

Office of the

## CONSERVATION COMMISSION

Town of Townsend,  
272 Main Street  
Townsend, Massachusetts 01469



**James Deroian, Chairman**

**Heather Hampson, Clerk**

**John Hussey**

Leslie W. Gabriliska,

*Conservation Agent*

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### Minutes

#### Selectmen's Chambers

#### Memorial Hall

*Wednesday, July 22, 2015 @ 7:30 P.M.*

#### 1.0 Preliminaries

**1.1. Open Meeting** – Chairman James Deroian opened the meeting at 7:38 pm

**1.2. Roll Call** – Chairman James Deroian (JD), Veronica Kell (VK), Heather Hampson (HH), Jennifer Pettit (JP), John Hussey (JH) and Christine Vitale (CV) were present. Conservation Agent Leslie Gabriliska (LG) was present.

**1.3 Topics not reasonably anticipated by the Chair 48 hours in advance of the meeting**

**1.6 6/10/15 Executive Session minutes**

**4.2 Federal Energy Regulatory Commission Errata Notice: address correction for scoping meeting at Greenfield Middle School, Greenfield, MA**

VK motioned to add 1.6 and 4.2 to the agenda, seconded by HH, all in favor.

**1.4 Chair's Report** - none

**1.5 Administrator/Agent Report** - LG reported on the following:

1. She is helping Ed Kukkula, Highway Superintendent, file a Notice of Intent to replace the culverts under Old Meetinghouse Rd.
2. She will see if Russ Cohen can walk the Squannacook River to scout out the places where obstructions can be removed. If he is not available, she will check with the Dept. of Ecological Restoration to see what needs to be done.
3. LG will schedule Gerald Clark, who directed the restoration of Rt. 13 from the hazardous waste spill, to meet with the Commission to go over the work and determine what else needs to be done to close the matter.
4. Quarterly reports are due to the Board of Selectmen
5. She worked with a resident on Wallace Hill Rd to file a Request for Determination of Applicability for a ground mounted solar array. It would be helpful if the Commission could look at the site prior to discussing it at the meeting on August 5<sup>th</sup>. The Commission agreed to a site walk on Monday, August 3<sup>rd</sup> at 7:00 pm if the homeowner is available.
6. The DEP Circuit Rider follow up "hands on" stormwater management workshop and the soils and vegetation workshops still need to be scheduled,

7. LG and Nashoba Board of Health Agent, Rick Metcalf, are working together to permit a flow device for a resident with a shallow point well on Edward Rd. She will be issuing an Emergency Certificate for the commission to certify.

### **1.6 Review of Minutes (5/27/15, 6/10/15, 6/10/15 Executive Session, 6/24/15 and 7/08/15)**

CV motioned to approve the 6/10/15 open meeting minutes, seconded by JP, all in favor with HH abstaining.

VK motioned to approve the 6/24/15 minutes, seconded by CV, all in favor with HH abstaining because she was not a Commissioner at the time, and JP abstaining because she was absent.

HH motioned to approve the 7/8/15 minutes, seconded by CV, all in favor.

VK motioned to approve the 5/27/15 minutes, seconded by JP, with JH and JD voting no, CV and HH abstaining, VK commented that her concern was that if the minutes are not completed in a timely fashion, there will be another open meeting law complaint.

HH left the room at 9:58 and returned at 10:00 pm

## **2.0 Hearings and Appointments**

### **2.1 7:45 Notice of Intent (DEP #308-627)**

**Applicant: Mark Truitt**

**Location: 14 Scott Road**

**Project: proposed construction of a 16' x 22' addition in the Riverfront Area of the Squannacook River.**

JD opened the hearing at 7:50 pm. HH checked the abutter notifications and noted that all was in order. HH read the legal notice aloud. Applicant Mark Truitt was present and represented the owners, Mr. and Mrs. Floyd Truitt, who were not present.

Mr. Truitt explained the project, which was an addition to an existing home built in the 1950's. Almost, if not all of the entire lot is in Riverfront Area; however, there is no alternative location for the addition on the lot. There is a garage to the left and there is not enough room to the right of the house to build an addition. There is also the required 15' setback.

The topography is level and it is at least 50' to the end of the lawn. The property drops off steeply at the back of the lawn to the Squannacook River and associated wetland and floodplain. There is very little chance of any sediment washing across the back lawn to the wetland below. However, Mr. Truitt will install either straw wattles or silt fence, but not hay bales.

HH motioned to issue an Order of Conditions with the special condition that Mr. Truitt install silt fence or straw wattles, seconded by CV, all in favor.

HH motioned to close the hearing at 8:05 pm, seconded by JH, all in favor.

### **2.2 8:00 Abbreviated Notice of Resource Area Delineation (DEP #308- )**

**Applicant: B & C Associates, Inc.**

**Location: 48 Clement Rd**

**Project: The application is for approval of the proposed delineation of wetland resources on the property**

JD opened the hearing at 8:05 pm. David Crossman, B&C Associates, represented the property owners, Zachary and Anne Marie Zufelt, who were present. HH read the legal notice, checked the abutter notifications, and reported that all was in order.

Mr. Crossman presented the project, which was a proposed wetland delineation on the 32.38 acre lot. The lot currently has two existing houses on it. LG advised the Commission that an abutter had visited the office and advised her that they thought there was a pond to the northwest of the western house that was not the same wetland that was delineated with the A-series flags. The Commission also questioned whether the A and B series wetlands were connected.

The Commission agreed to a site walk on Monday, July 27 at 6:30 pm. LG will meet with Mr. Crossman earlier in the afternoon to walk the site as well.

HH motioned to continue the hearing to Wednesday, August 5, 2015 at 8:15 pm., seconded by CV, all in favor.

### **2.3 8:15 Amended Order of Conditions (DEP #308-621A)**

**Applicant: Nichole and Brian Fluet**

**Location: 35 Vinton Pond Rd**

**Project: to determine whether a final Order of Conditions can be amended to include the installation of an underground propane tank for a single family home within the 100 ft. buffer zone of Vinton Pond**

JD opened the hearing at 8:27 pm. HH checked the abutter notifications and reported that all was in order. HH read the legal notice. Homeowner/applicant Nichole Fluet was present.

Mrs. Fluet presented their request to amend their Order of Conditions. They wish to install an underground propane tank instead of an above ground tank. There will be two 275 gallon tanks, which will be 10' from the property line. Washed sand will be placed at the bottom of the hole. The erosion controls are still up, and the work will be done within a week.

HH motioned to issue the amendment to the Order of Conditions, seconded by JH, all in favor.

HH motioned to close the hearing, seconded by CV, all in favor.

### **3.0 Work Session**

**3.1 Interview and vote on prospective volunteers to Conservation Commission** – JP suggested that the Commission interview the two applicants and then vote on them at the next meeting. This would allow Commissioners the opportunity to think about their decision. JD responded that he wanted to interview and vote tonight.

There were two applicants; Michael Turgeon and Patricia Jemiolo. Karen DiStasio had advised LG earlier that due to her schedule, she was not able to commit the amount of time needed to serve on the Commission. She hoped that she would be able to do so in the future.

JD asked Ms. Jemiolo why she was interested in serving on the Commission. She responded that she wanted to help the town and was interested in learning the process of protecting wetlands and wildlife. The land behind her has seen a lot of ATV activity and it is significant wildlife habitat. She has visited the office to look at our information, and she is not working so she would have a lot of time to give to the Commission. She has attended a lot of Commission meetings as well.

JP noted that she has been extremely helpful with stopping ORVs, including working with the Townsend Police Dept., Environmental Police Officers, and confronting riders herself. She further noted that the area has a history of environmental violations – a car in the Squannacook River, dumping and fires. Ms. Jemiolo confirmed JP's statement.

VK asked to hear Michael Turgeon's response. He said that he had been a wetland scientist since 1987. He has a degree in Environmental Science with a focus on biology. He has also taken graduate level courses in soils. He completed a 40 hour NOFA course for organic land care and has worked as a consultant. He spent 8 ½ years with DEP's Northeast Region. He was the Townsend conservation agent for 1 ½ years, and was an associate member in the early 90s. He worked with former Conservation Commission Chairman Karen Chapman to get a grant for organic land care at the town hall. He has testified as an expert witness for DEP and for private clients. He flagged 8 miles of the Fitchburg rail line for his current employer, Jacobs Engineering. He also monitored the installation of broadband cable for 40 towns and facilities.

CV asked Mr. Turgeon if he was still in business for himself. He responded that he is monitoring a restoration area in Billerica. He is now working full time at Jacobs.

HH asked if he works in Townsend. He has worked for Cornerstone Land Consultants in town. CV asked if it has been more than a year since he worked on the Karen Hill case. He worked for her in May 2015 when he participated in the DEP site visit to Karen Hill's property.

CV asked Mr. Turgeon again whether it had been more than a year since he had worked on Karen Hill's appeal. She asked that question because if it had not been more than a year it may give the appearance of a conflict of interest. She also told him that she was uncertain because being a commissioner is an unpaid volunteer position. She advised Mr. Turgeon to go onto the Mass.gov website and take the test so he could make the determination. HH advised Mr. Turgeon that he would have to take the conflict of interest test if he became a commissioner, so it would be worth his taking a look. She also advised Mr. Turgeon to make a disclosure to the Attorney General's office, as he said he planned to contact the Attorney General to find out if his working with Karen Hill was a perceived conflict. He may not be in violation if he makes this disclosure. Mr. Turgeon acknowledges that he would have to recuse himself on any project that he is working on privately.

VK asked if he was involved in the appeal before the town. JH said that the questions were inappropriate.

CV said that she knows that he is highly qualified, but she reviewed the ethics website and was concerned that his being on the commission would have the appearance of a conflict of interest based on issues with the town. She stated that as a public servant she is required annually to take and pass the State's Conflict of Interest training, so that puts her in the frame of mind to ask questions that are in the State's training. Therefore she respectfully disagreed with JH's belief that conflict of interest queries are illegal. .

VK asked Mr. Turgeon what he had done as a private citizen to protect Townsend's natural resources. He reiterated that he had been an associate to the commission in the 90s and helped with the town's organic lawn care demonstration project. He partnered with Yard Spice on the project, who made no profit on the materials.

VK asked Mr. Turgeon if he believed in the Townsend Wetlands Bylaw regulations with a 35' no disturb buffer zone and a 50' no build buffer zone. MT responded that the 35' was based on a regulation requiring that a 35' natural vegetated buffer strip be shown on a plan, and the 50' buffer zone is not in the regulations but is a policy. He said that the ability to obtain a waiver to the regulations should be explained, listing specific, consistent conditions in which the waiver can be given. There should also be performance standards once the waiver is given.

VK asked Mr. Turgeon if he believed in the 35' no disturb regulation, given that it is not well defined. JH interceded, asking VK if she would ask Mrs. Jemiolo the same question. She said that

she intended to ask both applicants. She then asked Mrs. Jemiolo if she believed that the commission should uphold the 35' no disturb. Mrs. Jemiolo replied that the commission should keep the 35' regulation as it has worked well at protecting the wetlands. She did not see why it should be changed but she is studying it to be more informed.

VK asked MT if he had done any trainings through the Massachusetts Association of Conservation Commissions. He responded that he attends the annual conference to keep up to speed on issues. He will take the courses where he feels he might be weak.

VK asked Mrs. Jemiolo if she would take MACC courses. She responded that she would take whatever is available and will earn whatever certificate she needs to get up to speed with the board.

JP asked Mrs. Jemiolo if she had served on the Finance Committee. Mrs. Jemiolo responded that she had served on the committee for a year.

CV said that she had no further questions.

The Commission discussed the dates each applicant submitted their volunteer applications. Mrs. Jemiolo applied on November 11, 2014. Mr. Turgeon applied on June 29, 2015.

JH motioned to move on voting. There was no second.

VK continued with additional questions. She noted that the Commission understand why Mrs. Jemiolo wants to serve on the board. She asked Mr. Turgeon why he wanted to serve on the board since it is a different situation than being a consultant. MT said that he would like to help with the pipeline and the Commission will need someone who has monitored projects. VK said that she was concerned that he would not uphold Townsend's regulations in light of Karen Hill's plans.

JH again motioned to vote as he disagreed with VK's line of questioning.

JP again said that she wanted to take time to think about the two applicants. She was concerned that the appeal has not yet moved through the court system. She recommended running Mr. Turgeon's application by Town Counsel or the Attorney General to see if there would be any potential conflict of interest.

JH said that the BOS will look at the situation long and hard, so the Commission does not need to discuss the issue.

JP was concerned about the issue of fairness, remarking that JH and JD wanted Stephen Marshall appointed over Veronica Kell because of the issue of fairness. One person who attended more meetings than someone who came in a little later but was more qualified was voted in by the Selectmen because of the issue of fairness.

JH motioned again to vote on recommending one of the applicants to the Board of Selectmen, seconded, with JD voting yes, HH voting yes, CV abstaining, VK voting no, JP voting no, and JH voting yes. The motion passed.

HH motioned to recommend Michael Turgeon's appointment to the Conservation Commission to the Board of Selectmen, pending a decision from the Attorney General that there would be no conflict of interest, seconded by JH, with CV voting yes, JH voting yes, HH voting yes, JD voting yes, JP voting no and VK voting no. The motion passed.

VK motioned that if the Attorney General's office determines that there is a conflict of interest, the Commission appoint Patricia Jemiolo, seconded by JP, with JH voting no, CV abstaining, VK voting yes, JP voting yes, JD voting no, and HH voting no. The motion failed

**3.2 Planning Board Referral Notice: Renewal of Special Permit, 12 Ball Rd** – JH motioned to issue a no comment, seconded by CV, all in favor.

**3.3 Vote on whether to extend the Order of Conditions for DEP #308-497, Phases I and II, Coppersmith Way** – JD reported on the Commission's site visit to the property on 7/15, attended by JD, CV, VK and LG. JD said that it was the first time he had visited the property and he was impressed with the development. Commissioners observed the swales, bioretention basin and rain gardens, as well as the gravel parking area set aside for the trail in to Old Meetinghouse Park. JP commented that she was involved in the original permitting of the development, and she said that fencing in the buffer zone should be reviewed by the Commission. VK noted that people don't usually know about the wetlands regulations when they move in, so the Commission could send a letter to the homeowners about them. LG said that once the houses were built, it was her understanding that they become subject to the bylaw. The development is a 40B, so it was exempt when permitted.

VK motioned to approve the one-year extension of the Order of Conditions, seconded by CV, all in favor, with JP voting no because she had voted against the original Order.

**3.4 Public Records Request from Karen Hill, Clark St., Gardner, MA**, - LG reported that she had already responded to this request for a copy of the audio tape of the July 8, 2015 Conservation Commission meeting. The Commission did not tape the meeting.

**3.4 Open Meeting Law Complaint from Karen Hill, Clark St., Gardner** – This complaint was in reference to "topics not reasonably anticipated by the Chair 48 hours in advance of the meeting" that is on each agenda. LG will draft a response for the Commission's review and signature..

**3.5 Open Meeting Law Complaint from Karen Hill, Clark St., Gardner, re: meeting minutes** – This complaint was in reference to the May 27, 2015 minutes. Again, LG will draft a response for the Commission's review and signature.

**3.6 Planning Board Referral Notice: Special Permit, 352 Main St** – LG and HH read. HH motioned to issue a no comment, seconded by CV, all in favor.

#### **4.0 Correspondence**

**4.1 Approved Forest Cutting Plan, Ambros Corp, Gary and Kathleen Amadon, Wheeler Rd** – LG to try to check boundaries. VK pointed out that there is a stream in the northern section of the property.

**4.2 Federal Energy Regulatory Commission Errata Notice: address correction for scoping meeting at Greenfield Middle School, Greenfield, MA** – LG gave copies to Commissioners.

**5.0 Executive Session for the purposes of discussing strategy with respect to litigation** – JH motioned to go into Executive Session for the purposes of discussing strategy with respect to litigation, then to return to open session only to adjourn, seconded by JP, with JH voting yes, JP voting yes, VK voting yes, CV voting yes, HH voting yes and JD voting yes. The motion passed and the Commission went into Executive Session.

**6.0 Items for discussion at the next meeting**

**7.0 Advertisements and Conferences**

**8.0 Next meeting – Wednesday, August 5, 2015 @ 7:30 pm**

**9.0 Adjournment** – HH motioned to adjourn at 10:50 pm., seconded by VK, all in favor.

Minutes respectfully submitted by Leslie W. Gabriliska