

Essex Conservation Commission

January 17, 2006-Minutes

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

Present: Wallace Bruce, Chairman, Robert Brophy\*, Shirley Singleton, Elisabeth Frye, Stephan Gersh, Philip Lake\*\*, Philip Caponigro

Meeting called to order 7:30

7:30 – Alex Filias - discussion of work being done at 138 Main Street. W. Bruce asks Mr. Filias to describe what is being done at the property as S. Gersh had been to the location and there were some issues.

Mr. Filias states that the sewer went through there - S. Gersh asks if it was on Main St. – it starts from the back of our property and went up to the right side. He asks if anyone is familiar with the property. Commissioners are. He says that what happened there is that there were a lot of dead trees and what not through that area and they were kind of pushed to the side and pushed out when the sewage contractor put the line in there. So they have been done at least three weeks and we were between jobs and we went in there just to clean it up. And we did not do any digging or anything. We just loaded the brush up into a dump truck to dispose of it.

S. Gersh asks who connected the apartment to the source main.

Mr. Filias states that it was the sewage contractor doing this working for the town. S. Gersh says that he got confirmation of that and they said that Mr. Filias hired them to do that. Mr. Filias states that he is not sure how that works. S. Gersh says that they can't, unless you hire them, come up to your private property, the apartment building at 138 Main St.

Mr. Filias says that they put the pump station in and put the pipe from there to the street. He says that you people (meaning the Con Comm.) have an easement on his property to do that work and that is why he was kind of bent that we called him about this. S. Gersh reviews the procedure with the applicant and asks if the apartment was connected to the town sewer. It was not. Mr. Filias states that he probably won't tie it in until the next project. The commission is OK with the explanation. S. Gersh reviews what was discussed with the contractors who put into the sewer, but failed to ask about connecting to the apartment building. The work was done by the town contractor and not the apartment owner, therefore there is no problem. Mr. Filias states that he was simply taking out the brush and asks if this is OK and that he could put in hay bails if necessary. S. Gersh says everything is fine. The Commission thanks Mr. Filias and moves on.

\*7:35 – Robert Brophy arrives.

7:35 – Continuation of a public hearing- Jeff Allsopp for the Greenbelt Association, renovations to existing structures, new additions, walkways, and

retaining wall at 82 Eastern Avenue, Assessors map 14 (9), DEP # 021-0523. The site plan is reviewed and no changes have occurred since the last meeting. W. Bruce asks if there are any comments from the public on this hearing. S. Gersh makes a motion that the public hearing be closed at 82 Eastern Ave., seconded by P. Caponigro, the Commission voted unanimously to close the public hearing.

Because there is extra time between appointments, W. Bruce asks to take care of some business:

John DiBlasi, 22 Lufkin Point Lane, building a deck. Mr. DiBlasi shows a site plan. He is asked to describe what his intentions are. He points to the existing house, this is the living room area, and this is the sunroom. What they want to do, there is a brick patio underneath there now, and what they want to do is put in a deck on the first floor over the patio. There is a set of stairs there and they will remove them and carry the deck out. There will be 6 footings and it will all be done by hand as there is no way to get machinery down there. E. Frye asks about any off set rules, and finds there are none. They did taper the deck to conform to the property line and keep it, minimize the effective square footage and thinks it is a good way of doing it. W. Bruce asks if there are any issues from the Commission. The building permit is signed.

Larry Schwin and Edward Connelly, 135 Western Ave., W. Bruce identifies the property and states they want to put the garage in on the hill. The sewer line placement is reviewed. There are no jurisdictional issues and the permit is signed.

\*\*7:40 – Philip Lake arrives.

7:45 – Continuation of public hearing, Peter Van Wyck, 3 houses and appurtenances at Low Land Farms, Assessors map 12 (3). P. Van Wyck wants to wait for his council, Russ Brown and wants to proceed with the Turtleback Rd. gas line issue scheduled for later in the meeting. He asks about a quorum, and is assured there are enough members to vote. Because there may be public concerns the Commission opts to wait for the attorney and move forward on the gas line issue at the appointed time.

Move to the building permit for John Fenton, 47 Lebaron Road, a site plan is reviewed and location of property is discussed. It is not evident as to what the project involves and there are many questions from the Commission as to the actual work to be done. The building permit will not suffice in this case and either an RDA or NOI will be needed. W. Bruce suggests that the applicant come in to explain the project in order to determine the proper course of action.

7:55 – Proceed with the continuation of public hearing for Peter Van Wyck at Low Land Farms. Russ Brown introduces himself as the representative for Peter Van Wyck in this issue and is unsure where they left off. He states that Peter wants

to amend his plan, so they have a new submission where he is actually going to move one of the houses back and away.

W. Bruce interrupts and states that for clarity, we want to understand why this issue has been continued and refers back to the minutes of October 4th. If you go to page two, in the third paragraph down, the issue is subject to final sign off from Board of Health and Planning Board. This is the issue at hand and to close the circle on this, asks if these things have been done.

Mr. Brown states that the Applicant does not have those, but the Board of Health has signed off on the septic systems on lot 3 and assumes all we are dealing with at his point. The Planning Board issue is the main reason why they are here although the Planning Board has not signed off on this special permit. The plan that Peter first submitted in 1994 was tied up in litigation all the way up to 2001 such that the plan did not get signed by the Planning Board until 2002. Because the property was tied up until 2002, the zoning that applies to this subdivision is the zoning that was in effect in Essex in 1994. So he needs to flush out with the Planning Board the zoning in 1994 and there was no special permit process for these houses at that time. He thinks the statute is very clear that he doesn't have to go through that special permit process and doesn't need a sign off by the Planning Board. It is being addressed by the building inspector and it is going straight to a building permit application and he won't be dealing with the Planning Board for a special permit.

S. Gersh states that we will need to have that clearly defined to the Commission by the Planning Board.

Mr. Brown states that this is a new issue and suppose they have to go to town council to verify that this is correct, but the statute is very clear on this and that 8 years from the signed endorsement of the subdivision plan there is a lock in on the zoning.

S. Singleton asks about the moving or changes to the plan that is being referred to does it have anything to do with zoning, or is it a convenience. Why is there a change at this late stage?

R. Brown states that it is just a house design Peter has moved ahead as to the design of the houses and as he gets more involved with the actual configuration of the houses, he didn't like what he saw and wants to move them a bit.

Unfortunately when he wants to move the footprint of the house even just a little bit it becomes an issue for the Con Comm. being so close to the wetlands. The only question for the Con Comm. is this a legitimate amendment to the plan. You will have to take a look at it and have that discussion. He thought it might be that because he is moving in the right direction away from the wetlands,

S. Gersh wants to return to the actual reason why the continuation was put forth and the reason is because of the need to have the Planning Board and Board of Health sign off. Is that correct? R. Brown assumes so. The reason it has been continued is because we needed a sign off, or now that a different perspective is being introduced you need something from the Planning Board that acknowledges what you are presenting. We need an official document before it

can be approved by the Commission. There is a discussion as to why. It is determined it is standard operating procedure.

R. Brown asks when the next Con Comm. meeting is and that all that is needed is a sign off from the Board of Health and resolution from the Planning Board.

Mr. Brown states that the Planning Board is looking for a new site plan and then they will move forward.

S. Gersh inquires about the new variation. P. Van Wyck states that it is just a slight change. And that The Order of Condition for Lot 3 has already been issued. A review of the site plan ensues. Mr. Van Wyck states that he elected to put a particular house down further "this way, not far" but it was in the buffer zone and points to the shift in reference to the wetland. P. Lake asks if this is the house that he got the conditions for. R. Brown states that it has already been approved.

P. Van Wyck states that the reason why he filed another Notice is because he wanted to shift this house that was in the buffer and that is all that we are dealing with. It so happens that what has happened is that he has turned this house this way (pointing to the site plan). E. Frye asks whether he shifted two houses. Mr. Van Wyck replies that they are just rotated a little bit. The point is that he is not any closer to the wetlands, just a shifting about 20 degrees. He restates that this has already been approved. S. Gersh and E. Frye comment that the shape is now different and that this is the confusion.

R. Brown says that this has already been approved a while ago and it is closer to the wetland and that this new plan, puts this aside for the sake for getting things straight. W. Bruce comments that this plan is the one that the Commission ordered the Order of Conditions on.

R. Brown wants to clarify that they are asking for a change or amend the plan that is pending in this application they want to change it. S. Gersh asks for the new plan which R. Brown provides. The new plan is reviewed and the new measurements and shapes of the houses are discussed and compared with the old plan. P. Lake asks about the corrected radius and the road. R. Brown states that the Planning Board asked for certain widening to the driveway, which they put in. S. Gersh states that, speaking for himself, he feels that this is a minor change. It does still need Planning Board approval, but he doesn't feel that 5 feet either way, especially since one is being further away from the wetlands, is any significance. P. Lake states that they would need to file an amendment with them and the DEP, but no new public notification is necessary. R. Brown asks if that is the general feeling from the Board; R. Brophy and others agree. P. Van Wyck then asks if they just need some documentation that they are not subject to the special permit and that will be it. S. Gersh confirms. W. Bruce asks that before the plans are put away and if the Board is done commenting, then he would like to ask the public if they have any comments.

Kimberly Jermain, Apple Street, has a concern about this plan in general. She has made this objection before and would like to make it now. She is concerned about the Rivers Act and its application to this. She really feels that it is within the river, you can row right up to it and the 200 feet needs to be protected. A commissioner asks where you can row up to it; on this side. K. Jermain states

that you can just come under the bridge and right along the property and proceed up to Apple Street and that is not even at high tide. You can go right up to this point. P. Lake asks if that is drawn up on any of the plans. K. Jermain states that it should be understandable by the elevation. It should be seen that that is the edge of the river.

Steven Goldin, 14 Hodgkin St. Gloucester, Also submitted something from the River Protection Act referring to the mean annual water line and refers to the legislation determination of the water line. He continues stating this is the Essex tidal river; you see the tide coming up every day, in a very similar river the DEP has determined that the tidal river is subject to Rivers Protection Act. He references the site plan and says the river comes to a certain point, where you have the bank to that salt marsh and it is within the 200 foot area is river front with very strict regulations; the first 100 feet can't be built on at all except for extraordinary circumstances and with very strict standards for the 2<sup>nd</sup> hundred. He wonders why it has not been marked out, that because of the inadequacies of the application put forth. He states that it is an evasion.

S. Gersh points out that, that in particular they are not defending or criticizing, DEP in a superseding order said that that was not part of consideration for delineation for Low Land Farms. This was delineated and then was appealed and they came down and checked the boundaries and the determination was that these boundary lines are correct. They also said specifically that it was outside of the Rivers Act.

Mr. Goldin states that he has read the Order and it is a matter of record in the Con Comm. files and they said no such thing. The only thing they said is that they rejected the report that was approved by the Con Comm. and when they were contacted by people, they just said that those delineations aren't good and that he (Mr. Van Wyck) will have to come back with new delineations and that time will have to be determined by the Con Comm. and then they will look at it. "They said no such thing, I read it over."

S. Gersh puts forth that we are talking about two different ones; one had to do with a wetland that occurs here, Lot 3 is here, the wetlands here. The Order of Conditions that we have on this property requires Peter before he starts work here, upon this building.

S. Goldin tries to clarify that the superseding order he is talking about was the one issued in September. P. Lake and S. Gersh state that that was for a separate one. That one had to do with the definition of a wet meadow. S. Goldin asks if that does not apply to this area. S. Gersh discussed the past review of the property and that it was accepted by the DEP.

Mr. Goldin disagrees that it was accepted by the DEP. Beyond the legalities, he asks why the 200-foot river front area regulations do not apply to this. W. Bruce states that this has been checked twice. Mr. Goldin is confused as to who checked it and can we just speak to the facts that we have a title river, it comes up to the edge of this, why should not the boundaries of the river front boundary not extend 200 feet in as the regulations dictate?

P. Van Wyck comments that twice a year the high tide does flood the area, but the river stream is really beyond the 200 feet. S. Gersh asks if there is water at a

certain point. K. Jermain says there is, she can take her oar and touch the property. S. Goldin says yes, twice a day.

K. Jermain restates that this is something that really needs to be determined and that it is quite clear that it is river front property, stating you can follow the whole edge of the property and right up to the end of Apple Street. He (Mr. Van Wyck) is going to advertise this as river front property because that is what it is and he would not be wise not to. It need to be protected if it river front property, you can't build within 200 feet. It just has not been discussed by this Board and thinks it is serious and under the Commissions purview to protect and asks that we do this as a citizen of the town. In all the 10 to 15 years this has been discussed the river issue has not been discussed.

P. Lake states that this issue has been addressed by the DEP, but Mr. Goldin and K. Jermain state that the DEP said the Con Comm. would have to address the issue and has to come at a later stage.

W. Bruce asked if P. Van Wyck and R. Brown were planning on continuing this. R. Brown says yes as they address the Planning Board issue and will address the River Act issue as well. W. Bruce asks if anyone else from the public that would like to speak on this matter.

W. Bruce recommends that in light of a continuance, the Board address the citizen's concerns. He thinks that is fair. While they are here, he would like to set a date to go down and look at these concerns and make sure their concerns be addressed. A review of the boundaries of where the riverfront starts is relevant.

