

Essex Conservation Commission

September 13, 2005 – Minutes

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

Present: Wallace Bruce, Chairman, Robert Brophy, Philip Caponigro, Elisabeth Frye, Stephan Gersh, Philip Lake; absent – Shirley Singleton

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

7:36 p.m. – Michael Davis, 197R Western Avenue, together with Damon Boutchie, met with the Board to discuss the installation of a pole to create an osprey nesting site. They have been looking at the program from the State of New Hampshire. The structure would be a 3x3-foot square pole with an attachment for the male to nest in. They would need to auger a hole for the pole, which will be 20-feet high. It was felt there would be no impact.

A continuation of a public hearing was held at 7:43 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 commercial building and associated site work at 229 Western Avenue.

Mr. Ewaschuk said he was here this evening to run through the project as they were not able to get on the Planning Board agenda, but he did talk to them and submitted a plan to them. He then presented the same plan to the Commission. Stephan Gersh asked Mr. Ewaschuk if he knew the soil characteristics under the storm infiltration chamber and if there was an overflow provision. Mr. Ewaschuk told him said it was up to him to maintain those annually. Stephan Gersh asked him if soil tests had been done in that area. Mr. Ewaschuk told him it looked like it was fairly good gravel. He noted that where the parking is now looked as though it has some pack on the top section, but it is quite gravelly if the top portion is dug a little.

Stephan Gersh moved to close the public hearing for Walter Ewaschuk for property at 229 Western Avenue, seconded by Philip Caponigro, with the Board voting unanimously in favor.

Stephan Gersh moved to approve the project for Walter Ewaschuk with the Order of Conditions being issued pending a final sign-off by the Planning Board of the plan dated September 7, 2005 for the site at 229 Western Avenue, seconded by Elisabeth Frye, with Robert Brophy, Elisabeth Frye, Philip Caponigro and Stephan Gersh voting in favor; Philip Lake abstained.

A request made by David and Debra Ray 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 10 Coral Hill was heard at 7:50 p.m.

Daniel Ottenheimer, Mill River Consulting, represented the applicant. He told the Board Chebacco Lake is approximately 20 to 25-feet lower than the access to the property and the land is currently terraced. He noted the only place they had to access physically for construction work was in the upper area. There was no way to get down to the other areas. The present system is a cesspool that did not pass inspection. Mr. Ottenheimer said they have designed a replacement septic system that will continue to pump the wastewater up and then intercept it and direct it to the new wastewater system. The wastewater will be pre-treated, and then to further enhance treatment the two leaching trenches will be pressure distributed so the wastewater will be spread out throughout the entire leach field that further helps with the treatment of the wastewater. They will have about a 4-5 day construction project. The closest point of the project to the Lake is approximately 75-feet. Mr. Ottenheimer said there are significant breaks to the site that it is almost impossible for erosion to make its way down to the resource area.

Stephan Gersh moved to issue a negative Determination to David and Debra Ray, 10 Coral Hill, for the upgrade of a septic system, seconded by Philip Caponigro.

Stephen Goldin, Gloucester, said he was troubled by the question as to why a Notice of Intent was not filed for this instead of an RDA. He said he is seeing more and more of this with Commissions. He agreed that this is a fairly harmless project and could not see any objections to it, but a project at Chebacco Lake, which is a very special resource area, and the fact that it is a steep slope, even though it is terraced, there could be erosion. Stephen Gersh told him first of all it is a mandated replacement and secondly, the only thing an NOI, in this case, would do would formally require some additional protection of the resource area which the Board can do with a negative Determination.

The Board voted unanimously in favor to issue a negative Determination to David and Debra Ray, 10 Coral Hill.

A public hearing was held at 8:00 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 removal of a loam pile and seasonal mowing of existing fields at Low Land Farm, Assessors Map 9, Parcels 12 (1,2, and 3).

Peter Van Wyck told the Board the removal of the loam pile will be done momentarily and then he would like to put the land back as it was. Stephan Gersh told him since the Order of Conditions will have to include conditions for the removal of the loam pile then the Board needs to know how he will propose to do that at some point in the next three years. Mr. Van Wyck said he would remove it by truck and excavator and will do it in the summer months. He added that he purposely put this in as part of the Notice of Intent so as to put the Board on notice that he does intend to move it and it is in the Board's interest to have it moved. Mr. Van Wyck said he would not do it this fall, but would possibly do it next summer. Stephan Gersh told Mr. Van Wyck the Board needs more

information so that they can write an Order of Conditions for it. He asked Mr. Van Wyck how he would access the area with a truck and excavator. Mr. Van Wyck told him he would do it in a way so as not to infringe upon the identified area that the Board is concerned with. He added that he is totally open to suggestions as to how the Board would like him to do it; the object is to get the material onto the access road. Mr. Van Wyck then said he has been trying to find out in the wetlands regulations as to what can be done with a wet meadow, and so he felt the Board should call Jill Provencal at the D.E.P. for an update as to what can be done with a wet meadow. He said in discussions with Ms. Provencal he knows he can cut that wet meadow twice a year. In the event he is allowed to cut it twice a year, he does not want to have a lot of stones around the area as it makes the cutting procedure more cumbersome. He suggested to the Board that the stones should be at the lower part of the land delineating the wetland boundary. Philip Lake asked if this Notice of Intent was to amend the prior Order of Conditions that required those stones be set. Stephen Gersh asked if this project was considered an agricultural exemption. Peter Van Wyck said he intends to use it for an agricultural purpose. Stephen Gersh told him it must already be in an agricultural use. Wallace Bruce said it was his understanding that Mr. Van Wyck wanted to cut the wet meadow but did not want to abide by the Order of Conditions requiring he put stones at each of the flagged corners of the wetland delineation. Mr. Van Wyck said that is correct, that this is a recognized wet meadow and the regulations say you can cut it twice a year, so he felt he was not asking for anything out of the ordinary. He repeated that he felt the Board should call Jill Provencal at D.E.P.

Stephan Gersh moved to continue the public hearing for Peter Van Wyck, Low Land Farm, to Tuesday, September 27, 2005 at 7:45 p.m., seconded by Philip Caponigro, with Robert Brophy, Philip Caponigro and Stephan Gersh voting in favor; Elisabeth Frye and Philip Lake abstained.

Stephen Goldin, Gloucester, told the Board that there is a saltwater tidal river at Low Land Farm and the regulations are very clear that there is a 200-foot riverfront area for all rivers, including Town Rivers, and it begins, according to the regulations, where the mean high water line is. Chairman Bruce told Mr. Goldin that wetland scientists from two companies have looked at that area, plus they have had approval from the D.E.P. on the area, and questioned whether Mr. Goldin was asking what has already been done, be re-done again. Stephan Gersh told Mr. Goldin there was a delineation made by Mr. Van Wyck and Apple Associates with an ANRAD only – an ANRAD does not require the 200-foot delineation from a river to be set out – an ANRAD only requires the Board to approve or reject a delineation submitted with the original ANRAD. The appeal to that ANRAD to bring in the riverfront regulations – it is irrelevant and not legally binding. D.E.P. made a decision, there has been an agreement as to the correct delineation and that is the end of the issue.

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 Court Appointed Receiver Attorney Richard Cuffe, Jr. for the implementation of a Release Abatement Measure Plan at 5, 9, 11 and Rear Southern Avenue, Assessors Map 38, Parcels 1, 2, 3, and 4, property of William Allen.

Attorney Cuffe, together with Hugh Mulligan and Joseph Orzel of Gulf of Maine Research Center, met with the Board. Attorney Richard Cuffe told the Board this is ongoing litigation that is grounded on the belief of the Board of Health that it is a junkyard operating at 7, 9, and 11 Southern Avenue. In 1990 the D.E.P. listed this property as a 'location to be investigated', based on an allegation of illegal dumping of waste oil, underground oil storage tank, clean gravel being placed over oil stained soil, and storage of unknown liquids in the two-story garage on Southern Avenue. The Court most recently ordered a clean up of the site. Joseph Orzel, Gulf of Maine Research Center, told the Board there are several wetland resource areas at the site – Essex River, salt marsh, bordering vegetated wetlands, land subject to coastal storm flowage and coastal bank. The delineation was done based on the regulations, with the exception that it was done primarily based on vegetation, the reason being that the soils in this area are historic fill. Mr. Orzel said he marked up a plan to show where some of the items are located on the property. This shows large vehicles such as dump trucks, trailers, bulldozers and road raiders and things of that nature as they are more or less present on the site. The proposal is to commence the RAM plan to begin the evaluation of the site to see what the extent of any contamination is. Stephan Gersh asked if they knew whether there is oil or gas in the machinery that is on site. Joseph Orzel said during the inventory process there was oil -stained soil. Stephan Gersh then asked before they move the machinery whether they immobilize the liquids that are in it. Hugh Mulligan, Gulf of Maine Research Center, told the Board that what they have prepared is a release abatement measure. The site has been in non-compliance since the D.E.P. was on site in 1990, when it was noticed there was spilling of oil onto the soil and illegal storage of junk. In 2002, they notified the owner that he needed to do something with the property, but there was no response, so the property became out of compliance. This summer the property is now back into compliance. The D.E.P. has allowed them to go forward but because it is in a wetland resource area they needed to come before the Commission. Mr. Mulligan stated that what they are looking at is a threat of a release. They do not know if there has been a sufficient release to be classified as a release, so it was a location to be investigated way back but nothing happened. There is so much material out there they cannot really do any testing, and where the threat of release is most severe is within a bunch of trailers. The first step they are proposing is to take out some of the large trucks – they have a lot of trouble walking around because of so much equipment. The trailers then will be pulled out of the wetlands to a more upland area and then the material would be removed from the trailers, taking all the liquids and all the metals, tires, etc. and consolidating and storing the liquids properly. Stephan Gersh said if they were to pull on the trailers they could possibly fall apart, creating a worse mess than what already exists.

Mr. Mulligan said to the extent they can drag it out safely they will and then open it up, but if a trailer cannot be pulled they would not. The trailers would be pulled with an excavator carefully, and if they do not move they will have to empty them. Mr. Mulligan added that they do not know what is inside the trailers, but they think it is barrels of oil or barrels of unknown liquids. Their objective is to clean the area of all the debris and material. Once this is done, they would do a ground penetrating radar survey because supposedly there is material buried out there. Once the survey has been completed then they are planning to put 10 or 12 test pits on site, then examining the soil, collecting soil samples and testing the soil. Based on that, they intend to do some borings and then install six monitoring wells to see if the soil and the groundwater are contaminated. Once they have done this, then they will be able to tell whether there is a lot of contamination or not. Stephan Gersh asked whether they could use some impermeable barrier on then upland side of the hay bales, down one and a half feet, so that if there is any spillage, any run-off, or any flooding from the river, at least it would stay on site. Mr. Mulligan told him they have purchased some booms that they plan to deploy on the up side of the hay bales. They have not done this yet as they would like to get some of the material back. Wallace Bruce asked Mr. Mulligan what they are hoping as an end result of this, would it be based on hydrology or soils. Mr. Mulligan said it would be based on testing that they would do, observations, and chemical test results, so that they are able to say there is no significant risk or harm to human health, safety and the environment. They then can say that the property is safe for residential or commercial use. It was noted that William Allen is paying for this work, but, according to Attorney Cuffe, the end result of this is that Mr. Allen may end up with a very valuable piece of property. A member of the public stated "I have just heard the biggest pack of lies you ever heard in your life. We are going to take care of that. There's nothing but steel in those trailers. He lies like a dog." Stephan Gersh asked him for his name. He replied, "I'm Allen's lawyer, ----- Burnham."

Stephen Gersh moved to close the public hearing for the Court Appointed Receiver, Attorney Richard Cuffe, for property at 5, 9, 11 and Rear Southern Avenue, and issue an Order of Conditions subject to receiving a number from the D.E.P., seconded Elisabeth Frye, with the Board voting unanimously in favor.

A continuation of a Request by Mac Bell for the Commission to Determine the Applicability of the Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for the repair of 900-feet of access road from the gate on Rocky Hill Road, Assessors Map 6, Parcel 24, was heard at 9:00 p.m.

Philip Lake said he walked the site and saw the sign for Essex Greenbelt and the Manchester-Essex Conservation Trust and questioned what land the Manchester-Essex Conservation Trust was responsible for. Mac Bell said Manchester-Essex Conservation Trust has been engaged in a co-operative assumption of responsibility from Greenbelt and their property is below where the gate is and his property is up above. Philip Lake

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asked what the proposed surface would be. Mr. Bell told him it would be 1.5-inch to minus 2-inch gravel. Philip Lake asked him to describe the surface that is presently there. Mr. Bell said 40-50 years evolved without maintenance. He noted that it was a good established roadbed at one time, but nothing has been done except to be washed out for the last 30 to 40 years. A letter was received from the Essex Greenbelt regarding the road, and Stephan Gersh asked whether a letter had been submitted from the Manchester-Essex Conservation Trust. Mr. Bell said Greenbelt owns the land. Philip Lake said ultimately the landowner is the one subject to any conditions and if the Board is restricting the land that belongs to someone else they should not sign off the application. He noted the letter has Mr. Bell listed as the owner of the land and the applicant but he doesn't think that is the case. Mr. Bell said as far as they are concerned it is the case – the Board could require a title search and that could require several thousand dollars worth of process, in which case he would take great insult and find the process beyond the beyond. Mr. Bell said they are talking a minimalist approach – his interest is to do nothing with it, maintain it, and perpetuate its natural beauty. They have no plans beyond that. Stephan Gersh said the Board will require protection of the vernal pools on site. Mac Bell said he is completely sympathetic to and respectful of Martha Hoar's work and all the vernal pool efforts.

Steven Goldin, Gloucester, wanted to speak to two topics, 1) the environmental aspects, 2) the legality of the road. As Essex does not have an agent, he submitted the paperwork for comments to Gloucester Environmental Agent, Nancy Ryder. She made the following comments: 1) there is incomplete information on the application, as it says road's average width, so the width at each point is unknown, 2) the hydrology – the vernal pools are on both sides of the road. The work may significantly raise the height of the road and affect the flow of water over it. He feels it needs to be researched. 3) They can certify the vernal pools but not what vernal pool creatures live there, which he feels is very important in conditioning the work. There is heavy equipment coming in very strict controls are needed. Also erosion controls are needed for the three vernal pools. All this shows that a Notice of Intent is required. He submitted a document from the Registry of Deeds when the property was given to Mr. Bell, that stated that Conomo Drive was a public way. He noted that someone from the Town stated it was both public and private. Mr. Goldin said there is no such thing as a public and private way. He said he has walked the road and feels a road is needed there, but the permission to do the work needs to come under a Notice of Intent.

Stephan Gersh moved to issue a negative Determination to Mac Bell with conditions, that 1) the roadwork be no more than 10-feet wide on average and located between the boundaries of the road shown on the plan titled "Plan of Land in Essex, Massachusetts", dated January 10, 1986, prepared by Hancock Associates, and 2) erosion controls be placed as indicated for 100-feet on either side of the road in the area of the vernal pools, 1-foot away from the 10-foot width of the roadway, and removed one month after completion of the project, seconded Philip Lake, with the Board voting unanimously in favor.

9:30 p.m. Informal discussion of redevelopment of 132 Main Street – Doug Trees, of D F Trees Associates met with the Board to discuss the redevelopment of the Essex River Motel, 132 Main Street. The main proposal is that the main house stays intact, but the motel buildings and office will be demolished and replaced with condominiums. There is an existing permit for the boat ramp that they will maintain. Mr. Trees was asked where the parking would be located. He stated the elevations in that part of the site are about eight, so the first floor would be over garages where only cars would be parked at that elevation. The living level would be at seventeen, well above any flood level, so each unit would have two parking spaces, with additional parking for ten cars. The condos will be two stories. It was noted the plan has not, as yet, gone before the Planning Board. Mr. Trees said the impervious surface would not increase but remain approximately the same. The applicant wanted feedback from the Commission that this would be a project that seems reasonable and would fit in with their interpretation of the Wetlands Protection Act. It was noted that the flood elevation was elevation 10. Some of that site elevation would be filled. Philip Lake asked what existed for a storm water system and what was proposed. They were not sure what existed, and maybe just surface run-off, but what they would do would be to capture it with catch basins. Stephan Gersh said he felt the project was reasonable, but they should go to the Planning Board first, and then come back to the Commission. They would have to go through the Rivers Act and an alternatives analysis for the project.

A request for a Certificate of Compliance was made by Robert Cummings, 31 Gregory Island Road.

Stephan Gersh moved to issue a Certificate of Compliance to Robert Cummings, 31 Gregory Island Road, certifying that the work done under Order of Conditions D.E.P. File Number 21- has been satisfactorily completed, seconded by Philip Caponigro, with the Board voting unanimously in favor.

Building permit application review:

- 1) Brian and Heidi McKeon, 8 Turtleback Road, for the construction of an in-ground swimming pool – A Request for a Determination of Applicability was filed for the project.
- 2) Robert and Toby Nathan, 3 Hardy Lane, to demolish an existing storage shed and replace with a new shed. Robert Brophy will check the site.
- 3) Andrew St. Pierre, 39 Wood Drive, for the installation of a 12x34-foot deck to the rear of the house - A Request for a Determination of Applicability should be filed for the project.
- 4) Ralph and Nina Amero, 34 Forest Avenue, for the construction of 10x10-foot and 10x28-foot additions. Wallace Bruce will check the site.

Board of Health Verification of Conservation Commission Jurisdiction Form:

- 1) Robert Port, 35 Conomo Point Road – The Board does not have jurisdiction.

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- 2) John True, 95 Conomo Point Road – An Order of Conditions has been issued for the project.
- 3) Edward Gallivan, 25 Haskell Court – The site will be checked for wetland issues.

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

Meeting adjourned at 10:10 p.m.

Prepared by:

A handwritten signature in cursive script, appearing to read "Gillian B. Palumbo", written over a horizontal line.

Gillian B. Palumbo  
Administrative Clerk

Attest: