

**Town of Essex Planning Board
Minutes
Wednesday, January 5, 2005 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:38 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ) Scottie Robinson (SR), Jay Sweet (JS)
Building Inspector: Bill Sanborn
Absent: Kim Jarvis
Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

Hardy's Hatchery

They would like to lease the building located near the street, at the front of the property to a landscaper/horticulturist.

The board discussed the issue of change of use.

JL: Under 61A state use they could do this with their property.

BS: If they are under 40A, farmland, they do not need to follow state zoning. You need to distinguish the use of the building.

SR: It is not considered to be commercial because it is a farm.

BS: He is changing from a farm to a garage that is a change of use.

ASTJ: Our bylaws do not address farm use.

JS: 61A does say that farm equipment can be stored to keep a farm running. This seems to be a totally separate enterprise.

JL: How can we tell them under Essex bylaws that they need to file a change of use? How would we determine the setbacks?

BS: There are reasonable set back requirements, not under state regulations. It is a change of use under the building code. If someone comes in and wants to change the use of a business they need to obtain a building permit. For example, someone has a small retail shop and they sell it to someone who wants to put in another business such as a restaurant they will need a permit.

MC: I would like to bring up the Meadow Ridge issue. I question the fact that he will be storing boats in the barn.

JL: He brings the site plan to use for a change of use to the Planning Board.

BS: The advantage is that you know where the businesses are located. If he brings you a plan and it fits the requirements, then you have to pass it. My suggestion is that if someone comes to the boards then first make sure they have all the necessary permits.

JL: We should have something in our bylaws that defines change of use.

ASTJ: We should add something to our by-laws that explains agricultural use and we have an articulate reference to agricultural use.

JL: What Hardy's does now is that they have trucks and plows on the property.

BS: If you have a crew of landscapers arriving every morning to show up for work then it is a business. The portion being used for this business is being used for a separate use.

ASTJ: Also any change of use needs to be presented with a site plan.

JL: Change of use refers to the building, not the lot in the bylaws. Bylaw 6.6.2.

BS: If it states that a building is not the lot then what about Meadow Ridge Farm. If he doesn't plan on using the barn, then he doesn't need a site plan review?

JL: I think there may be issues for the Hardy's under 61A.

10-Acre Parcel

The board discussed the next meeting with the members of the board and the parties representing Peter Van Wyck. Peter Van Wyck will not be present. The lawyer should have sent the plans, but they had not arrived by the time of the planning board meeting. The engineer will be submitting multiple plans. The board discussed the fact that there are twelve lots. Lot 41 will be marked as a lot that cannot be built upon. The final point in the letter from the lawyer is that the lawyers for both parties are in agreement that a letter is sent to the land court that outlines the final steps and the final outcome of the subdivision.

Peter Phippen – M.A.C.P.

Peter Phippen from the M.A.C.P. spoke to the board. He began the discussion by stating that the focus of the M.A.C.P. is smart growth initiatives. For example, 40R, which is an incentive to communities to do smart growth. Peter also mentioned that Sam Cleaves has been working with the town management plan. He suggested that the Open Space Committee may be an interested group that could use M.A.C.P. assistance and then in turn they could assist the Planning Board.

The board discussed with Peter what the assistance the M.A.C.P. could offer the Planning Board. One helpful tool Peter mentioned was the pictometry service that the M.A.C.P. A lot of communities are starting to use it. It offers aerial photos of cities/towns that may be a useful tool for the board. It can be accessed from the M.A.C.P. website.

Peter will check in with the planning board every few months to see if he and the M.A.C.P. could offer any assistance to the board.

Regular planning board business.

The budget for the Planning Board was discussed.

JL: I make a motion to accept the proposed 2005 budget.

RF: I second the motion.

All in favor: Aye.

Scottie Robinson will write a letter to the Bucklins regarding the outstanding invoices for Larry Graham and the need to add more money to the escrow account for the subdivision.

Mary-Ellen Feener will call Larry Graham to ask him what he has as outstanding invoices other than Scott Boches and the Bucklins and she will discuss with the accountant, Kathy the information she may have on the subdivision accounts. The board discussed a goal being that the data keeping for the accounts could be put on an Excel spreadsheet and that the information regarding each account could be more informative.

Mary-Ellen Feener will contact Sue Moses to send to her the Essex By-Laws.

Scottie Robinson's computer is not working and she will be away on vacation for the next meeting. If any members of the board need to contact her, she can be reached at home.

MC: I make a motion to adjourn the meeting.

JS: I second the motion.

All in favor: aye.

Meeting adjourned at 9:50 p.m.

Next meeting is set for Wednesday, January 19, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: 
Kimberly Jarvis, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, January 19, 2005 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:42 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Kim Jarvis (KJ), Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ)
Building Inspector: Bill Sanborn
Absent: Scottie Robinson, Jay Sweet
Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

David & Debra Ray
10 Coral Hill Road

They are requesting that they be able to place two trellises on their property. They want to place one trellis, 10 x 4, over a patio at the front of the house and the other, 14 x 4, in the rear of the house over a deck. A 6.4.2 finding is required.

MC: I put forth a motion to approve the application for two trellises one at the front of the existing house and one at the rear of the house, to be installed on the property located at 10 Coral Hill Road owned by David and Debra Ray.

KJ: I second the motion.

All in favor: All in favor: aye.

Motion passed unanimously.

Open Discussion:

RF: Sue Moses is looking at the bylaws and the zoning requirements to give us suggestions of where we need to make changes. I also have a meeting with Tim Purinton, who is on the Ipswich Planning Board and the Audubon and we will discuss Open Space issues.

Rob Fitzgibbon presented two charts to the board members and the building inspector which consolidated information he gathered from two web sites; one from the E.C.C.F and the other from the Massachusetts Community Preservation Initiative.

RF: I would like to discuss different ideas regarding what we will present to the May 4th Town Meeting. My thought was perhaps the demolition delay by-law?

BS: First thing to ask is what would be the purpose of the bylaw?

RF: My understanding from the E.C.C.F. meeting I went to a while ago is that it allows the demolition to be delayed for 3-6 months.

BS: In Essex there may be a problem due to the issue of who will determine the age of a structure. If you decide to add it as a zoning bylaw you also have to remember that once the notice for the bylaw is advertised all demolition will be held up until the public hearing.

RF: There is always going to be issues to consider and we will follow a course of due diligence.

BS: I would like to suggest you talk to the Salem building inspector because the demolition bylaw is something that Salem appears to have done effectively.

MC: What do you see the goal of the demolition delay bylaw being?

RF: I think it would protect older homes from being torn down.

BS: I would suggest a historic district.

MC: The board did attempt that route once and the people had an issue with the fact that they did not want someone else telling them what they could or could not do with their homes.

RF: The reason why I am sharing this information with everyone is so that we have ideas as to what to present for the May meeting.

BS: Can you put out referendum questions at the town meeting?

JL: If we decide to do that we need to be careful with the questions due to the fact they require a yes/no answer.

The board discussed other ideas regarding an issue to present to the next town meeting; Rob Fitzgibbon compiled some of these topics from M.A.P.C. information that he had been gathered into a chart and presented to the board. The following ideas were discussed:

Water Protection Bylaw
Community Preservation Act
Adopting a corridor overlay district
Making the causeway mixed use
Adopting a community preservation act
Identify vacant and underutilized properties
Back lot development zoning
Residential Corridor Overlay district
Center Village Overlay District

Bill Sanborn asked if a board member knew of a certain by-law which states that the board of health must sign each building plan. He had spoken to Brendhan Zubricki and they did not find such a bylaw. His concern was what will happen when an owner of a property has a house on a lot that is connected to the sewer system. The DPW will be reviewing any plans for any building on the sewer system. Would the Board of Health need to sign off on a plan and where is the by-law which states that they need to sign off on the plan.

ASTJ: 6.72 does not state anything regarding the Board of Health.

MC: 6.10 does give us the right as the Planning Board to ask for more information.

Bill Sanborn also brought before the board a concern regarding bylaw 6.4.2.5 and the fact that if someone builds on a lot and the plan is approved by the Planning Board are the abutters being notified and what could be the legal ramifications regarding not informing the abutters prior to a property being built.

Another topic discussed was the posting of the Planning Board Meeting Agenda and what was an appropriate time frame prior to each meeting for the posting of the agenda.

Michael Cataldo volunteered to write a letter and/or contact Brendhan Zubricki to request that the lawyers, Copeman & Paige be contacted to request their feedback regarding bylaw 6.4.2.5 and what their suggestions would be for the Planning Board.

It was noted that the deadline for what the Planning Board will present at the town meeting is March 14th and it was agreed that a block of time would be set-aside at the next board meeting to discuss ideas.

Rob Fitzgibbon will contact Betsy Shield regarding what had been the final outcome with the Water Overlay Project.

Regular planning board business.

RF: I make a motion to adjourn the meeting.

KJ: I second the motion.

All in favor: aye.

Meeting adjourned at 9:35 p.m.

Next meeting is set for Wednesday, February 2, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Adm. Asst.

Attested to: Kimberly Jarvis
Kimberly Jarvis, Clerk

As S. MEMBER

**Town of Essex Planning Board
Minutes
Wednesday, February 2, 2005 - 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:34 p.m. by Jud Lane, Chair.

Attendees: Jud Lane (JL), Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Scottie Robinson (SR), Jay Sweet (JS), Kim Jarvis (KJ)
Secretary: Mary-Ellen L. Feener

There was not a Building Inspector's Report due to his absence.

Open Discussion

10-Acre Parcel Turtleback Road

The Planning Board reviewed the Conservation Restriction for Turtleback Road and the ANR plan, which will be twelve lots with one lot that cannot be built upon until the process is completed.

JL: We need to approve the proposed lot that will not be built upon on the ANR. We don't need to sign off on the Conservation Restriction because it goes through a different process, we just need to vote for it, and what we need to say is that we are following the criteria set in the agreement for judgment and that we find this land mutually acceptable.

The board discussed the fact that they need to have something to propose for a warrant for the town meeting by the next Planning Board Meeting so it will have time to go to a public hearing.

Rob Fitzgibbon discussed his conversations with Sue Moses and her review of the Essex By-Laws for the Planning Board. He also discussed his meeting with Tim Purinton. Tim Purinton recommended the Village Incentive District that allows smaller lot sizes which increases the density. Tim also recommended that someone who is an older member of the community, someone who is well known and well liked by the community to present the by-law change. Tim suggested that there be two by-law changes presented so that if one is not accepted, the other may be accepted. Tim suggested to never present a recommendation on the town meeting floor, present it ahead of time. For the presentation Tim said to make no more than a four-page by-law change, one page slides and no Power Point.

JS: The flyers were a good idea. It gives the community to think of what is being proposed. It allows someone to see a flyer and think, 'a lot of people think like I do' and this could give people more courage to speak up and agree on what is proposed.

Scottie Robinson brought up her ideas for by-law changes which included, the fact that the by-law which restricts the number of building on one site to three residential buildings does not address how many businesses you can have on one site and that the board may think about proposing a change to limit the number of business. She also suggested adding fines for infractions on abusing a by-law in order to enforce the by-laws.

10-Acre Parcel

Russ Brown (RB), Lawyer representing Peter Van Wyck & Peter Van Wyck

The Planning Board reviewed the proposed plan.

RB: This is the same plan which some revisions with the cursors for the metes and bounds that shows the delineation of each lot where each lot begins. There is a dark dot where a stone bound will be placed on each corner and there is a 10-foot wide easement for the entrance to the site.

JS: Is that in the agreement?

RB: It is written down in the correspondence between John Goldrosen and myself and the plan.

MC: I am concerned that the easement is on land that he controls.

RB: The town will have an easement at the beginning of the 10-foot lot and along the entire stretch of Turtleback Road.

JS: Who will be responsible for the easement?

JL: That will be the town's responsibility.

RB: The easement the town will have is not on any utility easement.

JL: I make a motion that the Planning Board accept these designated 10-Acre parcel, plan dated January 27, 2005, since the parcel meets the criteria set forth in Paragraph 5 of the Agreement for Judgment dated October 8, 1996. The Planning Board will allow the further division of lots to bring the total number of lots in the Turtleback Road Extension Subdivision to twelve (12).

One of these twelve (12) lots, Lot 41, will be designated "not a buildable lot" until such date the Conservation Restriction is approved by the E.O.E.A. and signed off by the Town of Essex Conservation Commission and the Board of Selectmen, as well as Mr. Van Wyck.

KJ: I second the motion.

All in favor: Aye.

Motion passed.

JS and SR abstained from voting.

Russ Brown presented an ANR Plan to the board for Lots 36 & 37 on Turtleback Road. The board reviewed and discussed these plans.

MC: I make a motion to approve the plan for Turtleback Road Extension LLC for land on Turtleback Road for the division of lots 36 and 37, shown on the land court plan 32098, dated January 12, 2005. Finding that all the lots conform to Mass General Law Ch. 41, Section 81.

ASTJ: I second the motion.

All in favor: Aye.

Motion passed.

JS and SR abstained from voting.

Russ Brown presented another new plan to enlarge another existing lot located on Turtleback Road, the Perkin's lot, which is to be designated as Lot A. The board decided to review this plan at the next board meeting.

Sue Moses (SM) – Zoning By-Law Discussion

SM: I have a position with the right now with the Essex County Forum. I am not a zoning expert but I am a planner and I have been reviewing your by-laws and how to incorporate Smart Growth into the by-laws.

I want to preface this with the fact that I do not know how your community goals are in terms of growth and how you want to use your land. Obviously the glaring issue is that your zoning ordinance has no districts.

What I interpret when I look at these existing setbacks is that they seem to have been created because you don't have zones to separate zones, which may be incompatible, what I see instead, is that the setbacks and the lot dimensions are being used which from a Smart Growth perspective is not the way to go. I don't know how far you are interested in changing in getting the town to adopt zoning.

MC: In the middle of the 1980's the Planning Board hired Phil Ayer with some funds received from the state. The planning board at the time looked at the zoning and as a first step we proposed a downtown district, a downtown business district and an industrial district. The town people did not accept this concept of zoning. When we brought a group of items at once for example, The Aquifer District, Adequate Access and the Watershed District, it did not seem to work. However, when we proposed one item at a time, we seemed to have success in passing items.

The board discussed setbacks. Sue Moses brought forth the idea of industrial zoning setbacks that would encourage not to have parking in front of a building and not to have accessory buildings in front of the lot that would not protect the rural character of the community. She suggested a 50-foot setback with larger buildings and a provision could be added that if a building exceeds 150 feet then additional requirements can be made to the by-laws. Sue Moses also brought to the board the idea of hotel and motels zoning due to the fact that it may exclude Bed & Breakfast establishments. She suggested reducing current zoning to a 40,000 square foot lot with the addition of a requirement of how many rooms the establishment in conjunction with the fact that there has to be one parking space per room.

Sue also discussed with the board of a first step of trying to make a town center. She suggested that a line be drawn and change the dimensions, have smaller lot requirements for single-family dwellings, two-family dwellings, retail use and maybe some commercial use, but keep industrial requirements. This would not limit people and make a change restrictive; this would allow them to take ownership of their lots and be a non-restrictive change. This would also make two districts - the downtown and the non-downtown areas. A second step she suggested is that there be a separate district for business and industry and that there be height restrictions.

The board discussed principle use and mixed use and the two definitions. The board also discussed what they want to propose as changes with by-laws and long-term goals and a plan.

JS: We have a town vote and we need to get one item approved. It can be a small item so that we do have something to present and it will assist us in making a long term plan more defined.

SM: Right now your zoning is not making your town look like you want to look, what the zoning is doing is reacting to issue and there is the issue of sprawl and not keeping the rural qualities of the town.

SR: I think there are more people concerned with keeping the town looking like they want it to look.

JS: I think it is giving the board the ability to take the voice of the people and to put it into effect. I think right now the town may want one thing or another, but we really can't make that decision based on the rules we have governing. Whether the town wants growth or doesn't want growth we are not the ones to make the decision because we have nothing to restrict what happens.

ASTJ: Would clarifying the definitions be a piece we could address.

RF: What particular definitions would you suggest?

ASTJ: The height restrictions and the width and depth of a lot should be changed. Perhaps we could go over these two at the next meeting?

SM: I found that there were two redundant sections: 6.4.2 and 6.4.3 and these could be clarified. Which would be a simple thing to present for change.

ASTJ: What about adding two definitions principal use and mixed use or accessory use.

Rob Fitzgibbon will research and gather the definitions of use and present them to the board at the next meeting.

Regular planning board business.

Invoices.

Meeting Minutes reviewed.

JS: I make a motion to adjourn the meeting.

MC: I second the motion.

All in favor: aye.

Meeting adjourned at 10:18 p.m.

Next meeting is set for Wednesday, February 16, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by:

M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to:

Kimberly Jarvis
Kimberly Jarvis, Clerk

AS AMENDED
3/2/05

**Town of Essex Planning Board
Minutes
Wednesday, February 16, 2005 - 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:45 p.m. by Jud Lane, Chair.

Attendees: Michael Cataldo (MC), Andrew St. John (ASTJ), Jay Sweet (JS), Kim Jarvis (KJ),
Scottie Robinson (SR), Acting Chair
Absentees: Jud Lane, Rob Fitzgibbon
Secretary: Mary-Ellen L. Feener

Building Inspector's Report

10 Desoto Road - Phil & Carla Caponigro

The owners would like to add a second story to the existing one story, non-conforming dwelling. The front steps are a 3x4 platform, what they want to do is have an 18 inch overhang in the front and an 18 inch overhang in the rear. They will not need a variance but they do need a 6.4.2 finding because they do not have the required 25-foot setback and it is an extension of a non-conforming use due to setbacks. It currently does not have the B.O.H. approval, but it will prior to receiving the building permit.

KJ: Motion to accept the issuance for an addition of a second floor to the dwelling belonging to Phil and Carla Caponigro located at 10 Desoto Road. They have met with Conservation Committee and received approval and upon the approval of the Board of Health, we accept this plan providing that it provides nothing more detrimental than the existing structure. This is a 6.4.2 finding.

ASTJ: I second the motion.

All in favor: Aye.

Motion passed.

Bill Sanborn, the building inspector discussed the property located on 109 Western Avenue that is owned by David Dunn. He built a shed on his property without the proper building permits. Bill sent him a letter stating that he needed the required permits and Mr. Dunn did not respond. In the meantime, Bill Sanborn received a letter from someone in the community inquiring about the shed. Bill will be sending Mr. Dunn another letter restating that he has the options of either contacting the building inspector and obtaining the proper building permit or the shed will need to be taken down.

Bill had a suggestion for the Planning Board regarding changes in the by-laws. His suggestion was that a clear definition of change of use be added to the by-laws along with the fact that a building permit would be required when there was a change of use. Other suggestions he made was that a by-law change which has a height requirement of buildings and that a 6.4.2 should be a public hearing.

The Planning Board and Bill Sanborn discussed other issues regarding the current by-laws.

Turtleback Road – Lots 44 & A, Form A

The Planning Board Secretary will call Peter Van Wyck to inform him that unfortunately there was not a quorum of members of the Planning Board and that the ANR for lots on Turtleback Road will be reviewed at the next scheduled Planning Board meeting.

Kim Jarvis, planning board member and liaison for the planning board with the Conservation Committee, discussed with the Planning Board her meeting with the Conservation Committee on February 15, 2005. The Conservation Committee had concerns with the question as to why didn't the planning board accept the Perkins land with the Turtleback Road Agreement and Kim explained to Con. Com. that the land which was kept was the land which was stated in the original agreement. Another question was why didn't the Planning Board accept the Essex County Greenbelt's offer to write the C.R. and Kim explained that the Town Council wrote the Conservation Restriction. It was decided by the planning board that the secretary will talk to the secretary for the Conservation Committee to see if they would schedule a time when both groups could meet, perhaps the first week in March.

The board discussed a possible by law change regarding the definition of height.

The board reviewed the letter that was drafted by board member, Scottie Robinson, regarding the need to be informed of public hearings and decisions made by the Zoning Board of Appeals. It was decided that the planning board secretary would print and mail the letters to the indicated people.

MC: Motion to approve the letter drafted by Scottie Robinson.
ASTJ: I second the motion.
All those in favor: Aye.
The motion was approved.

The board discussed the unpaid invoices for the Bucklin – Story Street subdivision. There are numerous invoices. Scottie Robinson suggested that the board of Selectmen be notified that there are unpaid invoices and ask if there would be any recourse if the invoices are not paid.

Regular planning board business.

Invoices.
Meeting Minutes reviewed.

JS: Motion to approve the meeting minutes of January 25th as amended.
KJ: I second the motion.
All in favor: Aye.

ASTJ: Motion to approve the meeting minutes of January 19th as amended.
SR: I second the motion.
All in favor: Aye.

The Planning Board reviewed a memo presented by the Board of Selectmen asking if the Planning Board has any input regarding the proposal so that there may be additional terms of serving on the Board of Selectmen. The Planning Board reply was that they would not support additional terms for a selectman other than the present two terms.

MC: I make a motion to adjourn the meeting.
ASTJ: I second the motion.
All in favor: aye.
Meeting adjourned at 10:08 p.m.

Next meeting is set for Wednesday, March 2, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: Kimberly Jarvis
Kimberly Jarvis, Clerk
AS AMENDED

**Town of Essex Planning Board
Minutes
Wednesday, March 2, 2005 - 7:30 p.m.**

Attendees: Jud Lane (JL), Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Scottie Robinson (SR), Kim Jarvis (KJ)
Absent: Jay Sweet
Secretary: Mary-Ellen L. Feener

Jud Lane formally announced to the board that as of March 2, 2005 he would be resigning as the chair and as a member of the Planning Board. Following his announcement to the Planning Board, Jud Lane left the meeting and was not present for the remainder of the meeting.

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:45 p.m. by Rob Fitzgibbon, Acting Chair.

Building Inspector's Report

Island Road - James Richardson - Map 22-Lot 13

Mr. Richardson would like to replace an existing barn with a new 26 x 36 barn. He originally had all the approvals in 2003 from B.O.H., Con. Com. and he did not rebuild. He currently needed to receive the necessary approvals and he has received them from the B.O.H. and Con. Com. The new barn will be built upon the same footprint as the existing barn and it will be similar in dimensions and height.

RF: Motion to approve the building permit for James Richardson of Island Road to build a new barn to replace the existing barn.

SR: I second the motion.

After discussion, the motion was withdrawn.

Andrew St. John questioned who is the legal owner on record of the lot. Bill Sanborn produced information, which stated that there is a trust with no indication that the person requesting the permit is the legal owner of record. Bill Sanborn will request of James Richardson that he produce documentation that he is the legal owner or the trustee of the property.

RF: I would like to make a new motion for approval of the building permit requested by James Richardson to build a new barn to replace the existing barn contingent upon the building inspector writing a letter to Mr. Richardson requesting that he shows proof that he is either the owner or the agent for the owner.

ASTJ: I second the motion.

All in favor: Aye.

The motion is approved.

Mr. Allan Waller (SW), of Southern Avenue/Bothways Farms presented to the board an ANR. Mr. Waller would like to change the existing lot line of the property he owns on Southern Avenue to deed his neighbor ownership of a piece of his lot to his neighbor to Dan Morrow, which has an approved building permit to build on the lot. By doing this, his neighbor is giving him architectural approval. Mr. Waller stated that currently a man from Andover is planning on building a stucco structure that would not fit with the setting. The owner has an acre and a half lot with an approved building permit. This addition of land would allow Mr. Morrow to build a better house.

MC: How are you proposing to access the lot?

ASTJ: Mr. Waller is deeding a parcel to Dan Morrow who currently owns the abutting lot. What we are being asked to do is approve a subdivision, an Approval Not Required. We all recognize that there is no building allowed on this lot.

SW: It does.

The board looked at the plan and it was noted that the plan did not state that building could not occur on the parcel. The board explained to Mr. Waller that the plan needs to state that the lot is a lot that can't be built upon.

SR: I was going to ask what are the deed restrictions? The restriction is heresay to me.

ASTJ: I would recommend that you have reference to the deed restriction on the actual plan.

Mr. Waller will present the new plan (Mylar) that has the deed restrictions and clear indication that the lot is a lot that cannot be built upon to the planning board secretary; he does not need to attend a meeting. The board will review the new plan with the deed restriction information.

Sam Cleaves, North Shore Regional Planner, MAPC – North Shore Wind Power Project

Mr. Cleaves presented to the Planning Board information about a grant from the Massachusetts Technology Collaborative, Renewable Energy Trust Division, to provide technical and educational assistance for the siting of onshore wind turbine projects. The board also reviewed the wind energy facility map with possible locations where a municipal wind turbine facility could possibly be located.

Kim Jarvis and Rob Fitzgibbon would like to attend an all day seminar for the Citizen Planning Training Collaborative in March 2005. The charge to attend the seminar is \$50.00 per person and registration must be submitted by March 11th. The board discussed options for the payment of this seminar. It was decided that they would pay for the seminar themselves and then submit the receipts to the secretary who will submit them to the town accountant so that they may be reimbursed from the Planning Board account.

The board discussed the upcoming Town Meeting and the dates to present a warrant. Scottie Robinson stated that she thought that since at the last meeting the board did not discuss an issue for a warrant that the time frame for presenting any change at the Town Meeting had expired. Anything the board would have wanted to put on the warrant would have had to be advertised prior to the date of the present meeting. It was decided that Rob Fitzgibbon and the secretary, Mary-Ellen will contact the Town Administrator to inquire if the board does have time to present something at the Town Meeting. In the meantime, the members of the board will each research a possible proposal change and Mary-Ellen will post a meeting notice for Sunday, March 6th, in case the board needs to meet to discuss topics for the warrant.

Possible Proposed Changes:

1. There are two sections 6-3.3. The board would like to change the second instance to 6-3.34.
2. Width.
3. Height.
4. Change of Use; requiring a building permit.
5. 6.4.3 – pre-existing and existing.

The board discussed the issue that there are now two positions open on the Planning Board.

Kim Jarvis, liaison for the Planning Board and the Conservation Committee discussed her meeting with the Conservation Committee last evening, March 1st. She stated that the Conservation Committee appears to be divided regarding their opinions of the Turtleback Road subdivision, the Conservation

Kim Jarvis, liaison for the Planning Board and the Conservation Committee discussed her meeting with the Conservation Committee last evening, March 1st. She stated that the Conservation Committee appears to be divided regarding their opinions of the Turtleback Road subdivision, the Conservation Restriction and the Agreement for Judgment. As of the meeting last night the Conservation Committee was not ready to sign the Conservation Restriction. It appeared that the Conservation Committee felt that they do not have any choice regarding having to sign the Conservation Restriction. They discussed the fact that if they do not sign it, they may have to go to Land Court. It had been discussed that perhaps the Planning Board and the Conservation Committee could possibly meet to discuss any issues. At this point the Conservation Committee does not feel that a special meeting is necessary. The planning board secretary will give the secretary for the Conservation Committee the plan for the Conservation Restriction. The Conservation Committee did discuss that the monuments should be larger marking the boundaries and the pile of rubbish should be removed. The Conservation Committee discussed the comments that were presented to the Planning Board by Martha Hoar last year. The Planning Board thanked Kim Jarvis for her acting as liaison and reporting the Planning Board the concerns and questions of the Conservation Committee.

The plans for Turtleback Road, Lots 44 & A and the Form A application were reviewed by the Planning Board. It was noted that the information on the application did not agree with the information on the plan. It was decided that the secretary would contact Russ Brown, lawyer representing Mr. Van Wyck and explain that the plan could not be approved until a properly completed application was presented to the board and that the fee for the application would be two hundred dollars.

Regular planning board business.

Mail.

Meeting Minutes February 2, 2005 reviewed.

ASTJ: Motion to accept the meeting minutes of February 2nd, 2005, as so amended.

MC: I second the motion.

All in favor: Aye.

The motion approved.

RF: I make a motion to adjourn the meeting.

MC: I second the motion.

All in favor: aye.

Meeting adjourned at 10:32 p.m.

Next meeting is set for Wednesday, March 16, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by:


Mary-Ellen L. Feener, Secretary

Attested to:


Kimberly Jarvis, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, March 16, 2005 - 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order 7:40 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Andrew St. John (ASTJ), Jay Sweet (JS), Kim Jarvis (KJ)
Absentees: Scottie Robinson (SR),
Secretary: Mary-Ellen L. Feener

Due to the absence of the Building Inspector there was not a Building Inspector's Report.

Open Discussion

The board discussed the fact that there are two different positions open for the planning board, each with different length of terms and the fact that nominations need to be submitted no later than March 21st at 5 p.m. at Town Hall.

The board discussed how in the upcoming year they could possibly become a more efficient and more effective planning board.

The letter that was approved by the Planning Board regarding adherence to MGL Chapter 40A and notification of being informed of ZBA decisions concerning variances and special permits which was sent to the Selectmen was discussed.

A memo that was received by the Planning Board from the Selectmen was reviewed. This memo was regarding the fact that the Selectmen have requested that a copy of Planning Board meeting minutes be given to the Town Administrator's office and they will be kept on file in the office.

Rob Fitzgibbon brought forth the issue regarding the need of the members of the Planning Board to be able to be informed of the local issues of neighboring cities and towns.

Jay Sweet discussed the fact that there is a larger issue than being informed of other cities and towns and that issue is that until there is zoning and regulations in Essex being informed of what other Planning Boards are currently doing could become a frustrating experience. He suggested that the best focus is for the planning board to plan and that the board should be a planning board, not a review board.

31 Martin Street – Barry & Sara Richards

They would like to purchase a parcel of land from their neighbors and they presented a preliminary plan to the board. Their current lot is 7,800 Square Feet. Each of the lots on the street are non-conforming lots. Once the sale has occurred then the seller would have approximately a 20,000 square foot lot.

KJ: Given the fact that both lots are non-conforming would this be o.k.

The board did agree that Barry & Sara Richards can go ahead and have a formal survey completed.

The Planning Board suggested that Mr. Richards have a survey completed and to have only the two lots belonging to the parties involved with the sale on the plan. Each lot should be clearly marked with the size of the dwellings, the lot sizes and the setbacks.

The Planning Board also requested that the secretary inform the Building Inspector of these plans to see if he had any information to add.

Essex Park Drive

Peter Van Wyck & Representatives from Apple Associates, Tim Muldoon & Brian Buia presented to the Planning Board a preliminary plan for a sub-division located on Essex Park Drive. Tim Muldoon explained to the board that there is eighty acres on which they are planning to build nineteen to twenty units. Each of the planned lots will be 40,000 square feet and have the required frontage and they will each be conforming lots.

The question which arose was where to begin to measure the proposed street.

The board explained that they would need to discuss the issue of road measurement with the Selectmen and legal representation. Then the board reviewed the plans for the sub-division. The board questioned the shape of the lots, the dimensions of the lots and they were concerned that some of the lots appeared to be 'pork chop' lots. They also brought up some concern regarding the septic design(s). Another concern was that a part of the eighty acres (forty-five of the eighty acres) did not have any designated buildings, it was an open space, and the board questioned what the future plans were for the forty-five acres.

One of the suggestions the board presented to Mr. Van Wyck was that they would welcome something in writing regarding his future intent for the forty-five acres.

ALAN

The Planning Board reviewed the ANR for Mr. [redacted] Waller of Southern Avenue/Bothways Farms presented to the board with the changes that the board had suggested to Mr. Waller during the March 2nd Planning Board meeting. Mr. Waller would like to change the existing lot line of the property he owns on Southern Avenue to deed his neighbor ownership of a piece of his lot to his neighbor Dan Morrow.

ASTJ: Motion to approve ANR for Allan Waller to divide his land into parcels A1 & A2.
RF: I second the motion.
All in favor: Aye.

Kim Jarvis, liaison between the Planning Board and the Conservation Committee discussed the fact that the Conservation Committee has agreed to approve the Conservation Restriction with some requirements. These requirements included the monuments, the brush being removed and the drainage.

Regular planning board business.

Invoices.
Meeting Minutes reviewed.

JS: Motion to approve the meeting minutes of February 16th as amended.
ASTJ: I second the motion.
All in favor: Aye.

RF: Motion to approve the meeting minutes of March 2nd as amended.
KJ: I second the motion.
All in favor: Aye.

MC: I make a motion to adjourn the meeting.
KJ: I second the motion.
All in favor: aye.
Meeting adjourned at 10:04 p.m.

Next meeting is set for Wednesday, April 6, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: [Signature] AS APPROVED
Kimberly Jarvis, Clerk 4/6/05

Town of Essex Planning Board Agenda
April 6, 2005
Town of Essex/Burnham Library
7:30 p.m.

7:30 p.m. Building Inspector's Report

8:00 p.m. Review of PVW ANR and Form A for Turtleback Rd, Lots 44 & A

8:30 p.m. Open Discussion

Regular Planning Board Business

Invoices to be signed
Mail

Town of Essex Planning Board Agenda
April 20, 2005
Town of Essex/Burnham Library
7:30 p.m.

7:30 p.m. Building Inspector's Report

8:00 p.m. Peter Van Wyck – Essex Park Drive

8:30 p.m. Review of PVW ANR and Form A for Turtleback Rd, Lots 44 & A

9:00 p.m. Open Discussion

Regular Planning Board Business

Invoices to be signed

Mail

Meeting Minutes of April 6th to be reviewed.

Town of Essex Planning Board Agenda
May 4, 2005
Town of Essex/Burnham Library
7:30 p.m.

- 7:30 p.m. Building Inspector's Report
- 8:00 p.m. Hardy's – Separation of a Parcel of Land – Form A
- 8:30 p.m. Turtleback Road Ext. Lot 44 & A – Form A – Board to Review
- 8:45 p.m. Arielle Lane Discussion
- 9:00 p.m. Mr. Lima – Lufkin Point Road
- 9:30 p.m. Russ Brown/PVW Lowland Farm Road Discussion
- 9:45 p.m. 31 Martin Street – Discussion
(Owner cannot attend meeting, he would like to be contacted with information regarding the Massachusetts ordinance/law that states he cannot buy the abutters property.)

Regular Planning Board Business

**Town of Essex Planning Board
Minutes
Wednesday, May 18, 2005 - 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order 7:52 p.m. by Rob Fitzgibbon, Chair.

Attendees: Andrew St. John (ASTJ) - Jay Sweet (JS) - Kim Jarvis (KJ) - Rob Fitzgibbon (RF)
Absentees: Michael Catlado (MC)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener

Building Inspector's Report

1 Deer Hill Farm Road - Kevin & Cindy Donaldson

The owners are requesting a permit to build a 20 x 14 single story pool house. This pool house conforms to all of the set back requirements. The pool is not yet completed.

The members of the Planning Board reviewed the plans.

JS: Does the pool house have a kitchen?

BS: It does have a kitchen sink. I did raise that question with the owners and they would be willing to install something other than a kitchen sink. The idea was to have a sink to be used when they are entertaining. They are aware that the building cannot be used as a dwelling.

ASTJ: Will it be insulated and heated?

BS: No and that will be stated on the permit.

ASTJ: Has the B.O.H., Con. Com. and the Fire Department signed the permit?

BS: The B.O.H. and the Con. Com. have signed and the Fire Department signed off on the previous permit.

JS: Motion to approve the application of Kevin and Cindy Donaldson for 20 x 14 single story building on poured concrete for seasonal use located on 1 Deer Hill Farm Road, which has been approved by the B.O.H. and Conservation Commission.

KJ: Second the motion.

All in Favor: Aye.

ASTJ: I would like to emphasize the condition that the pool house is used as a seasonal building.

RF: As so amended.

All in Favor: Aye.

The motion passed unanimously.

Open Discussion

Jay Sweet updated the Planning Board regarding the facts that he did speak to Mr. & Mrs. Ketchum and explained the reasons for a public hearing regarding the building of a home which exceeds 2,500 square feet and he also spoke to Scott Faulk regarding the driveway on Lufkin Point Road and he will make sure his driveway allows a "T".

BS: I spoke to another owner who resides at the end of the road and she also appeared to be cooperative regarding the need for spaces for emergency vehicles to be able access the homes and she mentioned that she may be even widening their own driveway for their own use.

JS: The three families are very cooperative regarding the road and ensuring that there are adequate areas for the different areas to turn around on the road.

KJ: There is something in the subdivision regulations that state that the Planning Board can request temporary a turn around.