S. Goldin interjects that the DEP has these figures and they should really be consulted before a determination is made.

P. Lake says that a site visits should be determined now, but we need to find out when is high tide to be sure we have the right information. The Commission will plan a site visit utilizing a representative and then contact the public through a posting in the Town Hall.

A continuation will be held February 21<sup>st</sup> and the site visit will be discussed. K. Jermain maintains that this is important and a lot of people will be interested. S. Singleton makes a motion that this hearing be continued until the 21<sup>st</sup> of February, S. Gersh seconds and the Board votes unanimously, E. Frye and P. Lake abstaining.

S. Singleton makes a motion that someone from the Board contacts Mary Rimmer to see if we can hire her to look at the River's Act in relation to Low Land Farms, P. Caponigro seconds, the Board votes unanimously, E. Frye and P. Lake abstaining.

8:35 – Public Hearing on a Notice of Intent by Peter Van Wyck for the excavation of a trench on Apple Street and the installation and extension of a gas line on Turtleback Road. W. Bruce does state that because we have no DEP number at this point we can't really hear this. P. Van Wyck asks if we can speak to it as we have plenty of Board members here. He states that it involves taking the natural gas line that is down turtle back road and stops at the end of it and Apple Street

and he wants to continue it to Low Land Farms about 500 Feet. He didn't think this was an issue for conservation and was dealing with the DPW and then they made an indication that it needs to be addressed here, so the application was filed. The trench will be right along the pavement; seems like a simple deal being done in a day. P. Lake asks who determines if this meets the gas companies requirements. P. Van Wyck has no answer except to say the DPW is involved. P. Lake states that it looks like you are going through the right of way that needs approval from the town or adjacent landowners. P. Van Wyck returns that he has always gone through the DEP and it has been fine with their approval. S. Singleton comments that a safety issue must be addressed and reviewed by the town. She doesn't want to bless it but review it with the DPW, W. Bruce agrees.

Jennifer Stephens, 47 Apple Street, voices a concern about the access to the road during construction. She asks which side of the road it will be going on and will they be crossing the street. She asks how and if they will be notified when the road is going to be disrupted.

S. Singleton wants to see more information on this as it is a public roadway having the DEP come in and give some specifications or their blessing and it is a safety issue on a public road if it is not down deep enough or what ever, we need more information. R. Brophy suggests we call DPW and have them down to the next meeting. S. Singleton agrees.

S. Singleton makes a motion to continue this public hearing to February 7<sup>th</sup>

P. Lake interjects that we should announce that the site visit for the previous hearing should be scheduled Saturday, January 28<sup>th</sup> at 9:30 am when it is high tide. This should be announced now; Commission agrees and checks with applicant who is available.

R. Brophy seconds S. Singleton's motion; motion passed.

W. Bruce asks that people who have been waiting to come forward. They are from 24 Maple Street. There is no information on this building permit. Board of Health was supposed to forward it our way.

A discussion about clarifying name of Great Marsh took place.

R. Brophy moves to 4 Ralston Drive and says that everything looks great.

W. Bruce looked at Sandy Patrican's property; there was a comment on the driveway that was the only issue. He looked at it and it is fine, the run off area is nice, just as asked.

Both Certificates of Compliance are signed.

(Back to 24 Maple St.) As there is no building permit, W. Bruce asks them to describe it and then we can make a decision. The applicant states it is a vacant lot on Maple Street next to Joanne Doyle's current house at the big corner. The vacant lot has been surveyed and approved as a building lot, the house is set back and with the set back about 45 feet from the bottom of the hill. The site plan is reviewed.

W. Bruce asks if the house they want to build is depicted at a certain point on the plan. It is. There are no jurisdictional issues so when the building permit is found we can approve. Call Joe Walker at 978-768-7228.

The Determination for the Pallazola Brothers is reviewed along with the specific conditions. Commission agrees everything is in order and signs Determination.

Haskell Court (Edward Gallivan) issue is addressed. A review indicates it is all fine and a Board of Health Verification is signed.

Minutes for December 6<sup>th</sup> are passed around for approval.

W. Bruce revisits the Low Land Farm issue and states that this issue has been reviewed a number of times and wonders how far they really want to drag this out. The Commission discusses the past information and findings in order to determine where to go with this issue.

9:10 – S. Gersh makes a motion to close meeting, P. Caponigro, seconds, the Board votes unanimously.

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Mary M. Ferreira  
Administrative Clerk

Attest: