

Essex Conservation Commission

August 23, 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

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

A continuation of 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 Joseph Brain for the construction of a 1-story addition to the garage and a 30x22-foot 2-story addition to dwelling at 59 Wood Drive.

Kent Ellis, representing the applicant, met with the Board to submit a plan showing the changes requested by the Board at their prior meeting. The proposed walkway is about 4-feet wide with a slight slope towards the Lake. Mr. Ellis said at the last meeting they had spoken about a retaining wall, but the architect felt it would cause more damage as they would have to dig down into the bank 4-feet. The proposal now is to dig straight down and come out to about the 96.5 contour line. Stephan Gersh told Mr. Ellis if they are not putting in the retaining wall they would not, in any way, want to de-stabilize the embankment which is extremely steep. The silt barrier will now be placed at the top of the banking and not at the base of the banking as originally shown. The silt barrier will be laid out on the banking itself. Stephan Gersh noted that if they use a filter fabric then it should be anchored down with 8-10 twelve-penny nails or stakes and then the silt fence is on top of that near the top of the bank.

Stephan Gersh moved to close the public hearing for Joseph Brain, 59 Wood Drive, seconded by Elisabeth Frye, with the Board voting unanimously in favor.

Dave Lash met with the Board regarding a protective barrier for the beaver dam at Chebacco Lake. Mr. Lash said they have been talking to Marine Fisheries, who govern the whole Alewife situation, as well as Beaver Solutions. They believe they have a culvert protective fence design that could be adapted to this situation. Mr. Lash said he is presenting this to the Board to see if a) they can implement this with a modification to their Order of Conditions, and b) to see if a more formal application is necessary. This would be installed in only one location and that is at the main channel. Other gates will be abandoned. Mr. Lash

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noted that this is a design that has been used in other locations around the State. Beaver Solutions has discussed this with Mike Armstrong of Marine Fisheries and believes the alewife will move through it without any problem and the property owner, Angus Bruce, is also on board with it. Mr. Lash said he is at this meeting representing the property owner as well as the Lake Association. Mr. Lash then submitted the Board with information regarding the culvert protective fence, which is a simple galvanized mesh with large openings. It is brought in in sections and driven into the ground. It has a bottom on it because the beaver can get underneath it. Beaver Solutions has had good luck with these in the past and therefore the Lake Association would like to try it and feels it is a worthwhile experiment. They would like to install it in September which would give them two or three good months of experimentation with it. Mr. Lash said this is the main flow out of the Lake and one of the things they are concerned with is that if they ever get normal debris backing up and at some point there is a breakdown in the maintenance of it, i.e. keeping the debris clear, they eventually could have the same problem they are trying to alleviate. Beaver Solutions feels it would take four maintenance efforts per year. Beaver Solutions will do it part of the time but the Lake Association assures the Commission that they will take care of the maintenance on an 'as needed' basis. Wallace Bruce referred to a difference of opinion at a prior meeting between the Marine Fisheries and the Beaver Deceiver company on the elevation of this as to whether the alewives could pass back and forth. Mr. Lash told him that was a pipe solution. This is not a pipe solution and there should be no interference with the alewives. He said that would be monitored in the Spring to make sure, but Marine Fisheries looked at this and did not feel there was any problem. Chairman Bruce wanted to know whether the protective fence would be on Angus Bruce's property and how it would be handled if there should be a new owner of the property. Mr. Lash said the two properties in question are those of Angus Bruce and the Town of Essex. Where the channel is today is not surveyed and he cannot certify where that property line is and does not think anyone can know that. Stephan Gersh wondered if Angus Bruce would be willing to put this in his deed that this agreement is existing and is carried forward with the sale of the land, if that should happen, or have the right to pull it out. Mr Lash felt that was a prudent course of action, but because of the complexity of it he would like to stay away from the legal issues. The Commission would like a letter to the Town of Essex and Angus Bruce stating this is the responsibility of Lake Association but is allowing this, but should the property be sold and the new