BS: I don't think there is an issue regarding the turn around areas on Lufkin Point Road.

RF: I have a question regarding Mr. Dunn and his building.

RF: I have a question regarding Mr. Dunn and his building.

BS: I spoke to Brendhan Zubricki regarding this issue and he is going to see if he can not work this issue out with Mr. Dunn.

BS: Also, I did draft a letter that I will be mailing this week to the owners regarding the shed that is being used as a barn on Andrew Street for the owners to come in to discuss this issue with me.

MC: Good.

JS: What is the issue?

BS: They have a shed that they built without a permit and the shed is going to fall over.

Regular planning board business.

Invoices

Mail

Open Discussion

Rob Fitzgibbon requested that the Planning Board purchase the book, Robert's Rules.

The Planning Board discussed the request by the owner, Mr. Doyle for having an As Built completed for 170 John Wise Avenue and which engineer should do the As Built. The original engineer was Alan Hagstrom, who is not the engineer for the Town of Essex. It was decided that the engineer, Clay Morin, who was hired by Mr. Doyle could present the As Built to the Planning Board and that it should be on a Mylar and he should present copies to the Planning Board. The owner will be responsible for paying Mr. Morin and the sub-division account will be closed and Mr. Doyle will receive a check for the remaining balance.

The Planning Board decided that the Planning Board would be the responsible party to pay for the invoice from Larry Graham for his consulting on the road for Essex Park Drive.

The Planning Board discussed the vacant seats for the Planning Board and that there is one person who may be interested in joining the Planning Board for the one-year position.

Jay Sweet requested to go back to a previous meeting and the discussion of the Planning Board regarding the subdivision and the road located at Lowland Farms.

JS: I am trying to determine if we voted on not to accept anything new from Peter Van Wyck until the road is finished?

Rob Fitzgibbon reviewed his notes and read that discussion regarding Lowland Farms was that the Planning Board was attempting to make the determination of what needed to be completed in compliance with the prior decisions of the Planning Board. Russ Brown, lawyer for PVW, requested that the performance bond be released. Scottie Robinson stated, 'no, he needs to finish the road and there are two minor things that need to be done which is put the final top coat and put in the electrical work'. PVW responded that he knew this fact. Scottie Robinson stated that the town could finish the work and take the money from the account and have the road completed. It had been decided that PVW should finish the road and contact Larry Graham so he could present an As Built to the Planning Board.

RF: I make a motion to adjourn the meeting.

KJ: I second the motion.

All in favor: Aye.

Meeting adjourned at 8:25 p.m.

Next meeting is set for Wednesday, June 1, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: _____

Mary-Ellen L. Feener, Secretary

Attested to: _____

Kimberly Jarvis, Clerk

9/7/05

**Town of Essex Planning Board
Minutes
Wednesday, June 15, 2005 – 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:35 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon. (RF) Andrew St. John (ASTJ), Jay Sweet (JS), Bill Holton (BH)

Absentees: Kim Jarvis

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener

BS: How many votes do you need to approve a special permit?

RF: Four.

BS: Do you have four people here that were at the last meeting?

ASTJ: No.

BS: It would have to be at least four of the original to continue the hearing.

MC: Even if the meeting was closed?

The Planning Board chose to review the Subdivision Rules and Mass General Law 40A while the Building Inspector gave his report, so that the Planning Board could determine if they could continue the Special Permit Hearing for Brad Ketchum, 3 Lufkin Point Road.

Building Inspector's Report:

11 Forest Avenue – Ryan & Kacia Sheehan

BS: They are requesting a permit to remodel the first floor and to add a second story to the existing structure that does meet all set back requirements. They have the approval of the B.O.H., Con. Com. DPW and Fire Department.

RF: The shed appears to be non-conforming due to the location.

BS: It was a preexisting non-conforming structure.

The Planning Board reviewed the building plans for 11 Forest Avenue.

MC: Motion to approve the removal of a first story and the addition of a second story to the property located at 11 Forest Avenue owned by Ryan & Kacia Sheehan, providing it has the approval of B.O.H., Con. Com., DPW, Fire Department and providing it conforms to all the requirements of the Town of Essex By-Laws.

RF: Second the motion.

All in favor: Aye.

Motion passed unanimously.

10 Lowe Hill Road – Catherine & Nicholas Roberts

BS: The owners are requesting a permit to build a two-car attached garage and to put a second story above the garage. They do have the approval of the B.O.H. and Wastewater.

MC: What is the second story going to be used for?

BS: It is going to be a family room.

MC: With no plumbing?

BS: I didn't ask if there would be plumbing or not it is an attached garage.

The Planning Board reviewed the plans and diagrams of the proposed structure.

ASTJ: I would like to make a suggestion that all plans are locust plans and I will put that on your list.

RF: A yahoo map would be fine.

JS: Motion to approve the application of Catherine and Nicholas Roberts of 10 Lowe Hill Road for the raising of the garage and to build a two-car garage that has the approval of the B.O.H. and Wastewater, finding that it meets the requirements of the Planning Board and the Town of Essex By-Laws.

RF: I second the motion.

All in favor: Aye.

Motion passed unanimously.

3 Lufkin Pont Road – Brad Ketchum (BK)

ASTJ: (Reading from Mass General Law) Special permit issuance, the granting authority shall require a two-thirds vote of boards with more than five board members. In our case that means five people.

RF: Anything in there about having to have consistency of board members from one meeting to the next?

ASTJ: No. That is way too complex for even the Planning Board, no.

RF: So with the research we have done tonight, we can feel comfortable with the fact that we can go forward with Mr. Ketchum's site plan review. How do the other members feel about this?

MC: He just said that we need five votes.

ASTJ: No. We need five votes of the people that were here and there weren't five here at the last meeting. Here's the other way we can deal with this, we can do one of two things. We could reconvene the public hearing at the next meeting with the right number of people and then we can let ninety days elapse and then it would be deemed to be approved.

BS: When did you file for the special permit?

BK: The middle of May.

ASTJ: O.k. Failure of the special permit granting authority to take final action within ninety days from the date of the public hearing it shall be deemed that the granting authority granted a special permit.

MC: If Bill's analysis is correct, even if Kim Jarvis shows up for the meeting then we would still not have enough members to vote.

BS: You had two members missing off the board then, right?

MC: Bill Holton wasn't sworn in yet.

ASTJ: If that is the case and we only had five people on the board, then three people constitutes a two-thirds majority.

MC: So that solves that.

RF: So the members of the Planning Board at the time were Michael Cataldo, Jay Sweet, Andrew St. John and Rob Fitzgibbon.

ASTJ: Of which two-thirds vote of the board.

MC: On page B-103 in the Town By-Laws. (Reading from By-Laws). "The issuance of a special permit requires a two-thirds vote of the Board if it has more than 5 duly qualified members, a vote of at least 4 members of a five-member board, and a unanimous vote of a 3 member board."

ASTJ: So, we are back to square one. What I see is that we should close the hearing. We would have to advertise a new public hearing.

ASTJ: Motion to allow Mr. Ketchum to withdraw his application without prejudice.

RF: I second the motion.

All in favor: Aye.

Motion passed unanimously.

ASTJ: Secondly we make a motion that we allow Mr. Ketchum to resubmit his application as of today's date and that we schedule a public hearing for our next meeting on July 6th for review of his special permit application.

RF: I second.

All in favor: Aye.

Motion passed unanimously.

It was determined that the Planning Board would need to close the site plan review for Brad & Joan Ketchum, post new advertising at the cost of the Planning Board, waive any fees and to announce a Site Plan Review on July 6th.

The Conservation Committee and the Planning Board met to informally discuss future Open Space Developments and Subdivision Developments.

Turtleback Road – Peter Van Wyck (PVW)

PVW: I am just about ready to put the second coat of asphalt on the road at the end of the cul-de-sac.

MC: So we will have the second coat on Lowland Farms?

PVW: What I would like to do is make one big circle instead of two circles.

Mr. Van Wyck presented a plan of what he is proposing to do with the cul-de-sac.

MC: This abandoned cul-de-sac will become your front lawn.

PVW: It depends on what I do with this; I believe the times have changed.

JS: Is it changing any frontage?

PVW: No, it will not.

The Planning Board thanked Mr. Van Wyck for showing them the new plan for Turtleback Road and the Planning Board stated that they have no opinion.

Regular planning board business.

Mail

RF: Motion to adjourn the meeting.

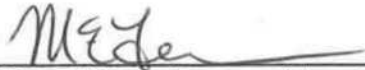
JS: I second the motion.

All in favor: Aye.

Meeting adjourned at 10:00 p.m.

Next meeting is set for Wednesday, July 6th, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by:



Mary-Ellen L. Feener, Adm. Asst.

Attested to:


L.W. Holton, Clerk

Town of Essex Planning Board Minutes

Wednesday, July 6, 2005

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:45 PM by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Bill Holten (BH), Jay Sweet (JS)

Absentee: Kim Jarvis

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener

Building Inspector's Report

Carbon Monoxide

Rob Fitzgibbon had presented an article regarding carbon monoxide to Bill Sanborn. Bill read the article and his response, which he presented to the Planning Board was that it was his understanding that the state government is planning on presenting a regulation that carbon monoxide detectors will be required in households at the beginning of the year 2006.

Open Discussion

Bill Sanborn presented a question to the Planning Board regarding a lot on Western Avenue that is located on the borders of the Town of Essex and the City of Gloucester. The lot was designated a map and lot number by the Essex Assessor. The question was that if a new house was built so it straddled the border would the house have an Essex Address? The Planning Board discussed the question with no solid conclusion at this time.

Turtleback Road

Bill Sanborn stated that he had received calls from both Scottie Robinson and Brendhan Zubricki regarding the altering of the road. The Planning Board decided that Mr. Van Wyck would need to go through the process of presenting a new plan for the road changes with a list of people who have a fee in the road.

Bill Sanborn mailed a letter regarding the shed located at Turning Leaf Farm that was constructed without a building permit; to date, he has not received a response.

1 Main Street

Mary-Ellen, Secretary for the Planning Board, received a call from Markie Parker a resident of 36 Pickering Street. She told Mary-Ellen that she and some of the neighbors (including Mark Chicoria) have concerns regarding the Essex River Basin business. She believed that five years ago, the project was zoned to operate at 1 Main Street. However, the business appears to be expanding into the residential area of Pickering Street with the parking of cars on this street. The neighbors are also concerned about the speed the kayak rigs and vans are being driven down the road and she stated that the business is being operated seven days a week for three-quarters of the year. The retail side is operational throughout the winter. She wanted to know if this was acceptable. The Planning Board decided to have the secretary

contact the owner of the business and ask if he could meet with the Planning Board for an informal discussion.

3 Lufkin Point Road – Special Permit Public Hearing – 8:12 p.m.

Brad Ketchum

RF: I would like to close the Public Hearing for Brad & Joan Ketchum of 3 Lufkin Point Road.

All in favor:

Aye. Motion passed unanimously.

RF: Is there any discussion regarding the special permit application?

MC: It seems that the applicant has addressed all outstanding issues.

ASTJ: I make a motion to approve the application of Brad and Joan Ketchum for a special permit for 3 Lufkin Point Road the proposed use is within all of the zoning requirements, that it has met the requirements of zoning bylaws of the Town of Essex and the Special Permit process.

RF: I second the motion.

All in favor.

Aye. The motion passed unanimously.

Rob Fitzgibbon volunteered to write the decision for the Special Permit.

John Wise – Hardy's Hatchery

JS: When we met with Mrs. Hardy did we sign anything when she was talking about turning over the plot of land with the white house on it on John Wise Avenue?

MC: Yes. What happened to the Chapter 61?

RF: I talked to David Santiello and he said he talked to you.

JS: That is on Island Road. Was anything signed? We just told her about the change of use?

RF: We did approve the sub-division.

JS: Can we do that without the town's approval?

MC: No. It's a separate process isn't it? They have a Chapter 61A restriction on the property. The town has the right of recession before they actually transfer the property.

BS: What is the 61A?

MC: The agricultural.

JS: They would have to pay back taxes.

BS: I don't know that process, but I would assume that once you create that subdivision they would need to pay their taxes when they filed it.

MC: The town has right of first refusal to buy the land.

JS: I am wondering if we did something wrong when we approved the subdivision.

BS: I think that comes into play now that just because they subdivided it doesn't change the use.

JS: My question is we allowed them to subdivide it, did we skip the step that the town would have the chance to buy it?

BS: No. Now if they go to sell it, they will need to let the town have the right to purchase it.

JS: We never told the town. Basically, Brendhan Zubricki didn't find out about this through the Planning Board, which maybe by law we weren't required to notify him.

BS: It was an ANR, right? If it were you would not need to notify anyone.

JS: They were a bunch of environmental people talking to me about this issue.

RF: I did speak to some people and it seems that a private citizen is going to purchase the property.

JS: Actually what they are going to do is a private citizen is going to buy it and they have someone in mind. The town is going to get the land in partnership with the Greenbelt or the Trustees but the money

will come from one particular donor. What they were also thinking of was of keeping it as agricultural use like they did with Appleton Farms.

BS: If you subdivided this property and it went up for sale the attorney who is doing the closing will need to research the tax issue, the Planning Board did not do anything wrong.

JS: I received a lot of phone calls. One of the other things that came up in these phone conversations was that the leading buyer of the property on Island Road is planning on putting in 40b housing.

BS: I would take one look at your bylaws if I was the developer and I would not think twice about going 40b.

MC: Especially due to the fact that they are not going to extend sewer down the road.

BS: I don't think they would need sewer, the lots would probably perc for septic.

It was decided that a letter would be sent to Brendhan Zubricki that stated that the Planning Board agrees to support the effort of keeping with the character of the Town of Essex.

Rob Fitzgibbon has spoken to Amy Morrill Reilly who is the wife of a developer and she is interested to be a member of the Planning Board. I am not sure what experience she has other than her husband is a developer, but she may be a good candidate.

ASTJ: What she needs to do is write a letter to the Selectmen indicating her interest and then they will probably interview her with us. If we wanted to we might consider asking her to come in and chat with the Planning Board first.

BH: Is that a five-year seat?

MC: No. It would be until the next election.

Essex Park Drive

Peter Van Wyck (PVW) & Tim Muldoon (TM), Apple Associates

The preliminary plan for the subdivision located at Essex Park Drive was presented to the Planning Board.

TM: This plan is quite similar to the plan we presented in March. We have just finalized the Abbreviated Notice of Resource Delineation with the Conservation Commission. We have identified the two vernal pools as well as determining where the flood zone is located. Additionally, we did the best we could to use the existing map that the town has and scan in the Watershed District that indicates that there is an underwater aquifer. When we do get to the building stage we will use recharge so that water on the site will fall back down on the site. We are still planning on twenty lots. We have switched it to have the appearance of one street. This was in response to the concerns of the measurements of two streets; should a street measurement be cumulative or individual. The proposed street does connect to Turtleback Road, but what we are suggesting is a fire gate. It would allow the benefits of one street without a busy traffic flow. The only lot that is somewhat irregular is lot eight and that is due to the location of the perc.s. We have four very good perc.s at the front of the lot and now we have the perc.s for the lot nine.

BH: Just to orientate myself, is the fire gate in front of your house?

PVW: Yes. I would like to also discuss the rules of subdivision. What we would like to do is have the one street. I hope it doesn't get to the point that there has to be another street for fire engines and school buses would go through. What we are presenting now appears to be adequate. It is your call.

ASTJ: Why don't you continue your discussion Tim.

TM: We do have perc.s for nineteen lots. That does involve having several lots that would be land locked and accessed by an easement and we would have pumps system from the property towards the front from the back and it would also mean that several of the lots that are closest to the wetlands and Alewife Brook the septic systems would not be physically on those lots, it would be done by an easement with the septic tanks down the road with a pump station.

ASTJ: And the Board of Health has approved this?

TM: We haven't designed it yet. Elaine knows the perc.s are there and they were done as part of the testing and we have submitted the plans.

ASTJ: So 15, 16 and 19 are going to a alternate sites.

TM: Yes. They are indicated by the corresponding numbers 15A, 16A and 19A. It allows us to use perc.s we found on the sites instead of putting in a road that would enter the conservation restriction. It allows us to keep all of the roadwork at the top. There will be no visible structures on the lots where the septic tanks will be installed; they will be located under what would be meadows.

ASTJ: Is the plan to come down the street and down the easement so you will not need to cross anyone else's lot.

TM: Yes.

TM: All the roads are to be built within the requirements of the town. We are not sure now if there will be one sidewalk or two.

RF: Do we know the length of the road?

TM: Yes. The proposed road is going from Essex Park Drive, I believe it is Salamander Hollow, will be 19,998 feet. Then, the small cul-de-sac in the center is 377 feet and the first cul-de-sac is 952 feet and those are measured from the intersections of those two cul-de-sacs with Salamander Hollow, where the roads split.

RF: And this is a two-way road, Salamander Way?

TM: Yes. It would be a two-way, but the fire gate would be there. On the Turtleback Road side so it appears to be a common driveway for two houses. The fire and police departments would know the firewall was there. Once again, this would also serve as an access to the Conservation Restriction on the site.

ASTJ: Question regarding the layout. Where the intersection where there is a through street and where there is a secondary road, there should be a better following of the concept of Ys.

PVW: The reason why these cul-de-sacs are there is that we need frontage. Of course anything you need to suggest is most welcome. The reason why the cul-de-sacs are there is for the frontage.

TM: We can make the turn a sharper angle.

TM: What is the remainder is lot twenty.

PVW: This is a chance to air our ideas and thoughts in as much as you are the organization that should be involved in the planning of the town. There are some things I could do here that I think this town needs, such as moderate income housing and that would be something I would want you to think about and how could we do this so it fills a needs of the town's and fulfills the states requirements.

BH: Why would you want to do that Peter?

PVW: First of all there is a lot of land here and it is a planning issue. Should this be done I would think it is a given that the town would have to grant access to the sewer system.

BH: So in other words you would want to do a swap?

PVW: I don't want to say anything about a swap. There is no swapping or trading. We should do something about moderate-income housing.

ASTJ: In return for allowing you to do this Peter what are you wanting?

PVW: I look at the town and I say, there are things that the town should consider and I know that the town is not fulfilling its need. Is this a concern from the town's point of view and if it is we should talk about it. I would be very glad to give you some plans.

ASTJ: Would you be proposing this on this subdivision?

MC: Lots one and two?

PVW: Most likely around the factory area of Essex Park Drive.

MC: Lots one and two.

ASTJ: This is an interesting conversation and I certainly don't know if the town has the ability to add to the sewer system. What I would suggest Peter, is that if you are intending on doing this, you should write a letter addressed to us and we will make sure it gets to the Selectmen.

RF: So you are thinking that the town may say, o.k. there will be thirty more units and that would assist us in fulfilling the quota, and they would allow access to the sewer.

ASTJ: A quota we are woefully under.

MC: I believe this is something worthwhile in pursuing.

PVW: I don't want to be in position where this is a trade. I am the giver. Start talking about trading will turn me off. I look upon this that the town needs this and I think we should consider this. I don't want to use the terms trade or barter. I will use some more land in a way that is meaningful for the town.

BH: I would like to go back to this road situation and I am a little puzzled about this fire gate. What you are saying is that it isn't going to be a dead end street. It would be a throughway. So a fire truck pulls up there and they would have a key?

TM: Yes.

MC: Your logic of not creating it as a through way is?

TM: Increase of traffic and it is on the wrong side of the gas line and the conservation area. Additionally, we had suggested a cul-de-sac, but then there was the concern about road measuring. Only emergency services would access the through way.

MC: You may want to share the letter we received from town consul with Peter.

RF: We did receive a letter from Attorney John Goldrosen.

The Planning Board reviewed the letter and gave Tim Muldoon a copy of said letter.

ASTJ: The only question in my mind is in order for this to be a legal subdivision it requires to connect to Turtleback Road and Turtleback Road is under the control of a private individual. What if at some point Mr. Van Wyck decided to be upset with the Salamander subdivision and he said, you can no longer connect to my road. Suddenly the Salamander subdivision is illegal. There would have to be a legal instrument that would make sure that the Salamander people have the rights to use Turtleback Road.

MC: If you look at M.G.L., Ch. 41, Section W, Modification of Amendment or Rescission of a Plan and this refers back to a question that was brought up about Turtleback Road at our last meeting, "No modification, amendment or rescission of the approval of a plan of a subdivision or changes in such plan shall affect the lots in such subdivision which have been sold or mortgaged in good faith and for a valuable consideration subsequent to the approval of the plan, or any rights thereto, without the consent of the owner of such lots, and of the holder of the mortgage or mortgages." My assumption is in reference to Turtleback Road wouldn't you have to go back and get the approval of the abutters on Turtleback Road because they are the owners of the original subdivision?

PVW: I haven't the answer to that.

PVW: Originally, there had been a time that I had planned a circle that would tie into Essex Park Drive. What you are basically saying to me is that this is something that is doable and maybe we should re-look at that.

ASTJ: No. I am not saying that at all. I am just observing that legal work needs to be done and the issues with Turtleback Road need to be acknowledged. If you were connecting a town road a permit for a curb cut would need to be obtained. Here it is a slightly different thing.

MC: My thought is that part of this whole notification process you are going through for the subdivision is that you are going to give your abutters a chance to make comments. Those comments are a part of the notification I was just reading. The other thing I caution you on is if you are doing something on Turtleback Road is that the very end piece of what I just read says that you also have to notify the land court. Turtleback Road stuff is all land court. So, if you are modifying the subdivision you would have to go back to land court.

PVW: I am aware of that.

MC: The last section of Chapter 41, Section W, perhaps it is how I am reading it, but 'so far as registered land is affected no modification of land can be in effect until it is approved by the land court.'

PVW: Let's just say I could do a circle all around Essex Park Drive. I would have the intersection under 1,200 feet. If I did this, it would be sad that the land that the road borders get developed. If you look at

the property, the dirt areas are in one area and it does seem that it would be wrong not to keep the land as pristine as you can.

ASTJ: Be well as this may I believe that this proposal for a road makes sense.

BH: I agree with you on that but what I am having trouble is that making that a through road without the fire gate is that you will increase the traffic not only on Turtleback Road but also on the scenic way, Apple Street. There are parts of Apple Street that are only eleven feet wide and you cannot alter a scenic way. I see the dilemma here and I think somehow you need to eliminate the through way, be it that you do it with a fire gate or a paper mache boulder in the middle of the road that you could move once in a while.

PVW: Can I say that the purpose of the preliminary plan is that we can sit and talk about these things?

RF: That is what we are doing here Peter.

PVW: I want to know answers. I don't want any frictions. I want to take these answers and do something that is useful and logical. You have given me several ideas. I said that we can do a circle, but you don't put the road in land if you want to protect conservation. These things that I bring up to the board, I want the board to give answers, not ask questions. I would like to put aside some time when we can sit again and talk about this to find answers.

MC: We have to have a public hearing in sixty days.

PVW: I am trying to keep down the questions and I would like answers.

RF: So this would be twenty lots?

PVW: Don't use the number twenty lots because that may not be the final number, right now it is nineteen.

RF: That's fine. I understand you are interested in affordable housing and you are interested in conservation land and you are interested in somewhere around twenty lots.

MC: I think what we should do tonight is to go through the punch list to see if the plan fulfills all the requirements and then we can schedule a future time to talk about concepts and in the meantime we can talk to Brendhan about our ability with the sewer.

The Planning Board reviewed the Preliminary Plans for the subdivision located on Essex Park Drive and accepted the Preliminary Plans.

MC: Before you go, we had a discussion regarding your question at our last meeting about modifying Turtleback Road and the design you talked to us about. Taking into consideration the Mass General Law I just read to you, since it is a modification of subdivision you would need to submit a plan to us.

ASTJ: It obviously isn't a big deal, you already have a plan, just dot in what kind of road you want to have and you have to let your abutters know.

PVW: Not all the abutters.

ASTJ: No, just the ones that are affected by the change.

PVW: It would be just me.

ASTJ: You. You're the only abutter?

PVW: Yes.

ASTJ: O.k.

Regular Planning Board Business

Mail

Payroll

ASTJ: Motion to adjourn the meeting.

SR: Second.

All in favor: Aye.

Meeting adjourned at 10:06 p.m.

Next meeting is set for Wednesday, July 20, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: Mary Ellen Feener Attested to: _____
Mary-Ellen L. Feener, Secretary L.W. Holton, Clerk

Town of Essex Planning Board Agenda

August 3, 2005

T.O.H.P. Burnham Library

7:30 p.m.

7:30 p.m. Building Inspector's Report

8:00 p.m. 1 Main Street Discussion

8:30 p.m. Peter Van Wyck Discussion – 40b Housing – Fire gate - Essex Park Drive

Planning Board Business:

Mail

Payroll

Meeting Minutes

Subdivision Rules & Regulations/Handouts/Forms for the Planning Board to Review/Vote

AUGUST 4, 2005

Due to the fact there was not a quorum (two Planning Board members attended the meeting) the meeting was not held on August 3, 2005. The next scheduled meeting is August 17, 2005 at the T.O.H.P. Burnham Library at 7:30 p.m.

**Town of Essex Planning Board
Meeting Minutes
Wednesday, August 17, 2005 – 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:45 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon. (RF), Kim Jarvis (KJ), Bill Holton (BH)
Absentees: Jay Sweet, Andrew St. John
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener

Building Inspector's Report

Due to the fact that the Building Inspector did not have any permit applications or concerns to present to the Planning Board, there wasn't a report from the Building Inspector.

1 Main Street

The Building Inspector, Bill Sanborn and the Planning Board Chairman, Rob Fitzgibbon did drive by the property, at different occasions during the past two weeks and they both noted that the owner of the property is addressing the parking issues that were brought before the Planning Board by a concerned citizen.

Arielle Lane

The Planning Board discussed the correspondence from the Kirkers and Scott Boches regarding the road. The Planning Board decided that Rob Fitzgibbon would contact the Kirkers and let them know that the Planning Board is determining if there is an issue with the road. It was also decided that Rob Fitzgibbon, Michael Cataldo and Kim Jarvis will walk the area to look at the road on Saturday August 20th and that Mary-Ellen, Planning Board Secretary, will contact Larry Graham, Engineer to inquire if he has any updates regarding Arielle Lane and an As-built.

The Planning Board discussed forming a policy on how to handle any question presented to the Planning Board by an Essex citizen.

RF: Motion that any citizen who has a question for the Planning Board should submit their question in a letter or email to the Planning Board office. Once a question has been presented, the question will be placed on the agenda for the following Planning Board meeting and discussed at a meeting by the members of the Planning Board.

KJ: I second the motion.

All in favor: Aye.

Motion passed unanimously.

Tim Purinton – Mass Audubon

Tim Purinton met with the Planning Board to discuss his role as an Outreach coordinator for Open Space Residential Design. He presented samples of an Open Space Residential By-Law and discussed with the Planning Board the grant that was bestowed to the Town of Essex Planning Board. Tim discussed a time line for presenting a By-law change at the 2006 Essex Town Meeting. The Planning Board discussed opening meetings and asking volunteers to participate. The Planning Board discussed the steps for reaching out for the volunteers and the possibility of a mailing.

- Mary-Ellen will check with the Librarian, Beth and the Town Clerk, Sally as to if the library may be used for the meetings.
- Mary-Ellen will forward any contact information for volunteers to Tim Purinton.
- Mary-Ellen and Rob Fitzgibbon will set up a schedule for the meeting with the volunteers.
- Mary-Ellen will mail Jay Sweet and Andrew St. John (Planning Board members not present) copies of the sample OSRD By-Law.
- Rob Fitzgibbon will send an email to Brendhan Zubricki to inform him that Mary-Ellen will distribute the sample OSRD By-Law.
- Tim Purinton will meet with the Planning Board at 8 p.m. on September 21, 2005.

229 Western Avenue – Walter Ewaschuk

Mr. Walter Ewaschuk requested an informal discussion with the Planning Board regarding his proposed site plan for a new building to be built at 229 Western Avenue. The Planning Board explained to Mr. Ewaschuk that he would need to go through the steps of requesting a Public Hearing for Site Plan review to happen due to the fact that the proposed building would exceed 2,500 square feet.

The Planning Board members discussed an Agenda and Meeting Policy.

- It was suggested that an agenda is closed the Thursday before a scheduled meeting.
- There will be 15 minutes allotted to each item. If an agenda item exceeds the fifteen minute time period, it will be continued to the next meeting.
- The meetings will begin at 7:30 p.m.
- If a Planning Board member knows that he/she will not be able to attend a meeting, they will make every effort to inform the Planning Board secretary and the other Planning Board members in a timely manner, preferably at the prior meeting and/or at least a week prior to a scheduled meeting.
- The Chairperson will review the draft agenda four-five days prior to the close of the agenda on the Thursday prior to the next scheduled meeting.

Mary-Ellen will type the Agenda and Meeting Policy and present it at the next meeting for the Planning Board to review and vote.

The Planning Board discussed the open seat for the Planning Board and that the person who had been a possible candidate was not interested.

The Planning Board discussed the need for an Alternate/Vice Chairperson.

RF: Motion to approve that Kim Jarvis is appointed as the Vice Chairperson for the Town of Essex Planning Board.

MC: I second the motion.

All in favor: Aye.

The motion passed unanimously.

Kim Jarvis informed the Planning Board of her discussion with Brendhan Zubricki, Town Administrator, and said that there will not be any more available Essex sewer connections. In five years the City of Gloucester will have the opportunity to either allow or not allow Essex to have more sewer capacity.

The Planning Board reviewed the draft notice for the Public Hearing that will be posted for Essex Park Drive and assisted with editing the notice.

The Planning Board reviewed the meeting minutes for May 4, 2005.

RF: Motion to approve the May 4th meeting minutes as amended.

KJ: I second the motion.

All in favor: Aye.

Motion passed unanimously.

Regular planning board business

Mail

RF: Motion to adjourn the meeting.

KJ: I second the motion.

All in favor: Aye.

Meeting adjourned at 9:40 p.m.

Next meeting is set for Wednesday, September 7th, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: M.E. Feener
Mary-Ellen L. Feener, Adm. Asst.

Attested to: L.W. Holton
L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, October 5, 2005 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:42 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon (RF), Jay Sweet (JS), Kim Jarvis (KJ)
Building Inspector: Bill Sanborn
Absent: Andrew St. John, Bill Holton
Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

63 Martin Street – Mark & Amber Fritsch

BS: This application is to turn an existing structure, a barn, into an apartment. It does have the approval of the DPW, BOH.

MC: Where is this house located? Is this the house that we asked when the barn was built it would not be occupied? Right next door. They said it would be used for guests.

BS: Right across the street?

MC: No, next to Town Hall. Remember when Jeff Vachon was taking the outbuilding and converting it.

BS: I don't think it is the same property.

MC: Is the construction completed?

BS: The one that Jeff was building was on the same side of the street. This one is on the corner of Brook's Pasture.

MC: The plan is to convert a barn into a dwelling unit.

BS: Yes and attach it to the house.

MC: The BOH signed off because it currently has septic and the DPW because it is going to be connected to sewer? Didn't the DPW tell Kim that they would not be allowing any more sewer hookups?

KJ: Yes, that is what they told me.

BS: The BOH still signs off on all building permits. They must have been assessed because DPW signed off on it.

KJ: We should check on this with the DPW.

BS: They have a deed restriction for three bedrooms.

MC: How many bedrooms do they have now?

BS: Two.

The Board reviewed the plans.

RF: Are they going to rent this unit?

BS: No, it is for his mother.

KJ: When we go to the fact it will be a two family house, what is the lot size? Would it cover more than twenty five percent of the lot?

BS: I do not believe so.

MC: Would they be over twenty-five hundred square feet?

BS: No.

RF: Should we wait until we speak with the DPW?

BS: My question is can you hold this up when I have the sign off from DPW.

MC: Can we vote it, subject to a condition?

JS: We can wait to vote.

MC: If they can give Bill an approval from the DPW then they could go forward.

JS: I would like to know the reason that the DPW is saying they could hook into the sewer when we have been told there are strict restrictions of new tie-ins.

MC: What I would like to see is that when the DPW is approving these plans in general, we would like to know is it because a property has two tie ins, bedroom count etc.

RF: I think our main concern is that the right hand doesn't always know what the left hand is doing and I certainly think the DPW sign off is great and our assumption has to be that they approved it.

MC: Did the DPW sign off specifically from the Wastewater Department?

BS: Yes.

MC: Who is signing these?

BS: It looks to be Jay Goodwin.

KJ: On sewer connections I was told that for five years if we want any further connections it would have to be approved by the City of Gloucester and then it would need to go before the Essex Board of Selectmen and then the Town of Essex to determine who would merit these connections and I believe it has to be voted on at Town Meeting.

MC: So, can we just vote on this subject to approval of the DPW.

KJ: So, do we have any dimensional issues?

MC: So you said it was a 6.4.2 finding?

BS: Yes because it is a non-conforming lot.

MC: Motion to approve the application for Mark and Amber Fritsch of sixty three Martin Street for the conversion of an existing barn structure to an apartment, subject to the final approval of the Essex Wastewater office for the DPW regarding the sewer betterment. The barn will be attached to an existing home. Finding that under Section 6.4.2 it is not substantially more detrimental than the existing non-conforming use.

RF: I second the motion.

All in favor.

The motion passed unanimously.

10 Harry Homan's Drive – Todd Rogers

BS: This is for a 6.4.2 finding. they want to raise the roof and add two dormers at the front of the house so they could have two bedrooms and a laundry on the second floor. This has the approval of the BOH, not required to be approved by Conservation Commission, and the reason for the application is because the original house is only twenty-three feet from the street and it does not meet the front yard set back.

KJ: Does he meet the other requirements?

BS: Yes.

The Board reviewed the plans.

KJ: I move that we approve the building permit for Todd Rogers at 10 Harry Homan's Drive. It is a 6.4.2 finding, due to the fact that it is not more detrimental than the existing use. It has DPW and BOH sign offs and it does not need the approval of Conservation Commission. The owners are going to raise the roof of the building and add a second story.

MC: I second the motion.

All in favor.

Aye.

The motion was passed unanimously.

34 Forest Avenue – Ralph & Nina Amero

BS: They would like to add a second floor addition on the second floor that would go out eleven feet at the back of the building. There would not be any building underneath; there would be a patio. They are going to expand to have two bedrooms and a master bath.

The Board reviewed the plan.

JS: Motion to approve the application of Ralph and Nina Amero of 34 Forest Avenue for a first floor addition ten by ten one story structure and a second floor addition ten by twenty seven and a half, one story structure and it is a 6.4.2 finding due to the fact that it is not more detrimental than the existing non-conforming use to the neighborhood.

RF: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Bill Sanborn, Building Inspector discussed with the Board the buildings on one lot built by Brian Feener, Eastern Avenue. He does not believe that occupancy was never given for the building at the front of the lot that seems as if it should have been torn down per meeting minutes from the Board in 1997. The current Board suggested that the Building Inspector send the owner a letter.

George Andrews, Story Avenue met with the Board for an informal discussion of plans to submit an ANR to the Board for the new construction of a home and to modify a stonewall on a designated scenic drive

which he will apply for a Public Hearing. The Board and Mr. Andrews discussed any issues, ideas and concepts. A date was set for the Public Hearing and the presentation of the ANR.

Essex Park Drive – Continuation of Public Hearing
Peter Van Wyck (PVW)

RF: This is continuation of a public hearing from September 7th regarding Essex Park Drive. At this point we would like to address the people attending this meeting to be able to speak. Yes, please identify yourself.

JM: My name is Jim McKenna, 29 Turtleback Road and I would like to cut to the chase and introduce our attorney, J. Michael Faherty (MF), who is here to address the issues that have caused us serious concern.

MF: I have a letter that I will read. The letter is addressed to the Planning Board and it states that I represent Jim and Susan McKenna who own property on Turtleback Road Ext. I have reviewed a number of documents provided to me by the McKennas concerning Mr. Van Wyck's original Turtleback Road subdivision and his subsequent Turtleback Road Extension. It is my opinion that based on the documents I have reviewed that in accordance with the analysis and holding in the case of Patel v. Planning Board of North Andover 27 Mass. App. Ct. 477,539 NE 2d 544 (1989) the property that he now proposes to subdivide has no access easement rights over Turtleback Road and Turtleback Road Ext. unless either such rights existed at the time of this purchase or he specifically reserved such rights in the deeds to persons who purchased property in the first and second subdivisions unless the rights already exist. He cannot create an access/utility easement over Turtleback Road and Turtleback Road Ext. at this time without each of the property owners joining in the grant of easement. What I am seeing based on the documents provided to me is that this is a case of successive subdivisions and as long as the road remain private the developer would need to have the approval of the owners on that road.

