



**TOWN OF TEWKSBURY
CONSERVATION COMMISSION
999 Whipple Road
Tewksbury, MA 01876**

Stephen Deackoff, Chairman
Anthony Ippolito, Vice-Chair
Sean Czarniecki, Clerk
Dennis Sheehan
Carolina Linder

**Meeting Minutes
January 8, 2014**

The meeting was called to order at 7:00 PM at the Tewksbury Town Hall Auditorium by Stephen Deackoff, Chairman. Present at the meeting were Anthony Ippolito, Sean Czarniecki, Dennis Sheehan, and Carolina Linder. Also in attendance was Kyle Boyd, Conservation Agent.

Approval of Meeting Minutes – December 4, 2013 and December 18, 2013

MOTION: Mr. Czarniecki made the motion to approve the December 4, 2013 meeting minutes as amended; seconded by Mr. Ippolito and the motion carried 5-0.

MOTION: Mr. Czarniecki made the motion to approve the December 18, 2013 meeting minutes as amended; seconded by Mr. Ippolito and the motion carried 5-0.

A) Continued Abbreviated Notice of Resource Area Delineation, 379 & 357 Pleasant Street, Marc P Ginsburg and Sons Inc., Map 32 Lots 36 & 37, DEP # 305-961

Present was Jim Hanley of Civil Design Consultants, Steven Erickson of Norse Environmental Services, and Marc Ginsburg. Mr. Hanley provided the members with an excerpt from the Wetlands Protection Act and explained that at the previous meeting on this matter there was discussion on whether the stream is intermittent or perennial. Mr. Hanley explained that they follow DEP procedures when it comes to these types of situations. Mr. Hanley reviewed the document and explained that the first factor that is taken into consideration is the size of the watershed. DEP says that if the watershed is less than 1 square mile the stream is most likely intermittent. They are at 0.54 square miles; which is just over half of what DEP says is the minimum for making a determination between intermittent and perennial. The second factor is how much flow is expected to be within the stream. As a way to try to standardize this, DEP says that streams with a predicted flow rate greater than or equal to 0.01 cubic feet per second at the 99 percent flow duration rate are considered perennial. Mr. Hanley explained that the invert to this is if there is less than that it is considered intermittent. Mr. Hanley noted that 0.01 cubic feet per second is barely a trickle. They have just over 65 percent of the DEP minimum; 2/3 of the way to the minimum. The final factor is direct observation; which DEP considers as a failsafe mechanism. The requirement is to observe non flowing conditions for 4 days within a consecutive 12 month

period; unless it was observed during an extended drought or if the stream is blocked. Mr. Hanley noted that the applicant has provided the evidence of non flowing condition between the 21st and 24th of October, 2013 and when they walked the stream they saw no evidence of blockage. Mr. Hanley noted that at the previous meeting there was much discussion on if it is considered a drought if the area has received less than normal flow. Mr. Hanley provided the DEP definition of what a drought is and explained that essentially a DEP taskforce determines when there is a drought and they have not for this area at the time the observations were made. It is Mr. Hanley's opinion that this stream is in fact intermittent.

Mr. Czarniecki thanked Mr. Hanley for the information he provided and noted that at the previous meeting there were abutters who discussed the flow direction of the stream. Mr. Czarniecki asked if anyone has seen a blockages or sewer related issues that may change the direction of the stream. Mr. Erickson noted that he walked the stream a few times and there is no blockage.

Ms. Linder noted that her main concern was whether the observations were made during a drought period. Ms. Linder explained that the letter from DEP does state that even though they have not officially declared droughts there are portions of Massachusetts that the National Weather Service says were in a moderate drought at that time. Ms. Linder noted that stream stats cannot be used to determine perennial to intermittent; stream stats are only used when you want to upgrade from intermittent to perennial. Ms. Linder noted that she would still prefer to see the observations be done at different times of the year and not four consecutive days at a drier than average time.

Mr. Deackoff noted that his concern is that when he visited the site they said the stream was not flowing, but in his observation there was light reflecting in as if water was flowing on the bottom. Mr. Deackoff explained that the report says it is not flowing because the leaves on top are not moving; however, he observed flow underneath. Mr. Deackoff noted that there is a walkway that goes from the road to the power lines right over the stream and has a collapsed culvert and Mr. Erickson confirmed this. Mr. Deackoff noted that there was information provided that explained that the regulations also clarify what is meant by flow. Mr. Erickson explained that this information was provided in the original submittal and noted that there is also an orange, light weight bacterial matter on the bottom that is not moving.

Mr. Ginsburg noted that even if the Commission determines this to be an intermittent stream for the order of conditions, in the future if someone wants to do something in this area they will find the stream and it reverts back to perennial stream. Mr. Ginsburg noted that he feels they have met all of the DEP regulations.

Ms. Linder suggested a condition be put in place that the applicant will maintain a minimum buffer. Mr. Ginsburg noted that he has offered to maintain a minimum of 100 foot buffer from any structures or roadways. Mr. Czarniecki noted that even if the Commission determined it as a perennial stream there is a 200 foot buffer and that does not mean they cannot go into the buffer as there is still the 25 and 50 foot buffers. Mr. Czarniecki noted that the regulations also do not state that the observations cannot be made in four consecutive days. Mr. Erickson explained that they have provided the evidence that it is an intermittent stream and if the Commission disagrees the applicant has the right to appeal. Ms. Linder

noted that the email from DEP states that the observations have to be documented with photographs and only a portion of the stream was photographed.

Mr. Ginsburg noted that he is aware that this is an ANRAD; however, he is willing to provide the proposed plan to the Commission if that would make them feel more comfortable. Mr. Hanley explained that they are proposing an open space subdivision and showed the plans. Mr. Hanley noted that the plan is in sketch form for Planning Board purposes. The entire parcel is approximately 9.5 acres with approximately 5.5 acres of open space that will not be touched. All of the required buffers will be maintained.

Mr. Ippolito noted that he does not see any issues with this project as they are maintaining the necessary buffers.

Mr. Deackoff opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Ippolito made the motion to close the public hearing portion; seconded by Mr. Sheehan and the motion carried 5-0.

MOTION: Mr. Czarniecki made the motion to approve the Abbreviated Notice of Resource Area Delineation as presented, 379 & 357 Pleasant Street, Marc P Ginsburg and Sons Inc., Map 32, Lots 36 & 37, DEP # 305-961, reference shall be made to the plan dated November 15, 2013; seconded by Mr. Sheehan and the motion carried 5-0.

B) Continued Notice of Intent, Carnation Drive, Tewksbury Housing Development Authority, Map 47 Lot 66, DEP # 305-960

Present was Sue Harrington on behalf of the Tewksbury Housing Authority. Ms. Harrington explained that the Tewksbury Housing Authority has four sites that they are bringing into compliance with Board of Health's regulations for dumpster pads with enclosures. They are requesting to build a 13x11 foot concrete pad with enclosure surrounding. The dumpster is within a FEMA flood plain; elevation 115, and close to a wetland resource area. The dumpster will be moved outside the flood plain; however, they are still within the resource area. Ms. Harrington noted that they have reviewed the site and feel this is the best location for the dumpster.

Mr. Ippolito noted that he visited the site and commended the applicant on moving the pad outside of the flood plain. Mr. Ippolito noted that there is some debris located near the wetlands; a file cabinet, etc., and requested this be cleaned up. Mr. Boyd also cautioned against snow removal and storage around the wetlands. Ms. Harrington asked what type of siltation barrier the Commission would prefer and Mr. Deackoff noted straw wattles.

Mr. Czarniecki does not feel this is the best location for the dumpster as it is in the 25 foot buffer zone and noted that there is a spot behind the maintenance shed that would keep the dumpster out of the buffer zone and would still be accessible. Ms. Harrington explained that there is additional storage behind this area; a shed. Mr. Czarniecki asked if there is any way to pitch the pad away from the wetlands as currently it drains directly into the wetlands and it

is likely the pad will not help the matter. Ms. Harrington explained that she would have to check the truck radius to see if they would be able to access the dumpster and noted that the maintenance vehicles may also have a hard time accessing the maintenance shed with the dumpster there.

Mr. Deackoff noted that it appears to him that the existing dumpster location encroaches just as much as the new one, if not more than the new one; the new dumpster location is further away from the wetlands. Mr. Deackoff explained that the dumpster is currently in an existing flood plain and if moved behind the maintenance shed it would still be in the flood plain which would be a worse condition than being in the 25 foot buffer.

Mr. Ippolito requested the pad be moved 30 inches towards the parking lot (away from the fence) and to pitch the pad away from the wetlands. Mr. Czarniecki noted that he does not feel that 30 inches is enough as it will not bring it out of the 25 foot buffer.

Ms. Linder asked if it is possible to eliminate this dumpster site location and double one of the other sites. Ms. Harrington explained that this dumpster is in a different location from the other sites.

Mr. Boyd asked if there is a way to move the location to the existing pavement so not to increase the impervious area with the pad. Discussion took place on the impact this would have on the access to the maintenance shed.

Ms. Harrington explained that the only real option is to keep the dumpster in this general area as the roadway is narrow, tenant's park around this area, and access to the maintenance shed would be tight.

Mr. Deackoff noted that this is an improvement and they are a State agency exempt from the buffers.

Mr. Deackoff opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Ippolito made the motion to close the public hearing portion; seconded by Mr. Sheehan and the motion carried 5-0.

MOTION: Mr. Ippolito made the motion to approve Notice of Intent, Carnation Drive, Tewksbury Housing Development Authority, Map 47 Lot 66, DEP # 305-960, the dumpster pad shall be pitched away from the wetlands, straw wattles shall be installed; seconded by Ms. Linder and the motion carried 3-1-1. Mr. Czarniecki was opposed and Ms. Linder abstained.

C) Certificate of Compliance, 825 South Street, Daniel Dandreo, Map 98, Lot 118, DEP#305-945

Present was Daniel Dandreo of 825 South Street. Mr. Deackoff noted that the Commission is in receipt of correspondence from Mr. Mello stating that the work is in compliance. Mr.

Deackoff asked if Mr. Dandreo had any other information to submit. Mr. Dandreo noted that the work went well; however, it took over a month to get a permit from the DPW.

Mr. Dandreo apologized for missing the previous meeting.

Mr. Deackoff opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Ippolito made the motion to close the public hearing; seconded by Mr. Sheehan and the motion carried 5-0.

MOTION: Mr. Ippolito made the motion to issue a Certificate of Compliance for 825 South Street, Daniel Dandreo, Map 98, Lot 118, DEP#305-945; seconded by Mr. Sheehan and the motion carried 5-0.

D) Request for Determination of Applicability, Portions of Route 38, Mass DOT

Present was Renata Welch on behalf of Mass DOT, District 4. Mass DOT is proposing to do roadway maintenance along a section of Route 38 in Tewksbury. The limits of work start at the Lowell/Tewksbury line and will continue for approximately one mile along Route 38; ending just east of Pike Street. The maintenance work will include resurfacing of Route 38 and the approaches at their adjoining side streets as well as sections of the on and off ramps for Route 495. Ms. Welch reviewed the resources involved; which include a brook and wetlands at the on ramp. Ms. Welch noted that the project consists of maintenance work only so they will stay strictly within the right of way areas and there will be no roadway widening. Ms. Welch noted that there will be no impact to the wetlands and they will install erosion controls as a precautionary measure. The work will also include minor deck and joint repair to the bridge, replacing the existing catch basins (6 existing will be replaced with deep sump catch basins), sidewalks on the north part of Route 38, and adjusting any drainage structures along the way in the roadway to bring it to new pavement elevations.

Ms. Linder asked what the plan is for the vegetation that is trimmed or removed. Ms. Welch explained the vegetation would be removed from the site.

Mr. Deackoff opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Ippolito made the motion to close the public hearing; seconded by Mr. Sheehan and the motion carried 5-0.

MOTION: Mr. Ippolito made the motion for a negative determination for Portions of Route 38, Mass DOT, standard order of conditions; seconded by Mr. Sheehan and the motion carried 5-0.

E) Request for Determination of Applicability, 355 Marston Street, Matthew Leonard, Map 20 Lot 27

Present was Matthew Leonard. Mr. Leonard explained that he would like to tie into town water and sewer. When he tried to get it done he was told that there was a moratorium on the road and that it could not be dug up until the spring. Mr. Leonard explained that the sewer will be done first and then when the ground unfreezes or the moratorium is up on the street the water would be done.

Mr. Czarniecki noted that there is no site plan, but he visited the site and the septic is right next to the wetlands. Mr. Czarniecki asked what the concrete structure is and Mr. Leonard explained a well.

Mr. Deackoff requested a plan be provided so that the Commission can get a better idea of what is being proposed.

MOTION: Mr. Ippolito made the motion to continue Request for Determination of Applicability, 355 Marston Street, Matthew Leonard, Map 20 Lot 27 to January 22, 2014 at 7:02 p.m., the applicant shall submit a site plan; seconded by Mr. Sheehan and the motion carried 5-0.

F) Notice of Intent, 15 Lucille Drive, Francis Augello Jr., Map 96 Lot 219, DEP#305-962

Present was Doug Miller of Goldsmith, Preston & Ringwood on behalf of Mr. Augello. Mr. Miller explained that there is an existing home on this site that is located at a dead end street; the street is supposed to be a cul de sac but the roadway does not go all the way to the cul de sac. Mr. Miller explained that there is also an existing shed that is within the 25 foot no disturb zone. The proposal is to move the shed outside of the 25 foot no disturb and to construct a garage; which is farther away from the wetlands than the existing shed. The existing shed is approximately 230 square feet and is basically entirely within the no disturb zone. Mr. Miller explained that as mitigation for the construction of the garage they are proposing a drainage system in the rear of the garage and down spouts from the garage will be connected to the system. They are also proposing to allow an area where the existing shed is to go back to its natural state to provide an additional buffer where they can. Mr. Miller explained that at one time there were two lots at this location and drainage used to run past the driveway to the cul de sac; however, when the town sewer was put in the drainage now runs down the driveway and it has become a mess. The applicant would like to put a hump in the driveway to force the water to the end of the road which will keep the water from sheeting across the driveway and allow for a greater run across the grass area. Mr. Miller explained that the purpose of the garage is to store the collectible vehicles Mr. Augello has parked in the driveway.

Mr. Deackoff noted that the straw wattles are shown beyond the existing vegetation line. Mr. Miller explained that they are not actually and that they are not clearing any vegetation.

Mr. Ippolito noted that he visited the site today and asked why they can't move the garage up four or five feet to be outside the area. Mr. Miller explained that there is an existing garage under that they are trying to line up with.

Ms. Linder asked if there is any way they can make the garage smaller. Mr. Miller explained the garage would then lose its usefulness for the storage of the cars. Ms. Linder expressed concerns with the runoff being directed to the street. Mr. Miller explained that the runoff is from the street.

Mr. Deackoff noted that there is an area marked for a temporary stockpile area that is on the existing driveway and the proposed garage would fit in this area, still be outside the 25 foot buffer, and provide for sufficient turn around. Mr. Deackoff asked why they garage cannot be put in this location. Mr. Miller explained that they explored the possibility and they did not feel they would be any more outside the 25 foot no disturb and pointed out the zoning setback and explained that a variance would be required. Mr. Deackoff suggested that the applicant go before the Board of Appeals first to see if they would allow the variance rather than disturbing the 25 foot buffer.

Mr. Miller requested to continue this matter.

Mr. Czarniecki noted that the wetland boundary has not been confirmed. Mr. Miller explained it was flagged in 2012. Mr. Czarniecki suggested the flags be checked again with Mr. Boyd and expressed concerns with filling at the corner of the garage. Mr. Czarniecki also asked if there is a dewatering plan in place and Mr. Miller explained that they do not anticipate any dewatering as it is a slab on grade; there is minor grading to blend the area.

Mr. Deackoff opened the hearing to the public and no one came forward to comment.

MOTION: Mr. Ippolito made the motion to continue Notice of Intent, DEP#305-962, 15 Lucille Drive, Francis Augello Jr., Map 96 Lot 219, to February 5, 2014 at 7:05 p.m.; seconded by Mr. Sheehan and the motion carried 5-0.

G) Certificate of Compliance, 61 Astle Street, Golen Family Irrevocable Trust, Map 22 Lot 6, DEP # 305-944

Present was the applicant, Ricky Golen. Mr. Deackoff noted that the Commission is in receipt of correspondence from Mr. Gill stating that all of the conditions have been met.

Mr. Ippolito noted that he visited the site today and it looks beautiful.

Mr. Czarniecki noted that one of the conditions was to install Bernstein markers and asked if this has been done. Mr. Golen explained that they are expected to be installed in the spring. Mr. Czarniecki noted that none of the original infiltration basins that were proposed were installed and asked about the driveway. Mr. Golen explained that a trench was put in and the driveway was pitched towards the mulch area by the telephone pole that has stone underneath. Mr. Czarniecki noted that he was a little disappointed to see some of the

changes from the original plan as the driveway is now closer than where the Commission wanted and there is some debris on the other side of the retaining wall that is in the buffer zone that should be removed.

Mr. Deackoff noted that the driveway is 35 feet so it would have been allowed as well as the 2 foot retaining wall.

Discussion took place on how to address the Bernstein markers and Mr. Golen requested the Commission issue the Certificate contingent upon Mr. Boyd's review and approval of the installation of the Bernstein markers. Mr. Boyd noted that he has 21 days from the Commission's vote to submit. Mr. Golen noted that he believes he can get them installed within that time.

MOTION: Mr. Ippolito made the motion to issue a Certificate of Compliance for 61 Astle Street, Golen Family Irrevocable Trust, Map 22 Lot 6, DEP # 305-944, contingent upon Mr. Boyd's review and approval of the installation of Bernstein markers; seconded by Mr. Sheehan and the motion carried 5-0.

New Business

Ms. Linder suggested that in the future applicants be required to submit a plan to have a hearing. Discussion took place on putting this in the regulations and Mr. Czarniecki noted that it is. Ms. Linder discussed electronic filings. Mr. Deackoff suggested these items be discussed at next Bylaw Subcommittee meeting.

Old Business

Mr. Ippolito requested a copy of the 2014 meeting schedule. Mr. Boyd will provide this.

Administrator's Report

There was no administrator's report.

Adjournment

MOTION: Mr. Ippolito made the motion to adjourn; seconded by Mr. Sheehan and the motion unanimously carried 5-0.

Respectfully submitted,

Approved: 3/5/14