

Essex Conservation Commission

June 7, 2005 – Minutes

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

Present: Wallace Bruce, Chairman, Robert Brophy, Elisabeth Frye, Stephan Gersh, Philip Lake and Philip Caponigro (7:50 p.m.); absent – Shirley Singleton

Meeting called to order at 7:34 p.m.

A continuation of a public hearing was held at 7:35 p.m. under the Wetland 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).

Peter Van Wyck attended the hearing. Chairman Bruce told him that based on the D.E.P. and the Board's feelings, the Board would not act on the Notice of Intent at this time. Mr. Van Wyck requested the hearing be continued.

Stephan Gersh moved to continue the public hearing for Low Land Farm, Assessors Map 9, Parcel 12(1) to Tuesday, June 21, at 7:35 p.m., seconded by Robert Brophy, with Robert Brophy, Wallace Bruce, and Stephan Gersh voting in favor; Elisabeth Frye and Philip Lake abstained.

John Shields, 1 Pine Ridge Road, met with the Board to submit two building permits for the Board's review. One application was for the construction of a two-car garage and the other was for the installation of an in-ground pool. The Board will visit the site on Thursday, June 9, 2005 at 5:30 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 a dwelling, driveway, septic field, septic tank and components and grading within the buffer zone at Low Land Farm, Assessors Map 9, Parcel 12(2).

Stephan Gersh moved to continue the public hearing for Low Land Farm, Assessors Map 9, Parcel 12(2), to Tuesday, June 21, 2005 at 7:45 p.m., seconded by Robert Brophy, with Robert Brophy, Wallace Bruce, and Stephan Gersh voting in favor; Elisabeth Frye and Philip Lake abstained.

A building permit application was submitted for review for Peter and Marguerite Clark, 3 Riverview Hill, for the construction of a 24'x24' two-car garage. The Board said they would visit the site on Thursday, June 9, 2005.

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

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

Stephan Gersh moved to continue the public hearing for Low Land Farm, Assessors Map 9, Parcel 12(3), to Tuesday, June 21, 2005 at 7:55 p.m., seconded by Robert Brophy, with Robert Brophy, Wallace Bruce, Philip Caponigro and Stephan Gersh voting in favor; Elisabeth Frye and Philip Lake abstained.

A building permit application was submitted for review by Ryan Sheahan, 11 Forest Avenue, for the construction of an addition. The application was signed.

A building permit application was submitted for review for Marc and Amber Fritsch, 63 Martin Street, to remodel the barn and construct a small breezeway to connect the barn with the dwelling. Mr. Fritsch would also like to remove two trees, clean up the brush, and then plant more trees. Stephan Gersh will view the site tomorrow, Wednesday, June 8, 2005.

Mr. Peter Athans met with the Board to discuss the building permit application of Peter and Marguerite Clark, 3 Riverview Hill, which was reviewed earlier in the meeting, to see if the Board had any questions regarding the application. The Board told him they would make a site visit on Thursday.

A continuation of a public hearing was held at 8:05 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for an Abbreviated Notice of Resource Area Delineation filed by Peter Van Wyck for property off Essex Park Road, Assessors Map 9, Parcels 5, 5A, 8 and 9.

A final report dated May 26, 2005, was submitted to the Board from Mary Rimmer, Rimmer Environmental Consulting, LLC, who represented the Commission to verify the flagging on site. The letter stated that Rimmer Environmental had reviewed a set of revised plans from Apple Associates dated May 20, 2005 which incorporated all of the comments from Rimmer Environmental's review letter dated April 15, 2005 and supplemental review letter dated May 18, 2005. With the final revisions, Rimmer Environmental was of the opinion that the wetland boundaries as depicted on the plans accurately represented the boundary of wetland resources subject under the Massachusetts Wetlands Protection Act, and that an Order of Resource Area Delineation (ORAD) be issued. The letter noted that it should be indicated on the ORAD that wetland series F is a certified vernal pool and that the J, E, U and S series also contain vernal pool habitat.

Stephan Gersh questioned Mr. Van Wyck whether he was going to do anything regarding the vernal pools noted by Ms. Rimmer during site inspections of the J, E, U and S series

of flagging, or whether they were outside of the areas Mr. Van Wyck was going to develop. Mr. Van Wyck said he could not answer that at this time. He added that it upsets him very much that the one of the vernal pools had been identified in the middle of the gas easement where trucks go up and down. He said he gave Mrs. Martha Hoar the right to walk over the land. Stephan Gersh said that was not what he was asking. He said there was already a certified vernal pool, but there are also four other areas where there could be vernal pools, but it is Mr. Van Wyck's choice as owner of the property to certify them. Stephan Gersh then asked if Mr. Van Wyck could consider not impacting those vernal pools. Mr. Van Wyck said he would like to answer the question, but for him to answer it the Board would have to listen to what he has to say. He said he plans to give more land to conservation, but what Martha Hoar has done has 'sent me up the wall'. If this Board would like to see him put land into permanent conservation, he wants it to be on record that this kind of thing is contrary to what he thinks is the right direction. There are many places Martha Hoar could have looked at for vernal pools, but she went and picked one that was controversial. He emphasized that he wants the Board to get the message that he considers what Martha Hoar did on one of those pools as an infringement of the right direction in which they should be going. First of all, Mr. Van Wyck stated, the vernal pool is right in the middle of the gas line where Tennessee Gas trucks go in, and if he has to move the access around that area, he doesn't know where to go. On one side is another vernal pool that is more important, and on the other side is wetlands. Stephan Gersh stated that the Commission is not a representative of Martha Hoar, and therefore he should not use the word collectively – the Commission, unless it initiates certification that is not part of the process, unless it is noted in the by-laws of the Town. The Board is informed by Natural Heritage when any individual successfully completes a vernal pond certification. He added that Mr. Van Wyck's issue is not with the Commission but with Martha Hoar and the Natural Heritage. Mr. Van Wyck said he could appreciate that, but if the Commission wants him to put land into serious conservation then they will have to address this issue. Mr. Van Wyck said he is incensed by what Mrs. Hoar has done. Mr. Van Wyck was told to take up the issue with Mrs. Hoar.

Stephan Gersh moved to make a positive Determination on the Abbreviated Notice of Resource Area Determination, with notes indicated on the approval reflective of Mary Rimmer's notes of May 26, 2005, seconded Philip Caponigro, with Robert Brophy, Philip Caponigro, and Stephan Gersh voting in favor; Philip Lake and Elisabeth Frye abstained.

Order of Conditions for Lot 38 and 39, Turtleback Road – Stephan Gersh moved to approve the projects at Lots 38 and 39, Turtleback Road, as submitted in the Notice of Intent, and to issue an Order of Conditions, seconded by Robert Brophy, with Robert Brophy, Wallace Bruce, Philip Caponigro and Stephan Gersh voting in favor; Elisabeth Frye and Philip Lake abstained. Robert Brophy will be the Commission's representative for the projects.

The Board signed a Bills Payable Voucher for Mary Rimmer, Rimmer Environmental.

The Board discussed having a joint meeting between the Planning Board and the Conservation Commission. Stephan Gersh indicated the joint meeting was to facilitate better communication and set up sequences of notification and time frames, etc., but in particular with Low Land Farm. Kim Jarvis, the liaison between the Planning Board and Conservation Commission, said this meeting can be arranged between Mary Ellen, the Planning Board Administrative Clerk and the Administrative Clerk for the Conservation Commission. It was felt June 15, 2005 at 8:30 p.m. would be a possible date for the meeting. Kim Jarvis said Peter Van Wyck did bring up something that was in the by-laws that was rather interesting and appears it would encourage his notion of cluster zoning under multi-family dwelling. Looking at it, it appears it might be an opportunity for Mr. Van Wyck to achieve what he wants on that side of the property. Stephan Gersh asked Ms. Jarvis if she was familiar with conservation subdivision planning – another term for it being ‘green neighbors initiative’. He then proceeded to explain to her and to the Board what it involved. Ms. Jarvis said the Planning Board has been trying to review their by-laws and modify them on a number of points. Stephan Gersh suggested Peter Phippen meet with the Planning Board, who is their technical advisor on Eight Towns and a Bay, and speak to this issue.

Selectman Jeffrey Jones met with the Board and said a couple of items came up on the Selectmen’s Monday night’s meeting. The Youth Commission would like to place more sand at the beach at Centennial Grove and rake weeds out of Chebacco Lake. He indicated this issue had come before the Board in the past. In the rear of the Town Hall, the Town would like to use the soil to raise up the ball fields, but did not include the big ball field. That issue may be coming up at some point. It was noted the big ball field is further away from the resource area. Stephan Gersh questioned Selectman Jones regarding the conservation easement Peter Van Wyck was giving the Town. He said it came down to the vote of the Conservation Commission; a letter was sent in April stating there were four conditions, one of which has been completed – all the brush was removed. Town Administrator Brendhan Zubricki said it went to Town Counsel, then went to Peter Van Wyck’s counsel, but nobody has heard anything back. The Commission had placed a deadline on the conditions because it was understood the Town wanted this closed soon. Selectman Jones said they, the Selectmen, did not want to hold up Mr. Van Wyck; it was his decision to hold up the easement. The Selectmen did not want Mr. Van Wyck coming back to them saying they had not made a decision, and therefore he could not do what he wanted to do. Wallace Bruce wanted to know if the area of land designated for the conservation easement was currently the Town’s land. Mr. Jones said no, that they have not signed the agreement. The Selectmen agreed to those conditions, but in turn, Mr. Van Wyck has not – the ball is in his court. Mr. Jones then mentioned the resignation of the Conservation Commission’s Administrative Clerk. Stephan Gersh said there were two issues on the table – the Clerk’s position was

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paramount and that the Commission could not meet unless they had a secretary, trained, understanding what goes on, able to do the filings, address the public in an introductory way; but the secretary is not an agent. He did not want to have the two mixed up, but the Board cannot function without a secretary and needs to have continuity, with a couple of weeks of training. Stephan Gersh added that both the secretary and agent's positions need to be advertised and it will not be easy finding someone to take either of those positions. It was his personal opinion that out of the two jobs, the secretary's job is more important right now. Robert Brophy said he understood there were people who would take both jobs. Wallace Bruce said there have been a couple of things on the table – there has been a job description for an agent, but as yet we have not seen a job description for the Administrative Clerk. He felt that the Board agreed that the Clerk's job was paramount, and he felt that was the focus. He added that to his knowledge the Board has not voted on the job description for the agent, and he does not think the Board has discussed the agent's job as a separate entity from the Clerk's position. Chairman Bruce said he had heard from a number of Board members and Shirley Singleton, one of the Board members who could not attend tonight's meeting, that there was some discussion about utilizing a person to do both positions. He felt that as a Board they should find out how they all feel about that. Stephan Gersh said, "1) only one position was approved by the Finance Committee and Selectmen, that of the agent's position, 2) you are talking about a radically different pay scale, one that starts at \$12.00 to 13.50, and the other one that starts at \$17.00 and goes up to \$23.00, and 3) you are talking about a level of qualification which is quite different. He said he personally knows every single agent on the North Shore and none of them would be a secretary to the Conservation Commission. Wallace Bruce said he asked the Board members if they felt they needed a professional in the agent's position, and he would like to know what constitutes an agent – does it have to be a college graduate. Chairman Bruce said he is raising these questions because they were asked of him, and, other than Commission member Stephan Gersh, he has not heard how others feel about this. He added that he has talked to wetland scientists, who told him there were a number of towns where one person does both things. It is not uncommon. It was noted that the Town wanted the position to be less than twenty hours per week. Philip Lake said that the Commission was not getting information on the other side of the table, and feels the Board is at a significant disadvantage. For every one the Board sees, there is a fair number the Board does not see. The idea is to get someone who is qualified, who is knowledgeable in this area. Wallace Bruce asked if the Board feels they need an agent for 12 hours per week. Philip Caponigro said he does not see, if it is the right person, why they cannot do both. Stephen Gersh said wetland scientists average between \$75.00 and \$125.00 per hour. He does not see the point of spending that kind of money when you can have someone available at \$22.00. Wallace Bruce said they were questions that were asked by Commission member Shirley Singleton who could not attend the meeting. Stephan Gersh said if the Orders of Conditions issued by the Board were contested in court, the judge would throw them out in a minute. The Orders of Conditions are not written based on the citing of the Wetlands Protection Act as the basis of a determination for an Order. When an Order of Conditions, which an

agent would be responsible for, not the secretary, is written, and the Board say they want a silt fence or they want to have a berm put in, etc. it should say in 'in order to protect the interest of the Act, therefore the Commission requires...' It should be written to withstand the scrutiny of a court case. Wallace Bruce said he is not convinced they need an agent for 12 hours per week. He indicated that the wetlands delineation that Mary Rimmer did, paid for by Peter Van Wyck, worked out very well as opposed to the previous one that Peter Van Wyck paid for. Stephan Gersh said it would be advertised as up to 12 hours a week. He indicated that some members were not doing as much as they should. Selectman Jones said that if a member cannot make a meeting, then the other Board members should indicate at the next meeting what took place. Wallace Bruce said he felt there was a rift in the Board with personality conflicts. Jeffrey Jones said all Board members do not have to agree, but they should come to a consensus – that is how a committee should work. Philip Lake felt the applicant should be given a full evaluation, not based on commonsense, not that commonsense should be thrown out of the window, because in addressing these things a lot of commonsense needs to be used, because a lot of the requirements, when addressing them, can be burdensome. It was reiterated that commonsense plays a role in the decision-making process, to which statement Philip Lake agreed. Stephan Gersh said the Planning Board has an expert, the Board of Health has an expert, but the Commission does not. He indicated to Selectmen Jones that has been an issue over the years – the other Boards have someone trained specifically. Robert Brophy stated the number one issue is the secretary and the Board needs to approve the job description. The Board also needs to approve the position of an agent, but he does not want to see one hired who may 'sit and twiddle his thumbs'. He also noted that he resented being told he could not use commonsense, but that Commission member Philip Lake brought it up five times this evening. He added he does not agree with some of the statements in the agent's job description. Mr. Jones suggested trying to contract a consultant on an 'as needed basis' for now instead of hiring an agent for twelve hours. Wallace Bruce said he wondered whether the site visits they would be making this week would necessitate having an agent. He noted they are willing to participate more if possible and to go out and check things. Selectmen Jones suggested that in July and August, when the Board usually has one meeting, to have two meetings, but make one a work session. Philip Lake said the bottom line is that the Board needs to have consistency, and he worries that is not the case. He said he could not see why the Board would turn down someone who would make site visits so that the Board would not have to out themselves on a Saturday. Philip Caponigro felt Selectmen Jones had a good point to use a consultant to begin with to see how things go. Wallace Bruce then read Commission member Shirley Singleton's comments into the meeting. Selectmen Jones recommended going to the Personnel Board for job descriptions. Philip Lake said if the Board could get a person to do both jobs he would vote for it, but he does not think they will. Robert Brophy and Philip Caponigro would like to see one person do both jobs.

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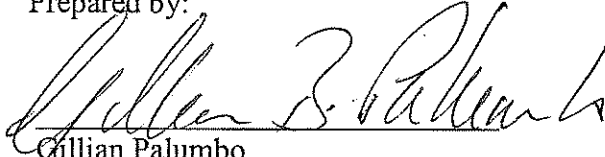
Stephan Gersh and Elisabeth Frye would like to see two people. Shirley Singleton indicated in her letter she would like to see one person. Wallace Bruce said he would prefer to see one person do both jobs.

Elisabeth Frye then questioned the Order of Conditions for Peter Van Wyck for 9 Turtleback Road. She indicated Mr. Van Wyck had installed piping draining the wetland to the pond on his property. She was told piping was not indicated in the Order of Conditions. Robert Brophy said he would visit the site and have Mr. Van Wyck move the piping.

Stephan Gersh moved to adjourn the meeting, seconded by Philip Lake, with the Board voting unanimously in favor.

Meeting adjourned at 9:55 p.m.

Prepared by:



Gillian Palumbo  
Administrative Clerk