JM: The Town's own rules of common driveways limits the use of a common drive to three lots and the question now is are you going to stick to your own rules and vote against this plan.

KJ: This is a Preliminary Plan and by the By-Law it is a strongly suggested element of the subdivision process and it really is to get over hurdles like this so we don't find ourselves in a much tougher point when the Definitive Subdivision Plan is presented. When we get to the Definitive Subdivision Plan that is when the traffic study needs to be presented and is required by by-law.

MC: And we can definitely hear the neighbors concern with this plan. Peter can hear it too, but it is not our prerogative to say, this plan will not work. It is your prerogative Peter that if you think this plan will not work you can withdraw it.

JS: Especially since we have a letter that says that Peter did not like the plan.

PVW: I think the purpose of the point of (letter PVW sent to residents of Turtleback Road) was that I was trying to bring to your attention that there is a lot of feelings about what this Board should do and I am talking about people on Turtleback Road and Apple Street. They all came down and they all said this road should not be a through street and let's look at our options. It seems to me that this Board has another case in town where has gone a route that is different than a through street and for some reason that street was acceptable for this Board to accept, whereas Essex Park Drive is not and I would like to ask the Board why.

JS: We are not here to address any other questions unless they are dealing with this plan. This plan is a through street. Is this the plan you want us to address?

PVW: Yes, that's right.

JS: This is the preliminary hearing for this plan.

MC: Before you submitted this plan you asked us if we could give you a longer than twelve hundred foot road. We went back to Town Counsel who researched this issue with other case studies and they came back and told us that no, you can not do that. Then, you chose as an option, to come back with this plan that has a through road on Turtleback Road. I don't think you can put the burden of this decision on us Peter, it is your land and you are the developer.

PVW: No, no, I am talking about Rocky Hill Road, it has a gate. Why don't you describe that road and how that works?

MC: It is not, nor was it built to be a through road. You are talking about the potential to develop eighty units on this road. To say this you can compare it to a road that has three or four different cul-de-sacs on it, is a completely different situation.

KJ: If there is a gate on it, then it is a dead end road and it does not exceed the twelve hundred feet.

RF: We need to let some of this people speak.

Kimberly _____, Apple Street: I wanted to know if you have reviewed the other traffic studies. We have went down this road twelve years ago when he needed to have a traffic study for Lowland Farms which has never been completed. The reason the people who live on Apple Street had to have a review of this traffic study at that time was that they wanted to make sure the Board looks at the number of cars which traveled that road, looking at the intersection. We have a traffic study and the effects that can happen with that kind of development and the negative effects.

PVW: I never knew one existed.

K____: You paid for it.

PVW: No, I paid for a traffic study which I hired and I have a copy of and which the Town should have a copy of on record.

K____: One of the things that came up in the last meeting was that individuals who live on Apple Street, one of the roads that is going to get the traffic, are experiencing difficult situations with the traffic and at the junctures of these roads. Apple Street cannot be widened under the shade tree act. It can be trimmed back. Visibility is very dangerous. You can't just divert the public safety for the developers' rights. Peter doesn't finish the project that he has permission for and this was done in 1992. We have a five year limit for subdivisions and it hasn't been adhered to and we are now being asked to add another subdivision onto a project that hasn't been finished.

RF: I don't think we should be getting to into Lowland Farms. What I do think we would be interested in seeing is multiple traffic studies that we can compare.

K____: All I am asking is that you include the junctures of these road and the swell and impact of traffic and the fact that there are developments which aren't finished yet.

JS: I think a good point is that a traffic study should include the future proposition of any more subdivisions in that area.

RF: Are there any other comments?

Scottie Robinson (SR): Scottie Robinson, Turtleback Road. I spoke with someone late this afternoon, Philip Lake, and his primary residence is on Apple Street and his property continues onto frontage on Turtleback Road and he wanted to assure me and wants to provide me with case laws which substantiating the rights and indeed the responsibilities of a Planning Board to consider the major traffic and safety patterns on roads that subdivisions on which roads will be in and out of. I am just saying that I am sure you know it all ready, and I was hoping to come here with case law in hand, I want to make sure you know that if you take the regulation that I read to you last week from the Essex by-laws, Chapter 7, the first part related to the Boards ability to deny an application for a subdivision due to inadequate access to and from the subdivision and that alone would be an adequate reason. If you were not satisfied with the reasons my neighbors on Turtleback Road Ext. have already provided.

JS: Phil Lake has been providing me with various court cases and documents regarding this and I have been trying to read them.

RF: When you have a chance could you share them with the Board?

JS: Yes, I can. I am trying to read them and bring myself up to speed.

Rob Fitzgibbon read a letter from the Board regarding the continuation of the time line for the Public Hearing for Essex Park Road. Peter Van Wyck agreed to extend the time frame to one hundred and twenty days.

RF: Is there anything else the other members of the Board would like to say about the extension?

The members refrained from comment.

PVW: I would just like to say that I think most importantly what we should do is consider the legality of using Turtleback Road as an alternate access. In this situation the only way I can get access to this area that I need to get access it to do this plan. I think we ought to address this problem with a traffic study. No, not a traffic study, but to look into the legalities of it. I feel my neighbors should know, this Board should know and I should know. With that in mind, my lawyer should be in contact with the Town Counsel in order to find another way of approaching it (the road).

MC: Wouldn't your counsel want to talk to the Planning Board? I am not really sure if your attorney came here what else he could add. The issue regarding the length of the road is something we have already gone to Town Counsel on, accessing Turtleback Road is an altogether different issue.

PVW: It seems to me that it is an issue to you. I think that the first thing we should do is to clarify this issue.

MC: O.K. If we continue this meeting, what we can do is ask that your attorney come to the next meeting to discuss why you should be able to access the road. At that point we have taken comments from both sides and we can close the meeting and make a decision about the plan. Now, part of that decision will

be that the decision is going to go right to our Town Counsel and they will determine if you have the right to access that road versus what the abutters rights are regarding the road. If this plan isn't going to work due to the fact your abutters will not allow you the access and if they have the right to do that, then you better withdraw this plan before we go through it for a lot of other reasons.

PVW: I am not going to sit here and say that they are right or wrong. But, it does seem to me that in this case that I don't need the part of the street Jim McKenna controls nor do I need the parts the other people who are here control because I have a part.

MC: When someone comes out on Turtleback Road you don't know if they would turn left or right. You are right, in all fairness; if you want to have your attorney attend the next meeting you can have him here.

PVW: Then I will have the traffic study.

JS: When we go through this and then we say that Peter can have the traffic study are we then up against the ninety days?

RF: No.

MC: The traffic study would be part of the Definitive Plan and that would go on much longer.

The Board members discussed with the people attending the meeting the difference between a Preliminary Plan and a Definitive Plan.

MC: I make a motion we continue this meeting at 8:45 on October 19th.

RF: I second the motion.

All in favor.

Aye.

229 Western Avenue – Walter Ewaschuk

MC: Vote to approve the special permit with conditions, for the plan for the building located at 229 Western Avenue by Walter Ewaschuk.

RF: I, Rob Fitzgibbon also vote to approve the special permit with the contingency of conditions.

JS: I vote to approve the special permit for 229 Western Avenue, Walter Ewaschuk with conditions.

KJ: I Kim Jarvis, vote to approve the special permit with conditions.

Application for a Special Permit approved unanimously.

Regular planning board business.

Mail & Payroll

MC: I make a motion to adjourn the meeting.

JS: I second the motion.

All in favor: aye.

Meeting adjourned at 10:50 p.m.

Next meeting is set for Wednesday, October 19, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: _____
Mary-Ellen L. Feener, Secretary

Attested to: _____
Kimberly Jarvis, Clerk

Town of Essex Planning Board Agenda

November 2, 2005

T.O.H.P. Burnham Library

7:30 p.m.

7:30 p.m. Building Inspector's Report

8:00 p.m. Continuation of Public Hearing from September 7, 2005 –
Essex Park Drive – Russ Brown, Peter Van Wyck

8:45 p.m. Presentation of the Application for a Public Hearing by
Craig Butner; Re: 102 Apple Street

9:00 p.m. Open Space Development Discussion (update, meeting schedule copies
to be given to Rob for the next meeting, November 9th Meeting)

10:00 p.m. Regular Planning Board Business

- Review of Site Plan Review application packets
By-Law/Sub-division packet
- Review & Approve Meeting Minutes
- Invoice for Bucklin Subdivision – As-Built was approved by Board
- Larry Graham's correspondence regarding subdivisions of P.V.W.
-
- Draft any notices for Public Hearings (if necessary)
- Request by lawyer for information that is still considered to be in litigation
 1. Need a volunteer from Board to review information that can be allowed for public review

Follow up on the following:

- Palazolla Bros. - 60 John Wise
- Myles Cambridge – Turtleback Road
- Arielle Lane
 1. Letter from Water Department

10:45 p.m. Meeting Adjourned

**Town of Essex Planning Board
Minutes
Wednesday, November 2, 2005 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:42 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon (RF), Jay Sweet (JS), Kim Jarvis (KJ), Andrew St. John (ASTJ), Bill Holton (BH)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

32 Island Road – James Richardson

BS: This application is for a change of use. The owner would like to change a barn into a dwelling and he would also like to construct a greenhouse. It does have the approval of the DPW, BOH.

MC: Where is this house located? Is it on Conservation land?

BS: That is part of it before I issue a building permit; one of the conditions is that he has sign offs from the Trustees of the Conservation. The owner did have a permit previously to rebuild the barn that had fallen down and that is the barn in question. The greenhouse would be added to the barn and it would be in conservation land.

The Planning Board reviewed the plans.

KJ: What about the conservation restrictions?

BS: This barn already had a building permit. He put the foundation in and had everyone's approval and then something happened to the foundation where it failed. He then took out the foundation and these are the future plans and the building is still active because he sent me a continuance.

KJ: For a barn or a residence?

BS: For a barn at this point.

MC: It is missing the house.

ASTJ: This is a very confusing drawing. It doesn't show the total conservation easement, it only shows a corner.

MC: It is a fifty-seven acre parcel. I know when they got the conservation restriction it was all on one map.

BS: The majority of this is not in conservation land, just this section. The permit for the barn has already been approved. What he wants is a change of use for the barn.

MC: My problem is that when he came in to the Planning Board he proposed a barn it seemed to be a more appropriate use and now he wants to convert it to a residence and that seems to be impeding on the conservation restriction.

ASTJ: So he needs to be a bit more forthcoming about all the other pieces of what is going on with the land.

BS: The issue with the conservation has nothing to do with this board, period.

ASTJ: Why do you say that?

BS: That is a private issue between the Trustees of the Reservations and him.

MC: We can't have any jurisdiction over a CR. We ran into this when Turning Leaf Farm wanted to convert a barn. We can't oversee anything to do with the CR. How many lots are there?

BS: One lot. That is quite a bit of land.

JS: If we are looking at change of use couldn't we ask for site plan review?

BS: Why, it isn't over 2,500 square feet.

ASTJ: Change of use automatically kicks in.

BS: I thought it had to be over 2,500 square feet?

ASTJ: No. I am not saying it is right Bill, but it is what we have in the regulations.

The Board reviewed the By-Laws and the Subdivision Regulations regarding the criteria for site plan review and determined that there was no precedent for site plan review.

MC: I make a motion that we approve the application of James Richardson for the conversion of a former barn to a one-bedroom studio located at 32 Island Road.

KJ: Is there anything for us to approve?

BS: Yes. Change of use.

KJ: It is change of use if it exceeds 2,500 square feet.

BS: If you go to 6.7.2 A the Planning Board shall approve the site plan of any altered structure and the site thereof.

MC: I make a motion that we approve application of James Richardson for the conversion of a former barn to a one-bedroom studio located at 32 Island Road. Finding that it meets all the current by-laws and it currently has the approval of the BOH and Con. Com.

RF: I second.

All in favor.

Aye.

Motion passed unanimously.

35 Eastern Avenue – Brian Feener

BS: As you know I was approached by somebody and asked did he ever get his occupancy permit and part of it was the removal of the old house. The old house hasn't been removed. I sent him a letter and he responded quickly. He is not under the belief that at the time the building had to come down, he was under the belief that the building was going to be an accessory building. If you remember going through the notes it was discussed. It was clearly stated that if he did wish it to be an accessory building he needed to come back to the Board. He didn't understand that at that point but he does now. He wasn't arguing, he just thought that when he went to the Board it was approved as an accessory use. So I suggested that he gets his proper sign offs and brings it back to the Board to be approved.

MC: Is there any plumbing in the building?

BS: No, it is not connected to water or anything at this time. He did mention that there may be someone who wants to move the house to Newburyport. I guess the house is a timber framed house and they are looking to use the house as a stable. It may have some value. He has been very cooperative. As far as his house he needs a little more work to get an occupancy permit and he is working towards that.

MC: Can I ask you a question regarding process? If the Board of Appeals granted their permit for a variance based on the premise that the building would have been torn down. Then, the Planning Board voted on something different. It's like apples and oranges. Wouldn't the Board of Appeals vote have more weight?

BS: I don't believe the Board of Appeals did that.

Bill Holton read minutes from the Board of Appeals meeting regarding the property.

MC: So that sounds as if the Board of Appeals did grant their variance with the condition that the house is taken down. Then the Planning Board goes and votes something different.

RF: So basically, you are asking if the Board of Appeals has the more power for decision making than the Planning Board.

MC: Basically, we can't override a decision or have the right to supersede a decision of the Board of Appeals.

The Planning Board discussed the Board of Appeals meeting minutes regarding the decision and it was not clear to the members as to the clarity of the decision. The Building Inspector stated that he would investigate this further.

Turning Leaf Farms

BS: I got in reply to a second letter, a phone call that said that they never received the first letter. Which may be true because I never got the card back as a certified letter. They don't know which shed I am talking about.

MC: Do you know which shed you are talking about?

BS: I think so, but I just want to make sure. Where they keep the tractor.

MC: Yes. There is a shed there next to the tree, next to the barn. It is a pretty big shed and they used to keep horses in it.

JS: There used to be a car behind it.

BS: Right behind the trees.

MC: Yes.

BS: I did call them and then they called me back. My understanding is that the owner works late on Wednesdays. I will try to talk to them in person and clarify which building we are discussing.

Continuation of Public Hearing – Essex Park Drive – 8:15 p.m.

Peter Van Wyck (PVW) – Russ Brown (RB) – Mike Faherty (MF)

RB: For the record, my name is Orestes Brown and I represent Peter Van Wyck in respect to the Essex Park Drive Subdivision and I have a follow-up to the last conversation we had two weeks ago. I have a written synopsis of the title issues affecting the ownership issues and rights of the owners of Turtleback Road and I have included in all of the exhibits all of the deeds of all of the people who bought from Peter Van Wyck on Turtleback Road and Turtleback Road Extension with the exception of two deeds. Mr. Van Wyck sold a group of properties, four lots to Essex Avalon Properties LLC, which was then sold, to who I believe was the McKenna's and the Rainey's. I don't have the deeds from the Essex Avalon Properties. Peter Van Wyck expressly, in every deed for the first section of Turtleback Road, which is described in Land Court Plan 3209 A-E, the E Plan being the most informative. In all of those deeds you will see that PVW expressly reserves the ownership of Turtleback Road, which is a very important thing in both statutory and case law.

JS: Can we jump to more laymen terms? The first section of Turtleback Road it goes from Apple Street to the original beginning of the loop?

RB: Yes. What I call this first section of Turtleback Road subdivision, Peter created six lots, one of which he kept for his residence. One of those lots he deeded to Jennifer Stevens, which is located at the beginning of Turtleback Road and the one he deeded to Caribou Fisheries, I think it was, who in turn deeded it to who I believe was a man named Souza. Then he deeded to Dick Tomiaiello, which I believe later became Scottie Robinson's house and then he deeded to a Williams and a Campbell.

JS: But my question is, you said the first part of Turtleback Road. I want to know where that starts and where that ends.

RB: The first section originally ended in a cul-de-sac.

JS: Yes, I know. Did it include the entire circle?

RB: Yes the entire circle.

JS: Not just up to the first circle, but including the entire circle?

RB: Yes, that's right including the turnaround. At that time the abutters were originally Peter Van Wyck and the Campbells. Then Peter took additional land, which is what I call Turtleback Road Extension which is the second turnaround which was subject to litigation with the Agreement for Judgment which we have all talked about before. Turtleback Road Extension was developed pursuant to the Agreement for Judgment into twelve lots, actually fourteen, twelve of which are buildable and that business has recently been before the board. Now, Turtleback Road Extension is different from the first Turtleback Road. In deeding out the first Turtleback Road. In deeding out on Turtleback Road extension Peter deeded out nine of the twelve lots. He has already sold nine of the twelve lots. The first lot went to the Prestons, which is at the beginning of the Turtleback Road Extension. That deed Peter expressly claimed ownership of the road. In another property he deeded out four lots, lots 24, 29, 30, and 31 to Essex Avalon Property. In that deed he did not mention anything about the road. He didn't give them any rights in the road and he didn't reserve any rights in the road. So, Essex Avalon now deeds out, I believe to the Raney's and McKennas and there were no mention of rights in Turtleback Road. Now, I believe their rights fall statutorily to include the middle of the road. Then two of the Essex Avalon lots came back to Peter and all those lots, 29, 30 and all the other lots were subject to a declaration of protective covenants. In that declaration Peter reserved expressly the right to grant easement rights. You will see that Peter for lots 29, 30, 35, 38, 39, 40 and everything that hasn't been sold yet, including lots 41, 43, 44, 32, for all those lots he has the express reservation to have the right to get an easement to develop Essex Park Drive. So there are only two lots really on the whole subdivision where rights regarding Essex Park Drive are not addressed. I think the important point is that Peter owns the upper portion of Turtleback Extension in its entirety.

JS: And that is where the road is.

RB: Yes, that is where the road is and he can put a road through there and go into the first part of Turtleback Road. In my opinion, due to the fact he owns all of that land outright, he has the right to grant whatever easements he wants to Essex Park Drive. That is my position that is the position I took in this letter. But, I also want to add, end, with this note; obviously there are people who live on Turtleback Road who are upset with this process and having a subdivision going through here and I don't think Peter actually wants to do that and there are other ways to go with Essex Park Drive. In order to handle the traffic, I know it probably isn't the time to have this discussion, a better way to look at it is that all of the time spent on litigation, because this could go on for a long time, complex litigation for there is a lot going on here, everyone would be much better served to have the access to go through Essex Park Drive and to have a waiver to allow that to happen.

ASTJ: You mean and not have access to Turtleback Road?

RB: Yes.

ASTJ: Let's take the issues one at a time and be sure we address that as one of the current priorities. This issue has to do with whether or not Peter has the right to connect with the existing private road and while it is important that he has done this and we can take that aside and if anyone wants to discuss that at a later time we can do that, if it comes to the point we reach that. Perhaps, we could move on from there and look at the whole project because I think where we were before this exploded was I think the traffic study, that's what brought this up and I think before you can mention a traffic study, you need to know more or less what the road is going to look like. Is it going to have an outlet on Turtleback Road or not, that is your basic question.

JS: As it is submitted now, it is a through road and I guess what your summary is that he has the right to do that.

RB: My summary is that he does have the right to do that, but...

JS: That's fine.

MC: That's what is right in front of us and that's what we are doing now.

JS: Anything else you are going to say means nothing to me right now.

MC: That's what this submission is about tonight.

JS: The submission is for a through road and you are saying that he can do it.

RB: Yes I am saying he can do it. But, I want to add the caveat the case law on these kind of issues is complex and I can find answer and Attorney Faherty sent me a case, a very fresh case, one court case of 2005, Wood v. Damon that although it was relative, it did state that the plaintiff did own to the middle of the way outright and therefore he could stop the granting of further easements. In this case I think it is a bit different because Mr. Van Wyck expressly reserved the right.

JS: I have a question that has been confusing me and I don't know what the law says, I am not a lawyer. But, let's just say on that upper extension of Turtleback Road if two people do own because it didn't say one way or the other, could you say that those two people own half way. It's a loop so if someone comes off of Essex Park Drive or Salamander Way, or whatever Peter plans on calling it, and someone decides to go right to turn on the loop, just to go around that way. What is there going to be a one way sign that says coming out of this thing you are going to have to take a left?

ASTJ: There could be a private road sign.

RB: They only own half of the road.

JS: What I am saying is that little part there, can you claim outright one hundred percent that this is something he could be doing. Or is there second guessing going on here?

RB: There is a lot of second-guessing going on here. I think it is pretty clear that Peter Van Wyck has the right to use the land he owns and the right to use it as he wants and you can see the land he owns. He owns Turtleback Road and the upper portion of Turtleback Road Extension.

JS: Well not entirely, but the majority.

RB: Yeah, but he owns enough where he can put a road through. However, there are a lot of other issues that I am sure Attorney Faherty will raise that may be the kind of issues that only can be resolved in the Appellate Court. I am not even sure they would stay in the Land Court. This could go on forever and I think this Planning Board, I think I can definitely show that we have the land and the right to do what we have to do. You could proceed with the plan and say, fine, we believe you and therefore we approve the plan contingent on the fact that you can provide this access. Then Attorney Faherty could take that issue and take us to court and stop us. Perhaps that could be wrangled through for a long time, I don't know.

ASTJ: Going back to the original question. I think we have now established and I am sure we will have another look at this and what the plan in front of us is and what he wants to do.

RF: Is there anything Attorney Faherty wants to say in response to Attorney Brown's position?

MF: Yes, one procedural. Mr. Brown and I had an agreement that he was going to provide me with the title for the property and he anticipated that I was going to get it sometime last week or this week. Due to various circumstances I did not get it until tonight. I am requesting five days to get you, I guarantee it will be much briefer than this (holding brief from RB), probably only two pages, but I need a chance to look at this and make sure everyone is working with the same deeds, the same facts. So I ask the Board's permission that if they would not have a problem with me asking for the five day extension because I didn't get a chance to look at the material until tonight.

RB: And that is all true. I did want to get it back to him last week, but...

JS: It's fine.

MF: The second thing is that we did want to take a different position than what Mr. Brown has pointed out. In that there are at least two people who bought in the Turtleback Road subdivision who purchased and built prior to the creation of this declaration of restrictive covenants. They are not bound by any

subsequent action at this point. The other point is, is that we take the position, and I guess you have already alluded to it, that once you have the right to use the way on a subdivision, you have the right to use the whole and you have the expectation that it is not going to be overused and the case Mr. Brown referred to which I gave him a copy of is a recent Massachusetts case and it gives reference to a whole lot of Massachusetts and Connecticut law in terms of what happens when you create access from a prior subdivision into a new subdivision and we feel comfortable that with our position. I would like to say, that I do agree with Mr. Brown. Once you get involved and I tell most of my clients this, as soon as you get in the court room door you have lost because you are turning over a decision to a court that should be made by your neighborhood, your local boards, whoever. You are turning that over to three people who aren't very interested, sometimes they are very disinterested and sometimes they come up with a result that neither side feels comfortable with and I have always felt that it is the responsibility of the Planning Board to do good design and if the law doesn't specifically fit then still it is incumbent upon what is best for the overall few. What I am saying is that we can probably litigate this, and it will probably make the lawyers happy and it may even make some cases in a case book sometime and somebody might debate about it later on, but for my point of view, they don't think that the Turtleback Road can absorb, physically, the extra traffic that could potentially be there and they are not overly anxious to get involved in the policing of that, or the restricting, or of anything else that may come of it so we would like to see an application with the egress from the other side and to leave Turtleback Road as it is. If we have to fight, we'll fight.

RF: The question I have for the board is that we have two directions to go. We will have to talk further about traffic study to determine if Turtleback Road could handle the traffic or if Turtleback Road could not handle the traffic or Mr. Van Wyck could come up with an alternate plan, as Mr. Brown suggested, that does not connect to Turtleback Road.

ASTJ: Let's allow the citizens any questions.

RF: General public any comments, questions?

Myles Cambridge, Turtleback Road: I think the lawyers have said some very important things in that this could go on for a long time and also some of the responsibility lies on the town boards, not just this town board, but any town board that works in the best interest of the town. In this particular instance, if he does have that right to put a road in then you have to address it at that point. Why do you have to drag through all of that to come to the realization that the real issues is how to gain access to the other side which would have less impact on Apple Street, not just Turtleback Road. We all know that Apple Street. It seems ridiculous to me that you have all of us to go through this.

JS: Because we have a law of what to follow.

KJ: Legally, if he has access from Essex Park Drive then he can also have access from a private road as long as he has the right to pass and re-pass it.

MC: And part of our issue is whether Turtleback Road the original portion of Turtleback Road, is adequate to access, to handle the traffic that he has talked about putting on it. The other piece is that, as Jay says, we have been advised by Town Counsel, that the 1,200 foot length of a road for a subdivision is what we have to go by.

JS: It is one of the few laws we have in here.

RB: But, that could be waived.

Myles Cambridge: That, what you just said, is that a rule or is that a by-law?

JS: It is an interpretation of our by-law.

Myles Cambridge: As boards do you have the right to change the rules?

MC: It is a standard in our Subdivision Regulations. Now, we don't necessarily need to go exactly by that standard. After a lot of research, we came to the conclusion that it was put there for a reason.

Generating twenty house or twenty-five houses.

JS: I want to say that precedent had been changed once before for Mr. Van Wyck and the consequence was that we ended up going to court and it ended up. You know that this hasn't been the first time. The precedence had been set and we did it once with this developer where the end result could be interpreted as abused. I was not part of the board at the time of that decision. I am just saying that being on the board when the Judgment for the 10 acres and all that came through, that was a direct result, and I think I am right, that was a result of what happened when that original extension that Russ was talking about. There is a lot here we need to consider and a lot we need to look at and not to sound pedantic, yes a lot of responsibility resides with the board, I also think a lot of responsibility resides with the developer to put forth a plan that the board has to look at. So, if this is the plan that someone put forth, he didn't put forth the one for Essex Park Drive. So, the one in front of us is the one we are discussing. It is that simple.

ASTJ: I second that. Before I say what I want to say, is there anyone else from the public who wants to say something?

RF: Anyone else?

No response.

RB: The regulation you are talking about required twelve hundred feet for a subdivision road. That is a subdivision regulation?

There was an affirmative response from the board.

RB: A subdivision regulation is waivable by the Planning Board.

RF: One of the discussions I think we are grappling with is that in the past if we waived a regulation such as that it has come back to bite us.

MC: I don't think we have ever waived the twelve hundred foot.

JS: We did, with Turtleback Road.

MC: No. It was determined it wasn't a waiver the way it was set up. I believe it wasn't waiving the twelve hundred feet.

JS: I would talk to Scottie about that (referring to former PB member Scottie Robinson.)

ASTJ: The first and most important thing is that we have only reviewed plans that are in front of us and Myles with all due respect, our job is not to do design. If we were in the business of doing design, no one here would be happy, we are not in a position to do that. So, we can only respond to what is put forth and we have gone down a number of roads to get to the point in which we find ourselves. Where the plan before us has a connection of the new road to Turtleback Road. That is based on a number of on the by-law and the regulations and on a number of assumptions that I think have been made on Mr. Van Wyck. If Mr. Van Wyck would like we can proceed with the plan in front of us and submit it to the other town boards for their response or we can go back and look at one of the other options. We could throw out this plan and start a new process for a plan which for instance, would not connect to Turtleback Road. Or for instance, Mr. Van Wyck was proposing a solution that extended more than twelve hundred feet, then part of the proposal would need to a request for a waiver. As an aside, we need to point out that the twelve hundred foot limit is largely set by the emergency services in the town and they are very clear with their desire of that and they want to make sure they don't have more than that before they can turn around. So, I think that we are being asked to do, we have been asked by Mr. Van Wyck, through a great deal of consideration and discussion of a number of plans. I think we have been very flexible by looking at all of these options and commenting on them, but I do not believe it is a requirement or is it appropriate for us to comment on a variety of plans. Mr. Van Wyck needs to decide, he needs to come to a direction on where he wants to go and then go down that road. If he is then successful at that point then we can modify it until everyone is happy then that is good, and if he is rejected at that point then perhaps there will be another solution he will have to start over with. But, I don't think you can get all of the answers before you commit.

RF: I think Kim, you have some comments?

KJ: Most of my comments are relative to the preliminary subdivision plan or relative to the proximity of the road way to the wetland buffer or the wetland areas, the delineation of the roadway on the slopes and the existing topography of the land, there is some discussion relative to the existing road that accepts traffic and all those things are addressed in 7.02, Streets and Ways in the Subdivision By-Law. From a procedural stand point I think they tend to be addressed in the Definitive Plan, which is somewhat consistent with what Andrew is saying. If this plan is the one that is going to be taken forward, then at that point we are going to be looking at this very closely from a standpoint of DPW's requirements, Conservation requirements, our own design standard requirements for the roadway itself, the road for accepting it and the lots themselves; the size, shape and all of those sort of things. They all come to much closer scrutiny when we come to the Definitive Plans and I think we are going to find that there are going to need to be some changes when we get to that stage.

RF: I know I drove around the first Turtleback Extension a couple a days ago and I started to think about, o.k. just imagine if this was connected to Essex Park Drive and the nineteen houses or so, and I was just thinking about it in a non-scientific sense and I was thinking, gosh, I was concerned about seeing the road as it is now, particularly the width of the road and imagining adding a subdivision to it and I was thinking of all the issues that the people on Apple Street have raised. The width of the road, the gradient, the amount of traffic. Since my job isn't being an engineer this is the sort of basis of my concern. But, correct me if I am wrong, Ms. Jarvis, but I imagine when we get to a definitive plan we get to focus and eyeball much more so on these kind of issues more so, that happen to be in 7.02 Streets and Ways. So, what we are doing right now is a Preliminary review, this is not a Definitive Plan. This is a sort of a courtesy before you get to the Definitive Plan. What we need to know from you Mr. Van Wyck,

is this the plan you are certain you are going forward with. I know that sometimes you have had plan B or plan C in your back pocket and you have submitted a different plan.

PVW: You asked the question and the answer is that I really have no option. I wanted to very much have you look at where you start the roads twelve hundred feet.

JS: Peter...

PVW: You asked and I am here now if you take that road and you put a subdivision of it. If you have Essex Park Drive and have a subdivision come off of it as a stand alone subdivision, you can measure the twelve hundred feet from the end of Essex Park Road. However, this board took it upon themselves to not go that route and when you did that, it cut the door of any other options I had. I have eighty five acres and the only other way I can get to that acreage is that through street.

ASTJ: Excuse me. There is nothing in our regulations or in law that requires you to be able to build any particular number of buildings or any particular number of lots on your land. The number of lots on which you can build on is regulated by the town laws.

PVW: All I am saying Andy is very specific. All I am saying is that if I wanted to do anything, I am not saying there is anything that the board can respond to, the only thing I could do if I wanted to go forward is to talk in terms of a through street.

MC: I resent your portrayal that there was a decision by us that there was a place where we would begin to measure the road. We took this to our Town Counsel and based on his legal advice we were told where the road could begin. It was not a random decision that we made on a Wednesday night.

PVW: I am sure it wasn't. All I am saying is from where I am, I am not suggesting anything on your end, what I am suggesting is that once the decision, whether it was the Planning Board's decision or the Town Counsel's decision, I don't care. Once the decision was made, that closed the door on what...

ASTJ: Only in your eyes.

PVW: O.k.

JS: That's the only way you can build the number of lots you want.

PVW: What would suggest I do?

MC: If you were to build a six-lot subdivision it might be a lot easier to consider using Essex Park Road. As apposed to a nineteen or twenty lot subdivision which potentially could have three dwellings on each lot.

RB: The Preliminary Subdivision process is a great time to flesh out some of the oppositions. The overall issue here is that Peter has eighty-five acres here and I think it would be positive to start thinking about is the intensity of use. Twenty lots doesn't seem to be over intensifying eighty-five acres.

JS: Russ, you are taking twenty lots, you are talking generalizations here.

RB: The subdivision can be restricted in a variety of ways. What I think Peter wants done with this process is to generally get the feel for what the sentiment of the board might be so he doesn't propel down a road that's going to be fruitless. So if there is some indications that if he comes back with a subdivision plan, say with a road, taking for granted he needs twenty lots so that this is economic. There are economics here driving this to a certain degree.

ASTJ: I am sorry, but I am not willing to let you finish that sentence if it is not something we can or decide. From our point of view a large piece of what is driving our review of this is access. There is a certain level of access to this property and that is one of the pieces we have to review. That access determines from our point of view what the appropriate level of development for this land is; one of the things. If he chooses to come into from Essex Park Drive, then actually, it would change a great deal what he will end up with. If he chooses a different way, then we can look at it a different way.

RB: If you are saying that technically it determines what he can do because of the twelve hundred feet, that is not precisely true because you can grant waivers depending on how you feel the overall picture is, you are not really limited to a twelve hundred foot road. If you wanted it to be a longer length you could allow it.

ASTJ: Russ, we have to start with a certain structure.

JS: That is another plan. I don't even know why we are talking about a plan that doesn't exist.

MC: We are halfway through a hearing for something else.

ASTJ: We actually saw other plans that dealt with the twelve hundred feet on Essex Park, which frankly did not work. None of the non-connecting plans we did see were even close to a twelve hundred foot road. Now if you were to come back here with a non-connected road you would have to have a pretty good set of reasons for us to even consider waiving that requirement.

JS: Well said.

MC: That being said, can we stick to this plan?

JS: We have all spent a great deal of time looking at his stuff and he finally submitted something he wanted us to look at and I don't understand why we are spending any time talking just about that.

MC: The purpose of tonight was to collect the data we needed and to terminate the public hearing. I can understand there was an issue with not everyone being here tonight, but I think we are all getting off on a tangent.

The letter from Town Counsel was read to the public. Copies were given to the Attorney representing Peter Van Wyck, Russ Brown.

RF: My understanding is that we are going to extend this hearing one more time so that Mr. Faherty can present his information in five days and the meeting will be continued on November 16th at eight o'clock.

The application for a Public Hearing due to the building of a property that exceeds 2,500 square feet, by Christopher R. Gibson for a property located at 102 Apple Street was presented to the Board. A meeting was date was set for December 7th at 8 p.m.

Rob Fitzgibbon updated the other members of the board regarding the OSRD By-Law and the Board discussed the next steps towards having the OSRD By-Law being presented at the next Town Meeting in 2006.

RF: Motion to approve the meeting minutes of October 5, 2005 as amended.

JS: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Regular planning board business.

- Mail
- Payroll
- Invoices
- Drafting of Letters for prior Public Hearings

JS: I make a motion to adjourn the meeting.

MC: I second the motion.

All in favor: aye.

Meeting adjourned at 10:35 p.m.

Next meeting is set for Wednesday, November 16, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: Bill Holton
Bill Holton, Clerk

Town of Essex Planning Board Minutes
Wednesday, November 16, 2005 7:30 p.m.

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:40 p.m. by Rob Fitzgibbon, Chair. Attendees: Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ) Absent: Jay Sweet, Mike Cataldo - Building Inspector: Bill Sanborn - Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

51 Story Street – Jonathon & Jennifer Cort

BS: The owners have all of the necessary sign offs for the construction of a new house. They have all of the required sign offs; except, for B.O.H. The B.O.H. has approved the septic system, but because of a mishap they did not review the plans and that is before the B.O.H. in their meeting tomorrow night and we have a letter from Elaine Wonzy, (B.O.H. Administrator) stating this fact. This building permit if approved, will be with the condition that the B.O.H. will sign off on the building plans. I believe the Planning Board just approved the subdividing for this lot.

KJ: This is a plan for a four bedroom septic system and it was before a two bedroom house.

BS: Yes.

KJ: Doesn't that trigger some type of special permitting? Isn't it typically three bedroom by right, four bedroom by special permit?

ASTJ: I don't think as far as the Planning Board goes.

BS: I don't think so. Three bedrooms is probably sticking in your mind because of the septic. The sewer basically assumes three bedrooms, but this was approved by the Wastewater Department.

KJ: Was this the lot belonging to George Andrews?

BS: Yes. It says it is his son-in-law.

ASTJ: We are required to vote on this because?

BS: It is a new house. The citing of a new building.

The Planning Board reviewed the building plans.

BH: Bill, (Sanborn) is that a requirement that the Planning Board approved any new building under twenty five hundred square feet?

BS: Yes, all new construction.

KJ reviewed the pertaining Zoning By-Law, 6-7.2 A, which states that the PB is required to review the site plans for all new construction, except if the owners have obtained a variance from the Board of Appeals.

ASTJ: Move to approve the building permit for the construction of a new residence by Jonathon & Jennifer Cort of 51 Story Street finding it conforms to all the zoning By-Laws of the Town of Essex, with the contingency on the approval of the plans from the Board of Health, which has already approved the septic system.

RF: I second the motion.

All in favor?

Aye.

The motion passed unanimously.

51 A Eastern Avenue – Thomas Lawler

BS: The next one is 51 A Eastern Avenue, Thomas Lawler for the construction of a new single family dwelling. This application does have the approval of Con. Com., B.O.H., and DPW. This has been before the Board previously. This is the one where the applicant was going to use the main building for a home occupation and then he was going to build a new house in the back of the lot. He had preliminary approvals. He has two employees who work for them and due to the nature of their business they are seldom there and spend most of their time traveling.

KJ: Does this become a second residence or does the existing building become the office?

BS: The existing building becomes the home occupation.

KJ: Is it home occupation if you are not living in the building?

BS: Yes.

KJ: I would like to require that they put erosion control on all down slopes. They are excavating land that slopes down towards the river basin.

The Planning Board reviewed the Home Occupation By-Law.

KJ: On the web there is a photographic street index that Kurt Wilhelm put together.

RF: Would you let us know how to access it?

KJ: If you go to the Town Home Page and click on genealogy it should link you to it.

RF: Did the historical society do this?

KJ: Actually, one of the assessors.

The Planning Board reviewed the plans.

ASTJ: With no judgment here, I would say it is obvious that they are loading up this site. They are sort of 'maxing' out this one-acre site.

RF: Are you saying now or after the proposed barn/garage goes in?

ASTJ: Both. They are going to take one away and put one back in. The way I see it they are taking the old one away and building another right across the way in the yard. They have three large buildings.

BS: That is not on this plan.

ASTJ: No, it is just something you end up having a feeling about.

RF: It has all of the approvals?

BS: Yes and actually Brendahan (Zubricki, Town Administrator) called me on this because the issue that came up before with the plan that was presented. He stated the issue has been resolved and that any issue regarding home occupancy has been resolved.

ASTJ: That said. Part of the downtown Essex core, I think it is appropriate in it's density. I think have commercial, semi-commercial is a good thing.

RF: We don't need to worry about signs do we?

BS: No.

KJ: I move to approve the building permit for Thomas Lawler of 51 A Eastern Avenue, noting that it has the approval of Con. Com., DPW and BOH approval with the stipulation that it has erosion control during construction on all down sloped areas for the construction of a new single family dwelling site work and landscaping. The existing building on the lot will be used for home occupation use. Finding that it meets all of the Zoning By-Laws for the Town of Essex.

RF: I second the motion.

All in favor?

Aye.

The motion was passed unanimously.

BS: I did notice something that is a problem elsewhere but not in Essex, though I have seen it in Essex. Construction site vehicles dragging mud all over the streets. I am not aware if there is some time of By-Law pertaining to that issue.

KJ: We do have the right to require specific erosion control.

BS: That wouldn't fall under erosion control?

KJ: Yes, it does. It is called sediment erosion control and it requires putting a stone pad at the entrance of the driveway and we can require that they wash their tires because what that is doing is erosion because it is pulling soil from the site onto adjacent roads.

BS: I don't believe you can do it until they disturb more than an acre during construction.

KJ: We put it on any project that goes out of my office.

ASTJ: What is your concern about mud on the streets?

BS: Mud on the streets. There is a lot of concern.

KJ: I think it is a big issue.

BS: The mud gets all over the streets and it can become a drainage issue. It is an expense for the DPW.

BH: It is also a safety concern because once it is wet it becomes slippery.

KJ: We have the right in the Subdivision Rules and Regulations to request erosion control and it is in the State guidelines and they call it construction stabilization.

ASTJ: In the time being if we need to add anything other than what we currently have, we can articulate that erosion control is required.

BS: You might want to be more particular as to when you want to do it, it gets a little complicated.

KJ: We can do it on a site-by-site basis. This plan has a significant amount of earthwork and it is very likely that they will be a lot of tracking.

BS: I found that a lot of times putting a simple stone down at the driveway works well.

ASTJ: A stone pad.

58 Story Street – Joseph & Wendy Davis

BS: The owners came in previously to get a permit to put an addition of a porch and a breezeway connecting the buildings. We are looking for a 24 x 30 garage. They are looking to put a playroom and storage room on top. They do have the proper sign offs from B.O.H., Con. Com./Wetlands, DPW.

BH: It sounds like an in-law apartment in the making.

BS: I don't think she has any intentions of that, at least not this one.

BH: She would be perfectly within her rights to do that.

BS: When she came for the original permit this was part of their plan and at that time they weren't sure if they were going to do it and now they decided they are going to do it.

ASTJ: Is there plumbing inside?

BS: I don't know the answer.

KJ: The other thing is that they could be heading to a home occupation for day care.

ASTJ: Is there any insulation; heating?

BS: I am not saying if there is or isn't, I don't know.

The Planning Board reviewed the plans.

BS: In-Law apartments by the way are not allowed. They are either a one or a two family.

ASTJ: Right.

BS: Well, I am just reminding Bill because of what he said earlier about in-laws being allowed, but we don't allow them anymore.

BH: You don't?

ASTJ: Well, it was sort of a silly distinction because we require them to be two families.

BH: Why, what is the difference. Is it only a matter of terminology?

BS: In-Law apartments turn out to be rentals. So we just eliminated the in-law because it wasn't anything said, but previous building inspectors and planning board members allowed in-law apartments when they didn't really meet the requirements of being a two family.

BH: I was never in favor of it frankly, but it came up constantly when I was previously on the board.

BS: That is my understanding. It either meets the requirements of a two family or it is not.

BH: Whether it is connected by a breezeway or not?

ASTJ: Yes, they need to be connected. If they are not then you need to meet the requirements of two separate buildings on the same lot.

RF: Motion to approve the application for a building permit by Joseph and Wendy Davis of 58 Story Street, Essex, Mass., to allow for the addition of the 24 x 30 garage with a playroom and storage room above, which has all of the necessary approvals, finding that this application meets all of the zoning requirements of the Town of Essex By-Laws.

ASTJ: I would like to amend that the addition does appear to look like a barn which fits in nicely with the Town of Essex aesthetically.

RF: So noted.

All in favor?

Aye.

Motion passed unanimously.

35 Eastern Avenue – Brian Feener

BS: The last one I have this evening is Brian Feener, 35 Eastern Avenue. He is looking for a change of use. He is looking to change the building which is at the front of his lot which was once his primary residence to an accessory building.

ASTJ: That's it?

BS: That's it. No plumbing.

ASTJ: Accessory to what?

BS: His residence. The new one he built at the back of the lot. This is the one we discussed at the last meeting. Where you here?

ASTJ: Probably.

BS: This is the one where the old house sat on the corner on Eastern Avenue and we talked about how the new house is in the back and part of the conditions was that the old house was to be removed.

RF: That was on November 2nd, when we talked about it. It was decided that if he wanted accessory use he would have to go before the Planning Board which is why he is here and he is getting appropriate sign-offs for his occupancy permit and he may be shipping the house to Newburyport. Is he still planning on shipping it to Newburyport.?

BS: Right now because he doesn't have anything definite in the works he wants it to comply with what was originally out there .

RF: Is the whole idea of shipping it to Newburyport gone?

BS: It still could be in the works. Right now he just wants to have everything set right.

KJ: According to BY-Law 6-6.2 Residential Land Use for a Single Family accessory buildings can be allowed for any purpose other than human habitation.

BH: I am interested in what he is going to do with this accessory building and he will not tell us.

KJ: He doesn't have to tell us.

BS: I believe he said storage.

BH: No, he doesn't have to tell us, but it could have a bearing on whether we approve it or not because if it would generate more traffic, it is a dangerous corner.

BS: My conversations with him are about how there is a lot of stuff in the building and he hasn't cleaned it out yet. It is just basically an accessory storage building to the house and that is what it will keep being used as, storage and nothing else is going to come of it.

ASTJ: And, if he didn't come to us with this application?

BS: Then he would have to remove the house three months after obtaining his occupancy permit. There was a question as to when the Zoning Board of Appeals reviewed the plans in 1997. I have the decision here and it does not mention whether he has to keep the front building or if he had to remove it.

BH: The minutes of that meeting I brought into last meeting. I didn't bring tonight, but I could get them. It has to do with Joe Ginn making a statement.

BS: That wasn't the Zoning Board though. That is what raised the question, and I wanted to make sure the Zoning Board didn't grant a decision, which stipulated that he would have to remove the house to grant the variance.

BH: This seems as if it could be a stall exercise on his part. I have real problems with this. We ought to find out if he is going to tear it down, move it, or it could be a home occupation.

BS: It isn't going to be a home occupation as far as I can tell.

BH: What he can do is keep it as an accessory building for purposes unknown and then come back to change it. When it was granted before it was stipulated that that building would be torn down. What he also could do is keep it as an accessory building. He was told if he built the new house he would need to tear this one down. We are going around in circles here.

RF: Would you want to tell him he would need to come in? The building now could be used as a residence?

BS: No. He hasn't received his occupancy permit for the newest one he built. He can't live in both of them and since he doesn't have his occupancy permit for his new one so he could live in that one.

ASTJ: He can only live in one of them.

BS: Right, he can only live in one of them.

ASTJ: He would have to come back to us to ask for anything other than an accessory building. While I am sympathetic with your concern Bill and he may have something in mind that we don't know of yet, I am not sure it is our place to second-guess him. He could keep this building as an accessory building for forever and a day.

BH: I am not sure of that. If you read the minutes of that meeting (in 1997), they are clear; the building needs to come down. If it didn't come down, Joe Ginn made an amendment that it could be used as a workshop. I am not sure if that was ever really established.

BS: I thought it was decided at that meeting when I look at the minutes, I thought it was stated that if he wished to make the building an accessory use that he would have to come back to the Planning Board.

RF: This was in 1997.

BS: This was from December 3, 1997 and the motion was from Joe Ginn and the end of the sentence here says the existing building needs to be removed within six months of occupancy of the new dwelling all other boards approved the application. Then it goes on, Sheldon Penyover brought up another remark, 'does he need to remove the existing home, can it be used as a workshop?' the board then agreed that the building could remain if the plumbing is removed (the plumbing is removed) and if he comes to the board for a change of use.

BH: Why is this a change of use? He is not applying for a change of use is he?

ASTJ: Yes, from a residence to an accessory building.

BH: It isn't a residence; there is no plumbing in it.

ASTJ: He is living in it.

BH: No he is not. He is living in the building behind. There is no plumbing in this building so it isn't a residence. It is an accessory building right now.

BS: Not technically.

BH: Technically it is an abandoned building.

BS: It is a building without a use.

BH: O.k. All I am saying is that we are going to end up with just like Fred's building up next to Ernie's. It is going to remain abandoned; there will be weeds growing up all around it and that wasn't the intention of the Planning Board when they said they wanted it torn down or moved. This idea of calling it an accessory building on his part is just a rouse.

RF: You think if we approve it as an accessory building, we are allowing him to keep the building.

BH: Yes, and to do nothing.

ASTJ: Again. I appreciate your concern. But, I don't find anything in the By-Laws that allows us to deny that; people are allowed to let their buildings go.

BS: This building is getting quickly in the state where he is going to have to deal with it and I have told him that I have driven by it and it is getting to where he is going to have to do some repairs.

RF: I am kind of leaning towards having him come in to explain and talk about it so we can get a better grip on the history. This building has a long history going back to 1992.

BS: Let me fill you in just a little bit and I am not trying to sway you either way. This came to light back in October because someone who sat on the previous board told me that the building was supposed to come down as an order of conditions. After that I dug out the meeting minutes and read what they said because he hadn't applied and also checked the file and found out he didn't have an occupancy permit for his building.

ASTJ: For his new building. Which was built when?

BS: Right around this time, 1997. It has been quite a while.

KJ: And he still doesn't have a permit.

BS: And he still doesn't. What I ended up doing was to send him a letter. He responded quickly and he came in to talk to me about it. I went out to inspect the property; the new house. He is still not quite ready to be issued an occupancy permit. He has a few more things he has to do and I told him what he needs to do and he really can't apply for the occupancy permit because the house is still only half done.

KJ: So we can't change the first house to an accessory building because technically the first house is still his residence.

BS: The plumbing has been removed from the first house. So, we have a sort of situation here. I really didn't get the impression he is trying to dodge something; he may be a little slow in doing things; but I didn't get the impression he doesn't want to finish.

RF: Would it be worth our while to go and drive by there?

BS: He asked me if it would help if he was here tonight and I said well, it he doesn't really have to and I don't see much of a problem with it. But, maybe I was mistaken.

ASTJ: Why don't you have him come in.

BS: And then he can explain what is going on.

KJ: It seems as if he isn't in a big hurry.

BS: Don't get the wrong impression. I talked to him about four or five times since I sent him a letter and he is in a hurry to comply since he received the letter.

It was decided that both the Building Inspector and the PB Secretary would contact Mr. Feener and ask him to come to the next meeting for an informal discussion with the board.

Essex Park Drive – Continuation of Public Hearing

Peter Van Wyck (PVW) – Russ Brown (RB) Attorney representing PVW

RF: This is continuation of a public hearing from September 7th regarding Essex Park Drive and Mr. Peter Van Wyck. Wasn't this going to be a chance for Mr. Faherty to present for the residents of Turtleback Road?

The PB Secretary gave copies of the response letter prepared by Michael Faherty, Esquire to each Planning Board members.

RF: I would like to announce the continuation of a Public Hearing from September 7th, 2006 regarding Essex Park Drive and Peter Van Wyck. To fill you all in on where we were on the last continuation on November 2nd, Attorney Brown had very kindly provided a packet of material regarding the ownership on Turtleback Road and Turtleback Road Extension. Mr. Faherty had asked for five days to respond. He has since responded within the time frame and he has a letter and I will read this letter aloud for everyone to hear. " It is dated November 8th, 2005 and it is addressed to the Essex Planning Board. Dear Planning Board, I continue to represent Jim and Susan McKenna and now represent Mark and Jeanne Raney who own property on Turtleback Road Extension. I am responding to the letter that Peter Van Wyck's

attorney, Orestes Brown, delivered to the Planning Board on November 2, 2005. In that letter, Attorney Brown argues that Mr. Van Wyck has the right to grant easement rights over and in Turtleback Road and Turtleback Road Extension for the benefit of lots in the proposed Essex Park Drive subdivision. According to Attorney Brown, Mr. Van Wyck's right to grant the easements derives from his claimed fee ownership in Turtleback Road. This claim is not supported by Massachusetts's law. Mr. Van Wyck acquired the land served by Turtleback Road and Turtleback Road Extension in 1965. The proposed Essex Park Drive Subdivision land was not part of this conveyance nor was that subdivision shown on the Turtleback Road or Turtleback Road Subdivision plans. In Massachusetts there is a long-standing property rule that prohibits the use of an easement to serve land not part of the dominant estate at the creation of the easement. After acquired property such as the proposed Essex Park Drive subdivision may not be added to the dominant estate without the express consent of the owner of the servient estate and absent such consent, the use of an easement to benefit property located beyond the dominant estate constitutes an overburdening of the easement. *McLaughlin v. Selectmen of Amherst*, 422 Mass.359.(1996). In March 1995, the Massachusetts Land Court decided *Gordon v. Damon*, a case with facts remarkably similar to this situation (copy attached). The Court held that a lot which lies outside a subdivision may not use a private way that was within the adjacent subdivision as an access way. The Court further held that any attempt to use any easement appurtenant to lots within the subdivision for the benefit of lot not within the subdivision will overcharge, overload or overburden the easement as a matter of law. Accordingly, regardless of whether Mr. Van Wyck retained a fee interest in Turtleback Road or claims to own portions of the fee in Turtleback Road Extension by virtue of the derelict fee statute (MGL, Chapter 183, Section 58A) he is legally prohibited from granting easements over those ways for the benefit of the proposed Essex Park subdivision." Signed J. Michael Faherty.

KJ: I would like to make a comment to this. When I spoke to the Town's attorneys at Kopleman & Paige, the impression I got was that this is a case if it is the primary access point. If the primary access point is somewhere else then this may not apply. This probably requires some further investigation, just based on that discussion I had with Kopleman & Paige because the impression I was given was that as long as the primary access was off of an independent public way, additional access could be off of a private way as long as there were easements.

RF: If the primary entrance is on Essex Park Drive.

KJ: Yes, this could be a secondary. This is something we would need to clarify.

RF: We as the Board and we, as in Kopleman and Paige.

KJ: We have two very legal documents here and the Planning Board itself is not in any position to make a determination. The fact is someone should look at these (indicating to both letters from the attorneys) and that someone should comment on them.

ASTJ: I would like hear the public speak on this, but I would also like to add that certainly nobody is expecting to decide with what we have before us due to the fact we are not lawyers.

A citizen asked the Planning Board how it was determined how a road is determined to be a primary access road.

KJ: I believe that legally the one with the primary access is the one that fronts on the public way. So whether or not the common access, the one that would most likely be used wouldn't be considered the primary access. Primary access is the one that is legally submitted because it is on the public way.

RF: And you are basing that on...

KJ: On my discussions with Kopleman and Paige.

RB: I have the utmost respect for Attorney Faherty but I do believe that he disclaims this case law. I think actually on a couple of issues he agrees with me. Attorney Faherty is not disputing that Mr. Van Wyck owns these roads. This is a very difficult situation where Mr. Van Wyck actually I believe, if you look at the subdivision requirements that the subdivision owner retains ownership in the subdivision way for a certain period of time; until the Town determines he no longer has to. That is probably why Peter decided to own these lands. Attorney Faherty is talking about easements. We don't have to deal with easements because Peter Van Wyck owns these ways and he isn't going to have to give up an easement to anybody to get a right to travel over them because he owns it. As Attorney Faherty notes, (Russ Brown read from MF's letter.) Peter Van Wyck is the owner of the servient estate. He owns these roads. In the cases that Attorney Faherty is referencing the people who owned houses in the subdivision actually owned the road and I agree with Attorney Faherty that when the owners in a subdivision own the road, you can't just give out more easement to go across their road, just because you own a house on it.

ASTJ: So in this case, the only right the Turtleback Road subdivision home owners had is as easement over the road? I believed they had to the middle of the road.

RB: No, they don't. There is a critical difference in Peter Van Wyck's case and I put that information in the submission I made because he in every deed reserved the fee in the road and because he did that according to the Land Court actually, he owns Turtleback Road all the way up to the extension and then he owns a huge chunk of land from the top of the original Turtleback Road and then all along the extension where you could bring a new road through. He is not talking about passing over anybody else's land. He is only going to be using land he owns. He doesn't need to get an easement from anybody. He won't be granting any easements to anybody.

RF: I think we should continue this meeting since we are not attorneys.

RB: Are you going to submit these papers to Kopelman & Paige?

RF: Yes.

The Planning Board reviewed the plans for Essex Park Drive.

RF: Motion to continue the Public Hearing for Essex Park Drive to December 21st, 2005.

ASTJ: Second.

All in favor?

Aye.

Motion passed unanimously to continue the Public Hearing for Essex Park Drive, Peter Van Wyck.

Lot #3, Lowland Farms Road – Peter Van Wyck

Mr. Van Wyck presented the application for a Public Hearing for a building which will exceed 2,500 sq. ft. The Planning Board set a date of December 21st, 2005 at 8:45 p.m.

The Planning Board reviewed the plans and the application for the building on Lowland Farms Road and the members decided that they would review the files for Lowland Farms. The Planning Board Members reviewed if there were any differences between process for a Site Plan Review and the Public Hearing. This discussion was in regards to requesting a traffic study for a plan that exceeds 2,500 square feet or for the actual proposed subdivision.

Rob Fitzgibbon updated the Planning Board members regarding the Special Town Meeting.

OSRD Discussion

Rob Fitzgibbon updated the Planning Board about the OSRD. On November 1st he went to the Essex Shipbuilders Museum to receive a grant from the Massachusetts Government for the Audubon and the Town of Essex Planning Board. He stated that he was disappointed that Kathy Lahey wasn't not there. He further said that he was somewhat concerned she was not there and that there has been an inconsistency from the Audubon. First there was Tim Puriton representing the Audubon and then Kathy Lahey. There was a meeting at the T.O.H.P. Library with the volunteers the previous week.

RF: (to Andrew St. John): Where you able to get the Master Plan out at all?

ASTJ: Here it is. I emailed it to everyone today. However, I should point out it is a hundred and twenty five pages. I printed out the first half, the rest are various supporting documents, appendixes. It has a huge amount of useful information in it. I also had a long talk with Sam Cleaves and I had been thinking that we should have had this adopted by the Town. Sam's response, MAPC's response, was that wasn't necessary or possible or likely. What he would recommend is that we have a discussion about it and then if we feel it is appropriate to ratify it as a board. I think we may have actually done that. I remember discussing this a year ago.

RF: We did have this discussion a year ago. I don't know if we officially recognized it.

ASTJ: Let's adopt it as the basis of our thinking. All of the good ideas came out of town meetings.

The Planning Board decided to put the Master Plan on the agenda for the next meeting.

The Planning Board discussed when the members were going to hand out the OSRD pamphlets.

BH: I think we should set a time for the Planning Board to tour the town and look at a lot of these places we discuss. I went up to Turtleback Road and the Extension which Albanesse is repaving last Saturday and it was an eye opener.

ASTJ: I believe as members of the Planning Board it is important for us to be familiar with the highways and the byways of the town.

ASTJ: Sam Cleaves has agreed to come on December 14th meeting. He points out that there is some MAPC budgets available for this work. Budgets from their point of view means that they get to spend some time on it. Not a whole lot. I said that I would send him the latest draft of the proposed OSRD By-Law.

It was decided that the PB Secretary would send copies of the OSRD Draft to PVW and Myles Cambridge.

RF: (to Bill Holton): Did Mike Davis get a copy yet?

BH: Yes.

RF: I would also like a copy to go to Rolph Madson.

- It was decided that Rob Fitzgibbon would send him a copy.
- It was also decided that Bruce Fortier would attend an OSRD meeting, not a Planning Board meeting due to the fact that he would discuss issues regarding the fact that having one person speak before a group regarding planning the OSRD meetings; a meeting of volunteers would be the better forum vs. a public meeting.
- The board discussed the steps towards having the Public Hearing regarding the OSRD By-Law in time to be on the Warrant for the Town Meeting.

BH: Mike Davis has a copy of the Draft OSRD and I gave him an open invitation to attend any meeting.

RF: Good.

ASTJ: The more people that come the better. Frankly, I think we should invite Wesley Burnham too.

RF: I did invite him and he didn't want to come to the last meeting. I spent about an hour talking to Wesley after the Town Meeting yesterday. His big concern is that, 'you don't have minimum; you don't set minimum requirements for your frontage and lot size' and he also thought we were stressing too much of the environmental aspects and not like setting aside open space for ball fields and such. He was also concerned about differentiating between the wetlands and the buffer zones. His question was why aren't the wetlands being included in the buffer.

ASTJ: Did you send him copies of the draft?

RF: Yes I did. He said it was covered in blood and then he said he wasn't going to send it to me because you wouldn't be able to read my writing. I think what is kind of happening is that you are getting people who like to criticize it but when you try to bring them in they don't want to.

ASTJ: That's fine. Keep working on it because in the end, no one can say that you didn't try to solicit their input and then at Town Meeting you can get up there and nail them down.

RF: Absolutely.

RF: I also spoke to Lynn March about I had not heard from Elaine Wozny. I can't remember what we wanted to ask her specifically.

The Planning Board wrote and signed a letter of approval for property located at 49 Story Street. George & Robert Andrews were seeking approval for the removal of a twelve-foot section from a stone wall to create a new driveway which is located on a designated scenic way. The Planning Board did approve this application at the Public Hearing for said property at a prior meeting on October 19, 2005.

Rob Fitzgibbon is currently working of the letter of approval for the Public Hearing regarding 60 John Wise Avenue, Palazolla Brothers.

The Planning Board reviewed a letter from John Sheridan, an Essex Resident, who is looking for available public grants/funds for house renovations. The Planning Board agreed we did not have any specific funds but that the Planning Board secretary could give them a few names and phone numbers of possible local groups that may be of some assistance and/or a resource.

Regular planning board business.

Mail & Payroll

Meeting Minutes

RF: Motion to approve the meeting minutes from November 2nd, 2005, as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

KJ: I would like an endangered species map.

The Planning Board secretary stated that she believes that there is one in the office.

ASTJ: I make a motion to adjourn the meeting.

KJ: I second the motion.

All in favor: aye.

Meeting adjourned at 10:58 p.m.

Next meeting is set for Wednesday, December 7, 2005 commencing at 7:30 p.m. at the Town Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: _____
L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, December 7, 2005 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:44 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Bill Holton (BH), Jay Sweet (JS)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener

Absent: Kim Jarvis

Building Inspector's Report

BS: I have one application. This is for Gregory Campbell, 124 Eastern Avenue. It is to demolish an existing trailer home to build a new home. He does have all of the necessary sign offs and approvals; Con. Com., B.O.H. and DPW.

RF: He is hooking into the sewer?

BS: Yes. The B.O.H. Owner occupancy is not to be given until it is hooked into town sewer, current system was abandoned, so he intends to be hooked into sewer.

RF: There is just the trailer there now?

BS: There is a barn, shed, there now.

JS: Does it meet the setbacks?

BS: I think it does meet the setbacks. He has twenty feet on the sides and forty-seven feet from the front and thirty feet from the rear. Garage is existing non-conforming. He is debating if he will tear down the garage.

MC: Is there any way he could put another trailer on the lot?

BS: Yes, as long it is grandfathered in because it was there before 1972.

ASTJ: The lot size?

BS: Eleven thousand square feet.

JS: Would this be a 6.4.2 finding?

BS: Yes.

The Board reviewed the submitted building plans for the property.

JS: Motion to approve the application of a building permit issued to Gregory Campbell of 124 Eastern Avenue for the demolition of an existing trailer and building a proposed home. A 6-4.2 finding, that it is not substantially more substantially detrimental than the existing non-conforming use. Also finding that the application does have all of the necessary sign offs from Con. Com. And the B.O.H. and to note that the owner cannot get an occupancy permit until it can be tied into the town sewer.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Turning Leaf Farm

Bill Sanborn updated the Board regarding the shed next to the barn. The owners visited Bill at his office and stated that they would either complete an application or tear down the existing building.

Dunn's Tree Operation

Rob Fitzgibbon discussed with the Board and the Building Inspector that he was approached by a citizen when handing out OSRD pamphlets at the dump the previous Saturday. This citizen voiced her concerns regarding Dunn's Tree operation and that the noise from the business is very loud and that the business produces pollution. Rob stated that her (the citizen's) biggest issue was the pollution; wood chips, oil, which could be going into the stream. The Board did discuss if it was an empty lot where someone does their business or if it was a business. The Board reviewed the Essex By-Law regarding Business land use.

BS: He is not a home occupation.

JS: I would agree with the fact that there is the potential of all that debris is going into the stream and there are wetlands out there.

MC: Then it would be an issue for the Conservation Committee.

RF: Should we pass it onto Con. Com.? She refused to identify herself.

It was suggested that if the citizen has concerns, that they should send an official letter to the Planning Board and then the Board would forward it to the necessary committee(s)/board(s). If the citizen still chose not to identify herself, she could still send such letter.

102 Apple Street

Christopher Gibson (CG), owner – Craig Butner (CB), Gateway Consultants, representing Mr. Gibson

RF: I would like to open the Public Hearing for 102 Apple Street. It is 8:02 p.m. thank you for coming. The Planning Board and the Building Inspector reviewed the proposed building plans.

CB: The existing building's footprint is thirty-four hundred square feet; the proposed footprint will be three thousand, nine hundred and seventy-one square feet. The rough layout is that the front saltbox is staying as it is. They are adding a kitchen in the middle with the porch and there is a living room. As Chris mentioned, he has some mid-1800 timber frames he will be adding. This one will be a tobacco barn and this addition here will be the master bedroom and additional bedrooms.

RF: Are you actually moving barns here?

CG: Yes, the tobacco barn came from Dudley, Mass. And the other came from Connecticut. It was one of those things that when you start making phone calls you can find them.

The Planning Board reviewed the proposed building plans.

JS: It is new barns?

CB: Basically what we are doing is keeping the front and adding the barns where the existing rest of the property is located.

MC: What is the height of the building?

CB: From one end to the other there is an eight-foot sloop. I have that there is from the centerline of the front gable to the back an average thirty-foot grade. If you were to measure the lowest point from where we are working to the highest point it is thirty-four feet.

The Board questioned Craig Butner and Christopher Gibson about the existing driveway and they reviewed the plans that were submitted to the Conservation Commission.

CB: We did obtain approval from Con. Com. regarding the driveway and whatever drainage is associated with the house and also where the culvert is located further up the street and we discussed the driveway with any modifications with the Con. Com.

The Board reviewed the application.

BS: This raises that lovely question again. Is this reconstruction?

MC: There is nothing there to reconstruct.

BS: Yes there is because they are not taking down the whole building.

MC: It seems to be semantics.

BS: I question that it is not. I told them that they needed to come through for site plan review and I told them that the Board would be interested in the property due to the location. I have to raise the question, How many feet are you adding?

CB: Four hundred square feet.

BS: What I would like the Board to clarify is, because they tore off a portion and they are adding on is more than twenty-five hundred square feet does that count or would you consider the footprint of what you are adding to the existing footprint.

BH: This is the point I brought up at the last meeting. Let's take a hypothetical case. An applicant has a building that is twenty-four hundred square feet and he wants to put a ten by ten addition on, does that require site plan review?

MC: No.

BH: Why?

BS: That is the question. You can have a lot of people argue that reconstruction is when you tear down an existing house.

BH: That is a fine line.

ASTJ: You can argue either way.

BS: I think you would like to have it clarified.

JS: I think either way you want the Board to be involved.

BH: I don't think you can clarify it. I think you would need to take it on a case-by-case basis. I brought up an extreme example and this (102 Apple Street) is another extreme example.

ASTJ: Any building with a ground floor footprint of more than twenty-five hundred square feet needs to go through site plan review.

BS: I just think it would be a good time for the Board to determine whether if yes, you tear off the addition and you add back on and it is over twenty-five hundred square feet of what you are adding on, it qualifies or it doesn't.

MC: Isn't that the way we have always done it?

BS: This is the first one where we have come into a residence where they are taking off twenty-five hundred square feet and putting back on over twenty-five hundred square feet, but they are leaving a good portion of the existing building. It raises that question. The other question was a good question too. If you have a twenty-four hundred square foot house and you put another two hundred square feet on it, does that need to have site plan review? I would say no.

MC: I would say no.

RF: But isn't it a matter of percentages? When you have a twenty-four hundred square foot house and you add another two hundred square feet, it is eighty percent versus twenty percent, what have you.

BS: I think this is a good time for the Board to say, yes, if there is an addition to a building that will make it be over twenty-five hundred square feet than we want to see the building.

MC: Part of the reason we adopted the site plan review was this format and it provides us with a review process for projects that were coming that were above a certain size. My feeling is that if what is being built is radically different than what was there previously we should see it. It gives us a chance to view revision to the property and look at it with perspective as to what was there. I think part of the theory of developing the site plan review was that it would give us a public forum to review this in. Abutters may have a chance to discuss the property.

BS: That is why we are here. But, to argue the other side of this they are only increasing the footprint by four hundred square feet.

MC: My perspective this alteration is at least within context with what was there, but you could do something that is so radically different that it could set every neighbor in the area off and it would not have had a chance for any type of public input. Part of what I thought was the reason we adopted the format was to give the people and the Board a review process.

ASTJ: Just to go back to your interest in having semantics cleared. I actually think it is pretty clear. It is either new construction or reconstruction.

BS: That word reconstruction is what is the issue. Reconstruction would be if the entire building were taken down. This technically does not follow under reconstruction. It is an addition. The Board wants to see if the builder is tearing down off a portion of a building and what the work they are building is going to be over a twenty-five hundred square foot footprint.

BH: From what we see here is that we should go down the list for 6-6.12 and make sure it fits all of the requirements.

MC: Yes.

RF: I want to ask Bill one question. You mentioned this as a precedent. How would you see us establishing that precedent? By changing or adding a clause to the verbiage?

BS: I think it should definitely say new additions.

C

The Board reviewed 6-6.12.

MC: I don't have any other issues.

RF: I don't have any other issues either.

RF: I would like to make a motion to approve the application for a special permit for Christopher Gibson; said application is to renovate and reconstruct a single family home. The ground floor footprint of the property being 3,971 square feet, and which is located on 102 Apple Street. Finding that said application meets all requirements outlined 6-6.12.2 and 6-6.6.4 of the Town Bylaws. Subject to the conditions set forth by the Conservation Commission on November 23, 2005.

MC: I second the motion.

All in favor.

Aye.

The motion was passed unanimously.

The Board signed the Mylar and the decision will be written.

Public Hearing officially closed at 8:45 p.m.

35 Eastern Avenue

Nancy Feener (NF), Brian Feener (BF)

Mr. Feener was asked to attend a Planning Board meeting for an informal discussion with the Board regarding the property he owns on 31 Eastern Avenue that has two buildings on one lot. The building at the front of the property was originally the home of Mr. Feener. A concerned citizen approached the Planning Board regarding the decision made by the Planning Board in 1997 (at that time Mr. Feener was a member of the Board.)

RF: I am going to refer to my notes. The original Planning Board motion on December 3, 1997 regarding the construction of a new ranch style home on the lot stated that the existing structure should be destroyed within six months once the new structure was erected. The then Planning Board said the building could stay once the occupancy permit was given and if the owner applied for a change of use. The current Building Inspector sent Mr. Feener a letter and an application for an occupancy permit. Did we ever get a status from the B.O.H. regarding this property?

BF: I have something that is signed from them. I am going to change the front building to an accessory building and I want to use it as storage right now; stuff I don't want to take up to the other house.

RF: We wanted to make sure that we understood what occurred in 1997 before we proceeded now.

BS: Is there a long-term plan for the house?

BF: Right now I don't have any. Right now I am trying to get my other one done. It is a three hundred year old building (the original building at the front of the lot) structurally it is in very good shape.

Basically it needs some clapboards and a paint job, but other than that it is structurally very sound.

ASTJ: It is a bit unusual to have it sitting in your front yard.

BF: Yes it is, but you know, it is only thirty years of history for us. What we will use it for in the end I don't know. Right now I am looking to have my new house done.

BH: Brian, back in 1997 when that came before the Board and you were on the Board, you excused yourself on the voting on it, which was the right thing to do. Joe Ginn made a motion that the building could stay if you were to change the building into a workshop.

BF: It wasn't specified as a workshop; it was an accessory building.

BH: I have the minutes here and I can read them to you.

RF: Does a workshop equal an accessory building?

BH: I don't know. (Reading from notes) Joe Ginn moves to add to the motion, 'if the existing dwelling was to remain, the applicant must apply for approval for a change of use'. Sheldon Pennoyer asked in a question before that, 'does he have to move the existing home, could it be a future workshop?' and the Board agreed the building could remain if the plumbing was removed and if you came before the Board with a change of use. I don't know if that was ever made clear at that time. What you are saying is that you are going to leave the building as it is?

BF: Right now, until I decide what I am really going to do with it and there are a lot of options I can explore. Do I really want to take down a three hundred year old building that meets all the requirements of the Bylaws and is really good shape?

BS: Actually, it would be non-conforming.

JS: Yes, it would be because of the set backs on the street.

RF: The plan is to leave it as it is?

BF: For now.

RF: I know we had been told at previous meetings that you might have someone interested in moving it to Newburyport.