owners are unwilling to continue allowing this barrier then the Lake Association, at their cost, would remove it. The letter should be signed by the Lake Association and Mr. Lash said he would have Angus Bruce countersign it. Shirley Singleton asked if there was a communication from Marine Fisheries that they approve this. Mr. Lash said they have an e-mail from Marine Fisheries documenting that they are fine with this. With Fisheries and Wildlife both Chuck Bell and Chrissie Henner, who are the two people who were involved with this before, have left, so there are new staff there whom Mr. Lash said he has tried to contact but has not made a lot of progress. Mr. Lash added that they are mainly concerned with the alewife and that is under the jurisdiction of Marine Fisheries. There was a question as to who had jurisdiction over the beavers. Robert Brophy said it was the Fisheries and Wildlife. Mr. Lash said that the beavers are delegated to the local Boards of Health and he has talked to the Health Agent and she has no issue with this and does not want to even have an application from them. Mr. Lash said he would copy any communication to her, and that is how it has been left at her request. Mr. Lash said he has been trying to inform Fisheries and Wildlife on this, but in terms of permits there is no Fisheries and Wildlife stamp of approval needed for this. Robert Brophy asked if the Hamilton Board of Health declared this an emergency situation. Mr. Lash told him they have not. Robert Brophy said he thought the only way the Board of Health could get involved is if they declared it an emergency. Mr. Lash added that that is what they did the last time, and received a 10-day permit. Mr. Lash said he would write one letter that summarises the whole proposal and the conditions that they have asked for today. There was a question as to whether the existing Order of Conditions could be amended, or whether Mr. Lash would have to refile. Robert Brophy said with regard to the existing Order of Conditions which was to breach the dam, this also requires the dam be breached to install it, so wondered why the existing Order of Conditions could not be amended, as it gave the applicant permission to breach the dam. He added that he does not have a problem with that.

Robert Brophy moved to amend the Order of Conditions contingent upon a letter and narrative being received by the Commission, seconded by Shirley Singleton, with the Board voting unanimously in favor.

A request made by Mac Bell for the Commission to Determine the Applicability of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for the upgrade of 900-feet of access road from the

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gate on Rocky Hill Road, Assessors Map 6, Parcel 34, was heard at 8:05 p.m.

Two letters from Steven Goldin, Gloucester, were read into the meeting, one stating that he walked the area and said the road is not in need of maintenance except for a 20x30-foot area near the entrance gate. The second letter indicated that the project requires a positive Determination because it is not a road repair but a construction project. The work involves activity near or adjacent to three vernal pools and increased speed on the road would endanger the vernal pools. Mr. Goldin also indicated that submittal of the Request at this time would have the least public scrutiny.

Mac Bell told the Board that this is absolutely maintenance. It is a desire to improve the road the the property that he and his wife bought from her mother and father twenty years ago. He has been intending to improve the road for the last twenty years, and now he is in possession of the perfect material to do this road repair and so felt this was the appropriate time. He has met with his neighbors, Essex County Greenbelt, Trustees of Reservations, and Greg Crockett and wants to keep it simple. He is not expanding anything, and the material they are putting down allows complete fluidity and drainage as the road is now. They have a co-operative arrangement with the Trustees of Reservations - the gate is there by his consent - and will remain there and remain locked - as he has no plans for the property in the foreseeable future. It is just a basic maintenance project. Stephen Gersh said he walked the whole property and said there could not be an increase in traffic as the gate is closed except for private use. He asked Mr. Bell if he planned to bring in a backhoe and grader and change the contour of the existing surface. Mr. Bell said not at all. Stephen Gersh then asked him if he planned to expand the existing surface of the road. Mr. Bell said no, the width that the road is now is the width they wish to keep, which is approximately ten feet. They would bring in the material on a dump truck from where it is stored, and then bring in the appropriate piece of equipment and grade it the width of the road and whatever depth is appropriate. Stephen Gersh said when he walked the property with Greg Crockett he told him to be sure they were vernal pools. He then noted that resurfacing the road does not affect the migration of salamanders, but told Mr. Crockett that those sections of the road near the vernal pool area must have very protective barriers so that nothing goes off the surface of the road. Mr. Bell noted they hired Mary Rimmer to identify the

wetlands. Michael Cataldo, Rocky Hill Road, stated that Rocky Hill Road has been considered a private way with public access. It was laid out but never accepted by the Town, so they show easements across their properties. It was noted that the Essex County Greenbelt had written a letter supporting this project with certain conditions. Michael Cataldo told the Board said he supports the project, as a good road is necessary if emergency vehicles should have to go to the area. Steven Goldin said he does not oppose the project, and agrees with the comments of the Board regarding protecting the vernal pools, but feels a Notice of Intent would take care of it and give the Board control over the project. He feels it is not a repair job, and feels it is legal and proper to file a Notice of Intent and issue an Order of Conditions. A discussion followed on the ownership of the road. Robert Brophy asked Mr. Bell if he was going over other people's property to repair the road, why did he not include the piece off the blacktop. Mr. Bell said he is requesting to repair the road in not only the completely washed out section but also further up in the road as it is a mess and he just wants to give it a re-established foundation. Shirley Singleton questioned whether the site visit was an official site visit. Chairman Bruce said it was not a scheduled site visit. Shirley Singleton said she felt there should be a minimum of two people on site visits, and it was not that she does not trust what Board member Gersh was saying, but she felt it made it a little more collaborative to be able to contribute.

Stephan Gersh moved to continue the Request for Determination of Applicability for Mac Bell, Rocky Hill Road, to Tuesday, September 13, 2005, at 8:15 p.m., subject to a site visit by Board members, seconded by Elisabeth Frye, with the Board voting unanimously in favor.

Chairman Bruce said he felt Shirley Singleton's point was well taken that at site visits two or more members of the Board should attend, or at least a majority of the members should be invited to attend.

A continuation of a public hearing was held at 8:30 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.

Walter Ewaschuk told the Board that the existing flagging was

confirmed by Wetlands Preservation and submitted a letter from them stating that the flagging shown on the plan is exactly the same as what they found on their visit to the site. Stephan Gersh confirmed with Mr. Ewaschuk that the existing mounded septic system was being removed as soon as the sewer was hooked up, and that he was 25-feet from the resource area. Mr. Ewaschuk concurred with the statement. Wallace Bruce said one question that came up at the last meeting was whether the amount of impervious area generated by the new construction met the Planning Board by-law for the amount of impervious area allowed. Mr. Ewaschuk said they had spoken with the Planning Board last week and drew up a site plan for them on a larger scale and they indicated that the size of the building and the amount of impervious area was fine with them. The Planning Board did not sign off as the plan was being completed this week.

Stephan Gersh moved to continue the public hearing for Walter Ewaschuk, 229 Western Avenue, to Tuesday, September 13, 2005 at 7:40 p.m., contingent upon receipt of a notice of a sign-off from the Planning Board indicating approval of the ratio of pervious to impervious surface, seconded by Shirley Singleton, with Robert Brophy, Elisabeth Frye, Stephan Gersh and Shirley Singleton voting in favor; Philip Lake abstained.

Peter Van Wyck, Low Land Farm - Stephan Gersh said it came to the attention of him and Wallace Bruce that Apple Associates was either beginning or had begun a re-delineation of lot lines at Low Land Farm based on a statement made to him that "an error had been made in reference to the original benchmark". He added if that was the case, lots that they were looking at, especially in lieu of the D.E.P. issue that came up about the boundary of the delineated wetlands, he questioned the results of the new survey and asked the Administrative Clerk to call someone to come in and explain what was going on. If there were, in fact, changes of lines especially on Lot 3 at the end of the turn around, on which monuments were specified in the Order of Conditions before work began on the parcel next to it, that was the reason why he wanted someone to come in to explain. Peter Van Wyck said he was not doing anything that was inside the buffer zone. He has put a silt fence at the buffer line and has been very careful to stay outside of it, so whatever the Board saw there it was not within their jurisdiction. Stephan Gersh said he went to Low Land Farm on Sunday and was looking at the field which was in question and which was finally determined to be a BVW, and found there was nothing demarcating where that was. He noted it was on the site

