clerk had spoken with Jill Provencal at the D.E.P. as to whether the hearings for Low Land Farm could be continued since Mr. Van Wyck had filed an appeal to the Superceding Order of Resource Area Delineation. Ms. Provencal stated that the Commission could go forward with the review of Lots 1 and 2, but on Lot 3 the D.E.P. had re-delineated a boundary line and was waiting for a revised plan from Mr. Gajeski. She also stated that in order for the Commission to issue Orders of Conditions for these sites, Mr. Van Wyck would have to first withdraw his appeal to the Superceding Order of Resource Area Delineation, as the Commission could not issue new Orders on a bordering vegetated wetland boundary that is currently under appeal.

Philip Caponigro moved to continue the public hearing for Low Land Farm, Assessors Map 9, Parcel 12(1), to Tuesday, June 7, 2005, at 7:35 p.m., seconded by Robert Brophy, with Robert Brophy, Wallace Bruce, Philip Caponigro voting in favor; Elisabeth Frye voted present.

A continuation of a public hearing was held at 7:50 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Peter Van Wyck for the construction of a dwelling, septic field, septic tank and components and grading within the buffer zone at Low Land Farm, Assessors Map 9, Parcel 12(2).

Mr. Gajeski of Apple Associates represented the applicant. Mr. Van Wyck was also present. The discussion for Lot 12(2) was as for Lot 12(1), with the Commission able to go forward on the review of the Notice of Intent, but not able to issue an Order of Conditions until Mr. Van Wyck has withdrawn his appeal of the Superceding Order of Resource Area Delineation.

Philip Caponigro moved to continue the public hearing for Low Land Farm, Assessors Map 9, Parcel 12(2), to Tuesday, June 7, 2005, at 7:45 p.m., seconded by Robert Brophy,

with Robert Brophy, Wallace Bruce, Philip Caponigro voting in favor; Elisabeth Frye voted present.

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 Peter Van Wyck for the construction of two dwellings, driveway, septic tank and components and grading within buffer zone at Low Land Farm, Assessors Map 9, Parcel 12(3).

Chris Gajeski, Apple Associates, representing the applicant, met with the Board, together with Mr. Van Wyck. Mr. Gajeski said flags have been placed on Lot 3 where the D.E.P. felt was the delineation boundary. He noted Lots 1 and 2 are far from the buffer zone. He said there is no connectivity that they have identified, but said it was a stream at one time and so believes historically there is. Mr. Gajeski submitted revised plans showing the re-delineated boundary line. The only other correction required by the D.E.P. was the extension of the hay bale line. The D.E.P. determined the delineation by a site walk on April 8, 2005. Ron Staline and Jill Provencal of the D.E.P., together with Chris Gajeski of Apple Associates, were at the site visit. Mr. Gajeski indicated soils were dug up and then color chips were looked at, but they found it was not the right color to make it hydric soil. There were rushes in the area which are wetland plants. They identified it by various indicators, but finally went by the wetland plants. Mr. Gajeski said he did not see the intermittent stream connectivity areas. The areas around the trench were identified as wetlands. The trench itself was identified as an upland area. Mr. Gajeski said he could not see that it was a resource area, but also could not substantiate it. Ecologically, the plants were there, but ecologically and jurisdictional are two different things, so he will let the D.E.P. make the decision. Mr. Van Wyck said he could still do something with his land, but it would not be really what he would like to do. He would like to address open land, but cannot get there with all the rules that come up. He added that even using the boundaries the D.E.P. has shown, he could still use Lot 3. Mr. Van Wyck felt it was unfortunate for Essex. He would liked to have given an example of what could be done with large parcels of land, but it is not working out. He then showed the Board a conceptual plan of what he would have like to have done. Chairman Bruce then asked Mr. Van Wyck why releasing the appeal he issued to the delineation made by D.E.P. would be so detrimental. Mr. Van Wyck stated it was because he was not doing what he wanted to do, and that he was being forced to create a normal subdivision. Mr. Gajeski then pointed out the areas to the Board that were delineated by the D.E.P. Mr. Van Wyck then said if the D.E.P. would be prepared to allow him Lots 1, 2 and 3, then he would be prepared to drop the appeal. Chairman Bruce said he liked Mr. Van Wyck's conceptual plan, but felt Mr. Van Wyck would need to get approval from the Planning Board.

Kim Jarvis, the liaison between the Planning Board and the Conservation Commission, said the Planning Board has discussed this at length, and that the Planning Board is interested in pursuing cluster zoning. She added that if everyone wanted to pursue this, it could go to the Board of Appeals. This concept could not be entertained presently by the

Planning Board because the by-laws do not allow it. Elisabeth Frye said she felt this should not be put in front of the Board of Appeals as it would start a precedent. Chairman Bruce wondered if this idea could come before a Special Town meeting.

Philip Caponigro moved to continue the public hearing for Low Land Farm, Assessors Map 9, Parcel 12(3) to Tuesday, June 7, 2005 at 7:55 p.m., seconded by Robert Brophy, with Robert Brophy, Philip Caponigro and Wallace Bruce voting in favor; Elisabeth Frye voted present.

A request was made by Stanley Collinson for a Certificate of Compliance for property at 89 Choate Street.

Philip Caponigro moved to issue a Certificate of Compliance to Stanley Collinson for property at 89 Choate Street, certifying that work regulated by Order of Conditions D.E.P. File Number 21-0502 has been satisfactorily completed, seconded by Robert Brophy, with the Board voting unanimously in favor.

A continuation of a public hearing was heard at 8:15 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for an Abbreviated Notice of Resource Area Delineation file by Peter Van Wyck for property off Essex Park Road, Assessors Map 9, Parcels 5, 5A, 8 and 9.

Chris Gajeski Apple Associates, represented the applicant. It was noted that Commission members Wallace Bruce, Stephan Gersh, Elisabeth Frye and Philip Lake were at the site walk. Mr. Gajeski stated that a drafting error was found on the plan and showed a revised plan to the Board. He said the original line crossed contours and was not making much sense. Mary Rimmer, the Commission's consultant, hired to verify the delineation, did not agree with the original line, but Mr. Gajeski stated that he agreed with her finding and so the line was revised. Ms. Rimmer said she does not have a final comment letter as she did not receive the revised plans until this afternoon. She noted that the original plan did not have the flood plain shown on it. She also stated that there are a number of vernal pools on the property, but which do not specifically pertain to the boundary line. She said if a Notice of Intent comes in for a project in the area, then they should be taken into account. Two vernal pools have been certified by Natural Heritage and Endangered Species, but Ms. Rimmer said that there are additional areas of vernal pools other than those certified which she has had identified on the plan. Both Ms. Rimmer and Mr. Gajeski agreed on the changes, and Ms. Rimmer said she is in agreement with what is on the plan. A final report will be sent to the Board from Ms. Rimmer stating she is in agreement with the final plan and will state the date of the final plan.

Robert Brophy moved to continue the public hearing for the Abbreviated Notice of Resource Area Delineation for property off Essex Park Road to Tuesday, June 7, 2005 at

8:05 p.m., seconded by Philip Caponigro, with Wallace Bruce, Robert Brophy, and Philip Caponigro voting in favor; Elisabeth Frye voted present.

Chairman Bruce said he received an e-mail from Martha Hoar who said she was disturbed by the Minutes of the Meeting of April 19, 2005. The e-mail, as follows, was read into the meeting:

“I’m disturbed that the Minutes of your April 19, 2005 meeting are significantly incomplete. When Peter Van Wyck stated that he never given permission for any vernal pools on his property to be certified, it was not recorded that he DID in fact give this permission to me in the presence of others on March 29, 2004 while walking his land with members of the Planning Board, Conservation Commission and Open Space Committee. He also offered the Town the area of Vernal Pool #1, the one we all later decided was our first choice.

I hope that tonight you will amend the 4/19/05 Minutes to show that his verbal permission was given and witnessed.

Please note also that I have an e-mail from Matt Burne of Natural Heritage and Endangered Species dated last summer where he said that NHESP WILL certify vernal pools even when landowners have not given permission. Even if he continues to deny giving permission, Van Wyck cannot deny that he gave me permission to walk over his land in order to identify potential sites for the CR, and to inventory the wildlife and plant life there, which I did frequently and with his knowledge.....”

Robert Brophy moved to place the letter into the appropriate records, seconded by Philip Caponigro, with the Board voting unanimously in favor.

Wallace Bruce said he has a concern that Mrs. Hoar stated Matt Burne will certify vernal pools even when permission has not be given by land owners.

Elisabeth Frye told the Board Peter Van Wyck has put a culvert on her property and she would like it removed. Chairman Bruce said he would like to visit the site of Elisabeth Frye’s property where the culvert has been placed. Mr. Van Wyck said he would remove the culvert.

A building permit application was submitted for review for David Tory, 7 Lufkin Point Road, for the construction of a 20x27-foot addition to the barn. As there were no wetland issues, the building permit application was signed.

A building permit application was submitted for review for Edwin Richter, 10 Town Farm Road, for the installation of vinyl siding. As there were no wetland issues the building permit application was signed.

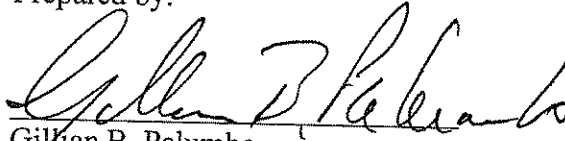
Board protocol – purchases and interviews. Robert Brophy said he felt that a member of the Conservation Commission should not be allowed to make purchases without approval of the Board and that no member should interview a potential member for the Board at a private home. Mr. Brophy also felt the Board should not be spending money on hiring an agent for twelve hours only to have him ask what he can do. He indicated the money should be saved for any legal matters and to hire a botanist on an 'as needed' basis. Wallace Bruce questioned whether someone could be hired to do both jobs, that of a Conservation Commission agent and clerk.

Robert Brophy moved that all purchases, interviews and discussions with the D.E.P. pertaining to Commission matters be discussed and voted on as a Board, seconded by Philip Caponigro, with the Board voting unanimously in favor.

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

Meeting adjourned at 10:05 p.m.

Prepared by:

  
Gillian B. Palumbo  
Administrative Clerk

Attest: