

**MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING
TOWN HALL COMMUNITY ROOM
July 12, 2005**

Present

HJ: Henry Jungmann, Chairperson	BL: Brian Logue	LC: Lori Capone, Director
RS: Robert Sherburne, Vice Chair	CH: Cynthia Hanna	GC: Gloria Clancy, Clerk
LG: Lucy Gertz	JK: Jeff Kablik	

Absent

JZ: Jeanne Zarba FZ: Frank Zarba, Associate Member LB: Laura Bride, Associate Member

7:00 Meeting opened by Henry Jungmann, Chairperson

7:02 Blair J. Finnegan, Tyngsboro Partners LLC – 169 Westford Road – Notice of Intent: (Map 15, Parcels 13 and 8) (Continued from 11/9 & 12/28/04, 1/25, 2/8, 2/22, 3/22, 4/12, 4/26, 5/24 & 6/28/05) Construction of 92 detached condominiums with associated driveways, roadway and utilities some of which is within the 100 buffer zone and riverfront area. Blair J. Finnegan, David Sears, and their representative, Joe Peznola of Hancock Associates, were present. Mr. Peznola referred to a latest review letter from David Sanderson of Edwards & Kelcey dated June 23, 2005. He said he had sent the newest revised plan dated 6/25/05 to him and had spoken with Mr. Sanderson as late as yesterday and that he was suppose to be present tonight or send us a letter to corroborate that all of the outstanding issues regarding the Riverfront, have been resolved. Mr. Peznola requested the Commission close the evidence collecting portion of the hearing and move on to other issues. LC said she spoke with Mr. Sanderson and that he has left Edwards & Kelcey and therefore will not be in attendance. There was much discussion. The members did not feel comfortable with closing out the issue of the Riverfront delineation without a letter from our consultant that all outstanding issues have been resolved. The Commission proceeded onto the issue of the possible need for a wildlife habitat evaluation study. Mr. Peznola reminded the members that the statute states that they “may” request one, but that it is not mandatory. He also said that the project area is bounded on all sides by main roads and does not feel that the area is any kind of wildlife corridor. Except for LG, none of the members spoke out for the need for a study. The discussion moved onto the issue of the alternatives analysis. HJ asked why the applicant is adamant that he needs to build 92 units to make a profit. Both Selectman Rich Lemoine and Selectman Kevin O’Connor addressed the Commission regarding the history of this project since it’s inception with the Zoning Board of Appeals and the negotiations that have been made. It was explained that the Board of Selectmen requested the applicant change the scope of the project, from three story apartment style units with no age limitation, to an over-55 detached condo style units, saving the town from the need for increased school costs. They both feel this project, as it stands now, is a very positive one for the town. Beside the fact that the applicant will build a new furnished Senior Center and install a new and much needed water tower, the revenue from real estate taxes will be a boon to the town over the years. They cautioned the members not to get hung up on the exact square footage of impact to the Riverfront Area, and to consider the trade-off of the positive impact to the town. Selectman Lemoine stated he called Mr. Sanderson on Friday, at which time, Mr. Sanderson indicated all issues were resolved. HJ said that he wants a final letter from the consultant. Selectman Lemoine requested the Commission hold a special meeting in one week to make a decision on

this application. HJ commented that accusations have been made against the Conservation Director that she should have made the applicant aware of the Commission's concerns while this application was in front of the Zoning Board of Appeals. For the record, HJ wanted to make everyone aware that the Director wrote letters to the Zoning Board of Appeals as far back as August of 2004 highlighting a number of the same issues we are still contending with. HJ asked Mr. Joel Kahn of Equity Alliance Corp., the town's consulting financial analyst, to present his findings regarding his review of the applicant's alternative analysis. Mr. Kahn went through his review letter dated July 11, 2005. Mr. Kahn explained the difference between performing a financial analysis under the Wetlands Protection Act versus under 40B standards. His analysis indicated the profit margin, at the present design, was almost 16%, however, Mr. Kahn agreed with the financial review performed by Michael Jacobs, Zoning Board of Appeals financial consultant, in that, soft costs for permits and closings appear to be high, the builder risk insurance budget was above industry standards and the sewer betterment charge may not be applicable. Assuming a 15% profit is fair and reasonable, Mr. Kahn present the Commission with three potential options: 1) reduce the project by 4 units; 2) if no sewer betterment charges are found to be due, reduce the project by 12 units; and 3) eliminate the requirement to construct the senior center and reduce the project by 16 units. HJ thanked him. LC pointed out a few additional concerns with the plan, including a resource area missing from the plan and additional encroachment of structures in the no-build zone. LC also stated the Lisa Mead, ZBA's 40B legal counsel, indicated that the applicant did owe the Commission's bylaw fees. Mr. Peznola was adamant that that this application was under the Wetlands Protection Act, solely, and his client was not responsible for paying bylaw fees. The Commission requested LC inquire with Town Counsel. HJ said that he definitely wants a final letter from a consultant. The Commission decided that if Mr. Sanderson does not report back to us, that we should have Jeff Rider of Holmberg & Howe Surveying review the delineation of the northwest portion of Bridge Meadow Brook and review the calculations and advise us on the method used to calculate the impact. HJ opened the discussion for abutter comments. There were none.

JK: Motion to fund a review by Holmberg & Howe to: 1) the delineation of the N.W. corner of the river and Riverfront Area; 2) confirm that impacts associated with the stormwater management facilities should be eliminated when calculating Riverfront impacts; and 3) determine whether the applicant can calculate the "islands" as Riverfront Area.

RS: 2nd.

Unanimous. (6-0)

JK: Motion to use the 53G account for payment of the financial review by Mr. Kahn of Equity Alliance Corp..

RS: 2nd.

Unanimous. (6-0)

JK: Motion to continue this hearing to 7/26/05 at 7:02 P.M.

RS: 2nd.

Unanimous. (6-0)

7:10 (9:20) Aline Roy – 18 Bridle Path Way – Notice of Intent: (Map 27, Parcel 64) (Continued from 6/14 & 6/28/05) Proposed construction of a single family home, driveway, retaining walls, septic system and associated utilities within the buffer zone. LC told the

Minutes 7/12/05 continued

members that she is in receipt of a request for continuance as the applicant is still waiting for a response from the Building Commissioner on whether or not the lot is a buildable lot. HJ opened the discussion to members then asked for abutter comments. There were none.

JK: Motion to continue this hearing to 7/26 at 7:10 P.M.

CH: 2nd.

Unanimous. (6-0)

7:30 (9:22) Kim and James Hapenny - 9 Cedar Lane - Notice of Intent: (Map 26, Parcel 145) Installation of a 4' x 10' removable dock along the shore of Lake Mascuppic.

JK: Motion to waive the reading of the abutter list.

RS: 2nd.

Unanimous. (6-0)

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

LG: 2nd.

Unanimous. (6-0)

LC said we have no proof of mailing of the application to DEP and the applicant is not present.

HJ opened the discussion to members then asked for abutter comments. There were none.

JK: Motion to continue this hearing to 7/26/05 at 7:30 P.M.

RS: 2nd.

Unanimous. (6-0)

7:45 (9:24) Michael DiFonzo – 10 Alden Street – Notice of Intent: (Map 30, Parcel 22)

Installation of an above ground pool with decking within the buffer zone.

JK: Motion to waive the reading of the abutter list.

RS: 2nd.

Unanimous. (6-0)

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

LG: 2nd.

Unanimous. (6-0)

The applicant was present. LC showed the plan and aerial photos of the lot and explained that the area is existing, relatively level lawn area. There will be no new disturbance to the riverfront area. An environmentally friendly filter will be used on the pool, and backwashing will be done outside the buffer zone. HJ opened the discussion to members then asked for abutter comments. There were none.

JK: Motion to close the hearing.

BL: 2nd.

Unanimous. (6-0)

JK: Motion to issue an OOC per plan and discussion and with the following conditions: 1.) An environmentally friendly filter will be used on the pool. 2.) Backwashing will be done outside the buffer zone.

LG: 2nd.

Unanimous. (6-0)

8:00 (9:30) Craig & Kelly Campbell – 3 Shetland Circle – Notice of Intent: (Map 15, Parcel 1, Lot 19) Construction of a 38' x 22' Addition, farmer's porch and decks. Installation of a 44'x24' in-ground pool. Some of the work will be within the buffer zone.

JK: Motion to waive the reading of the abutter list.

BL: 2nd.

Unanimous. (6-0)

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

BL: 2nd.

Unanimous. (6-0)

Kelly Campbell was present. LC had the members look at the plan and aerial photos of the lot. She explained that the maximum footprint of the pool with apron will be 70' x 44'. All impervious surfaces will be outside the 50' line. Kelly said that three trees will need to be removed for the addition and she still needed to figure out how many trees would need to be removed for the pool but she would definitely maintain at least the 30' no touch. It was decided that the applicant would contact LC for a Director's Determination when she was sure. LC said that silt fence will need to be installed during construction. HJ opened the discussion to members then asked for abutter comments. There were none.

JK: Motion to close the hearing.

RS: 2nd.

Unanimous. (6-0)

JK: Motion to issue an OOC for the project per plan and discussion, and with the following conditions: 1.) An environmentally friendly filter will be used on the pool. 2.) Backwashing will be done outside the buffer zone.

BL: 2nd.

Unanimous. (6-0)

Other Business:

❖ Steve Eriksen of Norse Environmental Services requested some feedback from the members on an area on Lot 12 Progress Ave. Mr. Eriksen explained that this isolated depression, though not state jurisdictional was protected under the bylaw. Mr. Eriksen referenced a letter dated 7/12/05. He said the pool has almost disappeared. It is his opinion that the Charles George Landfill cleanup, with all the grading and filling, has cut off whatever supplied this pool. LC said she has been watching the area for a few years to see if there is any sign of vernal pool habitat. LC has yet to see any. HJ polled the members. They were all comfortable with Mr. Eriksen's evaluation.

❖ LC told the members that we will be holding the hearing on the updated Regulations at the next meeting, July 26th.

❖ LC reminded the members that when they voted to accept the Massapoag Rod and Gun Club Land they excluded the roadway. Town Counsel has requested the Conservation Commission to also accept the roadway up to the point where Wilson Way will begin. She said we can do so with the stipulation that we will not be responsible for the maintenance of it.

JK: Motion to accept, with the Massapoag Land, the part of Massapoag Road up to the point where Wilson Way begins, with the stipulation that the Commission will not be required to maintain said roadway.

RS: 2nd.

Unanimous. (6-0)

- ❖ At the request of the Tax Collector, the members discussed the acceptance of two parcels of land for conservation purposes: 15 Anderson Drive and 31 Roberts Road. LC pointed the areas out on aerial photos.
RS: Motion to accept the ownership of 31 Roberts Road as Conservation Land.
CH: 2nd.
Unanimous. (6-0)
JK: Motion to accept 15 Anderson Drive as Conservation Land.
RS: 2nd.
Unanimous. (6-0)

- ❖ LC referred to a letter to the Town Accountant to encumber funds to pay an invoice that has not come in time to put through for FY'05.

- ❖ Request for a three (3) year Extension for an OOC (DEP# 309-620) for The Massapoag Road and Gun Club for roadwork and maintenance of a boat launch area off of Groton Road.
JK: Motion to issue a three (3) year Extension on OOC – DEP# 309-620.
BL: 2nd.
Unanimous. (6-0)

- ❖ Update on the complaint on 1 Alden Street. LC visited the site today and could not visibly see obstructions besides the blocks holding up the dock. The third section of dock she could not see under. Mr. Viera provided pictures showing buried bags of sand and blocks. The members asked LC to request that Mr. McCarthy come to the next meeting.

- ❖ Request for a **Certificate of Compliance** for 74 Willowdale Avenue. It was a teardown and reconstruction. LC did a site visit and the work is complete.
BL: Motion to issue a CC for 74 Willowdale Avenue.
JK: 2nd
Unanimous (6-0)

- ❖ Request for a **Certificate of Compliance** for 47 Scribner Road, DEP# 309-171. It is a very old OOC that lapsed.
BL: Motion to issue a CC for 47 Scribner Road.
JK: 2nd
Unanimous (6-0)

- ❖ Request for a **Certificate of Compliance** for 47 Scribner Road, DEP# 309-402.
BL: Motion to issue a CC for 47 Scribner Road, DEP# 309-402.
JK: 2nd
Unanimous (6-0)

- ❖ The members signed off on OOCs for Lot 12 Riverbend Road and 75 Lakeview Avenue, and the three CCs voted above.

LG: Motion to accept the minutes of the Conservation meeting of 6/28/05.

RS: 2nd.

5 Yeas. 1 Abstained (JK)

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- ❖ LG told the members that the Forest & Trails Committee is holding an *Exhibits Planning Session* at the Sherburn House on August 24th at 7P.M. Everyone is welcome to join in.

BL: Motion to adjourn.

RS: 2nd.

Unanimous (6-0)

Meeting adjourned at 10:30 P.M.

Minutes taken and respectfully submitted by Gloria Clancy, Clerk