

# CONSERVATION COMMISSION

## MINUTES (approved 12/9/09)

OCTOBER 14, 2009

Present: J. Wiley, Chairman  
A. Goetz, Vice Chairman  
B. Dyer, R. Turner

Absent: K. Phelps

Also Present: L. Hershey, Conservation Agent  
P. Smith, Board Secretary

### **Conservation Agent report given to members**

**MEETING OPENED: 7:05**

### **ENFORCEMENT ORDER**

#### **TANGLEWOOD RD. #8**

Ms. Hershey stated she requested the owners of 8 Tanglewood Dr to come to the meeting tonight to discuss enforcement issues. She stated the house was built under an Order of conditions and a Certificate of Compliance issued in 1997. Since that time their have been enforcement issues, including the construction of a shed in the buffer zone and most recently a foundation for a deck has been put in and an area in the backyard cleared. Ms. Hershey stated she issued an Enforcement order that was sent out on 10/2/09 requesting the owner provide the board with a plan and cease and desist. Ms. Hershey would like to have the wetland line reviewed. The owners have also widened the driveway and started a retaining wall. No building permit has been issued.

The owner Mr. Steven Sarkis stated the deck was constructed in 1992 and only 3ft. has been cleared in the backyard. He would like the commission to tell him what he needed to do and he would hire someone to come in to satisfy the commission.

Ms. Hershey stated there have been numerous times the owner has been non-compliant. They discussed plantings that the commission required plantings to be put in a specific area and later on the owner refilled the area once again. Ms. Hershey stated a wetland specialist needs to go out and see what is going on

**Mr. Goetz made the motion to ratify the Enforcement Order**

**Ms. Dyer seconded the motion**

**Vote: 3-0-0**

**PUBLIC HEARING**

**REQUEST FOR DETERMINATION**

**WEST ST. #444**

**OPENED: 7:20**

Mr. Wiley read the ad from the Walpole Times and green cards were collected

Mr. Wiley read board comments into the record

Mr. Paul DeSimone from Colonial Engineering was present along with Ms. Andrea Chamberlain from Derba Construction representing the owner of Assured Collision. Mr. DeSimone stated this request for determination is for excavation to put new footings in for the purpose of re-doing the roof to dress up the building. Mr. DeSimone stated he could put silt controls along the pavement. He stated there would only be a few yards of material that would be excavated and it will be taken off site. The rest of the material will be used.

Mr. Turner stated he feels this will be a great improvement and dress up the area.

Mr. Goetz stated he has no problem with this being considered a Negative 3 Determination. He stated he would encourage it to be a quick project and set conditions about silt control

**Mr. Goetz made the motion to close the Public Hearing**

**Ms. Dyer seconded the motion**

**Vote: 3-0-0**

**Closed: 7:30**

The commission discussed special conditions including silt control in specific areas and excavated materials be taken offsite.

**Mr. Goetz made the motion to approve and issue a Negative 3 Determination**

**Ms. Dyer seconded the motion**

**Vote: 3-0-0**

**NOTICE OF NON-COMPLIANCE**

**492 LINCOLN RD.**

Ms. Hershey stated she received a call from a neighbor with information that the owner at 492 Lincoln Rd. is setting up a path for off-road vehicles on the property. Ms. Hershey sent them a Notice of Non-compliance dated 9/23/09 for the earthwork and culvert that was created behind the property. She stated the owners should come to the meeting tonight to discuss this.

Mr. Goetz stated if there is no negative impact on the stream, such as the restriction of water flow the commission doesn't need to take action except telling them to stop

Mr. Wiley stated the owners should be advised to stay out of the wetlands and to remove the tires.

Mr. Wiley discussed going into Executive Session before returning to our regular schedule hearing

**Mr. Goetz made the motion to go into Executive Session to discuss ongoing litigation with 18 Frontier Dr.**

**Ms. Dyer seconded the motion**

**Vote: 3-0-0**

**The chairman asked for a roll call vote**

**Mr. Goetz – aye; Ms. Dyer – aye and Mr. Wiley - aye**

**Time: 7:45**

The board went into Executive Session at 7:45 p.m and will come back into regular session

**Mr. Goetz made the motion to come out of Executive Session**

**Ms. Dyer seconded the motion**

**Vote: 3-0-0**

**The chairman asked for a roll call vote**

**Mr. Goetz – aye; Ms. Dyer – aye; Mr. Wiley – aye**

**Time: 8:25**

## **MINUTES**

### **SEPTEMBER 9, 2009**

**Ms. Dyer made the motion to accept the minutes for September 9, 2009**

**Mr. Goetz seconded the motion**

**Vote: 3-0-0**

## **BOARD COMMENTS**

The Planning board is requesting comments on Legacy Lane Definitive Subdivision. The commission discussed that the applicant will need to file a Land Disturbance Permit with the Conservation Commission for this project

## **CORRESPONDENCE**

The following correspondence was available for the commission to review and discuss

- Town Work Order – Fisher School
- Town Engineer – Erosion reports
- Mosquito control program
- Mass Slow Growth Initiative
- Pond Drawdowns
- EPA letter – Stormwater
- FEMA letter
- Ransom Environmental – RAM notice (CVS)

## **CONT. PUBLIC HEARING**

**FRONTIER DR. #18**

**AMENDMENT**

**DEP# 315-726**

**OPENED: 8:45**

Mr. Wiley read the advertisement from the Walpole Times for the Continued Public Hearing for 18 Frontier Dr. This hearing was opened on 8/12/09 and has been continued twice

A sign-up sheet was passed around for the abutters to sign

Michelle Hunton, representative for the applicant Walsh Contracting Corp. was present. Attorney Peter Fenn, counsel for the abutters and Town Counsel John Goldrosen was also present. Court stenographer Kim Crandell was present as she was retained by the abutters as a verbatim reporter.

Ms. Hunton stated this filing is to request the approval for an amendment to the Order of Conditions for DEP# 315-726, 18 Frontier Dr. She stated the applicant believes the standards under the Wetland Protection Act are being met, and there are no substantial changes. Ms. Hunton stated that Mr. Albano, the wetland specialist from Tetra Tech Rizzo, stated the applicants' point of view at the last Public Hearing

Mr. Wiley stated that at the last hearing a request was made that the applicant mark the wetland line in the field so the commission could look at it and base their judgment on that line. He stated that the representative told the commission to follow the plan submitted and they would not stake the line. Mr. Wiley explained that under the conservation commission regulations, we could have a third party/outside consultant wetland specialist evaluate and locate the wetland line. He also stated it is up to the applicant to pay for this. Requests are sent out, bids collected with an estimate of cost.

The money goes to the Town of Walpole for payment to the consultant. Mr. Wiley asked if Ms. Hunton was aware that the field has not been flagged.

Ms. Hunton stated that she was aware of this and their client and Mr. Albano feel delineation was properly done and the client would like a decision of approval or denial to be made tonight if possible. She asked for a break to consult with her client.

The representative left the Hearing to consult with her client

Upon her return, Mr. Wiley asked if the applicant would provide funding for a third party evaluation

Ms. Hunton stated her client is not interested in paying for a third party

Ms. Hershey asked Ms. Hunton to clarify what line has been verified

Ms. Hunton stated it is the one that Mr. Albano told the board at the last meeting

Ms. Hershey stated the Daylor line was verified by the conservation commission and the AES line was not verified. She asked if Ms. Hunton could state that the AES line was approved

Ms. Hunton stated it was approved by DEP

Ms. Hershey stated it was not approved under the bylaw though

Mr. Wiley asked for questions or comments from the audience

Attorney Peter Fenn, stated he is the representative for the abutters and has also been counsel at DEP hearings as well. Mr. Fenn stated that the line has been **looked** at by DEP, but has not been verified. Mr. Fenn stated there has been a substantial change to the line and the plans since it was approved years ago even if it is the AES line being looked at. A new NOI is needed and Mr. Fenn stated the commission should make the applicant start over and do it right. The neighborhood is concerned. Mr. Fenn stated the amendment should be denied.

**Mr. Goetz made the motion to close the Public Hearing**

**Ms. Dyer seconded the motion**

**Vote: 3-0-0**

**Closed: 9:10**

Mr. Wiley stated the following be noted for the record:

- 1) The applicant has refused to delineate the wetland line in the field for our evaluation
- 2) The applicant refused to pay for a third party evaluation

3) The applicant has advised us that wetland line we should be following is the AES sketch line on the plan dated 9/14/07 and revised 12/12/07

4) The 25 ft no alteration area encroaches in several areas of the proposed house construction and driveway. An example of this is the AES sketch line shows a proposed driveway crossing the wetland line. This constitutes an additional crossing for this project. One wetland crossing has been granted for Frontier Dr. already and it is not mandatory that we allow another.

Ms. Dyer stated that to her two things feel unprecedented. One is the refusal of the applicant to provide evidence as requested, and the second being the use of the 25ft. no disturb boundary. She states it just looks wrong.

Mr. Goetz stated his comment is that the house appears bigger than the one approved prior and it appears to have been moved into a no-disturb area.

Mr. Wiley stated the entire project is within the 100 ft buffer zone and an extensive amount of work is in the 25ft no-disturb area. He also stated there is an existing wooded area the board indicated was not to be altered that the applicant is proposing to alter

Ms. Hershey went over the list of items Mr. Wiley stated that will justify the board denying the amendment

Attorney John Goldrosen stated the board clarify the 25ft no disturb is based on the AES line.

Mr. Wiley stated the applicant has advised us to use the AES line. He also stated that all comments tonight are based on that line. Mr. Wiley also stated that Mr. Russ Waldron, of AES stated at the last Public Hearing that he did not consider the "sketch line" he did as a complete delineation.

Attorney Goldrosen stated the board use lack of information in addition to the other factors discussed tonight, such as substantial changes to the plan, in making their decision to approve or deny.

**Mr. Goetz made the motion to deny the request to amend the Order of Conditions due to lack of information**

**Ms. Dyer seconded the motion**

**Vote: 3-0-0**

Mr. Wiley stated the commission has received a letter of resignation effective immediately from Russell Jones. A letter of thanks for past services will be sent to him.

**Ms. Dyer made the motion to adjourn**

**Mr. Goetz seconded the motion**

**Vote: 3-0-0**

**Meeting Closed: 10:00**