

MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING

June 13, 2006

Present

HJ: Henry Jungmann, Chairperson
RS: Robert Sherburne, Vice Chair
JZ: Jeanne Zarba

LG: Lucy Gertz
FZ: Frank Zarba

LC: Lori Capone, Director
GC: Gloria Clancy, Clerk

Absent

CH: Cynthia Hanna

7:00 Meeting opened by Henry Jungmann, Chairperson.

7:02 Whispering Pines Estates – 39 Lakeview Avenue – Notice of Intent: (Map 25, Parcel 13, Lot 0) (Continued from 11/8/05, 12/13/05, 1/10, 2/14, 3/28 & 4/25/06) Proposed residential townhouses, roadway, roadway crossing of an intermittent stream, drainage, grading, and associated utilities within the buffer zone. Also, removal of existing septic system, associated grading and construction of a water pump station within the buffer zone. Peter Cricones was present but had nothing new to report. The engineers are still working on the issues. HJ asked for abutter comments. Michael Abbrederis of 33 Lakeview Avenue is still concerned that we would go forward with this project when the applicant's last project in the same area has not been completed to satisfaction yet; namely the replication area. Peter said it would not make sense at this time to complete a replication on an area that will be disturbed by this new project. He suggests that it be incorporated into this project. Peter will submit a letter regarding Bonding any unfinished work on the existing replication areas.

JZ: Motion to continue this hearing to July 11 at 7:02 P.M.

FZ: 2nd.

Unanimous (5-0)

7:10(7:13) R & F Landholding LLC – Whitetail Estates – Off of Althea Drive. – Notice of Intent: (Map 33, Parcel 20) (Continued from 3/14, 3/28 & 4/25/06) Construction of a roadway, drainage system, and two single-family dwellings with septic systems. Work on the roadway, utilities and one driveway is proposed in the buffer zone. Ted Doucette of Polaris Engineering Corporation explained his two waiver requests dated June 13, 2006. The first was a waiver from the Tyngsborough Conservation Commission Additional Plan Guidelines II 6 c. and to Regulations Adopted by the Tyngsborough Conservation Commission Pursuant To Town's By-Law for Wetland Protection Sect. 5.2.1 - to allow the quantity of storm water to be carried by the drainage system to exceed the runoff rate of the predevelopment state for the 10-year and 100-year storms. This would minimize the amount of trees and natural vegetation that will need to be removed. There was discussion.

JZ: Motion to waive Plan Guidelines II 6 c. and Wetland Protection Section 5.2.1. as requested above.

RS: 2nd.

Unanimous (5-0)

The second waiver request is from the Tyngsborough Conservation Commission Additional Plan Guidelines I 3. - to allow a plan that does not reference the National Geodetic Vertical Datum(NGVD) elevation. There was discussion.

LG: Motion to waive Plan Guidelines I 3. as requested above.

JZ: 2nd.

Unanimous (5-0)

Minutes 6/13/06 continued.

JZ: Motion to continue this hearing to July 11 at 7:20 P.M.

LG: 2nd.

Unanimous (5-0)

7:15 (7:20) Mark Parlee – Parlee Farms – River Road - Notice of Intent: (Map 19, Parcel 52)

Proposed grading within the Riverfront Area to create an agricultural irrigation pump area.

FZ: Motion to waive the reading of the abutter's list.

JZ: 2nd.

Unanimous. (5-0)

FZ: Motion to waive the reading of the legal notice.

JZ: 2nd.

Unanimous. (5-0)

DEP has issued a number with the following comments: Silt fence needs to be used with hay bales. DEP also requested the pump area be moved farther away from river, if possible. Mr. Parlee explained the type of pump he will use and the manufacturer's recommended distances for maximum effectiveness. There was discussion of the placement of the pump. HJ asked for abutter comments. LC recommended issuing a 5-year Maintenance Order of Conditions.

JZ: Motion to close the hearing.

FZ: 2nd.

Unanimous (5-0)

FZ: Motion to issue a 5-year OOC for Parlee Farms to install and maintain an irrigation pump on the bank of the river.

RS: 2nd.

Unanimous (5-0)

7:20 (7:35) Two Tyng LLC: 104 Coburn Road – Notice of Intent: (Map 25, Parcel 43) (Continued from 4/25 & 5/9/06) Proposed construction of a single family dwelling, porch, garage, and driveway with grading and associated utilities; all within the buffer zone. Steve Ericksen of Norse Environmental Services, Inc. explained the changes to the original plan. He went over the history of the lot and requested a waiver of our 50-foot and 30-foot Regulations with reason of a financial hardship. LC referred the members to a copy of Town Counsel Zaroulis' opinion, dated June 13, 2006, regarding our setbacks. There was discussion on that, possible deed restriction, fencing, and alternatives analysis. HJ asked for abutter comments. There were none.

JZ: Motion to continue this hearing to June 27 at 7:10 P.M.

LG: 2nd.

Unanimous (5-0)

7:25 (8:00) Richard Bergskaug – 68 Mascuppic Trail - Notice of Intent: (Map 32B, Parcel 30) (Continued from 5/9/06) Demolition of an existing and construction of a new single family dwelling within the floodplain and buffer zone. DEP has issued a number but the application is still under review. We are still awaiting revised plans per the discussions at our last hearing regarding erosion controls and a de-watering plan.

FZ: Motion to continue this hearing to June 27 at 7:20 P.M.

RS: 2nd.

Unanimous (5-0)

7:30 (8:01) Boston & Maine Corporation – B & M Rights of Way – Request for Determination of Applicability: (Continued from 5/9/06) Verification of sensitive areas. LC told the members that they

Minutes 6/13/06 continued.

haven't marked the tracks yet. She has read their Yearly Operational Plan (YOP) and asked the members to do so also. She referred them to her comments included in their packets. She asked them if they have comments of their own to please write them in a letter.

JZ: Motion to continue this hearing to June 27 at 7:25 P.M.

LG: 2nd.

Unanimous (5-0)

7:35 (8:05) Nicholas Rabias – 37 Willowdale Road – Abbreviated Notice of Resource Area

Delineation: (Map 33, Parcel 1) (Continued from 5/9/06) Verification of delineation of bordering vegetated wetlands and intermittent streams. LC said that she has reviewed the delineation with the applicant's wetland scientist and made some significant changes. A revised plan has been submitted. HJ asked for abutter comments. There were none.

JZ: Motion to close the hearing.

RS: 2nd.

Unanimous (5-0)

FZ: Motion to issue an ORAD per plan dated 5/25/06.

JZ: 2nd.

Unanimous (5-0).

7:40 (8:09) David Seltz – 20 Wyoming Road – Notice of Intent: (Map 2, Parcel 62) (Continued from 5/9/06) Installation of above ground pool within the buffer zone. This hearing had been continued because DEP hadn't issued a number yet. We now have a number.

LG: Motion to close the hearing.

RS: 2nd.

Unanimous (5-0)

LG: Motion to issue an OOC with the condition that the applicant uses an environmentally friendly filter; no back washing immediately after chlorinating; and backwash outside of the buffer zone.

JZ: 2nd.

Unanimous (5-0).

7:45 (8:10) Maple Ridge Real Estate Development – Shakespeare Street – Parcel G - Request for Determination of Applicability: (Continued from 5/9/06) Burial of boulders and creation of a park area. Work within the buffer zone. Walter Ericksen was present and told the members that the plan is as previously presented. LC said that the plan should be revised to install silt fence in addition to hay bales for erosion control. The plan should be amended to eliminate autumn olive from the plant list. The project should be conditioned to require compaction as discussed at the prior meeting. LG asked about maintenance of this park area after completion. Walter said he would hope that the Homeowners Association would want to maintain it. There was discussion on the possibility of writing something into the Homeowners' Agreement.

JZ: Motion to close the hearing.

RS: 2nd.

Unanimous (5-0)

FZ: Motion to issue a Negative Determination with the conditions: 1.) install silt fence in addition to hay bales for erosion control. 2.) eliminate autumn olive from the plant list. 3.) compaction as discussed a previous meeting. 4.) Language be added to the Homeowner's Agreement requiring continued maintenance of this area.

JZ: 2nd.

Unanimous (5-0).

Minutes 6/13/06 continued.

7:50 (8:20) Keyspan Energy Delivery – Westerly side of Middlesex Road at T.J. Maxx Plaza – Request for Determination of Applicability: Proposed installation of 900 linear feet of gas main within the shoulder of the roadway, in the buffer zone.

JZ: Motion to waive the reading of the abutter's list.

LG: 2nd.

Unanimous. (5-0)

FZ: Motion to waive the reading of the legal notice.

JZ: 2nd.

Unanimous. (5-0)

Gerry Foley of Foley & Belanger represented the applicant. Dan Credo of Keyspan was also present. He explained that there will be erosion controls 120 feet on both sides of the culvert to protect the resource area. A trench will be excavated in the roadway to a maximum depth of 30 inches to install the main. The main will be installed over the culvert. The trench will be on roadway the side of the guardrail. It will be a 3-day project. Any stockpiling of soils will be on the pavement side of the trench. Any soil not suitable for backfill will be removed off site. They have all the Mass Highway permits already. HJ asked for member comments and LC's comments. LC said she sees no problems with the project. HJ asked for abutter comments. There were none.

JZ: Motion to close the hearing.

RS: 2nd.

Unanimous (5-0).

JZ: Motion to issue a Negative Determination for the gas line extension on Middlesex Road.

LG: 2nd.

Unanimous (5-0).

8:00 (8:25) Frederick Macleod - 2 Nevada Road – Notice of Intent: (Map 2, Parcel 160) Proposed 28'x28' garage and associated grading and utilities within the buffer zone.

JZ: Motion to waive the reading of the legal notice.

FZ: 2nd.

Unanimous. (5-0)

FZ: Motion to waive the reading of the abutter's list.

JZ: 2nd.

Unanimous. (5-0)

LC explained that DEP and the Natural Heritage Program are reviewing this project. The proposed garage is located about 25 feet from a bvw and 130 feet from the perennial stream. The area is presently forested. She and the members are concerned with the close proximity of this project. They would like for the applicant to provide an alternative analysis substantiating the need to utilize this location. A site visit was suggested and set for Monday, June 19th at 9 A.M. HJ asked for abutter comments. There were none.

FZ: Motion to continue this hearing to June 27 at 7:30 P.M.

JZ: 2nd.

Unanimous (5-0).

8:10 (8:35) J & K Tyngsboro Realty Trust - 271 Middlesex Road – Request for Determination of Applicability: (Map20, Parcel 42) Removal of petroleum contaminated soil in a 20'x20' area.

JZ: Motion to waive the reading of the abutter's list.

RS: 2nd.

Minutes 6/13/06 continued.

Unanimous. (5-0)

FZ: Motion to waive the reading of the legal notice.

JZ: 2nd.

Unanimous. (5-0)

Steve Brandt of Pease, Snow & Associates, Inc. represented the applicant. He explained that the area was contaminated when this property was a gas station back in the 60's and 70's. The soil will be immediately loaded on a truck and transported off-site, or stockpiled on site out of the buffer zone. The stockpile will be located on pavement and plastic sheeting and then covered with plastic sheeting pending transport. LC recommended that, as excavation work is proposed to take one day, we condition the project to require immediate removal of contaminated soil off-site, not stockpiled on site. The amount to be removed will vary according to when they hit groundwater. They will probably wait until August to start, to allow the current high water table to go down. HJ asked for abutter comments. There were none.

JZ: Motion to close the hearing.

RS: 2nd.

Unanimous (5-0).

JZ: Motion to issue a Negative Determination for the removal of contaminated soil with the conditions 1.) Immediate removal of contaminated soil off-site, not stockpiled on site. And 2.) If the area is to extend over the 20'x20', we shall be notified.

FZ: 2nd.

Unanimous (5-0).

Other Business:

- ❖ Request for Extension of an active OOC for Tim McCarron for the roadway at Beaver Run. LC told the members that she is very impressed with the excellent job Tim is doing over there. It is proceeding "slow but meticulous". She showed pictures.

FZ: Motion to issue a 3-year extension on the Order of Conditions for Beaver Run.

RS: 2nd.

Unanimous(5-0)

- ❖ HJ recused himself from the next discussion, stating he has a "business relationship" with Mr. Maciel. Robert Maciel – 265 Pawtucket Blvd and William Harvey – 267 Pawtucket Blvd. were present to address a complaint by Mr. Harvey that run-off from the project on Maciel's property is flooding his property. LC checked Maciel's Order of Conditions and there are several conditions that have not been adhered to. Steve Eriksen of Norse Environmental Services, Inc. represented Mr. Maciel and assured the Commission that he would read the OOC over and make sure that the proper controls are set up and kept up until the project is complete. There was some back and forth on other riverfront infractions, and LC will check into them.

- ❖ **Director Determination for B.F.I. – 385 Dunstable Road.** They are proposing a systemic treatment on phragmites blocking two outlet structures at the back of their parking lot. They will try to clear 5' – 10' around the structures. They will hire a registered herbicide company to do the applications.

LG: Motion to approve the Director Determination for B.F.I. – 385 Dunstable Road.

JZ: 2nd.

Unanimous (5-0)

- ❖ **Director Determination for McCarthy - 1 Alden Street.** To have two damaged trees at the end of his driveway removed with the use of a crane. The stumps will be ground down below grade.
LG: Motion to approve the Director Determination for 1 Alden Street.
JZ: 2nd.
Unanimous (5-0)
- ❖ **Director Determination for Jim Finn - 9 Alden Street.** The building Commissioner relayed a complaint to LC that Mr. Finn had added a deck and stairs without a permit. LC told the members that the deck and stairs were placed on an existing patio. He also would like to repair a small section of retaining wall. The work would be done by hand. There was discussion. It was suggested that the owner file an RDA for the retaining wall repair, so that abutters would be notified of his request. **JZ: Motion** to approve the Director Determination for 9 Alden Street for addition of deck and stairs on top of existing patio area. Retaining wall repair will require a filing of an RDA.
LG: 2nd.
Unanimous (5-0)
- ❖ **Director Determination for Marybeth Shanahan – 371 Middlesex Road.** She is requesting permission to have a large oak tree removed from the front of the property and some “vista pruning” of other trees, to allow more visibility of the restaurant. There was discussion and it was decided that she should file an NOI.
- ❖ **Director Determination for Jawed Choudhry – 2 Wintergreen Drive.** He wants to add a 15’ x 60’ deck with an enclosed porch 50’ from the BVW. It will be over existing lawn area.
JZ: Motion to approve the Director Determination for 2 Wintergreen Drive.
RS: 2nd.
Unanimous (5-0)
- ❖ **Director Determination for Walter Ericksen – Maple Ridge Subdivision.** He is asking to add 10’ x 10’ decks to several of the planned units, Lots 59-64, 90-95, and 119-121. There was discussion.
FZ: Motion to approve the Director Determination for the addition of decks on the lots discussed.
RS: 2nd.
Unanimous (5-0)
- ❖ LC asked the members their thoughts on an outstanding consulting fee of \$2000 from Howe Surveying and Associates. The Commission requested additional confirmation of the floodplain to appease the abutters of the project at Lot 12 Riverbend Road. Lynette Rivera claims it is a hardship for her to pay this entire fee. LC suggested that we split the cost with her to get the bill paid. We could vote to transfer the money from the WPA account. There was discussion.
JZ: Motion to transfer \$1000 from the Wetland Fund to Professional Services to pay one half of the consultant’s bill and Ms. Rivera shall pay the other half.
FZ: 2nd.
Unanimous (5-0)
- ❖ On the same project, we have received a letter dated May 17, 2006 from Jane Pirkle asking that, in light of the recent flooding, we reconsider our decision. HJ said that we can not legally change an Order of Conditions.

Minutes 6/13/06 continued.

- ❖ Interest by Mr. Breitweiser to serve as an Associate Member. He will be invited to attend the next meeting.
- ❖ Upcoming Aquatics Invasive Workshop.
- ❖ May 31st deadline for cleanup of Mr. Tocci's campground has gone by. HJ suggested an extension to the end of June, due to all the bad weather and flooding.

JZ: Motion to extend the deadline for clean up of the campground to the end of June.

FZ: 2nd.

Unanimous (5-0)

- ❖ The Board of Health issued an Emergency Permit on 5/11/06 for breaking of a beaver dam causing damage at 11 Old Hickory Lane.
- ❖ The flooding caused a collapse in the roadway down at Vesper C.C. Walter Ericksen supplied stone and Mass Highway did emergency repair. LC showed photos.
- ❖ The owner of 13 Jacques Road would like to donate the fire pond to Conservation. There was discussion and all agreed that the Commission did not want the responsibility of a fire pond.
- ❖ Draft of Policies for the Sherburne Property. The next Forest & Trails meeting will be July 1st.
- ❖ Continuing work on the Land Management Plan for the Bell Property.
- ❖ Kelly Griffin would like to volunteer to work at the Sherburne Property. LC will e-mail her info to LG.
- ❖ Request for a **Certificate of Compliance** for **7 Bowers Ave.**

JZ: Motion to issue a C.C. for 7 Bowers Ave.

RS: 2nd.

Unanimous (5-0)

- ❖ There was discussion of Mr. Berthiaume's request to set up disc golf on one of our properties. After doing some research of the restrictions on the properties, it was realized that disc golf is not considered "passive" recreation, so we do not have a property for him to use.
- ❖ HJ asked the members to think about electing a new chair and vice chair. LC told them that Jeff Kablik will be rejoining us. He never did send in his letter of resignation.

JZ: Motion to adjourn.

RS: 2nd.

Unanimous (5-0).

Meeting adjourned at 10:00 P.M.

Respectfully submitted by Gloria Clancy, Conservation Clerk