

MINUTES OF THE TYNGSBOROUGH CONSERVATION COMMISSION MEETING

October 25, 2005

Present

HJ: Henry Jungmann, Chairperson JK: Jeff Kablik LC: Lori Capone, Director
RS: Robert Sherburne, Vice Chair FZ: Frank Zarba(7:05) GC: Gloria Clancy, Clerk
LG: Lucy Gertz

Absent

CH: Cynthia Hanna JZ: Jeanne Zarba BL: Brian Logue, Associate Member

7:00 Meeting opened by Henry Jungmann, Chairperson

**(Jeff Kablik has been re-appointed but has not had time to be sworn in as yet, so he will abstain from voting this evening. A Unanimous vote tonight will be 4-0)*

7:02 Aline Roy – 18 Bridle Path Way – Notice of Intent: (Map 27, Parcel 64) (Continued from 6/14 & 6/28, 7/12, 7/26, & 8/23/05) Proposed construction of a single family home, driveway, retaining walls, septic system and associated utilities within the buffer zone. Jack Lugee of Dana F. Perkins, Inc. was present with the applicant and her attorney Douglas Deschenes. He gave a brief history of this filing, as it has continued on since last June. We have been awaiting a decision from Town Counsel to the Building Commissioner as to the *buildability* of this lot. Mr. Lugee produced a letter from Mark Dupell, Building Commissioner, referencing a telephone discussion with Town Counsel Zaroulis. It states that based on the information and documents provided by Attorney Deschenes and reviewed by Mark Dupell and Charles Zaroulis, the applicant is entitled to apply for a building permit pursuant to M.G.L. Ch 40A, S6, fourth paragraph, provided that the frontage is on a way as set forth in M.G.L., Ch 41, S81 L. Other factors in the application process may have bearing.

LC said she reviewed the delineation and said it looks fairly accurate. There is one flag that should be moved back but it is located on the opposite side of the project site and will not impact this development. There is a drainage area located adjacent to the driveway that should be delineated. Although this is a tight lot, the project appears to maintain our setbacks as presently designed. The project just maintains the 30-foot no touch and the structure is proposed 52.1 feet from the bvw. The plan only proposes haybales for erosion control. LC recommended silt fence in addition to the haybales. The applicant also filed with the Board of Health as there may be issues with the placement of the septic system. Any approvals should be contingent on Board of Health approval of the septic system design. HJ opened the discussion to the members, then to abutters. There were none.

LG: Motion to close the hearing.

FZ: 2nd.

Unanimous. 4-0

LG: Motion to issue an Order of Conditions per plan dated 5/27/05 and discussion with the condition that additional silt fencing be added to hay bales, and contingent on Board of Health approval of the septic design.

FZ: 2nd.

Unanimous. 4-0

Other Business:

- ❖ LC told the members that DEP is holding a site visit at 100 Massapoag Road tomorrow morning at 10:00 A.M. This is in response to a complaint by Corey Lambert regarding erosion and siltation of Lake Massapoag. She passed out photos taken during all this rain. There was a breach in the silt fencing, but it has been repaired. All agreed it would be better left in the lake than dredging it.
- ❖ Director Determination for Missick Realty Trust to have three telephone poles installed along **100 Massapoag Road /Wilson Way** rather than underground utilities. It was decided that would have less impact on the resource area and the applicant could avoid digging trenches for any future repairs.
RS: Motion to approve the Director Determination for 100 Massapoag Road /Wilson Way.
LG: 2nd.
Unanimous. 4-0

7:15 Ann Tinnirella – End of Beech Tree Road: (Continued from 8/23 & 9/27/05) Conduct a hearing pursuant to an Order of Judgement by the Superior Court, dated May 23, 2005, whereby this matter is remanded to the Conservation Commission for further hearing and determination of the ownership of the affected property. LC told the members that we have a request from Mr. Shyjan's attorney for a month continuance to request clarification from the Superior Court Judge.
LG: Motion to continue this hearing to November 22 at 7:02 P.M.
FZ: 2nd
Unanimous. 4-0

Other Business:

- ❖ Paul Haverty, Attorney for Tyngsboro Partners, LLC requested an Amendment to the OOC for *Wynbrook at Tyngsboro* that he feels would clear up some jurisdictional issues. He read a draft motion. HJ asked the other members and Town Counsel for input. There was discussion. Atty. Zaroulis said that he could see an amendment like this for a clerical error, but this is not the case here. Once the Commission votes and issues an OOC, any Amendment would require a noticed hearing. All agreed. Mr. Finnegan stated he was happy with the Order of Conditions and would discuss the situation with his attorney to determine whether they should pursue an Amendment. No action was taken.

7:30 Steven & Donna Deschenes – 31 Elm Street – Notice of Intent: (Map 31B, Parcel 23) (Continued from 9/13 & 9/27/05) Raze existing single family home and construct new single family home within the buffer zone of Long Pond. Matt Watermann of LandTech represented the applicant. Atty. Deschenes was also present. At the last meeting we had requested a de-watering plan. Atty. Deschenes explained that they will have a 6x6x2 settling basin at the furthest point from the water. It will be surrounded by siltation fencing and there will be a row of hay bales along the neighboring property line with check dams and a line of hay bales parallel to the pond. This will all be set up prior to any work being done. LC had met with David Kelly of LandTech as requested at the last hearing. She agreed that the engineering calculations performed to evaluate the floodplain elevation appear to be conservative. She recommends that we require the applicant file for a *Letter of Map Amendment* with FEMA to change the delineation of the floodplain to protect all parties.

FZ: Motion to close the hearing.

LG: 2nd.

Unanimous. 4-0

LG: Motion to issue an OOC per plan revised 10/14/05 and discussion with the requirement that the applicant file for a *Letter of Map Amendment* with FEMA.

RS: 2nd.

Unanimous. 4-0

***The Legal Notice for the following three hearings never made it to the paper. Therefore we must open them and continue without discussion.*

7:45 Connell Construction – 7 Skyline Drive – Notice of Intent: (Map 9, Parcel 23, Lot 14) Proposed construction of a single family dwelling; retaining wall; grading and associated utilities within the buffer zone.

FZ: Motion to continue this hearing to November 8 at 7:02 P.M.

LG: 2nd

Unanimous. 4-0

8:00 Eric Gardner – 72 Progress Avenue – Notice of Intent: (Map 13, Parcel 46) Proposed construction of a commercial building, bituminous pavement, landscaping, grading and associated utilities within the 100 ft buffer zone. Proposed filling of local jurisdictional wetland.

RS: Motion to continue this hearing to November 8 at 7:15 P.M.

FZ: 2nd

Unanimous. 4-0

8:15 Gloria Cote - 51 Mascuppic Trail – Notice of Intent: (Map 32B, Parcel 59) Proposed 3-season addition to be placed on existing 12' x 16' deck; Repair shoreline retaining wall; Add boulder retaining wall to prevent further erosion; Repave driveway; Remove two dead trees; all within the buffer zone.

RS: Motion to continue this hearing to November 8 at 7:30 P.M.

FZ: 2nd.

Unanimous. 4-0

Other Business:

- ❖ Ron Vieira and his son, of 7 Alden Street, approached the Commission with another complaint of Mr. McCarthy altering the shoreline at 1 Alden St. and leaving debris along the waterfront. Since there has been no response from Mr. McCarthy after the last letter LC sent him, HJ said to issue an Enforcement Order.
- ❖ LC said that Walter Eriksen has requested a Director Determination to allow a boulder dump 30' from the wetland. It is an area approximately 18,000 s.f. that was suppose to be left untouched. It is currently forested and it would need to be cleared. LC had suggested that he use the boulders as property line markers and retaining walls. He told her that would be too involved and time consuming. There was discussion and it was agreed that he needs to come up with something more imaginative that won't impact the area so much. They also want to see a filing for whatever he decides to do.

Minutes 10/25/05 continued

- ❖ LC showed photos of flooding in the area of **Lot 12 Riverbend Rd.** She told the members that there is a lot of flooding, but that Lot 12 seems to be the highest and the driest of the area.
- ❖ **Director Determination - Ted Flanders – 2 Upton Drive:** Request to build an 8'x8' deck 63' away from Flint Pond. It will require 2 hand dug sonar tube footings. He also plans to vinyl side the house. He will keep a dumpster on the driveway for debris. The members did not have any problems with this plan.
FZ: Motion to approve the Director Determination for 2 Upton Drive.
LG: 2nd.
Unanimous. 4-0
- ❖ **Director Determination – 50 Flint Road:** Request to build place a 6'x8' shed on blocks 12' away from Flint Pond. It will be in the buffer zone, the flood plain and the riverfront area. It will be placed on blocks, removable and there will be no vegetation that will need to be removed.
RS: Motion to approve the Director Determination for 50 Flint Road.
FZ: 2nd.
Unanimous. 4-0
- ❖ **Director Determination - Vesper Country Club – 185 Pawtucket Blvd.:** Requesting permission for tree removal. LC explained that they want to remove some dead and some dying trees from the area around Green #4. They also want to clear away saplings because they are shading the green. Also there is a large tree near Green #3 that has been girdled by beavers so is, in effect, dead. It is 60' from the river. There was discussion. The members agreed to allow the dead and dying trees removed, but no clearing of healthy trees because of shading.
LG: Motion to approve the Director Determination for Vesper C.C. to remove the dead and dying trees, but no clearing of healthy saplings.
FZ: 2nd.
Unanimous. 4-0
- ❖ **Director Determination:** Paul Rondeau – **23 Nevada Road:** Requesting permission to replace the existing deck located just within the riverfront area and 48 feet from the associated bv. Disturbance would consist of 12 new sonar tube footings. All work will be performed by hand.
FZ: Motion to approve the Director Determination for 23 Nevada Road.
RS: 2nd.
Unanimous. 4-0
- ❖ **Director Determination:** Jonathan Cricones – **6 Cedar Lane:** Requesting permission to extend the width of his driveway 10 feet, to within 20 feet of a bv. to Lake Mascuppick. The existing asphalt driveway is 30' away. The homeowner is willing to utilize a pervious surface for the extension.
FZ: Motion to approve the Director Determination for 6 Cedar Lane.
LG: 2nd.
Unanimous. 4-0

- ❖ Update on **71 Mascuppic Trail** court case: Town Counsel has filed an affidavit that the property is in the floodplain. The original filing said nothing about impact in the floodplain.
- ❖ Now that we may have to require filing an NOI under our ByLaw alone, we are going to have to establish fees for such filings. It will have to be posted as a hearing, when we meet on it.
- ❖ Walter Eriksen's Emergency Permit to replace a broken culvert under Middlesex Road has expired. He still needs to do the work and it has to be done before November 15. He requests another Emergency Permit for it.
FZ: Motion to issue a new Emergency Permit for the replacement of a broken culvert under Middlesex Road.
RS: 2nd.
Unanimous. 4-0
- ❖ Request for a Partial Certificate of Compliance for 15 Overlook Drive. The OOC was for the whole Chestnut Road subdivision. Everything is fine on that lot.
LG: Motion to issue a Partial Certificate of Compliance for 15 Overlook Drive.
FZ: 2nd.
Unanimous. 4-0
- ❖ Request for a Certificate of Compliance for 14 Daisy Lane. The OOC was for a deck. It is complete.
LG: Motion to issue a Certificate of Compliance for 14 Daisy Lane.
FZ: 2nd.
Unanimous. 4-0
- ❖ Request for a Certificate of Compliance for 78 Willowdale Ave. The OOC was for a retaining wall. It is complete.
RS: Motion to issue a Certificate of Compliance for 78 Willowdale Ave.
LG: 2nd.
Unanimous. 4-0
- ❖ Request for a Partial Certificate of Compliance for 8 Industrial Drive. The OOC is a very old one (309-74) and was for the whole Roadway. Everything is fine on that lot.
LG: Motion to issue a Partial Certificate of Compliance for 8 Industrial Drive.
FZ: 2nd.
Unanimous. 4-0
- ❖ **The members signed DEP forms:** OOC for 31 Elm St.; C.C.s for 14 Daisy Ln. & 78 Willowdale Ave.; Partial C.C.s for 8 Industrial Way and 15 Overlook Dr.; and the Emergency Certification for Middlesex Road Culvert.
- ❖ HJ told the members that he has asked to be placed on the Board of Selectmen's next agenda regarding funds for repair of the Flint Pond Dam. The Fire Dept. had to sand bag it last week with all the rain. It was suppose to be repaired a raised 3 years ago with money from the CG Trust Fund. It was suppose to cost approximately \$250,000.

❖ Minutes 10/25/05 continued

LG: Motion to approve the minutes of the Conservation Meeting of 9/13/05.

FZ: 2nd.

Unanimous. 4-0

FZ: Motion to approve the minutes of the Conservation Meeting of 9/27/05.

LG: 2nd.

Unanimous. 4-0

LG: Motion to accept the minutes of the Forest & Trails Subcommittee Meeting of 10/05/05.

FZ: 2nd.

Unanimous. 4-0

RS: Motion to adjourn.

FZ: 2nd.

Unanimous. 4-0

Meeting adjourned at 8:50 P.M.