

Essex Conservation Commission

August 9, 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, Shirley Singleton; absent: Philip Caponigro.

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

A continuation of a public hearing was held at 7:35 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Joseph Brain for the construction of a 1-story addition to the garage and a 30x22-foot 2-story addition to the dwelling at 59 Wood Drive.

Kevin Ellis representing the applicant, together with the applicant, met with the Board. Board members Wallace Bruce, Shirley Singleton and Stephan Gersh had visited the site, and Stephan Gersh indicated that there was no issue for the addition to the garage. He noted that with the addition to the dwelling, the wall closest to Chebacco Lake is on the top edge of an extremely severe embankment, which then drops down to the Lake itself. Mr. Ellis said the applicant is proposing to eliminate a few of the larger pines, and then they would like to excavate straight down along the edge of the embankment to a point where the first floor, which is approximately 7 or 8-feet below grade, will come out horizontal to the slope. There would be a 3 to 4-foot retaining wall put in at that point and a walkway between the first floor and the retaining wall that would be drained separately. The only question Stephan Gersh had was the stabilization from an area he pointed out on the plan down to the point they would be excavating, as it is quite severe. Stephan Gersh said at the site walk they discussed installation of an erosion blanket pinned into the soil to keep the bank from eroding down during construction, until such time the bank could be stabilized with some kind of growing material so as to keep it from going into the Lake. There was a concern at the site walk regarding the grades shown on the plan and how far into the bank the construction was going to be, and at what grade it would be removed. Mr. Ellis said he did not think they would be taking off all that much of the bank itself. He indicated that from where it stands now they could go down five feet into what is existing now. The plan was, after meeting with the Board at the site walk, to go down, flatten it out and then go back up into the retaining wall; they might end up losing two to four feet of the overall height of where it is now. A small dry well could be put in place to handle the walkway only, because all the run-off from the roof is going into the big dry well. Mr. Ellis said there was not a lot of vegetation on the bank presently, nothing low-growing, just leaf litter and pine needles. They will not be pulling out any stumps, unless they are in the area where they will be digging. Stephan Gersh said he would like to see a site plan showing what they have been discussing, i.e. how much they will be cutting in, the retaining wall, moving up the hay bales as close to the excavation as they can get and showing in detail where the erosion blanket would be and how far down. Shirley Singleton would also like to see the dry well shown on the plan. Mr. Ellis said the drywell will be under the walkway and all it would be handling would be the rainfall.

Stephan Gersh moved to continue the public hearing for Joseph Brain, 59 Wood Drive, to Tuesday, August 23, 2005, at 7:35 p.m., seconded by Elisabeth Frye, with the Board voting unanimously in favor.

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 Leslie Moore for the installation of a solar array at 28 John Wise Lane.

Mr. Moore told the Board his property consists of 4-acres of upland and 10-acres of marsh. He said they are proposing to install two arrays, one is 50-feet and the other is 70-feet, on a total of nine sonotubes as a foundation. The arrays are fairly close to the ground, with one end being approximately 7-feet at the highest part of the land and then it goes down another 2-feet making it nine feet high at the other end. A backhoe will be required to dig the foundation holes. The biggest problem is wind for the structure, so the foundations need to be big enough - about 5-feet by 3-feet for the underground foundations - so excavation is required for those. They will be in several strips - five strips is the estimate - and then backfilled, and the land will be back to the same condition as it was before. It is the uplift that was the main structural problem. The other piece of equipment that needs to go to the site would be a concrete truck, but Mr. Moore stated he would try to get one that is as small as possible. He feels he would only need approximately seven yards of concrete. The closest part of the proposed project to the marsh is about 30-feet.

Stephan Gersh moved to close the public hearing for Leslie Moore, 28 John Wise Lane, seconded by Elisabeth Frye, with the Board voting unanimously in favor.

A public hearing was held at 8:05 p.m. under the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Walter Ewaschuk for the construction of a one-story commercial building and associated site work at 229 Western Avenue.

Representing Mr. Ewaschuk was Attorney Philip C. Wysor of Glovsky and Glovsky, and Martin Halleran of T-Square Design. The applicant was also present. Commission members Philip Lake and Stephan Gersh did not participate in the discussion because of a conflict of interest. Attorney Wysor told the Board this involves approximately three acres on the corner of Scot's Way. It is essentially a commercial district and there is a commercial structure on the property now, but it is not an active site. There was an animal hospital there, which has now been abandoned. Attorney Wysor noted the reason they are before the Board is because it borders a wetland. They will not be disturbing the wetland in any respect as shown in the preliminary plan submitted with the Notice of Intent. They would be building within the 100-foot buffer zone, but the wetland itself will not be touched. Mr. Ewaschuk told the Board the proposal for the site is to demolish the existing veterinarian clinic - the building is of no value for what they want to do - and construct a building, shaped as an ell, 170-feet long, 40-feet in width, with a 30-foot ell, and turn it into contractors space. They would like to have a one-story building if they can get permission for the footprint they have submitted, with a wood frame and metal skin to match what is in the area presently. On the front side, facing Western Avenue, they would like to put in a nicer façade and have an office area there. Going down Scot's

Way they would like to have windows, but keep them high, so as to bring light into the building. On the driveway side they would have a pass through door and overhead door for vehicles to get in and out. They do not have a problem leaving the parking area of stone and not paved, if that would help with the drainage. There will be areas to take run-off from the roof that would spill into those areas also. All the water from the roof drains will be picked up and not just running into the parking area. They would like to do some type of landscaping on Scot's Way and towards the fenced area that abuts the restaurant and also in the front. Shirley Singleton asked if they would be bays that contractors rent out. Mr. Ewaschuk said that is what they would be. Shirley Singleton questioned whether there would be any oil or hazardous material stored there. Mr. Ewaschuk said they did not want hazardous material there and was shown the by-laws by Building Inspector William Sanborn indicating they do not want oils and chemicals. Mr. Sanborn also told him he could give the applicant a list of materials that they do not want in the building. Mr. Ewaschuk indicated it would be a place for contractors to store staging, ladders, etc., rather than for them to bring it home and try to find a place to store it. There would be a total of five bays, but it depends on what a party is interested in. They would partition it to the size people would want. There will be a toilet and a sink for each bay. The existing septic field would be eliminated; there is a sewer betterment with the property so everything would be tied into the sewer on Western Avenue. Mr. Ewaschuk said they have checked on the flow rate and they will be under that flow rate, because the building is about space and will not have a lot of use. The use will probably be first thing in the morning or late afternoon. It would not be set up for someone to stay all day and work on a project. Shirley Singleton asked where the run-off would be going. Mr. Ewaschuk said they would use collectors; the water will be piped to the collectors, which will be sized to take care of the amount of run-off. The collectors will be on all corners of the building. The Board questioned the size of the building and whether it met the Planning Board's criteria for the amount of impervious surface used on a lot. Martin Halloran said one of the reasons they came before the Board was to get some feedback and then they would finalize the plans. Most of what they will do will depend on Conservation issues. The Planning Board does have the issue of the percentage of impervious surface required, but Mr. Halloran did not know what that percent was at this time. He was told that it might be 25% excluding wetlands. The Board felt they needed to get a sign-off from the Planning Board first so that they could settle how many square feet the building would be. Martin Halloran said the one thing that does not show on the plan was that the wetlands were flagged when they were doing John Coughlin's property some time ago, and he is assuming that the flagging is still good. The flagging was done in the late nineties. The Board felt they should take the original delineation and have it brought up-to-date. The applicant will have the Company that did the original flagging come to the site and check.

Shirley Singleton moved to continue the public hearing for Walter Ewaschuk for property at 229 Western Avenue, seconded by Elisabeth Frye, with Wallace Bruce, Robert Brophy, Elisabeth Frye, and Shirley Singleton voting in favor; Philip Lake and Stephan Gersh abstained from voting.

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A Request made by Curtis Jones Jr. for the Commission to Determine the Applicability of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for a septic system upgrade at 75R Wood Drive was heard at 8:32 p.m.

Richard Clarke of EPS Associates, LLC, represented the applicant. Mr. Clarke told the Board the applicant has a failing cesspool and needs to upgrade the system. The house is on the market and so the system must comply with Title 5. The Board reviewed the plan and noted the system was more than 50-feet from Chebacco Lake and the house was between the work area and the Lake.

Stephan Gersh moved to issue a negative Determination to Curtis Jones, Jr. for a septic system upgrade at 75R Wood Drive, seconded by Elisabeth Frye, with the Board voting unanimously in favor.

Allan Dalton, 158R Western Avenue – Mr. Dalton told the Board the project began with the removal of a 2,000 gallon oil tank. Paul Wright was the excavator and discovered there was a hole in the side of the tank with extensive leakage of the oil. Everything so far has been taken care of and the 21E has been certified and given to him. He now has an excavation area of 30/40-feet x 50/60-feet that is two-thirds filled and all that remains to be done, and that he needs to get approval for, is to have the rest of the excavation filled up to make it a level area. He has received estimates from several people, but has also spoken to someone who works for Albanese Brothers, the Company working for the Town on the sewer project. Mr. Dalton indicated he needed 425-450 cubic yards. The fill from Albanese Brothers would be all clay, and he would need permission from the Commission to use the clay for the grading. Some members of the Commission visited the site and indicated they were satisfied with the location of the hay bales, but that Mr. Dalton would need to put up silt fencing and get the approval for the clay. Wallace Bruce noted that what they had said was for Mr. Dalton to put in new hay bales and silt fence, but that the location of the existing hay bales was fine. It was also noted that in place of hay bales a bio fence should be used and as long as the bio fence was placed in the area of the existing silt fence, and that no work took place beyond that point, then they would be satisfied. There was a question regarding the slope of the area to be filled, and that if filled with clay to become an impervious surface, the run-off would flow to the stream. It was observed that there were chips of asphalt in the fill, and Elisabeth Frye indicated that that would not be acceptable. The foreman from Albanese Brothers told Mr. Dalton that he would have to get the Town's permission to take the fill and also said that he knew exactly in the pile where the clean clay could be found. Stephan Gersh said Mr. Dalton should go with the clay that they have and keep the slope consistent with the surrounding area. He added that he thought the area to be filled was much larger than the 30x40-foot size, which is irrelevant with regard to run-off. Robert Brophy said he did not know why Mr. Dalton had even come before the Board, as he has an Order of Conditions for the project that states exactly what he has to do. Therefore, as the Board has said, he should keep the grade as low as possible and rebuild the silt fences that have been knocked down from the original job.

Myles Cambridge, Lot 38, Turtleback Road – Mr. Cambridge submitted a plan to the Board showing the footprint of the dwelling on the lot with the required setbacks and

with the required grading. The plan is before the Planning Board for site plan review, but, as yet, has not been signed off by them. The Board compared the plan submitted by Mr. Cambridge with that filed with the Notice of Intent by Peter Van Wyck. Mr. Cambridge indicated the change does not increase or decrease the impact on the resource area. The dwelling is a four-bedroom house approximately 3,200 square feet in size.

Susan Oliver-Munn – The Board met with Ms. Oliver-Munn as she had shown interest in taking the job of Administrative Clerk to replace the present Clerk who is vacating the position.

Kim Jermain, Apple Street, spoke with the Board regarding the appeal she had filed with the D.E.P. for Low Land Farm, as she felt the Rivers Act covers the entire property. Stephan Gersh asked if a letter had been received from D.E.P. stating that the appeal had been filed. The Administrative Clerk stated she had only received the Notice of Appeal from Ms. Jermain. Philip Lake questioned whether the Board was proposing to act before the appeal had been resolved. Ms. Jermain said it was filed August 5, 2005 and there is a seven business day appeal period from the August 5 date. She said her point in getting involved with this was, even though she respected the D.E.P.'s new approach to this project, that this has been a very long-term process. Even when she was on the Planning Board and this plan was approved by the Planning Board, there were some real concerns with the entire project at that point and felt the project was not being looked at seriously for all the implications of that area. She felt, as a resident on Apple Street, she should have a voice in this continuing process. Robert Brophy asked if this is over 200-feet from the river, then how does the Rivers Act apply. Ms. Jermain said she did not think it was more than 200-feet from the river, and that the Rivers Act applies. Robert Brophy asked if she had specific surveyor's dimensions indicating it is less than 200-feet. Ms. Jermain said she does not have the dimensions for this property, but she has seen the map. Robert Brophy said Michael DeRosa, a wetland scientist hired by the Commission to verify the delineation, said his figures show it is outside of the 200-foot area and felt Ms. Jermain should find this out prior to issuing the appeal. Shirley Singleton felt the Board should continue with the issuance of the Order of Conditions, but place a call to the D.E.P. in the morning to see if there is a hold on this in deference to what Ms. Jermain is stating, and if there is no hold and no feedback from D.E.P. then the Board should issue the Order of Conditions.

Order of Conditions, Low Land Farm, Lot 1 – Stephan Gersh moved to approve the project for Lot 1, Low Land Farm, property of Peter Van Wyck, as shown on the plan dated May 25, 2005, seconded Robert Brophy, with Robert Brophy, Stephan Gersh, Wallace Bruce, and Shirley Singleton voting in favor; Elisabeth Frye and Philip Lake abstained.

Order of Conditions, Low Land Farm, Lot 2 – Robert Brophy moved to approve the project for Lot 2, Low Land Farm, property of Peter Van Wyck, as shown on the plan dated May 25, 2005, seconded by Stephan Gersh, with Robert Brophy, Stephan Gersh, Wallace Bruce and Shirley Singleton voting in favor; Elisabeth Frye and Philip Lake abstained.

Order of Conditions, Low Land Farm, Lot 3 – Robert Brophy said at the last meeting the Board had quite a discussion on Lot 3, and reviewed plans that were not the same scale, but that the Board agreed with the D.E.P. for the area in question.

Robert Brophy moved to approve the project for Lot 3, Low Land Farm, property of Peter Van Wyck, as shown on the plan dated May 25, 2005 with an additional Special Conditions that within thirty days boulders, at least 2-feet high and 3-feet in diameter, must be placed at each of the flagged corners of the D.E.P. delineated bordering vegetated wetland, seconded Shirley Singleton, with Robert Brophy, Stephan Gersh, Wallace Bruce and Shirley Singleton voting in favor; Elisabeth Frye and Philip Lake abstained.

A request for two Certificates of Compliance was made by Shaheen Husain, 47 LeBaron Road.

Stephan Gersh moved to issue Certificates of Compliance to Shaheen Husain, 47 LeBaron Road, certifying that work regulated by Order of Conditions D.E.P. File Number 21-235 was never started, and work regulated by Order of Conditions D.E.P. File Number 21-241 has been satisfactorily completed, seconded by Robert Brophy, with the Board voting unanimously in favor.

A building permit application was submitted for review by Brian and Heidi McKeon, 8 Turtleback Road, for the construction of a 21'x38' in-ground pool. The Board felt they should make a site visit prior to signing the building permit application. The site visit will be on August 20, 2005 at 8:30 a.m.

A building permit application was submitted for review by Peter Townsend, 12 Low Hill Road, for the installation of a 16'x24' shed. The building permit application was signed.

A building permit application was submitted for review by Joseph and Wendy Davis, 58 Story Street, for a 10'x12' addition and screened porch. Robert Brophy will check the site for possible wetland issues.

Conservation Commission Agent Job Description – The job description was reviewed. Shirley Singleton asked if the agent works for twelve hours per week, where does he get his work orders and how will the Board know that he will not work more than twenty hours. (It was noted in a prior discussion that the agent could not work twenty hours as he would be eligible for health insurance.) She also questioned if a person from an engineering company, for example, Apple Associates, was interested in the position, what would happen. Stephan Gersh said that person would not be able to take the job as it would be a conflict.

Stephan Gersh moved to create a position called the Conservation Commission Agent for the Town of Essex for up to twelve hours of work per week, seconded Elisabeth Frye, with Elisabeth Frye, Shirley Singleton, Stephan Gersh and Philip Lake voting in favor; Robert Brophy voted present.


Robert Brophy questioned the word 'judgement' in Item 3, and wondered how the agent could use his judgement and not go by the laws. He also questioned Item 4 regarding an annotated agenda.

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

Meeting adjourned at 11:00 p.m.

Prepared by:



Gillian B. Palumbo, Administrative Clerk

Attest: