



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

Anthony Ippolito, Chairman
Carolina Linder, Vice-Chair
Steve Deackoff, Clerk
Dennis Sheehan
Jonathan Parker

**Meeting Minutes
May 13, 2015**

The meeting was called to order by Anthony Ippolito, Chairman at 7:00 p.m. at the Pike House. In attendance were Carolina Linder, Steve Deackoff (late arrival), Dennis Sheehan, and Jonathan Parker. Also in attendance was Kyle Boyd, Conservation Agent, and Melissa Johnson, Recording Secretary.

Approval of Meeting Minutes – April 22, 2015

MOTION: Mr. Parker made the motion to approve the April 22, 2015 meeting minutes; seconded by Ms. Linder and the motion carried 4-0.

A) Notice of Intent, KAJ LLC, 731 Livingston Street and 10, 20, 30 Eddie’s Way, Map 76, Lots 24, 57, 23, and 58, DEP #305-985

Present was Jim Hanley of Civil Design Consultants, Maureen Hanley of Norse Environmental Services, Attorney Richard O’Neill, Dick Cuoco, and Arnie Martel, applicant. Ms. Hanley provided the members with a copy of a plan of the site and explained that this is their second hearing and they have spent the last couple of months working with the town, DEP, abutters, etc. to address comments and concerns. Mr. Hanley showed a rendering of the site and referenced “Plan C3” which shows a minor modification to address a fire department concern. The access drive has been shifted to the East which results in a slight reduction in impact to the riverfront area. Mr. Hanley noted that they have also dramatically reduced the footprint of the infiltration pond. Norse Environmental Services conducted additional field testing’s in April and they found there is a porous grade material that allows the water to percolate to the bottom quicker than originally thought. Mr. Hanley noted that one of the comments they received from the Conservation Commission as well as the DPW was to try to decentralize the system. As a result, they have reshaped the existing pond and a second pond, approximately the same size, has been located to the far right behind the buildings. They have also added an underground infiltration system to service two of the carports which pulled some of the volume from the ponds and allowed for the reduction in the size of the ponds. Mr. Hanley reviewed the adjustments made to the alignment and configuration of the trail that have been made as the result of the many comments received from abutters during the Planning Board review process. Mr. Martel also met with some of the abutters numerous times on the site. Mr. Hanley noted that they have also reconfigured the utility design and explained that Sheet C5 details this reconfiguration.

Mr. Hanley explained that they have designed a full restoration plan. There are 2,300 square feet of net impacts or approximately 9% and the applicant is proposing to restore approximately 75,000 square feet. There is an approximate 15,000 square foot reduction in impervious service within the riverfront area as the result of removing an existing home, driveway, and septic system. Mr. Hanley noted that he worked with Norse Environmental to develop a planting schedule for the restoration area and they are proposing approximately 58 trees and 54 shrubs.

Mr. Hanley noted that they have addressed the items contained in the letter received from the DPW today and also received a letter from Weston & Sampson that the development meets the requirements of the Massachusetts Wetlands Protection Act as well as the local bylaws.

Mr. Boyd inquired about the Conservation restriction and Mr. Cuoco explained that the conservation restriction would require the property owner to maintain the trail. Mr. Boyd explained that he read through Weston & Sampson's letter which states he approved the restoration areas and, while Mr. Boyd is okay with the areas, he recommends they be done in phases and sections. Mr. Martel confirmed this will be done.

Mr. Boyd noted that the town engineer has recommended some of the parking spots be "banked" for future use and explained that with projects of this size, the future parking is difficult to determine. Mr. Hanley noted that 12 spots will be banked to allow for future growth. Attorney O'Neill suggested "reserved for future use" rather than "banked".

Ms. Linder referenced the town engineer's comments regarding the piping under the 25 and 10 year storm and asked if there is a plan for maintenance. Mr. Hanley explained that because the site is flat, the pipes are laid at a slope that works and are shallow enough where the pond will surcharge out during some of the storm events. As a result, maintenance may need to be performed at times and the applicant is aware that they will need to address this. Ms. Linder noted that there are a lot of trees being proposed in the pond area and asked if there is a way to avoid this. Mr. Hanley explained that they did some additional testing's yesterday to see if there is a way to shift things around and because the area is so flat so there is not much flexibility. Ms. Linder asked if there is a timeframe for construction and restoration. Mr. Martel explained that he began building under the previous order from Marc Ginsburg and noted that he has planted over 60 trees to date. Mr. Martel explained that he would like to remove the home and septic system that is currently in the wetlands and plant some shrubs and bushes to stabilize the area prior to construction. Ms. Linder inquired about a monitoring plan and suggested at least two growing seasons. Mr. Cuoco noted that a two year growing season is typically the standard. Mr. Martel explained that he has a full staff that monitors these things monthly at all of the sites he is developing.

Mr. Ippolito opened the hearing to the public.

Diana Martel of 752 Livingston Street came forward and asked if the town has addressed any of the culvert issues for the increased flow of water. Mr. Martel explained that the culvert has been clogged for years and has been a problem for over 5-6 years. Mr. Martel

explained that he has not spoken with the DPW regarding this, but he is willing to work with the town and abutters on easements, etc. as well as the cleaning of the culvert or any work that may need to be done and will help in any way he can. Mr. Cuoco explained that they are willing to help with this as they will be working in the area; however, the permitting process would be the town's burden. Mr. Martel noted that he would also like to overlay the road in this area to make it look nicer and to get rid of the potholes. Attorney O'Neill explained this was also discussed with the Planning Board and Mr. Martel has also pledge his cooperation on this to them. Mr. Boyd asked if the applicant would partner with the town if the DPW is willing to do the work and Mr. Martel confirmed this and explained that he would like to improve the appearance of this area as he also lives close by.

MOTION: Mr. Parker made the motion to close the public hearing portion; seconded by Mr. Sheehan and the motion carried 4-0.

MOTION: Ms. Linder made the motion to approve Notice of Intent, KAJ LLC, 731 Livingston Street and 10, 20, 30 Eddie's Way, Map 76, Lots 24, 57, 23, and 58, DEP #305-985, the restoration is to be started prior to construction beginning, 8 parking spots shall be reserved for future use, the conservation restriction shall be approved by the Commission prior to the issuance of a certificate of compliance being issued; seconded by Mr. Sheehan and the motion carried 4-0.

Mr. Deackoff arrived.

B) Notice of Intent, Jack Berube, 60 First Street, Map 81, Lots 167 & 198, DEP #305-989

Present was Jack Berube of 2543 Main Street, Tewksbury, MA and Kevin Fleming of Cypress design. Mr. Berube explained that he submitted an original plan for this site and there was a glitch with the mailing. As a result, he was required to re-advertise. Since that time, Mr. Berube has gone before the Board of Appeals and they have requested a modification to the plan in that the home be pushed further back towards New Jersey Road; which is a paper street.

Mr. Berube noted that the lot precedes the bylaws as it was created in 1907 and explained that he is requesting a waiver to the bylaws to construct a home on this lot. The new proposal is to fill approximately 300 square feet and replicate approximately 600 square feet.

Mr. Boyd noted that he would prefer to see the home go in the opposite direction from the ZBA's request and explained that the applicant has provided mitigation for the wetland disturbance, but not for the disturbance within the 25 foot no disturb area. Mr. Boyd recommended the Commission also take the disturbance within the 25 foot area into consideration.

Mr. Parker noted that he feels the lot is small and that he would also like to see the home towards the original location. Mr. Sheehan agreed with this.

Ms. Linder questioned whether the lot being created prior to the bylaws is a reason to grant a waiver. Mr. Boyd explained that consideration would be given to the fact that the lot was created prior to the bylaws; however, it is when the lot was purchased. Mr. Deackoff explained that it is an investment based expectation no matter who owns it or when it was purchased; when it was created it was a buildable lot.

Ms. Linder noted that 90% of the house would be within the 25 foot no disturb and expressed concerns with potential flooding. Ms. Linder suggested the matter be looked at further by an engineer if it is approved and noted that at this point she would be opposed based on the home being 90% within the 25 foot buffer.

Mr. Boyd noted that he would like to see the disturbance to the 25 foot no disturb area addressed as a replication for this has not been proposed. Mr. Deackoff explained that the intent of the bylaw is to recreate a 25 foot no disturb in another area. Mr. Boyd asked if this could be done and Mr. Fleming noted that it could be, but it would create more of a disturbance in the no disturb area.

Mr. Deackoff suggested organic fertilizers be used for the lawn as well as a berm with plantings between the lawn and wetlands.

Mr. Ippolito opened the hearing to the public.

Hector Montes of 49 New Jersey Road came forward and expressed concerns with flooding. Mr. Montes noted that it has not rained in over a month and the area is still wet. Mr. Montes feels Mr. Berube did a “good job” with the other house, but he is concerned with the water issue. Mr. Montes feels the lot has remained undeveloped because of the water issues and noted that his neighbor is trying to put in a deck and cannot because the footing would be in the 25 foot buffer.

Mr. Deackoff asked if the DPW has received complaints about flooding in this area and Mr. Boyd explained that he is not sure, but that he can find out.

Mr. Deackoff suggested continuing the matter to address some of the Commission’s concerns and to allow the ZBA to make their determination.

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

MOTION: Mr. Deackoff made the motion to continue, Notice of Intent, Jack Berube, 60 First Street, Map 81, Lots 167 & 198, DEP #305-989 to June 3, 2015 at 7:02 p.m.; seconded by Mr. Parker and the motion carried 5-0.

C) Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP #305-978 (Continued)

The applicant has requested to continue this matter to June 3, 2015.

MOTION: Mr. Deackoff made the motion to Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP #305-978 to June 3, 2015 at 7:04 p.m.; seconded by Mr. Parker and the motion carried 5-0.

D) Request for Determination, Tewksbury DPW, State Street/North Street/Clark Road/Pleasant Street

Present was Kevin Hardiman, Town of Tewksbury Engineer. Mr. Hardiman explained that he is present for roadway resurfacing projects the town is planning for this summer; three of which are located within 100 feet of a resource area. The three projects will be located on State Street, North Street, and Clark Road.

Mr. Sheehan asked if Pleasant Street is also included and Mr. Hardiman noted Pleasant Street will be paved; however, it is not within 100 feet of a resource area.

Mr. Boyd requested erosion controls be put in place and Mr. Hardiman confirmed this will be done.

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

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

MOTION: Mr. Parker made the motion for a negative determination, Tewksbury DPW, State Street, North Street, and Clark Road; seconded by Mr. Parker and the motion carried 5-0.

E) Enforcement Order, Patrick McCarthy, 120 Poplar Street, Map 97, Lot 98

Present was Patrick McCarthy of 120 Poplar Street. Mr. Boyd explained that he was out at this location with DPW staff as well as the Health Department inspecting beaver problems on the town's open space land located behind this site and they noticed that Mr. McCarthy had recently come in for a pool permit and it was clear that work was done beyond what was allowed in the permit. In addition, some of the work that was done was on town land and is within 100 feet of the wetlands. Mr. Boyd noted that there is a separate violation for potential zoning violations.

Mr. Ippolito noted that he visited the site with Mr. Boyd and the town's open space land is clearly marked out with stakes.

Mr. McCarthy requested some consideration on this matter and explained that they just purchased this home in September, he hurt his hand over the winter, and they recently had a baby. As a result, it has been a slow process. Mr. McCarthy noted that he can provide pictures to the Commission and explained that he removed trees that were too close to his home and put down the crushed stone as he felt it was a less aggressive way to address the mud and water that was created from the pool process that was done in the

fall. Mr. McCarthy noted that there was a silt fence at the stakes; however it has been covered some by the crushed stone. Mr. McCarthy explained that he will be in compliance with whatever the Commission recommends; however, it will be a slow process. Mr. McCarthy showed the Commission the photographs of the site.

Mr. Deackoff noted that his concern is that the area is restored and proper erosion controls are in place. Mr. Deackoff asked if there is currently erosion controls and Mr. McCarthy confirmed this. Mr. Boyd noted that it has been covered with the crushed stone. Mr. Deackoff suggested a Notice of Intent be filed for the restoration. Mr. Boyd suggested the wetlands and town property be mapped out and a wetland scientist be hired to determine a restoration plan. Mr. McCarthy noted that there are trees "in the distance" with metal tags. Mr. Deackoff suggested Mr. McCarthy contact whoever did the original work for assistance in restoring the area. Mr. Boyd explained that the work was done in 2010 by Steven Derochers.

Mr. McCarthy requested the matter be continued to the June 17, 2015 meeting.

MOTION: Mr. Deackoff made the motion to ratify the enforcement order for Patrick McCarthy, 120 Poplar Street, Map 97, Lot 98; seconded by Mr. Sheehan and the motion carried 5-0.

MOTION: Mr. Deackoff made the motion to amend the enforcement order, a Notice of Intent shall be filed before June 9, 2015; seconded by Mr. Parker and the motion carried 5-0.

MOTION: Mr. Deackoff made the motion to continue Enforcement Order, Patrick McCarthy, 120 Poplar Street, Map 97, Lot 98 to June 17, 2015; seconded by Ms. Linder and the motion carried 5-0.

F) Enforcement Order, FTO Realty Trust, 20 Riverview, Map 98, Lot 121, DEP #305-982

Present was Jim Hanley of Civil Design Consultants. Mr. Hanley provided the members with a response to the Order as well as with a plan of the site and explained that he received a telephone call from Mr. Boyd last Monday requesting he come look at the site. Mr. Hanley made a site visit and the process of clearing the trees had been started; erosion controls have been installed and trees have been cut. Mr. Hanley explained that the Order was issued for lack of properly installed erosion controls as well as cutting beyond the cut line illustrated on the plan. Mr. Hanley noted that he walked the site and provided photographs of his observations. Mr. Hanley referenced page 3 of his response letter showing five trees that were removed that were possibly beyond the limit of clearing. The trees were removed as they interfered with the installation of the retaining wall. Mr. Hanley noted that there is also one other tree to the right that is beyond the cut line and should not have been cleared. Since that time they have installed additional filter sock. Mr. Hanley explained that the applicant is willing to mitigate at a 2:1 ration and plant 12 trees in this location for the 6 that were impacted. Mr. Boyd questioned the tree line determination and discussion took place on the need to clarify tree lines in the bylaws.

Mr. Boyd explained that he sent certified mail to the applicant and it was not received back so he is not aware of whom the actual owner is and the validity of the enforcement order given confirmation of receipt has not been received. Mr. Hanley noted that he will address this and provide Mr. Boyd with the necessary paperwork.

Mr. Hanley requested the enforcement order be lifted subject to the signed paperwork being received back from the applicant.

Ms. Linder requested the restoration/mitigation be done prior to the home being removed and construction beginning. Mr. Hanley explained that they are unable to do that as they would then lose certain grandfather protections if the home is removed first. Ms. Linder explained that proof that it is grandfathered was previously requested and still has not been received. Mr. Hanley noted that the existing structure should be sufficient proof and explained that they would remove the home once the building permit has been received. Mr. Deackoff noted that the applicant was told to remove the home during low flow conditions. Mr. Hanley explained that the bylaws do not allow for two structures so the home would have to be removed once the foundation permit is received.

Ms. Linder suggested a condition be put in place that the existing home is to be removed by summer as it is in the river. Mr. Boyd noted that there are many homes that in the same situation and he is unaware of the legalities of telling a homeowner that they must remove their home.

Mr. Deackoff explained that the Commission can either amend the notice of intent or do the restoration under the enforcement order. Mr. Hanley noted that he would prefer to restore under the enforcement order. Mr. Deackoff noted that the trees shall be planted within four weeks from today's date. Mr. Boyd noted that he would like confirmation of receipt of the enforcement order that was sent via certified mail prior to do anything.

MOTION: Mr. Deackoff made the motion to ratify and continue Enforcement Order, FTO Realty Trust, 20 Riverview, Map 98, Lot 121, DEP #305-982 to June 3, 2015 at 7:05 p.m., tree planting shall take place within the next four weeks; seconded by Mr. Parker and the motion carried 5-0.

Jim Bruce of 2 Riverview Avenue came forward, noted that he is an abutter, and requested the opportunity to speak. Mr. Bruce provided the members with photographs of the site and explained that the existing home is a summer cottage and was only ever used in the summer. Mr. Bruce asked how deep the water will be between the house and street that runs over the driveway will be and asked if it will be 2 feet. Mr. Hanley confirmed this would be the approximate depth. Mr. Bruce expressed concerns with public safety accessing the home during these conditions as he feels the home will be on an island when the water flows across the driveway. Mr. Bruce made the following recommendations: keep an engineer on site while the work is being done to ensure the job is done correctly, a bond from the builder be put in place in the event their homes flood as the result of this project as it is in a flood plain, and Mr. Boyd and town engineer, Kevin Hardiman, frequently monitor the site.

John Costa of 95 Bridge Street came forward and expressed concerns with flooding. Mr. Costa explained that he has resided in his home since 1985 and has never had flooding issues. Mr. Costa asked who is accountable if his house floods as a result of this project. Mr. Boyd explained that FEMA would address water depths, flood storage, etc.

Mr. Deackoff explained that the Commission has reviewed the application for this project and from the engineering that has been put forth, there will not create a flooding issue for Mr. Costa's home. Mr. Deackoff explained that FEMA is the final auditor of the home being constructed in the flood plain. As a result, any flooding that would occur would be guaranteed by the Federal Government. Mr. Deackoff discussed some of the flooding that has occurred in this area over the years and noted that this project will not increase the water in this area. Mr. Costa noted for the record that he is opposed to this project.

G) Enforcement Order Ratification, Atilio Dispersio, 1275 Shawsheen Street, Map 101, Lot 76

Mr. Boyd explained that two enforcement orders were issued in the past on April 16, 2014 and August 26, 2014 and the applicant has not complied. As a result, the matter has been sent to DEP who has requested the Commission ratify this into one enforcement order.

MOTION: Mr. Deackoff made the motion to ratify Enforcement Order, Atilio Dispersio, 1275 Shawsheen Street, Map 101, Lot 76; seconded by Mr. Sheehan and the motion carried 5-0.

H) Non Substantial Change Request, Allen Boutiette, 30 Frasier Lane, Map 25, Lot 90, DEP #305-979

Present was Dick Cuoco and the applicants, Allen Boutiette of 30 Frasier Lane. Mr. Cuoco explained that were before the Commission in January for an Order of Conditions. The original home was completely outside the 100 foot buffer; which is why it did not have a DEP file number. Mr. Cuoco explained that now that the home is under construction, the homeowners would like to install a swimming pool, hot tub, and cabana. All of the improvements are outside of the 25 and 50 foot buffer zones, but are within the 100 foot buffer. As a result, they are requesting a non substantial change.

Mr. Boyd explained that his interpretation of a non substantial changes is would the change have affected the conditions if it was part of the original order and it was the consensus that adding the pool would not have changed the original order. Mr. Cuoco noted that no disturb signs will be put up as part of the project and that they will be planting 8, 30-40 foot trees along the back of the property.

Ms. Linder asked if the pool can be moved outside of the 100 foot buffer and Mr. Cuoco noted that it cannot as it would not be directly opposite the home.

MOTION: Mr. Deackoff made the motion for a non substantial change, Allen Boutiette, 30 Frasier Lane, Map 25, Lot 90, DEP #305-979, discharge

shall be directed away from the wetlands; seconded by Mr. Sheehan and the motion carried 5-0.

New Business

Land Donation adjacent to 2000 Whipple Road

Mr. Boyd noted that this matter is still being finalized with the Shawsheen Water Shed Association.

Open Space & Recreation Plan

Mr. Boyd noted that this is a topic that the Commission should discuss in detail in the future and noted that the \$20,000 had been appropriated from CPC funds for the Long Pond Study and it appears that the actual cost will be \$14,000; which leaves \$6,000 remaining to be used towards open space. Mr. Boyd will work on this further.

Educational Brochure

Ms. Linder provided a draft copy of the brochure from the printing company. The cost for the brochure printing and mailing is approximately \$2,179 for the mailing and printing on \$1284. \$1500 has been appropriated and leaving \$1,964.00. Ms. Linder noted that it is the same company who did the mailing for the water department.

MOTION: Ms. Linder made the motion to appropriate up to \$2,000 from the for the purpose of the educational brochures and mailings; seconded by Mr. Deackoff and the motion carried 5-0.

Old Business

There was no old business.

Adjourn.

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

Approved: 6/3/15

List of documents for 5/13/15 Agenda
Documents can be located at the Community Development Office

Approval of Meeting Minutes-April 22, 2015

- 7:02 P.M Notice of Intent, KAJ LLC, 731 Livingston Street & 10, 20, 30 Eddie's Way, Map 76
Lots 24, 57, 23, and 58, DEP # 305-985
- *Review letter from Mel Higgins dated March 18, 2015*
 - *Notice of Intent submitted by Norse Environmental dated March 2015*
 - *Proposed Riverfront Impact Assessment submitted by Jim Hanley dated March 4, 2015*
 - *Existing Riverfront assessment submitted by Jim Hanley dated March 4, 2015*
 - *Site development plans dated March 4, 2015 submitted by Civil Design Consultants*
- 7:04 P.M Notice of Intent, Jack Berube, 60 First Street, Maps 81 Lots 167 & 198, DEP # 305-989
- *Site Plan submitted by Cyprus Design Inc. dated March 27, 2015*
 - *Notice of Intent Form 3 submitted by Jack Berube*
- 7:06 P.M Abbreviated Notice of Resource Area Delineation, James Wu, 1201 Main Street, DEP # 305-978
(Continued)
- *Review Letter from Mel Higgins dated Dec 8., 2014*
 - *ANRAD application dated Nov. 21, 2014*
 - *Existing Conditions Plan submitted by Otte, Dwyer, with markups by Weston & Sampson*
 - *Review letter from Mel Higgins dated Dec. 15, 2015*
- 7:07 P.M Request for Determination, Tewksbury DPW, State Street/North Street/Clark Road/Pleasant St
- 7:08 P.M Enforcement Order, Patrick McCarthy, 120 Poplar Street, Map 97 Lot 98
- 7:10 P.M Enforcement Order, FTO Realty Trust, 20 Riverview, Map 98 Lot 121, DEP # 305-982
- 7:12 P.M Enforcement Order Ratification, Atilio Dispersio, 1275 Shawsheen Street, Map 101 Lot 76
- 7:14 P.M Non Substantial Change Request, Allen Boutiette, 30 Frasier Lane, Map 25 Lot 90

New Business

- **Land Donation adjacent to 2000 Whipple Road**
- **Open Space & Recreation Plan**