plan, but the Board needed to have something defining where the BVW was; for Mr. Van Wyck to simply say that he is outside of the buffer, without a reference to where that point is on the ground, becomes meaningless. Mr. Van Wyck said he asked Apple Associates to go to Low Land Farm and stake out the line. He noted that there are flags all along the side of the silt fence. Stephan Gersh said he wanted to have an objective reference on his property as to what Mr. Van Wyck cannot touch. Chairman Bruce said he had been told by an abutter, who in turn had been told by Apple Associates, that there was a mistake made in the surveys and they had to re-survey. Mr. Van Wyck said that was the first he had heard of it and he would speak to Apple Associates the next day. Stephan Gersh asked that the information be called into the Administrative Clerk as he would like to know the answer to this. He then told Mr. Van Wyck that the special conditions for the monuments was a direct requirement that there be demarcations for the BVW. Shirley Singleton said her opinion on this is that the Board looked at those three lots, they approved those three lots with a set of conditions, they followed legal process, they documented it and it was sent to Mr. Van Wyck specifying that the Board would like to see the demarcation permanently with boulders and that was the Order of Conditions the Board approved. Robert Brophy, who is the Board's representative for the project, will check on Thursday.

Town of Essex Ball Fields - Scott DeWitt, D.P.W. Commissioner, met with the Board to request they be allowed to re-grade the large ball field. Stephan Gersh said the use of the Town area was grandfathered because the D.P.W. for forty years has used that as a stockpiling area, and there were two conditions, one being that when you drove down by the firehouse, to the left, there was an enormous amount of refuse, iron, metal pipes, concrete, physically in the wetlands that has been there for at least forty years. As you went a little further to the right, there were piles of sand and gravel that was used by the D.P.W. to maintain the Town, because originally there was a barn there. The original Order of Conditions did not specify any of these, but during the time of the negotiation with Albanese Brothers there was an issue that there needed to be staging areas, and that one of them was already the rear of the Town Hall, because it had already been used to store material. Stephan Gersh noted that what they did as a Commission was two things; the Board asked for a double silt fence and that they stay fifty feet from the edge of the marsh with the stockpiled material. Prior to that, there was no silt fence and there was a tendency for some of the trucks to go up to

within two or three feet. Wallace Bruce felt this was added on to the blanket Order of Conditions. Scott DeWitt said he attended a Commission meeting in which they amended the Order of Conditions. Stephan Gersh stated that within the last two years, Richard Tomsyck of the D.E.P. came out and looked at the area behind the Town Hall, which had been cleaned out and piles of material removed, and said there was no issue about the storage of the material from the sewer project, especially since it is temporary and will be removed when the project is finished. Scott DeWitt said the ball field right behind the Town Hall has sunk 4-5 feet in the outfield and they would like to use some of the stockpiled material to fill it in. Mr. DeWitt then showed the Board the area on a plan that they would like to re-grade. Stephan Gersh asked when they would begin to do the re-grading. Mr. DeWitt said there was an issue with the Clam Fest and parking so it would be after that date. Robert Brophy said originally the Order of Conditions stated ball fields. Mr. DeWitt said the area would be stabilized by December. A letter was read into the meeting from Steven Goldin, Gloucester. Mr. DeWitt said the area would be reloaded and the slope would be a 3:1 slope to grade which is at the fence.

Stephan Gersh moved to extend the reference in the Order of Conditions and amendment to include the large ball field pending stabilization of the entire area with loam and seed prior to December and continuation of the double siltation barrier which must not be removed until spring 2006, seconded by Robert Brophy, with the Board voting unanimously in favor.

The following building permit applications were submitted for review: 1) Brian and Heidi McKeon, 8 Turtleback Road, for the construction of a 21x38-foot swimming pool. The Board will review the Order of Conditions issued for a second dwelling on the lot for the proximity of the pool to the resource area at the Board's meeting on September 13, 2005. 2) Andrew St. Pierre, 39 Wood Drive, for the installation of a 12x34-foot deck to the rear of the house - Wallace Bruce will check for wetland issues. 3) Patrick Mulry, 11 Pickering Street, to remove the existing deck and replace it with a 9.5x16-foot deck. The application was signed. 4) David Driscoll, 145 Western Avenue, to attach a lean-to to the barn - the application was signed. 5) Leonard and Joyce Woodman, 62 Main Street, to remove and rebuild an addition - the application was signed.



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

Meeting adjourned at 10:00 p.m.

Prepared by:



Gillian B. Palumbo  
Administrative Clerk

Attest: