

Essex Conservation Commission

May 11, 1993

Present: Edwin Perkins, Acting Chairman; David Folsom;
Arthur Hodges; Peter Perrigo; Thomas Prentiss.

Meeting called to order at 7:55 p.m.

Timothy Kane met with the Board for a building permit application review for the property of Margaret Lake, Turtleback Road. The Board was told that the nearest wetland is approximately 400 feet. The Board reviewed the application and plan. Folsom moved to sign off on the building permit application for Margaret Lake for property on Turtleback Road, seconded by Prentiss, with the Board voting unanimously in favor.

A public hearing was held at 8:05 p.m. under the Massachusetts Wetlands Protection Act. M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Gloucester Bank and Trust covering construction of a residential structure, driveway and regrading within the 100 foot buffer zone on Western Avenue/Essex Park Road. Attorney Michael Shea represented Gloucester Bank and Trust. Shea submitted a memorandum to the Board outlining their intent, i.e. they are asking to construct a single family dwelling in the buffer zone. Shea told the Board, "There were concerns as to whether the wetlands demarcation line shown on a plan for a previous filing of a Notice of Intent for this property was incorrect and that run-off from the construction in the buffer zone might have an adverse effect. The resource line was, therefore, reflagged. It was found that upon reflagging the bordering vegetative wetlands line had moved ten feet closer to Western Avenue. Also shown on the plan is the 100-year flood line and a line showing the normal flooding pattern. The septic system is outside of the 100 foot buffer zone. A 5' x 8' dry well is proposed to collect run-off from the dwelling by way of a perimeter drain and roof drains. A stone swale is also proposed to be placed on the lower side of the driveway to allow a rip-rap effect in distributing water flowing off the driveway. Surface run-off will go to the brook - that pattern will not change. We are proposing a siltation barrier between the activity and the bordering vegetated area. This barrier will remain in place until all construction work is finished, and loaming and seeding has occurred."

Perkins - "Have you received approval for the septic system?" Shea - "Yes."

Eugene Feener, Western Avenue, an abutter - "The septic system (for the existing dwelling) was built up in front of the house which is there already. Everything runs towards my yard. If you build

there, where's the water going to go? It will end up in my yard. They never did what they were supposed to do the last time."

Betsy Fawcett - "I think you should call the Department of Environmental Protection and get the file on it. Check the previous Order of Conditions. The brook is a fish run and is awarded the highest possible protection."

Elizabeth Frye - "We went through this all before - why does it have to keep coming up."

Feener - "The only way to build on that lot is to fill it, and then it goes to my yard."

Shea - "Building within the 100 foot buffer zone will not have an adverse effect on compensatory storage, if it is allowed by the Board of Health."

Feener - "Why would the bank be so stupid as to give someone something that cannot be built on?"

Muriel Feener - "This last storm my yard was completely unindated with water. (Mrs. Feener then showed the Board photographs of the flooding) We are not supposed to fill, but the yard next door is dry because it was filled." Fawcett - "Mass. General Laws Chapter 131, Section 40, can overrule Title V. You are within 100 feet of wetlands, so either the house has to..."

Shea - "I suggest you are incorrect."

Fawcett - "I am never incorrect. I may not be popular in Town, but I am always correct on environmental affairs." Prentiss - "I want to know why some tree cutting was going on without notification to the Conservation Commission."

Shea - "I had no involvement in that."

Hodges - "I had a map showing the area for the Watershed Protection By-law. I not sure how this project impacts on that."

Perkins asked what the gallonage per day was for the septic system. He was told the design capacity of the septic system was 440 gallons per day.

Hodges - "This is a terrible plan, whether it is permitted or not, with it sitting so close to the stream and the septic system just outside the 100 foot buffer zone. Just because the bank is trying to get something back from their loan. If there is any kind of overflow from flooding you don't have to be a genius to know it is going to go into the river."

Hodges then moved to close the public hearing, seconded by Prentiss, with the Board voting unanimously in favor.

A continuation of a public hearing was held at 8:35 p.m. under the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, on a Notice of Intent filed by Peter Van Wyck covering the removal of brush, ploughing, fertilizing, and reseeding of Low Land Farms, Apple Street.

Hodges removed himself from the Board for this hearing as he is an abutter to the property. Van Wyck read into the meeting the Grand Jury Minutes, a copy of which is attached to these Minutes. The Minutes identified Area A as isolated land subject to flooding. Van Wyck then asked if Area A was under the jurisdiction of the State. He felt this should be a closed issue. Betsy Fawcett, Apple Street, said she had a letter from Sabin Lord to Mr. Van Wyck concerning the area, which she then read into the meeting. Prentiss then asked why the area didn't flow - wasn't there something there that allowed it to flow? Van Wyck - "The road was lower. I cannot speak for the time prior to 1981. I can only speak for the circumstances that I found it in." Elizabeth Frye, an abutter, - "Mr. Van Wyck will be grading and I feel it should be so stated in the Notice of Intent." Van Wyck - "Mrs. Frye is talking about the piles of soil. Warshofsky did it. I'm not responsible for this. I will remove it. In areas here I made notice to the Board to do some grading if I'm a 100 feet from the buffer zone." Fawcett - "I feel the area is critical. He's been denied. He's in the hands of the Commonwealth." Hodges (as a member of the public) wanted to know how this fits in with the Final Judgement and if Van Wyck had been given 'the green light.' Van Wyck said he had not, as yet.

Folsom moved to close the hearing, seconded by Perrigo, with Folsom, Perkins, Perrigo, and Prentiss voting in favor. As noted at the commencement of the hearing, Hodges removed himself from the Board and therefore did not vote.

A Request made by Peter Van Wyck for the Commission to Determine the Applicability of the Massachusetts Wetlands Protection Act, M.G.L. Chapter 131, Section 40, for the construction of a 20-foot wide road along an existing cart path on property known as Low Land Farms, Apple Street, was heard at 8:56 p.m. Hodges removed himself from the Board because he is an abutter to the property.

Van Wyck told the Board, "This is before the Planning Board for their approval. It is our opinion because the road is not within 100 feet of a wetland it is not under the jurisdiction of this Board. It is our contention that Area A is not under the jurisdiction of the State. It was approved on April 27, 1988, but ten citizens appealed the Order. They have, effectively, stopped this since 1985. I am particularly anxious not to have to file a Notice of Intent. I have been very careful to have the road not within the jurisdiction of Chapter 131, Section 40. I don't think it is fair." Donald Browning - "I have been getting Peter's water on my land. His attorney and Peter have come to my house and said we are going to take care of it, but it is still there. I have a serious problem. Peter is not the abused person - I'm the abused

person." Browning added that he thinks a catch basin with a pipe would take care of the problem, not a ditch. Perkins - "On your subdivision plan, does it show drainage?" Van Wyck - "Yes, it does. If Mr. Browning had allowed this to go through, he would have had his drainage corrected. It's ready to go." Elizabeth Frye - "The story on Mr. Browning's problem - Mr. Van Wyck has made the problem worse. Thad Beal and Brad Story said he should fix the problem - he said he would if he got his subdivision - they said no, it should be fixed regardless." Hodges requested a plan showing the buffer zone.

Prentiss moved to continue the Determination to May 18, 1993, at 8:00 p.m., seconded Folsom, with Folsom, Perkins, Perrigo and Prentiss voting in favor; Hodges abstained from voting.

Jonathan Janes, Western Avenue, met with the Board for a building permit application review. The proposed work was outside of the Commission's jurisdiction, but they would like the Planning Board to note that the proposed work is within the Watershed Protection District.


Mrs. Paglia of the Essex Package Store, Main Street, made a request to clear the tall grass from around the property. Hodges said he would like to see a letter from Mrs. Paglia outlining precisely what she want to do and where.

The Board then reviewed memorandums from Kelly Marina for the Chapter 91 Amnesty requesting approval from the Commission for docks on the property. The Board could not approve Richard Condon's or Judith Foley's because of the seawall which belongs to the Town. They approved Melvin Barrons 's and Alfred DeScenza's. They could not approve the Conomo Point Association because the pier belongs to the Town.

Hodges moved to adjourn the meeting, seconded by Perrigo, with the Board voting unanimously in favor.

Meeting adjourned at 10:15 p.m.

Prepared by:



Gillian B. Palumbo
Administrative Clerk

Attest:

Essex Conservation Commission

May 11, 1993

A G E N D A

Appointments:

- 7:50 p.m. ... Tim Cain - Building permit review -
Lot 21, Turtleback Road, property of
Margaret Lake
- 8:00 p.m. ... Public hearing - Gloucester Bank and
Trust, Western Avenue/Essex Park Road
- 8:15 p.m. ... Continuation of a public hearing -
Peter Van Wyck, Low Land Farms
- 8:30 p.m. ... Request for a Determination of
Applicability - Peter Van Wyck, Low
Land Farms

Business:

Review correspondence

Building permit review - John Kotch, Belcher Street

Building permit review - Scot's Way

Eva Paglia, Essex Package Store

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Q Your name for the record, sir?

A James Sprague.

Q You're under oath from last time, sir?

A Yes, I am.

Q Sir, I show you this picture, and ask you to identify it for us please?

A This is an aerial photo of the Lowland Farm property. As we're facing the photo, Lowland Farms would be in the upper left quadrant of the picture.

Q That's a stream?

A That is one of the tributaries of the Essex River surrounded by salt marsh.

MR. LAREDO: Can we have this marked please?

(Exhibit No. 8 marked; Photograph)

Q I show you this picture, sir. Would you identify that for us please?

A Yes, this is another aerial photo of Lowland Farms. The entrance to Lowland Farms would be the dirt road between the two houses from the picture. To the left of the dirt road, which runs from the center going to the top, you can see a water body, which would be wetland A. Surrounding that area, and to the right of the road, you see other

1 disturbed areas.

2 (Exhibit No. 9 marked; Photograph)

3 Q Sir, showing you this next picture, would you identify it
4 for us please?

5 A This also is a picture taken from the ground at Lowland
6 Farms. What you have is an area where water is seeping to
7 the surface, which was a portion of wetland B before being
8 destroyed.

9 Q Looking at this picture, sir, what was in this area where
10 the water is standing?

11 A From our previous site visits to the property, this was an
12 area that had dense shrubbery. It was probably ten to 12
13 feet high, wetland plants that grow where the ground water
14 comes to the surface.

15 MR. LAREDO: Can we have this marked?

16 (Exhibit No. 10 marked; Photograph)

17 Q Sir, you said there were four wetlands on Lowland Farms.
18 One is referred to as wetland A on your map. Could you
19 just tell us what that is again please?

20 A That is an isolated land subject to flooding.

21 Q Wetland B, sir, what is that?

22 A That's a freshwater marsh.

23 Q Wetland C?

24 A The same thing, a freshwater marsh.