BF: I did have a couple in Newbury who was interested in taking the building down and moving it to their property.

BH: Technically saying the change of use has changed even though you aren't applying for a change of use.

BF: Yes I am.

BH: It would be then up to the Board to decide if this change is more substantially detrimental than the present non-conforming use.

ASTJ: This is an unusual situation. If he had a three hundred year old barn there wouldn't be any issue. It is a big lot.

BH: If the application were for the change of use, what would be the change of use?

BS: From a residence to an accessory building.

RF: What is the procedure for a change of use?

ASTJ: In effect, it is a site plan review.

BH: Or if it were a non-conforming use, it would be under a 6-4.2 finding.

BS: I think you would do a 6-4.2 finding because it is a change of use and there isn't new construction.

RF: There will be no hook ups to water or sewer correct?

BF: There is no water or sewer.

RF: What could you use it as an accessory building? Bill is your concern regarding the decisions of 1997 and making sure we follow the precedent?

BH: It seems clear that what the intent was back in 1997 was that it was to be an accessory building or a workshop. What Brian is saying now is that he doesn't know what he intends to do with the building so it leaves everything up in the air. How does the application read?

The Board reviewed the application.

MC: When you moved the stuff out, what would your intent be for the building?

NF: There is the chance that we may take it down. It isn't like we are going to use it as a hotel. We do use it for storage.

RF: It is defined as a residence now.

BS: Yes. He doesn't have an option, he either applies for the change of use or the building comes down.

BH: Yes, per the meeting minutes of 1997.

RF: Why would he have to do this, you can have two structures on one lot.

BS: Not on this lot because it is non-conforming.

MC: Would you have any idea as to how long it would take you to remove your items from the building?

If we were to say, let's postpone this for six months and then we can sit down again and discuss it.

BF: I don't know when everything will be done. We built the house out back and then we are both working fifty-five hours a week, it isn't easy to finish a house.

RF: So when the stuff is out of the house is that when it truly becomes an accessory building?

ASTJ: It doesn't matter. We all have barns out back with any number of items inside.

BH: I can't say it is a problem, but it is a concern I have is that a building that close to the road uninhabited is going to be subject to a number of things one of which could be vandalism.

BF: Do we have a lot of vandalism in vacant buildings in town?

RF: We do have a regulation regarding abandoned buildings. Bill, is there any possibility that someday in the future this plot could be subdivided into two plots? I understand that you have a three hundred year old building here, which is probably well constructed.

BS: According to your present Bylaws, no. If the Bylaws were to change there may be a chance.

RF: I am just trying to think about long term.

BH: If we give approval for this as a change of use, what happens if Brian sells it and a new owner comes back and says I want to change it back?

BS: The only way they could do that is with a variance.

JS: How would they be able to hook up to the sewer?

BS: It would be much harder to do. To obtain a variance to have two structures on the one lot you would have to show hardship. Just because the house is there and the house is changed to an accessory building, there is no hardship that needs to grant a variance.

ASTJ: The other issue would be the sewer hookup. Clearly we are guiding down a slippery slope regarding the possible re-occupancy of the house as a residence.

JS: (Reading from the Essex Bylaws) Non-conforming or that which has been abandoned or discontinued for over a period of two consecutive years shall be reestablished and any future use shall conform all applicable provisions of this zoning bylaw, except in the case of land used for agriculture. Couldn't you say that for two years it has been essentially abandoned?

RF: Couldn't you argue that he has been actively storing items?

BS: You don't want to go with abandonment.

BH: This has all the earmarks of something that could get sticky in a few years. Let's say he wants to open a workshop and he employs a couple of people. The plumbing code in Massachusetts says that if you have an accessory building and you have employees you have to provide a lavatory. I am faced with this with my business.

BS: Yes, you can't use the bathroom of another building.

BH: My point building is that there is the potential of it becoming a dwelling again.

BS: There is no reason as to why he couldn't put plumbing back in there again. He does not need the sewer. If it was an accessory building it could tie into the current sewer hookup for the main building.

RF: What stops him from doing this?

BS: What you are talking about doesn't exist, it takes zoning. If he meets the regulations he could use it.

ASTJ: Yes, what we are talking about is a level of control that we do not have.

MC: O.k. back to the main issue.

RF: I was just curious as to the ramifications of making this an accessory building.

ASTJ: My sense is that there is nothing that allows us to deny it.

BS: You need to show a 6-4.2 finding.

RF: We can go ahead and approve the change of use and then deal with the consequences if there are any in five years.

Bill Holton read the definition of an accessory building from the Bylaws.

JS: Short and sweet.

MC: This is a catch 22. On one hand it does conform to all of our definition of what an accessory building is, on the other hand if you make it an accessory building it is an accessory building for perpetuity that can eventually be used as something else.

RF: Meaning something else, a building?

MC: Yes.

NF: What is there to stop anyone from doing that with another building they own?

MC: Nothing, everything is subject to change.

BS: Subject to change, but we have to look at how they sit right now. The way the building is now, can it be changed to a residence?

NF: No, you should go in.

BS: It doesn't matter. Bylaw you can't have two principal buildings on the same lot.

NF: Right, but anyone who has a barn could change it to a dwelling.

BS: Yes.

ASTJ: The protection we have is that to change it back from an accessory use it would have to come before the Planning Board. We have to trust our successors.

MC: Are we looking at this as a submitted application?

JS: So at the next meeting during the Building Inspector's report.

BS: No, why don't you do it now?

JS: O.k. I wasn't sure if anyone wanted to have further discussion on this?

ASTJ: No.

RF: Should we add the phrase that the approval has conditions?

MC: I don't think so because he would need to come back to the Board.

ASTJ: I make a motion to approve the application of Brian Feener, 35 Eastern Avenue, for a change of use of a previous residential building to an accessory building finding it meets the requirements of Section 6-6.4.2. The existing non-conforming uses that is not more detrimental than what previously existed. The accessory building is not to be used for human habitation.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Regular Planning Board Business

Bill Holton brought forward the topic of regarding the definitions of accessory buildings and locations with the other Planning Board members. It was decided that the Board would begin to work towards clearer definitions. One way that was suggested was to complete the chart that the Building Inspector uses as a quick way to reference the zoning requirements. The Board decided this is a good way to begin. Jay Sweet volunteered to fill the chart and bring it to the next meeting for the Board to review and then propose it be on the warrant for the Town Meeting in May.

ASTJ: I would make a request is that dates are always on drafts.

BH: Let's not forget, we could piggyback on a Special Town meeting.

MC: No, any Bylaw change must happen at the annual Town Meeting.

RF: Someone mentioned an appendix, these blanks are not in the Bylaw right, and so can we submit the entire chart as an appendix in order to get around having to write every individual item out?

MC: I don't think so.

BH: I don't know.

ASTJ: You would have to come back and add it to the bylaw.

JS: That's fine we are going to rewrite what they already approved. We are not going to go back through the whole thing. Now you are pushing your luck with me doing this chart.

MC: You should keep it simple. Legally, I don't know the answer. Normally, you have to read each Bylaw you are revising. I am not sure you can put a chart out there.

The Planning Board reviewed the chart and the bylaws.

JS: What if we say on the warrant that here is the filled out chart and the vote is to then adjust the current bylaw to reflect the numbers in the chart.

RF: I wouldn't vote on that because it was too vague. I would rather have it be 6-6.2A.

MC: What we can hand out and say is here is a chart to show you what is being modified.

ASTJ: What this is, is an exhibit that Bill (Sanborn) uses to clarify with people who come in for an application which we could use and we could blow it up on a big board as an illustration as to what we would like to do with the bylaw. What we could say to the folks is if you like we could read each one of this, but here is what we are doing. We wouldn't have to talk about it more. Would we have to read each line here (referring to bylaws)?

JS: I will stand by my originally statement which was I will contact Scottie (Robinson) and fill out this chart, but I would hate to see my work be for nothing.

The Planning Board Secretary suggested that a member of the board contact Brendan Zubricki, Town Administrator and ask if a chart could be presented.

JS: I will have a discussion with him.

Open Space Residential Design Update

Bill Holton has a meeting with the people of Ipswich who put together their OSRD. The banner is up in the lobby of the Essex Town Hall.

JS: We may be discussing this later, but I wanted to bring up a topic, about Peter. I have had about two or three phone calls as to who will be contacted about the hearing regarding the Lowland Farms. The secretary explained that it was the abutters and it is abutters to abutters within 300 feet and that the assessor's office approves the list that the Planning Board secretary uses to send out the notices.

MC: What is happening I wasn't at the last meeting?

BH: He has come before us. He wants to put three houses on one lot.

JS: All above twenty-five hundred square feet?

BH: I don't know, I guess so, but he wants to put them all on one particular lot.

MC: How big is the lot?

BH: It is a good-sized lot and I don't think we have a leg to stand on.

MC: No, probably not.

RF: We did discuss a traffic study for Apple Street.

The Planning Board secretary found the old traffic study for Apple Street and copies were distributed to the members.

BH: Andrew, what happened to the Master Plan, you were going to email me copies?

ASTJ: I did.

BH: I didn't receive it.

RF: We wanted to discuss the fact that we wanted to make it a living document which we could ratify every year.

ASTJ: Sam Cleaves is coming to the OSRD meeting next week.

RF: Now we haven't approved the Master Plan. Where are we in regards to the Master Plan?

ASTJ: First of all, I have a ten second story regarding the fact that the Friday before Thanksgiving my hard drive ate itself. I don't know what I did in regards of email what I did before the twenty-fifth. It is also available on the MACP Website. I printed it without all of the attachments. Basically it gives you the story of what Executive order 14 is and what people said.

RF: What we need to do is to vote on this as a set of guidelines that we are going to adhere to and then at one meeting a year we can review the Master Plan.

JS: I like the dogma that once a year we can change and add to it continuously.

The secretary also suggested that it could be posted on the Town of Essex Web site once the Board voted on it and a copy is sent to Brendhan who will post it.

ASTJ: Did anyone send the OSRD draft to Sam?

RF: I will make sure another copy is sent to Sam.

The secretary will send him a copy.

RF: I have a draft of the OSRD bylaw right here if anyone wants a copy.

60 John Wise Avenue

The Board reviewed point by point the draft of the decision written by Rob Fitzgibbon regarding 60 John Wise, the Pallazola Brothers and the members offered comments, ideas for changes, edits.

BH: We have ninety days to get these letters to the applicants?

RF: Yes.

The Budget was reviewed and discussed and it was suggested that each member bring forward a 'wish list' for the upcoming fiscal year. Mike Cataldo inquired about what happens with the fees collected and it was decided that the secretary would find the answer for the next meeting.

The fact that the phone line was separated from sharing with the Conservation Commission.

It was decided that the secretary would send a letter to Joan Bucklin, Story Street for unpaid invoices for Larry Graham.

Lowland Farms

The Planning Board reviewed the file regarding Lowland Farms in order to familiarize themselves with the numerous documents and plans regarding the subdivision.

JS: Interesting note, this is from his own traffic study, 'given the existing roadway, horizontal and vertical signs that state no through trucks should be adding to both ends of Apple Street. The town should consider removing large trees and brush that line both sides of Apple Street. This vegetation impacts the road in three ways: they are physical hazards to vehicles, their roots systems cause bumps in the roads, and over the winter they impede the melting of snow.'

RF: What is wrong with that?

JS: It is a scenic road and I live on it. I don't want trees to be cut down. I want people to slow down.

MC: Did he ever do the final coat of pavement?

RF: I think he finished Lowland.

It was decided that Bill Holton would be writing the decision for 102 Apple Street.

RF: Motion to adjourn.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously and the meeting was adjourned at 10:48 p.m.

Next meeting is set for Wednesday, December 21, 2006 commencing at 7:30 p.m. at the T.O.H.P. Burnham Library.

Presented by:



Mary-Ellen L. Feener, Secretary

Attested to:



L.W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, December 21, 2005

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:38 p.m. by Rob Fitzgibbon, Chair.

Attendees: Jay Sweet (JS), Bill Holton (BH), Andrew St. John (ASTJ), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Michael Cataldo (MC)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

47 Lebaron Road – John Finton

I just have one application tonight that is for Able Island otherwise known as 47 Lebaron Road. It is on map 42. All the way down the end.

BH: The house is falling apart.

BS: What he is proposing on these plans is to that it is going to stay as a single family but he is going to add a second story addition. He is not going to expand the footprint at this time. All this permit is going to be for is a weather tight frame. What they are going to do on the interior they haven't decided yet. They are also planning on adding a bump out on the dining room and they are also asking to do some work on another house down there and I think they will ask for the permits at the same time. They need to go through a whole bunch of stuff before they get there. I believe they are below the flood plain.

BH: There are two residences there and an outbuilding I believe.

JS: This is the one that is where?

BH: Go all the way down Lebaron Road. It floods over during high tides. It is a nice spot.

BS: It is a nice spot. I don't believe the island itself floods over?

BH: No the road where you cross does.

BS: I took a ride out and this is just for your information for review.

JS: Is it a 6-4.2?

MC: He has plenty of land and he is staying on the same footprint. Do you have a site plan?

The Board reviewed the plans.

RF: Is this a courtesy thing?

BS: Yes, it is just for your information.

BS: I also received an interesting phone call. Somebody owns a piece of property out on Great Marsh. They own four acres. They have frontage on the water. I don't know if that is frontage or not?

JS: No.

BS: I think it is.

JS: Have they been paying their taxes?

BS: Oh yeah.

JS: The reason is that we had ninety some odd acres of land.

BS: That's not an issue. He said that if they haven't then it would be taken care of if they decide to do this.

JS: But, before you even get going, I went through, I don't know how long ago that was? I went and I go from basically all the people that were in arrears in taxes on salt marshes and then I got the Town who had a right at the time, they basically gave it over to the Conservation Committee.

BS: This wasn't given over.

JS: How long ago did they check? This was two years ago.

BS: Within the last two months.

JS: I have everything.

BS: I only know because they brought it up and the Assessor's had it in the tax maps.

MC: Doesn't a lot need frontage on a way?

BS: I don't know. If you are on an island how do you get frontage?

KJ: You can have a land locked lot.

MC: We wouldn't issue the permit it would be the Board of Appeals.

BS: When you think of it like this; people used to use rivers to travel so I told them that the first thing they need to do is find out if that can be used as frontage. They can access it. Everything else makes it a buildable lot; just not the frontage. What they want to build out there is a shack, a duck hut.

JS: Can you build a duck hut by right?

MC: Like Brophy's.

BS: I said to them, first you need to go to Con. Com.

KJ: You can have a lot without frontage.

MC: But you can't build on it.

KJ: Can you not build on it or can you not build a house on it; if you have a total island?

BS: In some areas you own the water. Here they don't own the water.

The Board reviewed the definition of a lot that stated that a lot must have frontage on a way or street.

BS: What I suggested they do is have an attorney or somebody show that they have frontage.

MC: But you can't call it a way.

KJ: What about Rust Island.

MC: That is a non-conforming use and they were all built.

KJ: Yes, but you would tell them they can't build another house?

MC: I think it would be a Board of Appeals issue.

BS: Somewhere I believe I saw that the water can be used as a right of way.

MC: You are right that it would be up to an attorney to prove that they can use water as frontage.

ASTJ: Your point is logical but not necessarily covered by our zoning bylaw.

KJ: Right.

JS: I just think that then you will have everyone want to be building their summer plat form our there.

ASTJ: Everyone already does. If you have an island which hasn't been built on by now it means that you can't.

JS: What we are talking about here is marsh.

BS: That definitely is marsh.

ASTJ: That becomes a conservation issue.

RF: Let me ask you about 6-10.2 wetlands district on the ocean and it talks about private boathouse or duck blinds as being mandated permitted use.

MC: Even if it is a permitted use then it needs to conform.

JS: Have him go to Con. Com. first.

MC: I have a question. Does anyone know about the new driveway that is going in on Southern Ave and does anyone know what that is?

KJ: That went before Conservation Commission about a year and a half ago and I mentioned it to you guys. I think it was Jerome French.

MC: But we denied it.

ASTJ: We denied it twice.

KJ: He wasn't trying to subdivide the lot.

MC: Yes he was.

KJ: He went to Conservation so he could access up there.

MC: At one point the people across the street wanted to buy that as a buildable lot.

BS: Someone just asked me about that before there is road that goes up there.

MC: Yes, it goes all up behind that.

BS: He was in here before, I know he was, and it was denied. He didn't want to do a road improvement.

MC: I don't believe we approved that.

ASTJ: Absolutely not.

RF: Do you want to take a look?

MC: It doesn't matter he can put the road in right?

KJ: You can put a driveway in but you can't put a road in. Isn't that how it came about?

MC: At one time he came in because he wanted to put a cell tower in there and we denied that application.

KJ: That was before I came.

RF: When was that?

ASTJ: Two, two and a half years ago.

MC: Then the people across the street wanted to buy it to put a house on it and we denied that too.

ASTJ: Because he didn't have any frontage.

BS: I don't think you denied it. I think you told him he needed to do a road improvement and he didn't want to do the road improvement.

MC: We also didn't think there was enough frontage there and we thought he would have to put a subdivision road in. What is going up there sure doesn't look like a road.

BS: What he is probably going to try to do is come back and say, look I have a road.

ASTJ: That would be my guess as well.

KJ: I think I recall he described it as a driveway.

BS: Unless that road exists on the list of roads that existed prior to 1972.

MC: No.

BS: It still matters then he has to apply for a subdivision or tear it out.

ASTJ: I bet you a nickel that he is thinking it is easier to get forgiveness than permission and he is going to come back.

MC: In terms of a driveway, that is a pretty extensive driveway.

BS: Did he get permission from the DPW? Someone was just in and asking me about that a few months ago.

ASTJ: There is another one by Centennial Grove. You know the old orange building that was the old Elks. Well, I believe that they have put a drive accessing the back part of their property from Grove Street.

KJ: Wasn't there something put before us about two lots separating two lots on Grove Street.

MC: I will ask the DPW. What is his name Stevens?

Public Hearing – Essex Park Drive – Peter Van Wyck (PVW), Russ Brown (RB) (lawyer representing PVW)

RF: I would like to call the continuation of a Public Hearing for Essex Park Drive at 8 p.m. Just to refresh everyone's memory since the last time we got together to discuss this hearing which was on the seventeenth of November we have had counsel for Mr. Van Wyck and counsel for the Residents of Turtleback Extension have both submitted briefs regarding the rights of way and ownership of the road and so forth. Let me get back to my notes; primary access vs. common access, how access is determined, so that is where we were when basically we had the residents saying that Mr. Van Wyck didn't have the rights to pass and repass and Russ Brown for Mr. Van Wyck did have the right. What we did was to amicably extend the hearing and we sent both briefs to Town Counsel, Kopelman & Paige and Town Counsel contacted me today and they requested that they be given until January 15th

so that they could draft a response to both briefs. I said that sounds appropriate and that I had no issue with that request. That is where we are right now. I would like to open the floor for discussion with members of the Planning Board or any citizen. I believe what we did in the fall was that we asked for an extension of our agreement beyond the usual sixty days and we asked for it for another two hundred and twenty days. Mary-Ellen, let me ask you a question, are we going to have to ask for another extension. I think we will be all right. Planning Board members do you have any questions or comments on how we should proceed on anything?

KJ: I think we should wait until we get a response from Kopelman & Paige.

JS: Yes, unless anyone here has anything they want us to hear.

RF: The other thing was about a traffic study. Now I know we had drafted a letter to Peter about four firms. I know there was some discussion at the last meeting on the 17th of November and I believe there was some discussion regarding the nineteen ninety-two traffic study. Did we discuss that?

MF: You were all emailed copies.

RF: We were?

JS: Yes we were.

ASTJ: My hard drive crashed.

RF: So you read that?

JS: Yes with great interest. My thoughts were I don't know which one it was because there were two that were done; one by Peter's people and then an additional one. I didn't know which one it was.

RF: Do you know which one the additional one was? My understanding that is for purposes of a Preliminary Hearing a traffic study isn't necessary.

ASTJ: Except, traffic studies don't happen over night.

KJ: There were not two traffic studies after all; this was appended. This was in 1993 and for informational purposes only. We can't base anything on it now.

ASTJ: One thing we can do is say that this format to use as a model.

JS: I would say it is not. My advice is to say that it was worthless because it is outdated.

KJ: Andrew is talking about the format.

JS: It is a little hard to understand; for someone like me.

RF: Do traffic studies come in a standard template?

JS: I thought there was a standard table?

KJ: There are basic categories they must discuss.

JS: They called the road a highway as if it was a two-lane road. Which it is; but it truly isn't a two-lane road. They made the reference that there was a clear yellow line down the road which there is not.

BH: I don't think this report is appropriate but that it is something to suggest later on.

KJ: I agree with Bill, this one isn't relevant but it is something we will recommend.

The Board determined the steps of a Preliminary Plan by reviewing the Subdivision Rules and Regulations.

RF: The whole Preliminary Plan seems a bit looser than the next steps or submissions of a plan. My understanding is that we just draft a letter as to what our opinion was and what our recommendations were.

MC: I don't think we need to get that detailed for a Preliminary Plan.

RF: Great. I apologize to the citizens that are here as we work on our procedural issues. Is there anyone here who would like to discuss anything?

Jean Rainey (JT), Turtleback Road

JR: I would like to know if we will find out since it is a public hearing, what is the policy to notify people as to what the outcome is.

RF: That is a very good question.

The Board reviewed the Subdivision Rules and Regulations and M.G.L.

MC: You take a vote at a Public Meeting.

RF: Then that becomes a matter of public record and that is how the public learns of the outcome.

JS: But as an abutter you wouldn't receive any notification.

RF: Are there any more questions from the public?

MC: Is there any reason we can't close this public hearing?

RF: No, but we are going to see if there are any more questions from the public.

No Comments.

RF: I would like to make a motion to continue the public hearing until such date as to when we hear from Kopelman & Paige and take a vote which is probably going to be February 1st.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

KJ: We have about twenty minutes before the next Public Hearing right?

ASTJ: Yes.

KJ: Charlie Burnham would like to speak to the Board.

RF: My colleague Ms. Jarvis would like to have Charles Burnham come on up and tell us about Conomo Point in an informal discussion. Come on up.

Charles Burham: Thank you. I am the secretary for the Conomo Point Committee and we have not been very active lately. It turns out that a Conomo Point Plan part of the DEP Final Judgement calls for five years before the leases end that we decide what to do with the properties in the field. There has to be an article on the warrant for the Town Meeting in the spring. The Planning Board, the Finance Committee and the Assessors have all be membership. One person from each on the Conomo Point Committee. I put together some stuff and gave Kim a copy of it. It references reports and some data about Conomo Point and includes the status of the votes from the Town Meetings in 1997 and 1999 and the settlement agreement with the Assessors where that Point was granted a thirty percent tax reduction and then the DEP Conomo Point Plan. Then there are some reports about the rent committee report written by the Selectmen in 1987 and the Town Report in 1991 by the Conomo Point Commisioners that says the status of the suit, and the status of the suit, and there was a planning committee which met over a period of about five years and this shows a summary of what was done. Then there is some legal things; the report on what happens when the lease ends. The other thing is the settlement. When you have a settlement you have it agreed upon and then the judge rules on it being fair and equitable and that sort of thing. What is in here is a copy of the settlement. The present lease and a list of all the present land values, the property values. Kim has a copy of all of this. It is a lot of work to Xerox this.

ASTJ: Unbelievable it is a lot of work to do this; thank you. I have been wondering what is going to be happening with this.

MC: If there is a member of the Planning Board on the Conomo Point Committee who is it?

ASTJ: The first question is; is the Conomo Point Committee currently active?

CB: It is going to be activated. The Town told us to make a plan to keep some and sell some. We had meetings about every possible way you could get. The Town voted to retain the front part of the point for use of the Town. Then they voted not to sell any of the land. We had proposed to sell some of the field with some restrictions. The Town voted to not sell anything down there. I think the Selectmen should work with the Town to work out something. The whole thing about the point is that there are ten thousand gallons a day of discharge and you would have to put in a treatment plant. We looked into putting in a treatment plant and you can't. The division we made was that the waterfront would be retained by the Town and then we would decide what to do with the field. The problem is that we didn't decide what to do with the field.

ASTJ: Where is the field?

CB: The field is the land from Robin's Island south and the waterfront is from Robin's Island north. The Planning Board reviewed the map and discussed the areas that the Conomo Point Committee will be discussing.

BS: Are you concerned that the closer you get to 2011, the closer you get to a fire dome?

BH: That is a good comment. How would the fire trucks even get down there?

BS: Unless it was controlled on the Fourth of July it could be a problem.

CB: The DEP is going to force the Town to take the land.

ASTJ: I would like to make the suggestion that we don't appoint someone at this time, but that we ask two of our board members who already have interest in this situation to consider being on this committee to appraise these documents and to quickly surmise to the Board what these documents say.

KJ: I nominate you.

ASTJ: I am not volunteering at this time. We are all interested in this situation.

It was decided that the secretary would make a copy of the documents for the members who volunteer for the committee.

Public Hearing - Lowland Farms – Peter Van Wyck (PVW), Russ Brown (RB)

MC: Are we done with the road? Have we received approval from our Clerk of the Works?

ASTJ: My recollection was that there was one item left. It was one that Peter was going to do down the road.

KJ: The electric.

ASTJ: My own personal feeling is that let it go already. I don't think it matters.

MC: I was thinking that this is an attentive audience.

The Board reviewed the plans.

BH: This is one of three dwellings that are going on the lot, right?

MC: Where are the other two?

ASTJ: Shown here. Are they all identical? No.

RF: Why don't we open up the Public Hearing? I would like to call the public hearing open for Lowland Farms at 8:39 p.m. When was the last time we talked about this?

MF: The last meeting you reviewed the plan.

RF: Did we talk about it informally?

JS: I don't remember that.

ASTJ: Yes we did.

KJ: Did Con. Com. approve this and is it not within the hundred-foot buffer?

PVW: The reason we are here is because anything over twenty five hundred square feet has to go before the Planning Board.

KJ: Right. It is almost entirely within the hundred-foot wetland buffer. I am just curious whether the Conservation Commission has approved it?

PVW: Yes it has. I have a Notice of Intent and an Order of Conditions.

JS: Can we see it? I didn't get a copy of it.

MC: Anything we would approve would be subject to the Order of Conditions.

JS: I am not denying that you didn't receive the Order of Conditions I just want to see it.

The Board reviewed the plans.

MC: You don't need to put in any turn around for fire trucks?

ASTJ: Yes you do. I will put that in if nothing else.

MC: Turn offs so that if two cars are coming in opposite directions they can get by each other?

ASTJ: We have driveway standards and they do include standards for hammerheads and stuff like that.

KJ: And the width of this appears to be perfectly adequate for two cars to get by.

Kim Jarvis measured the width of the road on the plan.

KJ: It is eighteen feet wide.

MC: Is this plan the same as that plan?

BS: When was the originally plan submitted.

KJ: This says the twenty fifth of May.

MC: We are talking about one house now.

PVW: It has been slightly moved.

MC: This is called Site Plan Review.

ASTJ: I think it is a handsome house, but we are more concerned about the site.

Kim Jarvis read the criteria in the Subdivision Rules and Regulations regarding Site Plan Review.

BS: What you should do Peter is we need the exact footprint of the house; all three of them. Exactly how they are going to be on the driveway.

PVW: I am not sure what is here?

BS: What is going to happen is that each time you are going to have to come back for each of these houses.

MC: This is the septic system for the three houses?

ASTJ: You are planning on building three houses on each lot with one shared septic system for each lot?

PVW: Yes.

KJ: Lot number one says, 'not a shared septic system'.

MC: Peter, come on, I am tired of this. So, we have two separate sets of plans and this one is stamped draft and this one here says that the septic system isn't a shared system, but you just got done telling us it is.

PVW: It is a shared system.

MC: The note on the unstamped plan says it is not. Why don't you take this back and we will continue it?

ASTJ: We will continue it without prejudice.

MC: I am tired tonight Peter and we have a lot of other things to get done tonight. Why don't you take it back and we will continue the hearing?

RB: It is only a few weeks in January?

ASTJ: We will continue it and then you can't change it again without going through the process again.

RF: I would like to make a motion to continue the Public Hearing of Peter Van Wyck for the construction of dwellings, which exceed two thousand five hundred square feet to February 1st at 8:30 p.m.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

The Board members discussed the upcoming Town Meeting and items that they are going to present for the warrant.

RF: Motion to approve the meeting minutes of January 4, 2005 as amended.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Regular Business

Mail

Invoices

MC: Motion to adjourn the meeting.

JS: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:55 p.m.

Next library meeting is set for Wednesday, January 4, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by:



Mary-ellen L. Feener, Secretary

Attested to:



L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, January 4, 2006**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:42 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Bill Holton (BH), Andrew St. John (ASTJ), Mike Cataldo (MC), Jay Sweet (JS), Kim Jarvis (KJ)
Building Inspector: Bill Sanborn
Secretary: Mary-Ellen L. Feener

Building Inspector's Report

77 Wood Drive – Filias, LLC

BS: Applicant is renovating a house and putting on an addition in the back. I am not sure if this is a second story addition. This already has the approval of the Con. Com. And the BOH. The Board reviewed the Plan. It was decided that the Planning Board wanted more details regarding this property.

BS: Peter Van Wyck came to my office and showed me the plans. He misinterpreted the ordinance and he thought if the house contained more than 2,500 than he needed the ordinance. That is not what our bylaws state, they state if the footprint is over 2,500 square feet. I told him to go back and figure it all out and come back with what the square footage is, it is not a square house, and then I would bring it in to the Planning Board. He never came back in. Looking at it and doing some quick math he is less than 2,500 square feet. If he does show up tonight, I haven't approved the plan yet, but if he shows up tonight with it, just to let you know he may not need the site plan review.

Russ Brown, lawyer representing Peter Van Wyck, had contacted the Planning Board. Peter Van Wyck gave the secretary a letter saying that the properties were less than 2,500 square feet. Then, Russ Brown contacted the secretary and he said that they were over 2,500 square feet; actually they are 35 square feet over. They are going to bring in a plan and due to the Board's suggestion there will be two properties on the plan; to show more than one property at a time during a public meeting. (The Board had suggested that PVW present a plan with as many potential properties as possible). The secretary had told Russ Brown that once a plan has been changed and if that is what he is proposing then there could be a chance that the Planning Board would make them go through the process of site plan review and the posting of the notices for a public hearing again.

BS: When do you determine when someone has to re-advertise when there is a change in a plan?

MC: I would think that when there is a substantial alteration from the original plan. He has what, another house on the plan now?

KJ: Did we accept only that one lot? We never really did discuss it.

JS: No. We did not. We told him to pack up and leave.

MC: Was that his application or the public hearing?

ASTJ: We continued the public hearing.

BS: The public hearing is still open; you did not accept the plan.

MC: We accepted the plan.

BS: I am not talking about this particular application, I am talking about, 'in general', if someone comes in and you tell them, 'we don't like your house here, we want it over here', or whatever you tell them, and they revise it and they come back, do they have to re-advertise it? Maybe the changes you asked them to do are substantial, when do you determine that you have to have them re-advertise or don't.

KJ: If a hearing is still open then it is still open.

ASTJ: Yes. What you want is to have them come in so they have something workable and then they have the public hearing where the people from the town can come in and then you already have something that is approvable; that is my opinion.

BS: So on site plan review.

ASTJ: That is not a public hearing.

BS: I don't think he did a preliminary here (referring to Lowland Farms) so if he came here with another plan here and you had sent him away and had said this isn't what we want, can he come in with a new plan and would he have to re-advertise it?

KJ: I don't think so because we haven't closed the hearing.

BH: I don't think so; it would just continue the hearing.

ASTJ: Nothing had been changed; we just didn't accept what he gave us.

BS: O.k.

The secretary inquired that the first plan showed one house and then the new plan showed two houses, would he need to re-apply.

BS: I think the Board asked him to do that. In fact, I suggested he show all of the houses and if you don't do that you will have to come in for another site plan and another and you could be denied one because you have two that affected something else; he should show them all.

MC: Bill (Sanborn), before you go can I ask you a few questions. The guy who is requesting a public hearing and who is building on Story Street; Andrews. He has a new house with the barn falling down. I noticed he had cleared the lot and he put the foundation in but the barn is falling down. I hear that he is 'pulling a permit to pull the barn down'. Did he ever get the permit?

BS: He was going to repair the barn.

MC: I drove by it and it looks like it is falling down.

BS: Yes. I have to get on his case and see what is going on because he was supposed to do some more stuff.

MC: Is there any leverage with what is going on at the other lot to have him repair the thing?

BS: No. I wouldn't even threaten because he is attorney and he knows his stuff.

MC: The other question I have is that two years ago we voted to convert what was a business next to the Universalist Church to a residence. The white house on Main Street. It was an antique store and we allowed them to change them to apartments.

BS: I remember that lady.

MC: Someone has come in and bought the place and put in a real estate business and a decorator's business on the first floor.

BS: She was the one that was concerned with the sewer she was going to lose the business for the antique store.

MC: The antique business went away and we allowed them to convert it to apartments. Now there are two businesses there with no dialogue with us. Wouldn't she have to come in to change the business piece? It isn't a home occupation because the woman has a sign out where she lives on John Wise Avenue. Actually, she has a real estate license outside of both places.

RF: Brigid Venti.

MC: Yes. The point is that we went through the process to change the building to a residence.

BS: My opinion always was that the Planning Board must approve any change of use including home occupation.

ASTJ: Right.

BS: There were those that argued with me on that who said if it's a right it's a right and you don't have to do it.

ASTJ: That's like saying an ANR doesn't need to be approved. An ANR is a right.

BS: But you can deny them.

ASTJ: Are you saying we can't deny a change of use?

BS: I think you can but you have to have cause to.

MC: Someone has to at least ask right? I don't know if she ever came to you, but she hasn't come to us and she is doing this without even a dialogue with us.

BS: How did you vote on that? I remember we brought it to the Board and the lady was worried because the sewer would affect her antique business. I am not sure you voted on it?

KJ: Is it less than 2,500 square feet?

MC: Yes. There is no parking there; there are only 2 parking spots.

BS: What are her name and the name of the business.

RF: Slipcover and Real Estate, Brigid Venti.

MC: Now she is giving the Unitarian Church a hard time about the door.

BS: what is interesting is that she came and asked me questions about a different property, but never that one.

KJ: It certainly would have to go to the DPW because a change of use would affect the sewer flow and that is a big deal.

ASTJ: Ah, that is more to the change of use.

MC: If I get the address, change we send a letter.

KJ: It is certainly something the DPW should be made aware of.

BS: My opinion is that she needs a building permit for the change of use for two reasons. One to verify what is going in there and two to make sure the building makes code for what is going in there and I still think that in the Bylaws it says that the Planning Board must approve new buildings and change of use. Any time someone does a change of use they need to talk to the Planning Board.

RF: Who wants to contact the DPW?

BS: I will go ahead and contact the owners and then we can go from there.

BH: That stems a question Bill regarding your role as Building Inspector I am curious as to the fact that we have a part time Building Inspector, when it comes down to the enforcement officer for the Planning Board is this part of your job description as the law sees it?

JS: Tough guy with a badge.

BS: Yes and no. I don't work for the Planning Board; the Selectmen hired me. I am not the enforcement officer for the Planning Board.

KJ: The Town of Essex Bylaws says you are.

BS: It does?

KJ: I was reading it this week and it does.

ASTJ: Here's your gun.

MC: You are the hired by the Selectmen to be the Enforcement Officer.

BS: I do enforce Bylaws and certain Bylaws. If the BOH or the Planning Board has a complaint and it affects my office, I look into that complaint. I didn't know that was in there I would have to look at it.

RF: Section 6-7.1, the Zoning Bylaws should be enforced by the Building Inspector.

BS: The Zoning Bylaws, it doesn't say that I answer to the Planning Board.

BH: Let's say we get a complaint, say there are too many cars in the front yard; there is a business in a place where there was once a home occupation. What is the procedure?

BS: There are two different procedures depending on where I am. One is more informal than the other (town). In this case, I will stop by on Friday and talk to her and let her know she needs to come in. If I don't get any response then I will send a letter. After the third letter we can file a complaint in court if we don't have a response. We don't want to get to that step. While we are on the subject, there are new regulations that have come up from the state and they have issued new laws since the Warwick fire regarding sprinklers and everything. They are now giving the Building Inspectors the authority to write tickets for building violations. That is only pertaining to the building code. There is one establishment in town that really failed their liquor license I could go in and cite them for violations. The only problem with that is when you go in and write a ticket you have to have a hearing officer that the town has to hire that can hear from someone who is aggrieved if they are given a ticket. The hearing officer has to be paid a minimum \$25,000 a year. I am pretty sure the town isn't going to do that. It also includes the fire department too. The state is writing a book as to the violations they need to be looking for. This is still in the early stages, but there has been talk about merging Essex, Gloucester, Manchester and Rockport and having one hearing officer. It wouldn't probably raise any money. It is another tool instead of going to court. If you haven't been through the court process; you file a complaint, you have to have the social security number to file a complaint in District Court. So, getting a social security number is a feat itself. Then, it is thirty or sixty days to get a hearing in front of the Court Magistrate. Then if the Court Magistrate hears it and decides it is worthy to go to court, another thirty to sixty days

pass until you are to appear in court. If someone has gone that far, they are going to get an attorney and then the attorney will continue it. It could be a year, year and a half before there is any resolution in the court. Then a majority of judges will just say take care of that because a lot of the judges feel it is wrong to fine someone because they did something wrong on their own property. I make every attempt so that a violation does not go that route.

The Board reviewed the proposed zoning chart for the Town Meeting with the Building Inspector.

31 Martin Street - Barry Richards (BR)

Mr. Richards came before the Board to discuss the decision of the Board in March 2005 to deny his request to purchase an abutter's lot due to the fact that both of the lots involved are non-conforming and the Planning Board can not approve this because it would make the lots more non-conforming. Massachusetts General Law 40 A prohibits a Planning Board from increasing a non-conforming use and since both of the lots involved are non-conforming we could not allow the exchange.

ASTJ: Can you refresh my memory in less legal terms what you are trying to do here?

BR: We have lived on that property since 1980 and we have been using that land and taking care of it and gardening it for just about 25 years. Todd and Michelle bought the house on Maple Street and upon purchasing it; we discussed the fact that we would like to buy that part of property. Then, we came in to discuss the purchase with the Planning Board.

The Board reviewed the plan brought in by Mr. Richards.

BS: You came in and ask me about this a while ago.

BR: You did.

BS: And I said you couldn't do this then, right?

BR: Actually, then we were talking about exclusive land deeds and you said come back to me when you get the easement. We had actually gotten to the point where the easement was drafted by an attorney and then after further discussion with Todd we said that easement is going to have to go with any purchase and a tax compensations if one of the property was sold, so we decided to go for a straight sale.

BS: Where did this plan come from? (Referring to the plan presented by Mr. Richards.)

BR: That plan was submitted when Garsha Kimball applied for a building permit for that lot and that is what Todd and Michelle bought.

BH: I was on the Planning Board at that time and that lot was controversial. Sumner Raymond who lived on Main Street put parcels 1,2,3 together and he was a lawyer who put this thing together. We (the Planning Board at that time) denied building on that lot where Todd's house is now. The court overruled it because they said that Sumner Raymond produced evidence that it was all part of an existing lot and that it came under an existing non-conforming lot and Todd's house got built there. That's why you see 1,2,3 there.

BS: That was in 1992?

BH: No, that was way back.

BS: Why does this plan say '92?

BR: That was for the Stewart property that had to be added to it for the septic system.

MC: Yes. The argument was that it was all one existing lot.

BS: When did these 1,2,3 parcels cut up this way?

BR: It was a relative of the Lufkins.

MC: For our discussion tonight, this isn't relevant.

BS: I don't know. If this had to go to court because the Planning Board turned it down now and they appealed and it went to court saying that they had grandfather rights and the court upheld the decision because it is already non-conforming and they can't take land away from it now.

BH: Why not?

BS: Because the court already said it was non-conforming and you can't make it more non-conforming.

BH: There is nothing in our bylaws that says that regarding a lot. Only structure and use.

BS: This is under state law.

BR: Section C, Paragraph 3 under a special permit it is allowed.

BH: There is nothing in our bylaws that states that it is for lots.

The Board reviewed the state law, Section 40A.

ASTJ: Is there anyone who thinks this is more detrimental?

RF: I just don't want to go against state law.

BH: I went through this thing frontward and backwards and I didn't see anything.

BR: Would you like us to give you time to find it and come back at another meeting.

ASTJ: If someone thinks this goes against state law, then we should find it.

BS: Maybe we should have the Town Attorney's find it?

MC: I don't have any problems with this, but if it goes against state law we want verification.

BS: If either of you go to sell your property, a real estate attorney can come in and say you can't do that and then you are stuck (talking to B. Richards.)

BR: Why would he say that?

BS: Because, if it has been changed and the case law says that you can't change that lot because it is non-conforming then you would be in violation and you would have to change that violation and then it screws up your sales.

ASTJ: My question is how it is a deeded lot but what we are looking at has all these parcels.

BR: It is written in the deed, it references all these parcels. Because Julien Mears and Stewart owned these lots, I think it was always kept this way.

RF: Michael, do you want to contact K&P?

It was decided the Planning Board secretary would ask the Town Administrator to ask the Selectmen if the Planning Board could contact Town Counsel and if was approved, Michael Cataldo would contact Kopelman & Paige.

35 Rocky Hill Road – Hancock Survey

Jeff Pelonzi (JP) – friend and lawyer of owners, Mr. & Mrs. Minken

Helen Chapel (HC) – Essex Conservation Trust

It was noted that Jay Sweet is a trustee of the Essex Conservation Trust.

The Board reviewed the plan.

JP: This was called Conomo Road.

JS: Yes and then it changed.

JP: My clients have owned on the large plan lot 4A & lot 4B as one lot for the past 20 years.

KJ: So lot 4A is here.

JP: Yes. Twenty years ago they bought one parcel, which included both lots. We are here to separate the lots. The reason we are doing this is because our backyard is here and this parcel has always been owned by the Manchester Essex Conservation Trust and in an effort in order not to use their property it has been suggested why not do a swap for no value with MECT. As you see here we are piano key lots. They would swap the lot labeled under their name so we can avoid the piano key situation.

JS: What is the ultimate goal?

JP: Just the land swap. The Minken's have four kids and the yard area is right there.

There is no frontage issue. We will have plenty of frontages afterwards. It is just for delineation purposes.

KJ: And no one is stressed out because of the ten thousand feet.

JP: We aren't building and they are building.

MC: So both of these lots can be labeled unbuildable lots?

HC: Yes.

JP: I would have to talk to my clients about that. What we have now is one lot and both Mark and Cotton have anything told me over the years that they are not building. I don't know what the zoning is and if the swap happens it might make it not possible for them to build.

MC: I was on the board when we created this subdivision. When the road was created in sub-standard conditions with the understanding that there would only be ten lots. If we allow this lot to be conveyed without something on it that says not a buildable lot, granted I know who it is going to and I know there will not be building on there, but I think it sets up the argument that we have created an eleventh lot on this road. If someone comes in for a twelfth lot then they can argue this issue.

HC: We already have out lot saying it is unbuildable.

MC: With the swap the Minken's a non-conforming lot.

HC: You can't approve a non-conforming lot?

MC: Not with the ANR process. If it were non-conforming it would need a special permit. The process is reserved for parcels that meet the requirements.

HC: What process could you do it?

MC: A subdivision process.

The Board gave recommendations of moving the frontage, 46.9 feet so it would be a conforming lot and to label the two lots not buildable.

90 Apple Street ANR – Mill River Consulting – Dan Ottenheimer (DO)

DO: Good Evening. We are with Mill River Consulting. We are working with Karen McNiff. This is a pretty straightforward ANR division of a parcel into two lots. One lot would be 1.42 acres and lot two would be 1.43 acres. There is an existing house on what would become lot 2.

JS: Do you know where lot one would come on?

DO: It is going to be on Apple Street. ~~I know this~~

JS: This house looks down onto the field?

ASTJ: Yes.

JS: Not as a member of the Planning Board, but I grew up on one of the death curves. You come around the corner and then coming on and off that will be very interesting. The hill starts here and then people will speed and try to brake.

The Board reviewed the plan.

RF: With the ANR application you don't need to fulfill any requirements on the application?

KJ: You just have to make sure the plan meets all the zoning.

JS: They have frontage and what else?

KJ: Do we need to be concerned about anything else?

ASTJ: Not unless they are putting a house on it.

KJ: Right, then we want to review the site.

ASTJ: Where do we sign?

JS: Make sure that plan is really solid before you come here again.

KJ: In case I am not here next meeting, we need to make sure we date the ANR plans when we sign them.

The Board signed the ANR plan and application Form A. It was agreed that the Board members would sign the Mylar at the next scheduled meeting.

The Board discussed the OSRD presentation for the Town Meeting.

RF: Motion to adjourn the meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:45 p.m.

Next meeting is set for Wednesday, January 18, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by: 

Mary-Ellen L. Feener, Secretary

Attested to: 

L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, January 18 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:38 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Bill Holton (BH), Andrew St. John (ASTJ), Mike Cataldo (MC), Jay Sweet (JS)
Building Inspector: Bill Sanborn
Absent: Kim Jarvis (KJ)
Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

BS: The first thing I would like to bring up is the Special Permit application of Peter Van Wyck. His attorney, Russ Brown, presented an argument that claims, and basically I agree with him, that the plan was submitted prior to the time the ordinance was accepted by the Town of Essex and he doesn't need to comply with the current zoning law. I did ask Attorney Brown to come to this meeting to explain this issue.

Russ Brown: First of all, I apologize to the Planning Board for putting them through the Special Permit procedure. I came in late into the special permit process. The 1994 zoning for the Town of Essex did not have a special permit requirement for houses that had a footprint larger than 2,500 square feet and at the time of the last Planning Board meeting that Peter and I attended I pointed this out to Mr. Van Wyck. The statute Chapter 40A, section 6, says, that you need to file a subdivision plan and the Lowland Farms subdivision plan was filed in October 1994. It froze the 1994 zoning law as being applicable to that subdivision. It froze the process, even during the appeals process and for eight years from the time of endorsement the plan which I believe was in 2002, although there is a little bit of an issue here because the Judgment was recorded in 2001 and that may be the applicable date. From either one of those dates (2002 or 2001) the 1994 Essex zoning by-law applies to all of the lots of the Lowland Farms Subdivision. If you look at the 1994 zoning law everything applies to these lots, setbacks and everything else, until 2010. As I told Peter, you don't really need a special permit because a special permit wasn't in effect then and you can just apply for your building permit. Now as an aside, he has adopted and if I remember it was an issue of practicality for the common driveway, Peter did make all of the changes that the Planning Board suggested and he is doing what the Planning Board wanted because it is a better plan. For a matter of procedure the Special Permit law doesn't apply.

RF: Russ, I have a question for you would this also relate to Section 5.02. The section for the Subdivision Rules and Regulations, which has to do with the relation of a preliminary to a definitive plan. Part of what this statute says is, 'the zoning provisions at the time of submission are in effect.' What I am trying to drive at is are we certain that the plans that were submitted in October 1994 was what we saw in 2002?

ASTJ: That would be my question as well.

Russ Brown: I included in this letter from the Essex Planning Board and I adopted what I have stated with this letter and I gave the Building Inspector a copy of the plan. The letter states it was submitted October 5, 1994 according to your letter and then approved on January on 1995 and then appealed to the Land Court by someone, and the Land Court Judgment is right here and that Judgment references that same plan. The 1990 plan, revised in 1995 and that is the plan that was endorsed in 2002, revised in 1994. I assume that the Planning Board when they signed it was the right plan.

RF: Basically we saying that the Definitive Subdivision Plan originally came in 1990, modified in 1994, the Agreement for Judgment and then approved again in 2002. Is that correct?

Russ Brown: The Agreement for Judgment was in 2001. It was tied up in litigation for 6 years. I just know it was appealed and the Judgment date was 2001.

RF: What we would like to do is to make sure the plan we are discussing now is the same as the one in 2001. The Board would like to recognize Scottie Robinson.

Scottie Robinson: I was a Planning Board member at the time the Agreement for Judgment was made by the court and the plan that was endorsed by the Planning Board was the same as the original plan. I can attest to that because the Planning Board at that time went over the plans very carefully. The reason there was litigation at that time was because Peter brought the Town of Essex to court because he was told by the town that one of the lots was not buildable, I believe it was Lot 1, which to this day, if I am not mistaken was not buildable. It did take a long time to settle. My question is actually to Mr. Brown, if I can ask him a question. I know that there was some ANR action on that plan after it was endorsed and my question would be if the lots you are talking about now is part of the revising of the lots, does that change the eight year time period or does the older rules and regulations come into affect? I do know there was at least one ANR after the endorsement. Does that matter?

MC: Theoretically, if you subdivide the property further that does vacate the original subdivision because you have drawn all new property lines?

Russ Brown: That is a very good question and the statute does actually address that specifically. I will give you a copy of the statute. I am reading from the statute, 'The submission of an amended plan or a further subdivision of all or part of the land, shall not waive the provisions of this section.'

MC: Are you asking us to waive the process?

Russ Brown: I am. The Con. Com. Is waiting to hear the answer from the Planning Board. It was agreed that the Planning Board would discuss the matter with legal counsel.

77 Wood Drive - Two Filias, LLC

BS: This is a 6.4-2 finding. The owners are building without altering the footprint and adding a second floor to the back of the house on a non-conforming lot.

The Planning Board reviewed the proposed plans and application.

ASTJ: I make a motion to approve the application of Two Filias LLC, 77 Wood Drive for a second floor addition finding that it has all the necessary approvals and under Section 6.4.2 it is not substantially more detrimental than the existing non-conforming use.

RF: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

22 Lufkin Point Lane – John Diblasi

BS: He is applying to build a deck which would not increase the non-conforming use. It requires a 6.4-2 finding. The application has the approval from the Conservation Commission and the Board of Health.

The Planning Board reviewed the proposed plans and application.

MC: Motion to approve the application of John Diblasi of 22 Lufkin Point Lane to build a deck that would not increase the non-conforming use and under Section 6.4-2 finding that it is not substantially more detrimental than the existing non-conforming use. It has the approval of the Board of Health and Con. Com.

JS: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

21 Spring Street – Mark and Laura Hall

BS: He is renovating a barn and adding an addition to his house. The Board of Appeals approved the renovations to the barn. It does have the approval of the Board of Health and the DPW. He is applying for a 6.4-2 finding.

JS: Motion to accept the building permit application of Mark and Laura Hall of 21 Spring Street for a 6.4-2 finding due to an addition to the existing structure, finding that it has the necessary approvals and it is not more detrimental than the existing non-conforming use. It has the approval of both the DPW and the Board of Health.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Public Hearing – 82 Eastern Avenue – Jeffrey Allsopp (JA), Allsopp Design Inc.

RF: I would like to open the Public Hearing for 82 Eastern Avenue.

JA: What we are proposing to do is add office space, conference space and adding more space for the staff. We are bringing the property up to the twenty first century. Actually, it is the farmer's porches that brings it over two thousand five hundred square feet.

BS: How many people meet in the conference room?

JA: Typically, not more than fourteen.

RF: Why?

BS: Second means of egress would be needed.

MC: What about parking?

JA: (Pointing to plans), Here is some and there is more for run off towards the back.

The Planning Board reviewed the proposed plans.

RF: Motion to close the Public Hearing.

MC: I second.

All in favor?

Aye.

Motion passed unanimously.

Public Hearing – Proposed item on warrant for Town Meeting – Open Space Residential Design

RF: I would like to open the Public Hearing for Open Space Residential Design.

Rob Fitzgibbon discussed what is Open Space Residential Design and reviewed the questions that have been asked regarding OSRD.

RF: Open Space is essentially subdivision design and it is an alternative tool to use. We have had feedback from various people and we (the Planning Board) want to take a proactive stance.

BH: I took a trip to Rutland and met with the chair of their Planning Board and we discussed the fact that they have three subdivisions ~~building~~ ^{being} built there this year for one hundred and twenty six houses. They do not have as extensive bylaw as we do, but they do have OSRD and I saw one of the developments and it is fantastic.

Bruce Fortier, Southern Ave.: First of all it should be on record that I offered to meet with you board. If I look at what I have here versus what was presented at the Town Clerk's office I don't believe you will be covered because there are significant differences.

BH: We put it under the subdivision regs.

Bruce Fortier: It is not a subdivision regulation, it is a zoning change, so it should be under the bylaws.

RF: To get everyone up to speed, we do have bylaws regarding zoning.

BH: Bruce, can I ask you a question? Are you in favor of OSRD?

Bruce Fortier: I would say no.

BH: Theoretically you like the idea?

Bruce Fortier: Yes.

RF: Thank you Mr. Fortier.

Scottie Robinson, Turtleback Road: I think one thing that you forgot to point out is that open space is restricted by deeds and covenants. That is a plus.

Ed Perkins, Story Street: The open space is all well and good. I believe that the extra land should not be taken off the tax base. As soon as ^{you} turn a property over to a conservation trust you lose that tax.

RF: There are three scenarios now that a developer may chose from regarding land.

Dick Carter, Apple Street: My questions would be what was the growth of new construction last year? The year before? How many towns have zoning areas? The Planning Board used to control building with septic. If they build units, we have to provide water and sewer. The only one this is an advantage for is developers.

JS: I would agree with you to a point. Right now there are two subdivisions going on Apple Street right now.

Scott Dewitt, Lakeview Road: I have some questions about yield. Right now you may have a lot but it doesn't mean it is a buildable lot.

Scottie Robinson: I wanted to address Scott's question. Traditionally OSRD makes a developer go through the steps to show it is a developable lot.

Due to the fact that the Proposed OSRD presented at the Public Hearing differed from that which was available to the public at Town Hall prior to the Public Hearing, it was decided that the Public Hearing would be adjourned and a new Public Hearing would be held with same final draft available to the public prior to the meeting and at the meeting.

RF: I make a motion to close the Public Hearing.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

RF: Motion to adjourn the meeting.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:00 p.m.

Next meeting is set for Wednesday, February 1, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: 
L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, February 1, 2006**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:42 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Bill Holton (BH), Andrew St. John (ASTJ), Jay Sweet (JS), Kim Jarvis (KJ)

Building Inspector: Bill Sanborn

Absent: Michael Cataldo, Secretary: Mary-Ellen L. Feener

Building Inspector's Report

24 Maple Street - Laura Doyle

BS: The first application is for the construction of a new house, according to the plans 2,000 square feet of living area. It does have sign off from BOH, Con. Com. and the applicant will be getting a couple other sign offs for me.

The Board reviewed the plans.

KJ: Does she own both of these lots?

BS: This has to be a conforming lot it is 30,000 square feet.

KJ: There is not a lot number on it. It looks as if they are adjusting the lot; did they come in for an ANR?

BS: I don't know, I think it was approved.

KJ: This says lot 46 and this doesn't have a number, but this says lot 45 & 46. This is 47, this is 46.

RF: Here is it, area before adjustment, area after adjustment.

KJ: She has 31,000 square feet.

BS: These are 31,000; these are 30,000.

ASTJ: Lot area for land on street in existence before 1972, minimum area is 30,000 square feet. So, what you interpretation Bill is that, for purposes of discussion, you got a street a mile long with a 30 acre parcel along it, you can chop it up into 30,000 square foot pieces all along the street?

BS: As long as you have the 150 feet of frontage.

KJ: I would argue that in court.

BS: Why is that?

KJ: That opens up huge parcels of land and that wasn't the intent of that.

BS: How do you know that wasn't the intent of that?

KJ: I don't.

BS: I would read it that way and that is the way it was read previously.

KJ: Of course everyone wants to interpret it favorably to ~~there~~ ^{their} own way. In any case, it doesn't matter here. It is a 30,000 lot and it was larger than 30,000 when it was divided.

BS: When was it divided?

KJ: In 1988. It was divided, but adjusted; so the lot was in existence before 1988 and most of the house on this road are pretty old.

BS: This person owns this lot? Bill, does this person own this lot?

BH: This is Ed Perkin's sister, Joanne Doyle. She owns this house and this lot and Ed owns this one.

KJ: It looks like that is when they added the pool.

BS: Lot line adjusted 12/4/1987.

KJ: They added the pool then?

BS: Yes. This is similar to the other case. That made it less conforming; this made it more conforming.

BH: When it comes back to the future garage, does it come under the 2,500 square feet?

BS: No. This addition would make it over 2,500 square feet.
BH: Then would they have to come back for site plan review?
BS: No, because it would be done at a later date.
BH: This one we just did on Apple Street had to be site plan review.
BS: Apple Street, yes, because they were adding 2,500 square feet. We determined that last week.
BH: I thought they were adding 650 square feet, but they were taking part of it down. They were taking down the cottage.
BS: Yes, that was what it was, they were tearing down and what they rebuilt made the addition to the footprint.
KJ: What about sewer?
BS: They have the approval of BOH. Before they move forward they need the approval of the DPW and they also need the approval for the curb cut.
RF: What do you think about that?
BS: They just need the approval before I issue a permit. It isn't an issue.
KJ: I would almost like to see the DPW sign off because otherwise, I would like to know the betterment.
BS: If they don't have betterment then they would need to go back to BOH.
BH: Is there a septic on that plan?
BS: No, they were charged betterment.
ASTJ: It is a two family?
BS: No, it is a single-family house.
ASTJ: Two family (referring to the plan), living, kitchen, bedroom; living, kitchen, dining.
KJ: You are absolutely right.
ASTJ: Looks like a two family to me.
BS: I can verify that it is a single family. It doesn't have a full bath on the other one.
ASTJ: It does have a full one on the first floor.
KJ: It doesn't have a door.
BH: Yes he does off the dining room.
BS: I think he changed things from this plan.
KJ: How would you access this from here?
ASTJ: You know this is the plan of someone who is in a really big hurry and didn't do their work.
BS: I don't see a way to get into that though.
ASTJ: So, the plans don't jive with each other. Let's not worry about it. I do think that they need to identify it as a two family.
KJ: This is a stock drawing. They are not showing all the details correctly.
JS: That is a three level house.
RF: Does it have a drainage plan?
KJ: This isn't site plan review.
BS: The application states single-family right?
ASTJ: It does.
BH: I think they want to resubmit the plans to state it is a single family.
RF: So they have to resubmit the plans and what else?
ASTJ: Just tell them to resubmit the plans; it isn't our job to tell them what to do.
RF: So Bill, resubmit the plans and DPW sign off.
BS: Yes.

135 Western Avenue – Larry Schwinn and _____ Connolly

BS: This one is for the construction of a one story, two car garage and kitchen remodel and remodel bath. This is right across from the Building Center (store), there was a garage here, but they took it out without a permit. They meet their requirements.

KJ: With a kitchen and a bath.

BS: No, just a remodel.

The Board reviewed the plans.

BS: What we are really doing here is citing the garage. They have sign offs from Con. Com., BOH, Sewer is approved.

KJ: They are adding to the house too.
BS: Yes they are.
KJ: It isn't a bath or a kitchen.
RF: Do we need a vote on this?
ASTJ: They are not really clear here; we don't have a full idea of what they are doing here.
BH: We don't need to; we are just citing the garage.
ASTJ: But, they are adding to the house. I would send that one back too so we know what this addition is for.
BS: They are not making that addition. We can scratch it out and approve the garage. I can issue the remodel permit.
ASTJ: Bill, I have nothing but the highest regard for you and your talents but I guess I am more comfortable with the idea that isn't an addition.
BS: That isn't for the Planning Board to decide.
RF: (to ASTJ) So, you feel that the plan isn't clear?
ASTJ: I feel that there are discrepancies in the drawings.
RF: O.k.
KJ: What Bill is saying is that if they weren't doing the garage, he wouldn't bring this to us anyways.
RF: But, now that we have seen it, we would like more clarification I suppose.
BH: So, otherwise the house renovations would not come before us anyways.
KJ: Right.
BH: So we are only looking at the garage.
BS: Right.
ASTJ: All right. I won't stop this; we can make a motion.
BS: I just know that I received a call that they had torn it down and they wanted to put it back up.
RF: Kim what do you think?
KJ: I don't have a problem with this.
RF: Bill, Jay?
BH: I don't have a problem with this either.
JS: I am not going to stickle.
RF: Motion to approve a building permit for Larry Schwin and Edward Connolly of 135 Western Ave for the construction of a one story, two-car garage, finding that it meets all the rules, regulations and bylaws of the Town of Essex.
JS: I second.
All in favor?
Aye.
Motion passed unanimously.

BS: I was checking into two different driveways. One on 33 Grove Street has a driveway permit from the DPW. The other driveway off of Southern Ave.
KJ: Jerome French?
BS: Yes. He went to DPW about his driveway and they said it was just maintaining an existing driveway.
KJ: He went to Conservation Commission to get it approved.
BS: It was a dirt path and Paul Goodwin told me he remembered it as a kid because they used to go sliding down it. He did not get a driveway permit. Whether he did the right thing or not; but, it is a driveway and it can't be used as a road for frontage for any other lot. Paul said that he would get a letter from him saying that is the case.
ASTJ: The reason we are concerned is, as you know that he may use it otherwise.
RF: Why is it a concern?
ASTJ: He tried to get a lot or two in there a few years ago and we turned him down.
BS: Just recently we had two different people trying to get lots.
ASTJ: First it was him, or maybe it was something else; he was trying to do a cell tower.
RF: So Bill what's your take on this driveway, not a driveway.
BS: It is a driveway and it should be noted in the minutes that it is a driveway and it can't be used as a road.

ASTJ: Let's talk about it and it's existence as a driveway. It does not indicate that there is for instance that there is any right to build anything back there because it does not have the adequate frontage.

BS: It goes right up to a house.

ASTJ: For which there is another driveway.

BS: That's what I am told, but I couldn't see it; it must be directly in back of the house and it comes down on Forest Avenue.

ASTJ: It is just below.

BS: I was getting out because there were dogs there.

BH: The reason this was cut in was just a matter of convenience?

BS: Yes. I guess he wanted another access because on Forest Street it is quite steep.

ASTJ: Yes it is.

BS: This was put in just for access to his house. It should be noted that it is just a driveway.

ASTJ: What is the person's name again.

KJ: Jerome French.

ASTJ: It isn't Jerome French. He is right on Forest Avenue.

BS: What is his name, I can't remember?

ASTJ: This guy is on Southern Avenue. I assume this driveway accesses the back so he doesn't have to go up the hill. I would be very surprised that we don't see a building permit application for something up there some time soon.

BS: That's why I wanted it recorded in the minutes that it can't be done.

JS: So noted.

RF: Is there anything else Bill?

BS: I don't think so.

RF: Did you get my voice mail about coming up with statistics for the annual report for the Town Meeting?

BS: Yes I did. I don't have that information. Pam, my secretary, can probably get it. If you send it to Pat, the Selectmen's office and she can give it to Pam and then Pam can do it in the morning.

BH: What is the name for 33 Grove Street?

BS: Steven Paine.

RF: Just to let you know, one of the things we need to do is submit a report to Brendhan and the Selectmen a report for the Annual Report for the Town Meeting.

BS: The other comment I wanted to make was that I have had numerous calls regarding 90 Apple Street. That is the one that the ANR was approved. It has a deed restriction? I haven't read the deed and I am not an attorney. But, it is my belief that the Town cannot enforce anything that is in a deed restriction unless it is put there by the Town and neither can I enforce it. So, basically what it amounts to is that it is up to whoever put that deed restriction on there to enforce it.

ASTJ: It is also true that the deed restriction has expired.

BS: There is a reason why the Town doesn't enforce them you never know what they are exactly.

BH: I thought it was a ten-year span.

JS: Listen, the thing is that I just read the deed again. Actually, I just had Mary-Ellen give me a copy of the deed. That is different. It is dated November and then I saw what looked like a continuance of the deed restriction and it was signed in either June or July after 2005. So what I am saying is that there is a piece of paper that is different than the current deed.

RF: We should talk about this at another time.

BS: I just wanted to give you my take on it.

JS: I don't have it of course. Mary-Ellen couldn't find it.

BS: Anything else tonight?

Continuation of the Public Hearing for Essex Park Drive

Orestes (Russ) Brown – Counsel for owner of land, Peter Van Wyck
Peter Van Wyck

RF: We are back in session after a hiatus for this public hearing. Let's see, the last place we were was I believe we talked on December 21st?

JS: How the time flies.

RF: We have been waiting for a response our town council. I believe it was Barbara St. Andre who was supposed to give us a response. Has Mary-Ellen heard from her?

BH: She (Barbara St. Andre) has been away for four days and we have been trying to get a response about this and Barry Richards. She has ~~not~~ gotten a response back about that either and she won't be back until next week.

NOT

RB: I can maybe shed some light on this because I was just talking to Town Counsel this afternoon in order to make sure we weren't going to waste our time tonight. The person I spoke to was Shereen, I can't remember her last name. She did her opinion and she faxed it over.

JS: Do you have a copy?

RB: I don't, she wouldn't send it to me because she preferred it went to you. I know the gist of it, but I don't have a copy.

JS: There is a folder at the end of the table.

The Board reviewed the contents of the folder. There did not appear to be any response from the Town Counsel in the folder.

JS: Do you want to paraphrase?

RB: I don't even want to begin and I only have an impression of where she was going. If she faxed it, it might be in the fax.

JS: I will go look.

JS: No fax, no emails.

RF: Where is our fax machine? Did you actually see a fax machine?

JS: Yes. There it is on her desk.

RF: I thought it was upstairs. Should we call Mary-Ellen?

The Board called the secretary.

RF: Hopefully she is up.

ASTJ: Remind up Russ what this fax is about.

RB: It is going to be regarding K&P response about the road. I have an idea that her response is going to be that we have a fee in the road and that the way belongs to Peter. Mostly because she was dwelling about what the land courts decisions were.

JS: I would have thought that if Mary-Ellen received it she would have put it in the folder.

RB: She said she was going to fax it at 5:30 today.

RF: Mary-Ellen was here at 5:30 so she would have received it.

ASTJ: We can't really address this right now because we don't have a fax. What other questions do we have?

RF: That was the big one.

ASTJ: My memory tells me that there was still the question of the traffic study was still on the table?

RB: My memory says that there just because the number of lots we are making is that you are going to require a traffic study. Before we got to the point though we obviously wanted to answer the question of the cul-de-sac because the number of lots would be significantly reduced if we didn't have the pass through on Turtleback Road.

ASTJ: This being a preliminary hearing I just want to make sure we have a subdivision plan at the end of this if everything goes the way you would like it to, that we can approve. Do we have a copy of that handy?

RF: A copy of which?

JS: It is in the folder.

RF: We had thought that at tonight's meeting we could make a vote. I would think that without K&P's decision we can't make a vote.

JS: Do you want to look? I have the keys.

RB: There isn't any time constraints here and it isn't deemed critical if we don't have a vote tonight. The issues that are important to us are basically, A. the number of lots we can do and that hinges on chiefly if we can use Turtleback Road. If the Board decides we can use Turtleback Road then we want to ask the second question; will the Board require us to use Turtleback Road

to pass. We have already heard from Town Counsel; it was John Goldenrosen I believe, that the limitations on these cul-de-sacs is that if there is an emergency and the one road is blocked then you will need a secondary access. What we want the Board to consider is can we just have an emergency access road through Turtleback Road. It isn't Mr. Van Wyck's desire to have a road through Turtleback Road.

JS: If that is the truth than why is the plan before us for Turtleback Road?

RB: Because that is the only way he can do it.

JS: That's the only possible way he can get as many lots out of the land as he can.

RB: He can put twenty lots on sixty or seventy acres.

JS: Well, I have seen what twenty lots on Lowland Farms. One lot doesn't equate one house in this town.

RB: We can have a discussion about that. An approved subdivision can come with restrictions. If you approve a twenty lot subdivision that doesn't prevent you from saying only one house per one lot.

ASTJ: That is something we have to look at and I hope you are right. I think what Jay is referring to is in effect, without having taken it all the way through, what Mr. Van Wyck is trying to do is maximize, or increase the number of houses he can put on the lots with only one access if the access was on Essex Park Drive. If there was no potential here, he would be down by the 1,200-foot cul-de-sac regulation and that would mean that several of these lots would not be able to gain access from Essex Park Drive.

RB: That's right, there would be less lots for sure. Yes, he could have less lots and just as many houses and they could be clustered differently and maybe that is an interesting way to go. I think overall there is a lot to consider in the overall aesthetic of the development.

ASTJ: There is and it is not just the aesthetic. It is just as much the potential number of houses and that is why we keep harping on the traffic study. It is our observation that Apple Street is taking on as much traffic as possible and Western Ave. is certainly getting there and it is a question of looking at what would be the effect of the traffic.

RF: Western Ave. has what Apple Street doesn't have. It is not a scenic road.

JS: It is wider.

RB: We can't do a traffic study until we know if we are going to include Apple Street.

JS: Of course.

RB: We are kind of stuck; we don't want to waste money on a traffic study until we know what we are doing.

JS: I believe Peter even signed a thing that he doesn't want to do this; some kind of a petition that he doesn't want to do this; why do we keep saying Peter wants to do this when he is sending a petition that he doesn't want a through road. I just find it difficult to understand that if he is saying, 'I agree, I don't want to put in a through road', but we are sitting here putting in hours of our time looking at a through road.

RB: I think he would rather not do it, but I think his preference first is that he does the development in this look and feel. This is the look and feel of the development that he believes is best suited for the land. So, in order to do that he will use Turtleback Road if he has to use it, but he would just rather want to have the Planning Board give him a waiver so that he doesn't need to have a secondary access. Great, all the better.

ASTJ: It certainly isn't within the Planning Board's scope to give a waiver to the 1,200-foot requirement. That is a safety issue that the Fire Department would have to deal with.

JS: I thought Russ told us we could give a waiver.

RB: Oh most definitely. John Goldenrosen pointed it out in his letter that you could.

KJ: It is not inconceivable that we ask for an opinion from the DPW and the Fire Department.

JS: Without a doubt and from our lawyer who said that...

KJ: I would also say that if the drive does not connect to Turtleback Road then it doesn't eliminate the traffic study from Apple Street because people can turn the corner here and it will affect the traffic on Apple Street.

JS: Of course.

KJ: It is just the access as to how many lots you would have in the subdivision.

RF: Wouldn't the variables be different?

A phone rang.

RF: Is this Mary-Ellen? Did you see that fax? Oh, o.k. If it had come it would have been put on your desk and you would have seen it. Supposedly Kopelman & Paige faxed their opinion regarding the statements of the attorneys Brown and Faherty. Yes, she said she faxed it. Russ was it Barbara? (RB: Shereen). O.k. sorry to bother you when you are sick.

RF: For the record there was nothing on her desk; there is no fax yet. I will be happy to call K & P tonight.

RB: I think we could continue this thing to the next meeting; it is only two weeks away anyways. In the meantime, if you get the fax and I could find out what her position is then we could start planning accordingly and I will come to the next meeting with a lot more information.

JS: As soon as we get it, we will let you know. It will probably be tomorrow.

RB: That would be great and maybe we could start a traffic study.

RF: Have you obtained a particular engineer? I know we suggested three names.

PVW: VHB.

ASTJ: Just bite the bullet and use VHB.

PVW: Wouldn't you think it be helpful to get prices from two of the names. Also, I would also like to ask you, if we don't go through to Turtleback Road, it seems that the importance of a traffic study is diminished.

KJ: The cars will still go down Apple Street even if you don't access through Turtleback. All they have to do is turn onto Apple Street. You may not get one hundred percent of them, you may only get ninety-eight percent, but I think it is important that you include Apple Street.

BH: If this road, Essex Park Drive, comes in and loops around and comes back out, then it wouldn't be a cul-de-sac.

KJ: Didn't we have that definition already?

ASTJ: Yes we did.

KJ: It would have only one entrance on Western Avenue so it is just a longer cul-de-sac.

ASTJ: The idea is that you should have no more than twelve hundred feet before you can turn in two directions and this does not constitute two directions.

JS: The other thing is, where were the wetlands on that thing again?

BH: I don't have a problem with the number of lots. If you could work it out so that it came in and went out and you did what you had to do, then...

RB: The number of feet you could have, I think, without having a secondary access, is highly related to the number of people that can possibly live on a twelve hundred foot road. There is a calculation you can do safety wise, under the Essex Zoning Code with one hundred and fifty feet of frontage, how many houses can you have on a twelve hundred foot road.

KJ: That's why I think if we were presented with something, we would want to go before the DPW and the Fire Department.

ASTJ: The other thing is that if we were presented with a plan with some number of lots that had a road that didn't connect to Turtleback with the thought that if we were to grant this waiver that there will be a restriction of the number of dwellings.

JS: Still without breaking the twelve hundred foot?

ASTJ: No, I am suggesting and Russ is suggesting that if you reduce the number of dwellings to the maximum possible. You can do a calculation; if you have a straight long road, twelve hundred feet long...

RB: It is like fourteen lots, you could have seven lots on each side roughly. Seven times one hundred and fifty is what a thousand fifty; so on each side you have roughly frontage for seven lots; you might be able to have fourteen lots on the twelve hundred foot road. You could have three houses on each lot.

ASTJ: So the question is; in the granting of a waiver are we in a position to restrict the number of dwellings. That is the issue; not lots, but dwellings.

RB: Theoretically, you could have what, thirty dwellings?

BH: Why couldn't he have two cul-de-sacs? One in this direction and one in this direction.

JS: Can we just talk about this plan?

BH: This is a preliminary discussion. We are talking about preliminary plans here.

KJ: And the whole purpose of a preliminary is to flush out the issues and we have something that we want to look at that is appropriate.

RF: I know that there was also concern among people regarding the status of Turtleback Road and what it is now, the traffic.

ASTJ: I definitely think a report and the status of Turtleback Road and hearing from the folks who would be impacted by this...yeah.

JS: I believe someone went right off of Turtleback Road the other day.

RF: Basically, what we are doing is get the stuff from Kopelman and Paige. Basically, if we are going to approve a Preliminary Plan is to say, we approve it with modifications, we don't approve or we approve it right out.

ASTJ: Yes, it is a diagram that leads to the next step. There may be members of the public here Rob that would like to have some input.

RF: Yes, absolutely. Is there anyone from the public who would like to say something?

Agatha , Turtleback Road

A : I would like to repeat what I told a few meetings ago. Do you think that we have rights on what we can do or not and hopefully he has no rights to the road? We have a petition for this. My second question is that do supposedly have the right to reject something like this based on the condition of Turtleback Road. This is the sixth time we meet and it all comes down to does he have the legal rights or not and this isn't the only point. If we don't want it and Mr. Van Wyck doesn't want it.

ASTJ: What we are trying to do collect all the information we need. We haven't forgotten what you have referred to as the overwhelming public opposition. We have to collect all the input from a number of sources, at which point we have to deliberate and then we will make a decision.

A : I am just worried that you will forget all that is said and just wait for your counsel.

ASTJ: If you have precedence then we will look at it.

JS: They did. It was what their lawyer sent to our lawyer and what we were hoping would come out.

Mark , 14 TurtlebackRoad

M: I think the other issue with Turtleback Road is where it intersects with Apple Street and the incline and the conditions in regards to the width of the road and if it can be modified or not so that it would be able to meet the requirements that it would need to become a through way.

JS: Steepness, yes...

M : Yes, the steepness as it is; I know...

JS: Someone went off the road two days ago. I was walking below my driveway and someone went off and their car was hanging and they had to be towed because they slid onto Apple Street right off of Turtleback Road. Two days ago...

M : Just during the holidays, my in-laws went down that road and the ice and the conditions and the steepness... they went right across onto Apple Street. If that becomes a thruway, lots of people are going to use it and they will have problems onto Apple Street.

RF: And right now you feel that the condition of the roadway is, should Peter make the connection from Essex Park Drive to Apple Street, the condition of Apple Street would not be able to handle the increase of traffic and so on and so forth..

M : Exactly. This is going a long ways ahead, but if it turned out that it was approved and it was determined that Turtleback Road could be modified to meet the requirements, the impact on doing so would not be good because of how much earth would need to be removed so you would not have that incline there and the impact that would have.

RF: So you do recognize that is an option. For example, we could say, o.k. we approve this Preliminary Plan, but what we recommend is that you go ahead and grade this part of Turtleback and make it wider and so on..

M : Whether it is physically a possibility due to the characteristic of the road or not, I don't know. I do know that this is something you need to consider.

RF: Planning Board members, anything else?

No response from Board members.

RF: Well, I will call K & P tonight to see if we can't get their letter.

BH: Peter, when you had Apple draw all these plans up, where there any other plans on the drawing board that would include a loop that didn't turn into Turtleback Road.

JS: Yes, we have seen a lot of them.

BH: O.k. that was before my time.

JS: We have seen spider ones with a cul-de-sac and a cul-de-sac off of a cul-de-sac and then they counted and you had to add them all up.

ASTJ: It was too many feet.

JS: We went through at least two of those and then there was one with the fire gate.

BH: There is a fire gate on this one.

JS: I will show it to you, I have it.

ASTJ: The reason Peter has come to this solution is that it was the only way without exceeding the twelve hundred foot road, the only way, he decided, that he could get the number of lots he wanted. If you recall, it is an interesting exercise, given Peter's enthusiastic support of Open Space Residential Design. The way the Residential Design process works is that you site the number of houses the land can support and then you draw the roads and then you draw the lot lines. I think one of the reasons we are spending so much time as we are spending on this is because there is a distinct difference of opinion as to what the appropriate number of house is on this parcel of land. Peter started off with the number of lots that he thought should go here and he has done everything that he can to push us to accept that number of lots.

RF: You mean the twenty.

ASTJ: Yes and I think there is a fairly strong resistance in the community and it may well be members of the Board and the Essex Bylaw does not require us to facilitate the process anymore than we have done.

BH: This is all based on the fact that it was going to tie into Turtleback Road. The number of house lots is a sticking point because it is going to tie into Turtleback Road?

ASTJ: No, it is the other way around. In order for him to build the number of dwellings that the parcel would bear, according to our Bylaw, in order for him to do that, he would have to tie into Turtleback Road.

BH: That's what I said. So if the tie in was out, would you have any problems with the twenty lots?

ASTJ: The real question is..

BH: From your perspective, is the twenty lots the problem? Just personally, I want to get a feel for..

KJ: The roadway is a problem.

BH: I know the roadway is, but which road.

KJ: Whatever road is beyond twelve hundred linear feet.

BH: I know, but aside from that, let's just say the road can be worked out Kim.

KJ: If the road can be worked out then it wouldn't be an issue.

BH: And not tie into Turtleback?

KJ: Correct.

ASTJ: The situation, I won't say it is a problem, is that with the Bylaw is that we are not allowed to think about that.

KJ: And we are not the only community...

ASTJ: And we are not the only community and we are not allowed under the Essex Bylaw to think about what is the appropriate number of houses on this land.

JS: Whether or not I have an opinion doesn't matter.

ASTJ: Exactly, I don't want to be asked at this instance what my opinion is because I am on tape.

BH: But you are setting a limit because you are saying that twenty is too much.

JS: No, we are saying twelve hundred feet is too much.

ASTJ: I am saying twelve hundred feet. That is the only thing the Essex Bylaw allows me to rule on.

BH: O.k., O.k. This is why I asked about the loops.

ASTJ: If I had a plan that showed me where the houses go and showed me that the twelve hundred feet was not..

JS: Exceeded.

ASTJ: No, no. Showing me that exceeding the twelve hundred feet was not an outrageous thing to do then who knows what we might come up with.

RF: Guys it is about nine o'clock. We should discuss..

ASTJ: Excuse me. (Addressing Russ Brown) Have you read the new OSRD and the process?

RB: The new one you are proposing?

ASTJ: Yes, it is a different way of approaching.

RF: It is something we are very interested in and if we have it approved at Town Meeting it should allow a lot more flexibility.

RB: That's in May?

RF: Yes. We are having another public hearing on it. We have already had one public hearing on it and we had some good feedback on it regarding septic systems and conservation land and lot size and stuff like that... We got a grant from the Mass Audubon and we have a good working draft going and I can definitely see an OSRD would allow us a great deal more flexibility with a subdivision such as this and I think it would allow us a much more win, win, situation and a quid pro quo situation, but that is all theoretic conversation.

ASTJ: We should end this hearing.

RF: Yes. We are crippled here because Mary-Ellen isn't here and she manages our schedule. All I have hear for the week of February fifteenth is the Public Hearing for the Zoning Bylaw and the OSRD.

JS: Just call Mary-Ellen to confirm. Before she left she already booked someone in. Just tentively say the fifteenth for now and then have them call Mary-Ellen.

Due to the fact that the Board wanted to review the opinion of Town Counsel, Kopelman & Paige regarding the use of Turtleback Road to access Essex Park Drive and to also have time to discuss the outcome of said opinion and the questions, issues, concerns brought up during the Public Hearing it was determined that the Public Hearing would be continued until the next scheduled meeting.

Lowland Farm

Orestes Brown, Attorney for Peter Van Wyck

Peter Van Wyck, owner

RF: Now Russ you dropped off a letter at the last public meeting and correct me if I am wrong, but the last letter said that when the Definitive Subdivision Plan was done in nineteen seventy-four, the houses that are going to be built there are subject to the rules of seventy-four not necessarily the way they are now.

JS: That is the way I read it.

RF: And so, thus since, how does that affect us.

JS: He doesn't have to get the twenty five hundred square foot approval.

RF: So did we really have that adopted in nineteen ninety-four?

ASTJ: That was a few years ago.

JS: The one question I have, and I am really not trying to be contentious, I am asking. We were looking at this Agreement for Judgment (referring to copy in hand) if we were going by this then I look at the fact that the subdivision road was supposed to be done in two years.

KJ: And if you read this it says that if the subdivision road is not done then the subdivision should not be going in.

JS: That is exactly my point. I read your thing and it made sense to me. Then I say, well if the subdivision road was not done in two years then..

ASTJ: Are you suggesting that if Peter is playing hardball then we should too?

JS: I don't know, but I am suggesting that if we sent reminders that said hey, you have got to do this and you didn't get it done, and like I said, not to be contentious, but if we are supposed to go by the letter of the law here and if the road wasn't done, then I would like to go back and say...

RF: What does that do?

JS: What it says is that he would have to get a special permit for a house over twenty-five hundred square feet.

KJ: Because the subdivision is no longer valid, he didn't finish the road.

JS: Because he didn't follow the Agreement for Judgment.

RF: Wouldn't the first thing he had to do was to finish the road?

ASTJ: The real question here is...

KJ: That doesn't mean this doesn't automatically mean that this doesn't apply here because it says that it is null and void.

ASTJ: The real question is, are any of conditions we are likely to impose on Peter be happening if Peter finished the road?

JS: No. That's what I don't get. We have just asked him to finish the road. We are trying to work with you. You have one thing to do to finish the road and still you don't...

RB: I raised the issue and then once I raised the issue. Of course I had forgotten this was tied up from nineteen ninety-four until two thousand and two and it was grandfathered to nineteen ninety-four. Actually it is very common.

JS: I actually learned something from that.

RB: I think you are right; that statute is very commonly applied.

KJ: It is.

RB: But, what was the reason I raised the issue was there have been several renditions of this plan and Peter has adjusted his houses, ever so slightly, but every time he moved them it meant that he had to go back to the Con. Com. to get a new Order of Conditions. There has been, one, two, three; there has been several Orders of Conditions and all of them have been granted, but that is a process and the plan that was submitted that I think was submitted for a special permit did not quite match the one that is before the Con. Com. (referring to plan) This is the one that is before the Con. Com. and it has all of, this is what Peter wants to do, and it actually includes all of the requests of the Planning Board. Except there was a request that there was another hammerhead here, which did not get done, and this was adjusted in compliance with the Agreement for Judgment. The Fire Department looked at the plan and signed off on it.

JS: I thought we also wanted one here.

KJ: I wouldn't be too worried about this one here, because that is a driveway here.

RB: So, is there a reason why not to get the special permit from the Planning Board? We have included everything you asked for.

KJ: I see no problems.

ASTJ: Yes, we are good to go.

RB: Great. I would rather not make waves. I think in the future though and it is a point I have raised; these houses are just over twenty-five hundred square feet; like twenty-five hundred and fifty square feet.

JS: But if you had known before hand you would have chopped off the fifty?

BH: Now does the twelve hundred foot cul-de-sac apply in a case like this?

ASTJ: This is a driveway. A cul-de-sac is a road.

BH: It is so contradictory.

ASTJ: No it is not. You could add this to the twelve hundred, so you don't want to make the twelve hundred there. Look, the fact is it is possible to legally say that you can go more than twelve hundred feet.

BH: There is more than one house on a lot here.

JS: It is a condominium I believe.

BH: I am just bringing this up for my own education. You have all obviously been through this before.

ASTJ: Bill, the basis of the law is that it is obviously an arbitrary length, but the twelve hundred feet, if you go past that then the length of driveways that can be added onto that can make the whole strung together length and the number of people who will be egressing on that street will be too many.

RB: I think the difference is that the driveway does not correlate to the number of houses where a subdivision road does. A subdivision road is dictated by frontage.

RF: We were questioning: number one, on a typical driveway cross-section change bitcom to limppact gravel; we wanted to see the roadway crowned in the cross-section.

KJ: Yes, have that.

RF: The second thing we wanted to see was to redesign the road in the southeast corner to a sixty-degree angle...

JS: Limit the common area...

KJ: Yes, did that..

RF: We need a sixty foot to the centerline radius...Number three was a record of DPW comments.

JS: I thought that was also the Fire Department comments?

ASTJ: I just saw that and it was signed off.
JS: That's all we wanted to see, the piece of paper that had that.
BH: If we have three houses on a lot, doesn't our Bylaw require three hundred feet of frontage?
ASTJ: No.
RF: The other three things we asked about; number four... number five, the Fire Department needs to sign off on the plan, number six, the condo association has to be on file with the Planning Board.
KJ: The Fire Department sign off is there.
RB: Yes, it is right there, checked and approved.
JS: Yes, check.
RF: Obviously you don't have a maintenance agreement yet.
RB: We haven't gotten to the point where we finalized that yet.
JS: You are drafting that...
RB: Yes.
KJ: Well, we will want a copy of that once it is done.
RB: We will have to do that in order to sell these.

Due to the fact that the Board wanted to review the opinion of Town Counsel, Kopelman & Paige regarding exceeding 2,500 square feet and to also have time to discuss the outcome of said opinion and the questions, issues, concerns brought up during the Public Hearing, it was determined that the Public Hearing would be continued until the next scheduled meeting.

Regular Planning Board Business

RF: Motion to adjourn the meeting.
ASTJ: I second the motion.
All in favor?
Aye.
Motion passed unanimously.
Meeting adjourned at 11:05 p.m.

Next meeting is set for Wednesday, February 15, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: 
L.W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, February 15, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:31 p.m. by Kim Jarvis, Acting Chair.

Attendees: Bill Holton (BH), Andrew St. John (ASTJ), Kim Jarvis (KJ), Michael Cataldo (MC)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Absent: Jay Sweet, Rob Fitzgibbon

Building Inspector's Report

5 Riverview Road – Maureen Appleyard

BS: I have one application which is just a review by the Board which is for 5 Riverview Road, Maureen Appleyard for the addition on the right side rear of the house on the back of the one story house. It has sign offs from B.O.H. and Con. Com. checked off on it that they don't need to approve it and it has DPW sign off that they have permission to hook into the sewer.

ASTJ: And we are reviewing it for what?

BS: Just for the one story addition.

The Board reviewed the plans.

BS: Unless you have any issues, that is all that I have.

MC: Did anything happen with Andrews the guy that was building about his barn?

MF: That was Story Street right? He told Rob that to let the Board know that he was going to take care of his barn.

MC: Was it Andrews Street.

MF: No, George Andrews, Story Street. He said he was taking care of it.

BS: I do have a few items of interest. 45 Forest Ave and the Board was asking about the driveway that suddenly appeared.

MC: Jerome French.

BS: Paul Goodwin did get me a letter that said it was only a driveway. I will keep a copy on record.

BH: What is that?

MC: Next to Jerome French's. It goes to the house on Forest Ave.

KJ: Any news about the house that was supposed to be turned down on Western Avenue, Eastern Avenue?

BS: What house is that?

MC: The Feener's house. We voted and allowed him to let him keep it as storage.

BS: Someone stirred that up and then all I did was hear about it.

ASTJ: If someone doesn't like the way something looks then the people are just going to have to pass a design bylaw.

MC: Good luck.

BS: They wouldn't go for that; I probably wouldn't go for that. Maybe a historic district. There was one on Rocky Neck that went on for years and then they were quite shocked that yes, they could determine that.

BS: I have a question regarding Lowland Farms, Peter Van Wyck.

MF: My understanding is that the ANR was approved.

MC: We didn't need to go through site plan review because it was grandfathered.

BS: He didn't withdraw the site plan review?

ASTJ: No, it was dropped.

MF: Here is the new thing; he is applying for an ANR. I have the application. He told me this on Monday. I said to Russ Brown he should bring the application in for this meeting.

BS: I am going to get a decision on that right? I actually agree with their argument.

ASTJ: We did too.

MF: Is he going to have to go through site plan review for each time he builds a dwelling over two thousand five hundred square feet on Lowland Farms.

ASTJ: No.

KJ: We still would need to approve the citing of the building during the building inspector's report.

BS: I wanted to talk about the Kopelman & Paige's decision regarding 31 Martin Street.

MC: The Richards.

BS: Yes. I read the decision and I am not sure I really agree with it

MC: She said because of our 6-4.2 ability it doesn't really need to go through the Board of Appeals since it is within our jurisdiction and we have the ability to approve it.

BS: I just thought it was a unique take on that. Is she going to send us something official on it?

MC: Yes. She will mail a hard copy of the decision.

BH: Mrs. Richards is coming in tonight isn't she?

MC: Are the Rocky Hill Road people coming in here today?

MF: Yes.

MC: I would like to have legal counsel review this issue.

KJ: There is a lot they want to change hands.

MC: And they want to do it with an ANR.

KJ: The difficulty is that they want to do it with a non-conforming lot. The question is can they create a non-coforming lot to complete the ANR process?

MC: My argument is, no.

BS: They would have to put it that it is a non-buildable lot.

MC: They could shift the line so that they would have one hundred and fifty feet of frontage or they could deem it as a non-buildable lot and they said no.

BS: What I see is that the only two issues the Planning Board looks at if a lot is buildable is lot frontage and lot area.

MC: The third one we need to look at is adequate access and in my opinion when we allowed that road to be built we said that there could be no more than ten houses on the road. When they develop this lot, no matter what their intent, they would create an eleventh lot.

BS: And that road was a subdivision?

MC: We waived the standards because there was an argument as to whether the road was public or private.

BS: So that used to be Conomo Road?

MC: Yes.

BH: There is a fire gate.

MC: The decision was that anything over ten lots and the road would need to be modified.

BS: So they want to give this lot to Greenbelt right?

MC: They want to lot swap.

KJ: Greenbelt has an out parcel.

BS: So that parcel has no frontage on Rocky Hill Road.

KJ: It does.

The Board reviewed the plans that had been submitted to the Board.

ASTJ: I was going through Ice House Lane yesterday. It wasn't raining, but the snow was melting a mile a minute. I can see their problem, but the problem is certainly not caused by the subdivision. Actually, right here is the problem because the new drive comes in here and then the catch basin is right there.

BS: This is Arielle Lane.

ASTJ: No, this is Ice House. The catch basin is right here.

KJ: There is another one right here. If this were really causing that you would see erosion here.

31 Martin Street – Sara Richards (SR)

KJ: Our first item after the Building Inspector's report was the decision from our legal counsel regarding the property located at 31 Martin Street, Barry Richards. This was regarding the exchanging of one piece of one lot to another lot and both lots are non-conforming. Upon discussion among the board and documentation from legal counsel in writing it appears as if there are no issues with this land transaction as long as it is stated that it is a 6-4.2 finding recognizing that the lots are non-conforming.

MC: If you prepare the ANR plan we will sign it.

BR: We have a plan.

ASTJ: It has to be something done by a surveyor.

MC: Shouldn't it be done by the owner?

BH: Yes, Todd should have it done.

MC: Basically what we are saying is that we don't think there is anything stopping us from signing such a plan.

SR: So you just want to see a actual surveyed plot plan of the actual lots and Todd is going to have to have that done and he can be assured that you will sign off on it.

MC: Then it would be him coming to the Board applying for the ANR. Basically, it would be his application and his survey.

SR: O.k.

MC: Whenever it is done, come on in.

ASTJ: And when it is ready, give Mary-Ellen a call.

Public Hearing – Essex Park Drive – Peter Van Wyck (PVW)

KJ: Our next item, it is now 8:14, the continuation of the Public Hearing for Essex Park Drive. I would like to now officially open the Public Hearing for the continuation of Essex Park Drive.

Due to the fact the correspondence was stamped confidential the Planning Board secretary did not share the decision with others; only the Planning Board. The Planning Board did give the Planning Board secretary to share the decision with the other people involved.

Andrew St. John reviewed the correspondence from Kopelman & Paige and paraphrased the letter regarding their decision. Kopelman & Paige stated that Peter Van Wyck does have the right to grant lot owners in the second subdivision the right to use the same (road). The letter went on to state that if there were to be a dispute between the residents of the first subdivision and Peter Van Wyck that it should be done privately.

KJ: I have something I would like to mention. I went out there this weekend. I drove down Apple Street and I drove on Turtleback Road. I made a few observations. One is that although Turtleback Road is narrow and windy and has steep slopes it doesn't appear to be any worse than Apple Street and it has similar conditions to Apple Street. Apple Street is also steep and windy etc.; that's an observation. The other observation I made was that Turtleback Road is in very bad shape and that as far as we know it was never completed to our satisfaction. I would like to propose to the board that

perhaps we not consider attaching a new subdivision to Turtleback Road until Turtleback Road has been completed to our satisfaction and is not in a state that is in poor condition. If at the time it was completed and the applicant would like to present a subdivision plan then we may consider such an application.

ASTJ: I concur.

MC: I agree. I am not sure that we are in any position to approve a new subdivision is off of a substandard road and in its current condition it is a substandard road.

ASTJ: Lets see if there are any comments from the public.

PVW: What are you saying is in poor condition?

KJ: The road hasn't been completed.

PVW: The only part I have to complete is the extension and that will be in the spring.

KJ: What the extension is connected to is in very bad shape. I would suggest that we not connect a new subdivision on it and perhaps then that we need to get a new pavement overlay on it which is the responsibility of the owners on it because they own the road.

PVW: I was planning on doing the whole thing, but the owners have not shown that they have interest in seeing a different situation and then my position is that let the owners do it.

MC: That is nice of you to volunteer other people's money to complete your work. How many years has it been now?

PVW: I have to deal with the circle, no question.

MC: How many years now?

PVW: I said it was going to be done in the spring.

MC: You said that last spring.

RB: There is a final coat that is going on Turtleback Road Extension.

ASTJ: And without the finish coat it has deteriorated significantly.

MC: The rest of Turtleback Road has deteriorated too.

PVW: And that has to be done by all of us.

RB: Then there is the original Turtleback Road.

KJ: Which you need to come into agreement with everybody and that is not our issue.

PVW: No, it is not ours; it is the association of people. It is all of our responsibility.

Agatha Zawaska (AZ), Turtleback Road: Not to repair after the installation of gas lines.

KJ: The repair of Turtleback Road, not the Extension, because the Extension is before the Planning Board. Not the rest of Turtleback Road because it is a private issue.

ASTJ: Except in so far in regards to a connection onto that road from that road which is not currently, and appears to have not been in a very long time an other than substandard road. Approving a subdivision off of the road appears not to be in the Town's best interest.

MC: I think basically we have the ability to take what is out there today and take it into consideration of what has been proposed as his new subdivision and decide what is adequate or not.

BH: I have been up there too and I concur and Russ, we are talking about the original Turtleback Road and the first problem I see is if you go up the hill and go right to continue on you have to stop, back up and drive around the corner.

MC: Where is that?

BH: Before you get to Peter's.

MC: Regardless of what is said about this tonight, we should take any public comments and then close the public hearing.

RB: I was going to offer that you can condition any approval regarding the upgrade of that road.

ASTJ: We would take that into consideration.

RB: I can respect that as far as the Extension that he has an obligation to finish but the existing road...

ASTJ: He has to be in agreement with the association about that road.

RB: No, he owns that road outright.

ASTJ: Fine, he owns it he needs to fix it.

MC: We are at the point that we can close our hearing and make our decision. I am of the mind set that we are not going to put conditional approvals on anything because we have been working with Peter for so long I don't want to put any kind of an extra complication into the process.

ASTJ: Yes.

KJ: Agreed.

BH: Yes.

Jean Rainey, Turtleback Road: What you just said in regards to not needing additional approval and yet what you just said about the first part of the road not being acceptable not being ready for connection right now, would that lead to you denying the proposed plan?

ASTJ: There is no proposed plan yet. There have been a bunch of drawings floating around and Peter is working to see if we would consider the connection. I think what you heard was our reluctance to consider the connection until the issue of existing road have been completed and that there is agreement with the users of the road.

Jean Rainey: I think along with everyone else that since August you have heard what we have to say and we don't have anything else.

Mike Dyer, Indian Rock Lane: The question I have is about the original Turtleback Road and was it built to the town standards? I am speaking specifically about the width of that road and the grade which goes down to Apple Street. I have gone down that many times. When it is wet or icy I worry about that road; even when it is dry I worry about that road and it is a very hairy intersection. If you would talk about the road construction.

BH: I can comment on that because it goes back to 1978 I believe when I was on the board. The grade exceeds the specifications by about four percent. It was six percent when we began the subdivision. When we looked at it originally it was around nine, nine and a half.

Mike Dyer: Did it get a variance at the time? How did it wind up like that?

BH: Because we didn't have a Clerk of the Works.

PVW: I think we did go by what was acceptable in the 1950's and 60's.

BH: I don't think so Peter, I don't think there is a spec anywhere that calls for an acceptable nine percent grade.

ASTJ: This is speculation Mike, I don't think we are in a position to answer this question.

Mike Dyer: My comment to the Planning Board that as a concerned citizen that roadway safety is not disregarded and I think you need to take traffic safety into consideration.

ASTJ: I am not sure you are aware of it but one of the first comments we made to Mr. Van Wyck was that we were going to require a traffic study.

Jean Rainey: Can you be more specific regarding road standards?

MC: I feel that if he is going to be putting in additional amounts of traffic due to the subdivision that we would have to go back and look back at the width of the road, I don't know if you can ask him to bring back a three percent grade to the road, but I would believe we would ask for guardrails and lighting.

KJ: One point I would like to make is that there is a lot of concern about people driving down Turtleback Road and hitting this grade. In the course of this discussion, what no one has mentioned is that if we have a connection from Turtleback Road and off of this new subdivision off of Western Avenue then that would then provide a safe means of access onto the streets of Essex without having to go through that intersection during dangerous conditions. Just a comment.

BH: The only way to assure that is to make sure it is a one way street.

KJ: I am not saying that; I am just saying that having another way to access the subdivision may deter the flow of traffic.

ASTJ: I am not sure that would change my mind about the alternate access.

KJ: I am not suggesting that, what I am saying that is Mike made the comment about altering the existing grade and I don't know if we can do that, but in response to that, there could be another means of egress that would meet the requirements of a subdivision road.

ASTJ: Until we have a good traffic study I am not going to make that determination.

PVW: What I want to do is to get the Town Counsel comment. Now I am going to put before the board with just a single access off of Essex Park Drive. We can look at it and toss it around and see if you like it. However, it requires that a longer than twelve hundred foot street be allowed.

MC: We have already been that route and we told you that it is not an acceptable option.

ASTJ: We did start there and I think with the present discussion we may have gone further.

MC: Motion to close the public hearing for the Preliminary Hearing of a Subdivision located at Essex Park Drive at 8:40 p.m.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Lowland Farms – ANR Application – Peter Van Wyck (PVW), Russ Brown (RB)

RB: This shows the final subdivision that we would like to proceed with and all of the proposed units are shown.

RB: There are three lots now; he is going to go to six total lots.

ASTJ: I have two lots four?

BH: This does not change lot three at all.

RB: Lots one, two and three do not change at all.

ASTJ: So you are proposing how many dwellings total?

ASTJ: Now you are just cutting out lots five and six?

RB: Yes.

BH: Is it safe to say you are going to have three on each lot?

RB: Not necessarily. Really, what lots one, two and three are looking at is three houses each. Lot five may have two; one on lot six and a special permit for lot four because he wants to do twelve units in a cluster.

MC: Is that eighteen total?

RB: There will be twenty-four total units on a seventy-acre parcel. The ANR is to create lots five and six. Each has adequate frontage.

KJ: Any discussion from the board?

The Planning Board reviewed the ANR plan submitted.

MC: What was the ANR we approved last year?

RB: That was for the existing lots; one, two, three and four.

The Planning Board decided to accept the application and the plans for the proposed ANR.

35 Rocky Hill Road – Joe Small, Hancock Engineering

The Planning Board approved the ANR application and signed the Mylar.

The Mylar for the previously approved ANR for 90 Apple Street was signed.

MC: Motion to approve the meeting minutes of December 7, 2005 and January 4, 2006 as amended.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Regular Business

Mail

Invoices

BH: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 9:30 p.m.

Next library meeting is set for Wednesday, February 22, 2006 commencing at 7:30 p.m. at the Town Library..

Presented by: M. E. Feener Attested to: L. W. Holton
Mary-Ellen L. Feener, Secretary L. W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, February 22, 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:35 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ) Kim Jarvis (KJ), Bill Holton (BH)

Building Inspector: Bill Sanborn

Secretary: Mary-Ellen L. Feener

Absent: Jay Sweet

Public Hearing – Open Space Residential Design (OSRD)

RF: The hearing is called to order; my name is Rob Fitzgibbon, Chairman of the Essex Planning Board.

The first item of business is that we are going to discuss the Open Space Residential Design. This is the second public hearing we have had on this subject. What I will do is talk about some of the changes we have done since our last public hearing on this topic, then go through a basic overview of what the document, what it is and what it is supposed to do, so on and so forth.

Then I am going to address some of the issues that were raised at the last public hearing and then we are going to open the floor for public comments. The draft is available with Sally, the Town Clerk and there are copies available for people tonight at the meeting. The draft has gone through sixteen (16) iterations and we have had a lot of wonderful people give their comments and feedback and so on and so forth, and that has been great.

Basically, one of the major changes that has been done since the last public hearing is that this proposal will no longer be part of the Subdivision Rules and Regulations, it will now be part of Section 6 of the Zoning By-Laws. What that means is that we have changed the numbering system on the OSRD draft to reflect this change, so it would be a new section. One of the other major changes we did is regarding the Open Space Requirement, section 6-14.09, Number 6, addressing the question as to where the protected land would go. Originally there were three choices, now there are two. The Town of Essex has been removed as an option for maintaining the open space and it is no longer an option. The land now has to go to a nonprofit organization or a corporation or a trust owned jointly or in common by the owners of the lots within the OSRD.

The OSRD is a means to be a variant of subdivision control. It allows you to preserve more open space. In essence it is quid pro quo, this for that. Everyone benefits: the developer gets density increases in the number of lots and the town and the people get more open space. It is considered to be a very good way to preserve the character of a rural town, while at the same time allowing for growth. I will get more into the benefits later on.

(Referring to visual aides) This is a traditional subdivision. It is a cul-de-sac with separate lots. With this traditional subdivision you go with the existing by-laws with no consideration of the topography or the environment. The OSRD sets aside fifty (50) percent of the developable land as open space. What an OSRD does is identify the conservation areas and the developable areas. What we would say is, o.k. what part would we like to save and what part would we like to develop, while identifying primary conservation areas, secondary conservation areas. Unlike conventional subdivisions, which focus on frontage and other requirements, the OSRD shrinks a development by the fifty (50) percent that is set-aside as upland. That is it basically in a nutshell.

The actual process is still the same as the current process for a subdivision. The design for the lots are what I would say is more logical. We require that we have a pre-application process with the developer. We would say, 'come in and lets have a chat about what we can do,' we would discuss the plans while looking at a sketch. Then we would have a site visit and we would still proceed as usual. One of the things I wanted to point out is that the number of units is determined by what is allowed under conventional rules. The idea isn't that the developer must decrease the number of units they can build under the conventional rules and regulations. The topography is taking into consideration first; a conventional way was to look at the lots first.

The OSRD is optional; a developer does not have to do this process. There are some density bonuses. The requirements are; you need five (5) plus acres, the minimum lot size are ten thousand (10,000) square feet, you have fifty percent (50%) of the required setbacks. So on a conventional plan you had a set back of twenty-five (25) feet, with the OSRD you would need half of that footage. Fifty percent of the

set back of twenty-five (25) feet, with the OSRD you would need half of that footage. Fifty percent of the uplands is set aside for open space. The perks are if a developer agrees to set aside sixty percent (60%) of the uplands then they could build two more houses. Also, if a developer sets aside two units for 40b, low to moderate housing, then they can have two more units. The maximum houses you can have is twenty percent of the basic maximum yield. For example, (referring to chart) if the basic maximum yield is twenty units, than twenty-four is the maximum number of units you can build. The owners themselves get a property that has a more neighborhood feel and the community gets more open space. The idea is the layout is friendlier, promoting a neighborhood feel.

I wanted to address some of the questions that were raised at the last public hearing. One of the questions was, common septic systems. From Glen Gibbs, Ipswich Town Planner, the common septic systems work fine for OSRD cluster developments. We obtained some great information from Cliff Pearce, who is the Planning Board Chairman for the Town of Rowley. One of the things that Cliff told us is that the shared systems are subject to DPH monitoring, which does not exist for individual systems. What that means is that if you had a problem with the shared system there is more likelihood to have that problem repaired. Currently, there is no monitoring system for repairs to an individual system until the owner sells them. An owner can live with a failed system until it sells. OSRD shared systems tend to be located on the best soil of the site, and away from wetland buffer zones. For example, in an OSRD planned development in Rowley that has two connected townhouses on each lot, they have a pre-treatment facility which greatly extends the life of the systems and the leeching field. What I would like to point out is that not every OSRD development would have shared systems. In the last fifteen years there has been tremendous advances in septic technology. Subdivisions can have their own treatment plants on site. Our own Town of Essex Board of Health Administrator, Elaine Wozny, has not expressed any reservations regarding shared septic systems.

Another question that came up at the last public hearing was regarding property values. An OSRD similar to this (referring to visual aide) is people will say, 'oh my God, you have smaller lots, and smaller lots must be worth less and we don't want that now because we need to raise our tax base.' What we found out was that is not the case. For example, in the OSRD development in the town of Newbury, Caldwell Farms, the townhouses start at six hundred thousand dollars (\$600,000) and go up to eight hundred thousand dollars (\$800,000). Mind you conventional style homes in Newbury start at the price range of five hundred thousand dollars (\$500,000). The interesting thing is that the OSRD units start at a higher price versus the conventional units. The source for this information was Sue Moses, a planner in Newbury. The Caldwell Farm has over sixty units for owners who are over fifty-five years old and they are always bringing in a source of revenue for the town. Another interesting benefit for OSRD developments is that they tend to be developed for over fifty-five housing and what is interesting about that is that typically people over fifty-five years old no longer have small children that would attend public school which in turn could be a burden on the current tax base.

Another question was would the value of properties in an OSRD development depreciate. There was a study done in Amherst that stated that units in an OSRD development appreciate at a twelve percent (12%) rate higher than conventional subdivision units. Our source for that information is Andrea Cooper, who works for the state of Massachusetts, the Department of Environmental Affairs. What Glen Gibbs noticed is that houses that built in an OSRD development initially are assessed at a lower value than conventional properties. However, then over time, they seem to appreciate to greater values than those built in what is considered to be standard subdivisions. The appreciation value is good.

Cliff Pearce found no evidence of the decline of value of the units. He also pointed out that the typical OSRD townhouses bring in substantial tax revenue with no cost to the town.

One of the other interesting things is that with OSRD due to the smaller infrastructure, the costs for the infrastructure is less because you are not building as much road. What other towns do is that they do interesting thing with townhouses and condominium. An OSRD does not need to be small houses.

A couple of more things and then I will open the meeting floor up for comments. I wanted to point out was that one of the comments we heard was that, 'all Essex needs is our poor soil which will protect us from development', what we found from the Executive Office for the Department of Environmental Affairs is that combined with the septic system technology and the changes that are soon to come regarding Title V requirements, and the government changes that is going to happen, what it boils down to is that the state of Massachusetts is going to tighten the Title V regulations because it found that towns are misusing Title V as a growth control rather than using Growth Management tools. It may actually end up being easier for developers to build developments in Essex.

That is basically it with the comments we have received. Let me open it up to comments from the citizens on the floor.

B.J. Frye, Apple Street: You spoke about more units for Open Space. One of the things that I have been talking about from the beginning is traffic. Out of every one of those units come two cars. You can see it when it is right in your face. I am seeing it for Lowland Farms on Apple Street. The traffic on the street has increased horrifically and we haven't even got the big bomb yet, it is coming. I don't know what you can do to control the traffic. It would be the same number of cars, but when you get to the density bonus stuff, then you are allowing more houses that will have more autos. That doesn't mean I am knocking what your plan is, but definitely the bonus thing is going to make more cars and this is a serious, serious problem.

RF: I think to address your comments, BJ, you raise a very, very good point. The way that the increased traffic would be addressed in the OSRD system is that basically we would start off with the pre-application conference and work with the developer. Would every unit have a two-car garage? Where is the site? Is it near downtown? There will be the opportunity for the Planning Board to talk to the developer beforehand. As with our regular subdivision applications, the plan is distributed for review and the board can require a traffic study and there will be a public hearing as well. I think that a lot of traffic impact will depend on the location of the site. For example, if it is located on Apple Street or if it is located along Route 133. The number of units, the type of units and so on and so forth, all will make differences. There are ways for us, controls for us, to handle the traffic if it rises to become an issue. We can't offer a subdivision by-law that states that no one can have cars.

BJ Frye: I realize that, but it will be a problem from now on as the world becomes smaller. I don't know how Turtleback Road was restricted to twelve (12) houses, but that was for different reasons because of the road length and then Turtleback Road Extension and then the new planning board restricted the extension to five houses. You have the right to limit the number of houses. There is nothing that restricts the number of cars the houses may have.

RF: We refer to them as units because you could have two townhouses attached.

BJ: When you have your traffic studies, does a traffic study ever limit the number of houses?

BH: We will be having traffic studies galore.

BJ Frye: Everywhere. The narrower roads for the subdivisions can't be changed.

BH: Your question regarding the bonus units is a good one. Keep in mind that it is a twenty percent bonus. So it is something that can have control and then with a traffic study we would have information to use.

RF: What you are raising are valid questions. However, what you are bringing forward is something of a macro concern regarding the growth of Essex and how does Essex handle the increases in traffic that it has seen in the last ten years and will continue on seeing in the future. What do we do about that? There are probably other things we can do as we look at subdivisions and there may be other things we can do, for example, parking lots, increased public transportation. The issue you raised is a much larger issue. What we noticed at the last public hearing is that people thought the OSRD is a 'growth prohibition tool'. I like to think that it neither helps nor hinders growth. It tries to keep the town character and keep more open space. It can also do good things to increase the town to increase the over fifty-five housing and to increase the low to moderate housing while continuing to grow while making more efficient use of streets and what have you.

Scottie Robinson, Turtleback Road: I have a letter from Martha Hoar. She wanted to be here, but she had another obligation. (Scottie Robinson read the letter from Martha Hoar.) "Dated February 22, 2006, To the Essex Planning Board, I have read the proposed Open Space Residential Design Bylaw which you propose for Essex, and attended the Planning Board's recent open meeting at which public comments were solicited. As a member of the Essex Open Space Committee I became familiar with the OSRD/Green Neighborhoods project over the past several years as presented at the Mass. Association of Conservation Commissions' annual conference and at other workshops in Essex County. I believe it to be a useful tool for our town as we work to maintain Essex's traditional character in the face of increasing development pressure. It will allow a piece of land to carry the same number of units as our present requirements without sacrificing favorite views, wildlife habitat and historic or natural features that Essex citizens have come to value. Look at some of the post-WWII developments in Essex and neighboring towns and imagine how much better they might look if OSRD had been available when they were built. The Essex Planning Board has worked hard to adapt and tailor this concept to Essex's situation and needs. I feel strongly that this proposed Bylaw is a good thing for our Town's future. It will guide development in a way that we will all be proud to live with. Sincerely, Martha F. Hoar."

RF: Any other comments from the floor.

BJ Frye: I would also like to add a written comment from Martha. "I think you have all worked so hard and done such a good job and it isn't an easy job. I was reading that last paragraph that was on the list

of Martha's changes and it says, all together I think you have got yourselves an excellent document. Obviously, a lot of work has gone into it and I think it is highly appropriate for Essex right now. Dearly needed with developers circling our town. My congratulations to you for being so active and good luck with getting this passed at Town Meeting."

RF: Is there any comments from the board?

No response.

RF: I would like to adjourn this public hearing. Thank you.

Public Hearing – Proposed Additions to the Current Town of Essex Zoning, Chapter 6

The Planning Board reviewed the proposed zoning by-law additions. One citizen was in attendance for this public hearing, Bruce Fortier.

Mr. Fortier, the Planning Board members, and the Building Inspector discussed in an open forum the areas that the Planning Board are proposing to make additions to what is not clear or defined in the Zoning By-Law, Chapter 6.

In the past Mr. Fortier was a member on the Essex Planning Board and he is knowledgeable of zoning issues and the reasoning for the zoning by-laws written in the past when he was a member of the Planning Board. He made numerous suggestions to the current planning board regarding what was proposed. For an hour the Planning Board, the Building Inspector and Mr. Fortier reviewed each proposed zoning requirement.

It was decided that the public hearing should be closed and that the issues brought forward by Mr. Fortier and the new ideas generated by the Planning Board and the Building Inspector will be reflected in a new zoning chart that will be presented at the next scheduled meeting of the Planning Board on March 1, 2006.

RF: Motion to adjourn the meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously and the meeting adjourned at 9:55 p.m.

Next meeting is set for Wednesday, March 1, 2006 commencing at 7:30 p.m. at the T.O.H.P. Burnham Library.

Presented by:


Mary-ellen L. Feener, Secretary

Attested to:


L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, March 1, 2006 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:44 p.m. by Rob Fitzgibbon, Chair.

Attendees: Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Bill Holton (BH), Kim Jarvis (KJ)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener

Absent: Jay Sweet

Building Inspector's Report

89 Choate Street - Mark & Ingrid Renzi

BS: First permit is just a review for 89 Choate Street; I don't believe any action needs to be taken. It is to add two additions to the existing structure. Both additions will conform. One is small and the other is a little bit larger. They do have all the approvals of the Fire Department, BOH, Con. Com., DPW is not required. There will be a master bedroom suite, a family room, a master bath and a half bath. The Board reviewed the plans.

24 Maple Street – Laura Doyle

BS: The owner wants to build a two family property on a vacant lot. The lot is located on the corner of Maple Street. It is seventy-one acres; 31,110 square feet on a road that existed prior to 1972. The application has the approval of the B.O.H., Con. Com., DPW and the Fire Department.

The Board reviewed the plans. The Board discussed the lot size and the fact that single family and two family properties have the same dimensional and zoning requirements.

Also it was noted that as a two family one of the two units could have no more than two bedrooms.

MC: Motion to approve the application for a building permit for Laura Doyle of 24 Maple Street for the construction of a two-family house that will be two thousand square feet in size. Finding it has received approval from the B.O.H., Con. Com. and the Fire Department and it meets all the Bylaw requirements of the Town of Essex. The application has the required approval and that it meets all of the Bylaw Requirements of the Town of Essex.

ASTJ: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

210R Western Avenue – Rosemary & Denis Burnham

BS: The owners want to remove an existing two and half car garage and then rebuild the garage on the existing footprint. Application has the approval of B.O.H., Con. Com. and the DPW.

The Board reviewed the plot plan and discussed the location of the home and the garage.

RF: I make a motion to approve the building permit application to for the reconstruction for a two point five car garage placed on the existed footprint for Rosemary & Denis Burnham of 210 Rear Western Avenue finding that it meets all of the Bylaws of the Town of Essex.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

24, Lot 50 – Joseph Parady

The application is for the new construction of a 24 x 16, eight-foot high duck blind that does have approval from the Con. Com.

The Board reviewed Essex Bylaw 6-10.2.8 regarding duck blinds.

BH: Would it be appropriate for us to ask Mr. Parady to come in to a meeting to discuss this with us?

MC: I think that would be a great idea.

BS: The applicant's intent is definitely for hunting.

MC: If I see ten people out there in the summer time drinking beer and we have angry citizens because we allowed a duck blind to be built, we should make sure his intent is to build a duck blind.

KJ: If he says it is a duck blind we are going to require him to say it is a duck blind?

BH: Yes.

KJ: Aren't we saying we are requesting he verifies he is building a duck blind by the sketch he submits for the building of the duck blind?

BH: I would like to see the sketch of what he is building.

BS: I would go along with providing a plan to show what it is going to look like but what you have to remember is that when people put down on the application that it is going to be a duck blind, you have to be very careful you are not assuming it is anything else.

ASTJ: We're not.

MC: Due to the lack of clarity in the application can't we ask them to come in?

BS: If the application says it is a duck blind, I would caution against accusing someone of something else.

ASTJ: We are not accusing anyone of anything.

RF: Can we invite someone from Con. Com.?

MC: Yes.

BS: The Con. Com. has approved it.

ASTJ: I would be interested in finding out what the Con. Com. has to say, let's look to invite them.

BH: Motion to request that Mr. Parady is asked to attend a meeting and to discuss with us his intent and to present a sketch.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

The Building Inspector will contact Mr. Parady and request he attend the next Planning Board meeting.

64 Eastern Avenue – Sigrid Olson and Liz Claiborne

The Building Inspector updated the Planning Board and asked if they had any feedback regarding a question that was proposed to him that evening during the his business hours. A real estate sales agent approached him regarding the purchase of the lot located at 64 Eastern Avenue and inquired if they would be allowed a change of use. The buyer wants to employ twenty people, there are four acres that are buildable and there does exist a parking area for fifteen to twenty cars. The owner would also like to build a home on the lot. The Board replied that they would be willing to entertain an application and stated that they believed the proposed change of use would be a good idea.

A Board member brought forth the question regarding the property on Western Avenue owned by Guerin to the Building Inspector and the condition of the building as well as the property that is owned by Frank Friend located at 6 Main Street.

BS: The owner is working on the property and within the past year he has had a hardship that has delayed the progress, he is working on the property.

63 Main Street – Brigit Venti

The Building Inspector will be mailing a certified letter regarding the fact that she has yet to obtain a change of use permit for the business she is operating at the property and that she must do so immediately.

Zoning Chart

The Board and the Building Inspector discussed the zoning chart. The Board decided that they would present the chart without the additions as the article for the warrant for the Town Meeting.

RF: Motion to approve as an article for the warrant for the annual Essex Town Meeting the insertion of a chart titled Dimensional Requirements. The chart will be inserted as a new section 6-6.1.A at the beginning of Section 6-6 Land Use Regulations in the Zoning Bylaws of the Town of Essex. Said chart to reflect precisely what exists in Section 6-6.

MC: I second the motion.

All in favor.

Aye.

- Arielle Lane - Drafted a letter as an official stand of the PB regarding the completion of the work and forwarded it to Rob for his input.
Board to review and sign.

Mike

- Contacted K & P for the following: A formal written decision regarding 31 Martin Street, Barry and Sara Richards and he contacted Brendhan Zubricki requesting permission to contact K & P regarding their input of Lowland Farms. Inform Board of outcome.

Bill

- Wrote the following: An Approval Letter for Lowland Farms and an Approval letter for 82 Eastern Avenue for Board to review.
Board to review and sign.

Andrew

- Took pictures of Turtleback Road to present during Essex Park discussion.
- Master Plan to present at a future meeting.

Rob

- Drafted article for warrant regarding OSRD and preparation for March 6th deadline.
- Drafted article for warrant regarding Zoning Chart and preparation for March 6th deadline.
Board to Vote at 3-1-06 meeting.

10:30 p.m. - Meeting Adjourned

Motion passed unanimously.

Lowland Farms

Mike Cataldo contacted Kopelman and Paige, legal counsel for the Town of Essex, regarding the question which was presented by the legal representation for Peter Van Wyck, Russ Brown. The question was when the approval for the subdivision was granted by the Board in 1997 were the then bylaws 'frozen'; thus current bylaws and zoning requirements do not pertain to the development regarding the necessity of having site plan review for buildings which exceed 2,500 square feet.

The ANR for Lowland Farms was signed. Russ Brown will bring the Mylar to the Board for their signatures the next time the Board officially meets.

Essex Park Drive

ASTJ: I like the idea of connecting streets in general. I would say I am concerned about the impact of traffic onto Apple Street.

The Board reviewed the requirements for a preliminary plan. It was decided that Rob Fitzgibbon for the Board to review at the next meeting would draft a letter with the recommendations discussed.

The Board also explained to Peter Van Wyck when he approached the Board regarding a different topic that the discussion regarding Essex Park Drive was not a Public Hearing and if Mr. Van Wyck would like to discuss a different topic that the request and/or concern should be written and presented to the Planning Board secretary.

Arielle Lane

Rob Fitzgibbon will write a letter that will be presented to the concerned abutters. Rob will also contact Kathy Benevento due to the Board's questions regarding the different type of accounts. They would like clarification regarding the term bond in regards to Arielle Lane. The invoice for the remaining balance for the subdivision accounts was not signed due to the questions raised. The As Built was not signed.

OSRD

RF: Motion to approve the article for the warrant for the annual Essex Town Meeting which states that the Town of Essex amend the current Zoning Bylaws of the Town of Essex by inserting the following new Section 6-14 entitled Open Space Residential Development into Chapter VI of the Zoning Bylaws and any subsequent sections accordingly, or act on anything relative thereto.

BH: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Regular Planning Board Business

KJ: Motion to approve the meeting minutes for Wednesday, December 7, 2005 and I also move that we approve the meeting minutes for February 22, 2005 as amended.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

RF: Motion to adjourn.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously and the meeting was adjourned at 10:21 p.m.

Next meeting is set for Wednesday, March 15, 2006 commencing at 7:30 p.m. at the T.O.H.P. Burnham Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: 
L.W. Holton, Clerk

PUBLIC HEARING

Present: Jeffrey D. Jones, Chair; Mark W. Lynch and A. Raymond Randall, Jr.
Also: Brendhan Zubricki, Town Administrator - Pat Laskowski, Assistant to Board.
Present from the Planning Board: Rob Fitzgibbon, Chair, William Holton, Kim Jarvis,
Andrew St. John and Jay Sweet. Also, Town resident, Joseph Walker.

At 7:30 p.m. Chairman Jones said he would entertain a motion to call the Public Hearing to order on behalf of the members of the Board of Selectmen and the Planning Board for the purpose of holding a Public Hearing to discuss and receive public input relative on the Town's overall community development strategy including a proposal to replace the current Senior Center with a new modular building on Pickering Street. The motion was moved, seconded and unanimously Voted. The Chairman introduced the aforementioned members and turned the meeting over to Town Administrator, Brendhan Zubricki.

In conjunction with one of the requirements of the DHCD grant application, Mr. Zubricki passed around a sign-up sheet in order to record the names of those individuals present this evening who, in addition to the aforementioned Board members and staff, were representing either themselves as interested residents or on behalf of an interested organization (indicated in parenthesis following their names) as follows: Roger Lander, Walter and Effie Andrews (Council on Aging); Michelle Grant, Georgeanne Lane, Susan Kane, Kim Reed, Tammy Harrell and James Wilson (Girl Scouts and Boy Scouts); Gloria Story, Karin Symmes and Priscilla Doucette (Senior Citizen's Club); Thayne Symmes, David Elwell, Margaret Nelson, Irene Hayes, Jean Ball, and Roger Ball; Evelyn Hickey (Friends of the Council on Aging); Rosemarie Carr and Arlene Pizzo (Sr. Travel Club) Robert Coviello and Kurt Wilhelm (Essex Historical Commission); Cathy Hoog (Essex Housing Authority); Marilyn Klypka Simpson and Ann Cameron (Essex Youth Commission); Gordon Martin (Finance Committee) and David Lane, Town Moderator. Not signed in but present, Julio Chuy, Gloucester Daily Times reporter, James Mulcahy, and Sandra Pelkie-MacIntyre (COA).

Mr. Zubricki opened his remarks by confirming that each individual in attendance this evening was given a copy of the proposed Town of Essex Community Development Strategy (CDS). He explained what the State guidelines required and how strategy would be evaluated. Mr. Zubricki advised, for informational purposes, that the Town went through a process, beginning approximately two plus years ago, called the Community Development Planning process during which a number of public forums were held to discuss housing, economic development, natural resources, and open space planning themes. A \$30,000 grant, he said, allowed the Town to employ the services of the Metropolitan Area Planning Council who assisted the Town in holding public workshops resulting in the development of the first real tangible planning document that the Town ever had. He commented that the CDS document continues where the Community Development Plan left off and proposes a variety of ideas for actual implementation. Mr. Zubricki continued that it is a prerequisite of the Department of Housing and Community

Development (DHCD) grant process that there be a document setting forth prioritized community development needs and proposing a formal plan intended to accomplish specific goals in the Town. As such, Mr. Zubricki confirmed that the Town is now seeking to begin to implement the ideas set forth in the Community Development Plan. In addition, he noted that a new need to replace the Town's senior center emerged subsequent to the production of the Community Development Plan. With the above in mind, he presented a summarized overview on the proposed CDS document which follows in its entirety.

Goals and Objectives

The goals of the Town of Essex Community Development Strategy (CDS) are several-fold: First, the CDS is intended to crystallize community-based planning and priority setting from past efforts in order that those needs identified as being most critical may be addressed by appropriate project funding and/or implementation. Since past planning efforts were intended to develop a comprehensive prioritization of community planning needs and projects over a broad spectrum of planning themes, the CDS will ensure that public resources at the local, State, and Federal levels are directed at high priority issues.

Second, the CDS will draw upon the prioritized needs noted above and will outline a plan of action intended to accomplish specific goals that will positively impact the community. Implementation of specific projects and activities to accomplish specific goals will require a comprehensive, integrated approach to ensure that each action supports the overall planning direction and desired character of the community.

Third, the CDS will demonstrate how the community's priorities are consistent with the Commonwealth's Sustainable Development Principles such as promoting compact development; expanding housing opportunities; revitalizing brownfields and abandoned buildings; implementing EO 418 Community Development Plans; protecting open space; and preserving working natural landscapes.

Scope and Outlook

The CDS is calibrated to what the Town may expect to accomplish over the next three to five-year period and will be updated from time to time as priority projects are completed and secondary priorities take center-stage or as new priorities emerge based on changing circumstances, conditions, or public input. The CDS should be considered a "living" document.

Approach, Content, and Format

The most comprehensive planning effort to date in the Town of Essex has been the EO 418 Community Development Plan (CDP) process – a community-based needs assessment and planning tool aimed at capturing and prioritizing meaningful planning goals with the input and assistance of a diverse public audience. The CDP, coupled with other planning efforts and implementation projects such as the Town's Open Space Plan (OSP); a recent Public Works Economic Development (PWED) grant; a recent Community Development

Action Grant (CDAG); a recent Brownfields grant; and a soon-to-be-implemented intermodal transportation project (Route 133 Reconstruction Project) serve to well-demonstrate a truly community-driven priority setting process of late. Each of these tools and implementation vehicles are replete with input from and the support of the general public and Town officials alike. The CDP incorporated multiple public forums and workshops to create an overall roadmap as a place to start and projects that have since been completed have begun to weave the fabric of integrated planning desired by Essex. The CDS is part of the natural progression in the Town's community development program and brings actual implementation of the CDP (a publicly-funded and State-approved process) to the forefront. A portion of the language found in this CDS is taken directly from the CDP and assertions made herein are supported in great detail by that document.

The CDS was first presented and discussed at a public hearing on March 13, 2006. The hearing was intended to highlight the overall planning status and future community development thrust in the Town and to specifically receive input regarding a newly-emerged need – the replacement of the Town's existing Senior Center. The document is organized by highlighting the top priorities in each of four planning themes in a fashion similar to the CDP (themes include Natural Resources and Open Space, Housing, Economic Development, and Transportation). Also, included in each theme are projects that have already been completed, projects that will soon begin, and/or initiatives that have been tried and have failed - in order to provide the best picture of planning goals and actual follow-up actions intended to advance community goals on a variety of fronts. As a final synthesis, the CDS concludes with a prioritized list of projects drawn from the various themes that the Town intends to undertake in order to address community development goals.

Top Issues within Planning Themes

Natural Resources and Open Space

Protection of specific natural resource and open space areas was prioritized in the CDP and the top three protection initiatives have been identified as a reasonable focus over the next three to five years. The Town's approach to this theme is primarily to acquire important properties using Town and/or private conservation organization funds to the extent possible. The kind of efforts outlined below are very much supported by the Town's Open Space Plan as well.

Hardy's Hatchery/Vitale/Benotti Parcels. The Hardy Hatchery land contains Priority Sites of Rare Species Habitat, Endangered Species Habitat, Supporting Natural Landscape and wetlands designations. The Benotti parcel contains wetlands and Supporting Natural Habitat. Recently, the Hardy's Hatchery site was sold and was previously under an agricultural restriction. However, unfortunately, neither the Town nor a local conservation group had sufficient funds to purchase the site outright. The Town worked with the local conservation group to attempt to negotiate and purchase a conservation restriction that would

survive the sale but those efforts were unsuccessful. The goal was to utilize a conservation restriction to preserve the character of this historic working landscape and open space. The Town is once again bringing to the voters the potential adoption of the Community Preservation Act (CPA) so that future potential sales regarding similar properties may be considered by the Town by exercise of the Town's right of first refusal (among other uses of CPA funds).

The **South Essex Woods** parcels, including the following lots:

- A) The approximately 9-acre Parsonage lot that was given to a local church in 1710. The Manchester Essex Community Trust (MECT) owns land just to the north of it and the church owned parcel is exempt from MGL 40-A. This is a key piece of land to the effort by MECT to assemble and protect the South Essex Woods, as it is centrally located. It is a Priority Site for Species Habitat and Core Habitat as well.
- B) Various town owned tax title parcels of about 20-acres in total. These tax delinquent lands are mostly wetlands, Core Habitat and Priority Sites of Rare Species Habitat areas.
- C) Maple Swamp area of about 50-acres. This is potential tax-title land that contains wetlands, Core Habitat and Priority Species of Rare Habitat designations.

Alewife Brook Buffer between Pond Street and Essex Park or from Library to Chebacco Lake. This area contains Supporting Habitat for Anadromous Fish, is in the town's Wellhead Protection Area, provides Supporting Natural Landscape, wetlands and Core Habitat.

Housing

According to the CDP, young families and senior populations are particularly burdened and in light of current wait lists for subsidized housing units, the need will likely increase in the future. Additional efforts are needed to meet their needs, along with the needs of all income groups for a greater diversity of housing types to choose from in the future. Essex has a documented need for more senior and handicapped accessible affordable housing. Essex can expect significant growth in empty-nesters and, later, early seniors.

With the above in mind, it will be necessary for the Town to approach the future by considering strong senior planning efforts that will be bolstered by working closely with the Council on Aging and by providing a quality Senior Center that will enable the senior population to congregate and to plan and speak with a common voice. The present Senior Center (known as the Scout House/Council on Aging Center) was, subsequent to the CDP process, deemed by the Building Inspector to require a variety of spot-fixes just to allow for continued occupancy. Those small items have been corrected but major structural issues with the wooden and brick pillar foundation and with elements on the second floor have caused the Building Inspector to deem the second floor "off-limits" and to

carefully monitor the foundation pillars since they will likely be deemed unsafe in the near future – translating to the loss of the use of the building. Further, the building is in extremely poor overall condition and needs much interior and exterior improvement work. It is estimated that the work necessary to rehabilitate the existing building will be far more costly than an outright replacement of the building. As such, the replacement of the Senior Center (a “re-develop first” approach in the heart of the downtown area) is the Town’s first priority relative to future housing planning and enhancement of a suitable living environment for the Town’s senior population and that population’s other associated issues.

Many housing issues outlined in the CDP suggested a focus is necessary on future zoning study and potential changes. Relative to the promotion of compact development, redevelopment using the “re-develop first” concept, and affordable housing, and expanding housing opportunities, the CDP highlighted a variety of ideas and options as follows:

It would be useful to allow accessory apartments on existing lots and make it permissible for an apartment to be a separate structure if design/safety/parking requirements are met. Also, conversion of large single-family homes to multiple apartment units or condos should be encouraged.

In the Causeway area of the downtown, uses with retail/light commercial on first floor and residential ranging from 1-3 units and 4-6 units on upper floor(s) should be encouraged – providing for the integration of economic development with the other goals listed above.

Along the Route 22 Corridor, Pond Street to the Hamilton line, residential development should be encouraged with new limits on industrial/heavy commercial.

On Laurel Lane, the potential exists for multi-unit affordable housing with mixed ages.

Along Eastern Avenue, from Main Street to the Gloucester line, the Town should limit commercial development and propose residential.

Along John Wise Avenue, from Western Avenue/Pickering Street to the Ipswich line, the Town should promote lower density residential housing and land conservation via Open Space Residential Design (OSRD). Presently, the Planning Board is putting forth to the Town for the Annual Town Meeting in May of 2006 a new, OSRD By-law developed using grant funding that will enable this approach in all areas of the Town if accepted.

In the Western Avenue/Martin Street Triangle area, the Town should consider a higher density mixed use area with restricted commercial uses.

Economic Development

Prioritized Economic Development Goals are as follows and the Town's general approach to this theme is to focus a variety of projects on the downtown area with attention also given to overall Town character issues.

The Town has made great strides recently regarding economic development measures. A PWED grant obtained by the Town provided the Town with a new, central parking facility in the downtown area intended to support parking for new jobs created via new, private building construction in the immediate area and to provide parking for visitors to the Town. A CDAG grant obtained by the Town provided for a new sewer pump station with public restrooms to provide visitors with restroom facilities and to provide downtown businesses with a permanent wastewater solution. A Brownfields grant obtained by the Essex Shipbuilding Museum provided for the cleanup of pollutants from a historic boat yard (a historic landscape in the downtown area) that will continue to be used for museum projects and will continue to attract visitors to the Town. The CDAG and PWED projects both referenced a downtown building that is presently abandoned but will be rehabilitated, likely into mixed commercial and residential use, in the near future. All of the above efforts included numerous public hearings and community input sessions in order that the Town's economic development thrust would be based on a wide variety of viewpoints and needs.

In the future, the Town will be looking toward priorities established in the CDP for continued economic development opportunities as follows:

Encourage entrepreneurs in home occupations/small businesses, farms, and shellfishing.

The lack of separate business districts buffered from residences can lead to nuisance conditions (noise, truck traffic, odors). More active enforcement of existing rules would help in some instances but would require more staff resources being applied (e.g. one building inspector now shared with Gloucester). Residents have a long standing tradition of being able to operate businesses in or adjacent to homes and the Town wants to maintain that opportunity. It may be possible to phase in any regulations for reducing impacts so that people have a chance to adjust their plans.

Carefully manage siting of larger commercial and industrial uses.

Any business can now locate anywhere in town if the parcel size is large enough and wastewater disposal requirements are met. Design reviews may help in buffering impacts of developments even if separate business districts are not designated.

Manage growth through public dialogue and participation and provide public information sources such as a town web-site.

Most residents are unaware that the town's zoning by-law is relatively unusual and allows all types of uses everywhere in the town rather than identifying specific districts for commercial and residential.

Education/publicity of the potential negative impacts of the current zoning (i.e. projects being proposed in inappropriate locations) might increase support for designating commercial and residential districts. The Town should explore establishing a long-term planning committee. A Town web site has been established and may now be used as a tool for this type of information.

Use planning/zoning and financial tools to achieve a sound balance between conservation and appropriate development.

The current zoning provides no balance, but instead allows any kind of development to occur anywhere. With development increasing in communities surrounding Essex and alternatives to septic systems now available, it is only a matter of time before developers propose large projects that will be inappropriate to the scale and desires of the community. The planning board will be unable to stop such projects despite the objections of neighbors. The Town should explore establishing districts where commercial/industrial uses are permitted by right and districts where businesses are not allowed.

However, a master plan with such districts was voted down in the 1980s. The Town should identify models of zoning used by other rural Massachusetts communities that are becoming more suburban.

Strengthen Essex as a tourist destination

Identify and promote attractions that will extend the stays of visitors to the attractions such as the Shipbuilding Museum, Little Farm (SPNEA), and Crane's Beach. The recent Brownfields grant obtained by the museum will further these goals.

Support/maintain the clamming industry

The number of clammers has declined because productivity of beds has fallen and closures are common after rainfall. The Town should support efforts to increase production and better manage the resource, e.g. by eventually creating a rotation plan to allow the flats to recover.

Transportation

Transportation Goals are presently being approached with a strong focus on the downtown area and these goals are very much integrated with the Town's Economic Development Goals. According to the CDP, the Main Street/Causeway area of the Route 133 corridor in Essex needs much improvement in relation to vehicular and pedestrian safety, ease of access to the businesses along the causeway, and flow of traffic. The Town is presently programmed for a comprehensive reconstruction project funded by the State and Federal Governments under the FY06 element in the Transportation Improvement Program. Much public input, particularly from the business community in that area, has yielded a reconstruction plan that the Massachusetts Highway

Department supports while keeping the needs of area inhabitants and the character of the Town in the forefront.

Prioritized List and Action Plan for Implementation of Community Development Projects/Activities

The following action items represent a tangible plan for furthering community development in Essex and serve to present an integrated planning roadmap covering a variety of planning themes:

1. The replacement of the existing Senior Center is the Town's first priority. The Town will be applying for CDBG-CDFI funding in March of 2006 in an effort to address this need. If funded, the project will be implemented beginning in the summer of 2006 and may extend to late 2007.
2. The successful implementation of the Route 133 Reconstruction Project using non-CDBG State and Federal funds is next in importance. The Town has worked very closely with the Massachusetts Highway Department and the Metropolitan Planning Organization to ensure that the Reconstruction Project moves forward and the Project represents a key improvement to the downtown area starting with advertising by September of 2006 and with construction as of the spring of 2007. The project will conclude by late 2008.
3. A continued effort to bring about the passage of the Community Preservation Act is the Town's third priority. The Town considered the Act in the past and turned it down. However, in the Town Election that will occur in May of 2006, the Town will again consider the Act with great support from the Board of Selectmen, the Planning Board, and the Finance Committee. Passage of the Act would translate to the accumulation of local tax surcharge funds and non-CDBG State matching funds that could be used to purchase open space or exercise rights of first refusal if properties come out of agricultural or forestry use restrictions. The Town will be holding an informational forum on the Community Preservation Act presented by MAPC on April 10, 2006. If the Act is accepted, funds will accumulate to potentially leverage open space acquisition over the next 3-5 years and beyond.
4. The Planning Board has put great effort into the development of an OSRD by-law that will be presented to Town Meeting in May of 2006. If adopted, this effort will represent the beginning of meaningful zoning changes in the Town. The Planning Board will then begin to focus on other zoning issues such as the establishment of specific zones and greater freedom relative to mixed-use and accessory apartments. Such an effort will have a positive impact on housing variety and affordability; quality of life; economic development; open space conservation; and transportation. The Planning Board will proceed in stages and will strive to bring individual issues to the Annual Town Meeting over the next three to five years and beyond.

His presentation concluded with a specific discussion of the list of prioritized projects that the Town plans to undertake in the near future as outlined in the four numbered paragraphs above.

Following his presentation on the proposed Community Development Strategy document, Mr. Zubricki said that since the CDS is considered a living document, it can be revised and/or expanded on in the future. Moving to the public input portion of the Hearing on the proposed Community Development Strategy document, he asked if there was anyone present that wished to speak in favor or against the document.

Speaking in favor of the document, Mr. Rob Fitzgibbon, Chairman of the Planning Board, commended Mr. Zubricki for the amount of work he had invested in developing the Community Development Strategy, a document, he said, which will certainly give the Town more chances to pursue grants as alternate sources of funding in the future.

Mr. Andrew St. John of the Planning Board also confirmed that he would like to see expansion on the current document in the future and was pleased to see the beginnings of community development implementation.

There being no response to an inquiry as to whether anyone wished to speak opposed to the CDS document, Mr. Zubricki confirmed that it was his recommendation that the Board of Selectmen and Planning Board both take action to adopt the CDS as presented. The Chair of the Planning Board, Rob Fitzgibbon said he entertain a motion to approve the Community Development Strategy as presented with the notation that this is a living document. The motion was moved, seconded and unanimously Voted. Chair of the Board of Selectmen, Jeffrey Jones, said he would entertain a motion that the Community Development Strategy as presented be approved with the notation that this is a living document. The motion was moved, seconded and unanimously Voted.

Following formal acceptance of the Community Development Strategy, Mr. Zubricki introduced a proposal to apply for community development block funding for a new senior center. He confirmed that the purpose of the grant is to serve people with low to moderate incomes and since the elderly are presumed to be of low to moderate income, the senior center is a viable project for the Town to pursue, especially in light of its top priority in the CDS document. He then introduced Mr. Joe Walker, a local resident who, he said, has helped the Town by developing the initial schematic drawings of the modular building construction of the proposed two-story senior center.

Mr. Walker, who has had many years of experience in the modular building industry, confirmed that he had drafted a set of floor plans in accordance with the original footprint and per the suggested requirements as set forth by Mr. Zubricki. Mr. Zubricki confirmed that he had provided Mr. Walker with suggested building requirements prior to this evening's Public Hearing at which public input would be given that could result in modifications to the initial drawings. A copy of the floor plans was passed out to each individual and/or Board member present followed by an explanation by Mr. Walker relative to what the building would look like, how a modular building is constructed at the factory and then transported to its final destination. A review of the floor plans followed subsequent to which those present were asked to offer their favorable or unfavorable input on the plans.

Arlene Pizzo questioned why both of the restroom facilities were located on the first floor rather than having one on each floor. Mr. Walker confirmed that the second restroom could be on the 2nd floor just so long as it met the code.

Roger Lander asked about the foundation of the building. Mr. Walker assured Mr. Lander that the building would have a foundation that was in accordance and full compliance with the building code.

Jim Wilson pointed out that the exit on the second floor was in the same location as the stairs and elevator. For safety purposes, he asked that a 2nd exit be put in the front as well in the event of fire in the location of the stairs/elevator. Mr. Walker acknowledged his request and again confirmed that these were preliminary drawings which would undoubtedly be modified several times over in accordance with public input and to best serve the needs of the occupants of the building. Mr. Wilson commented that he felt that, other than those particular issues, the plan was very well done.

Ann Cameron asked if there would be a separate entrance to the second floor. It was confirmed via the plans that there was a separate entrance to the 2nd floor.

Sandra Pelkie-MacIntyre asked if the grant would also cover all of the handicapped accessibility requirements of the building. Mr. Zubricki confirmed that the grant pays for all of the construction. He also explained that while matching funds are not required, the Town and private partners will be contributing a sum of money. He said in addition to the Board of Selectmen having sent a signed Request for a Line Item Transfer from the Reserve Fund to the Finance Committee asking that they allow the transfer of \$5,000 for the project, private individuals were being approached to make donations to augment the Town's contribution.

Referring to a comment as to whether the basement of the building could be utilized for the scouts, Mr. Roger Ball asked if a full cellar could be part of the plan. Mr. Walker said it will definitely be considered if no blasting would be required. Mr. Ball indicated that he was very impressed with the overall drawings.

Overall comment was made from those present, a great many of whom came from the Town's senior population, that they were very favorably impressed with the building plans as presented.

There was no one present who spoke in opposition to the planned construction or the plans.

Chairman of the Planning Board, Rob Fitzgibbon, said he would entertain a motion to support the senior center project. The motion was moved, seconded and unanimously Voted. Chairman Jones said he would entertain a motion to support the senior center project. The motion was moved, seconded and unanimously Voted.

Following the votes of support from the Planning Board and Board of Selectmen, individuals representing the Council on Aging, the Essex Housing Authority, the Scout House Committee, the Boy Scouts, the Girl Scouts, the Senior Citizen's Club, the Friends of the Council on Aging, and the Senior Travel Club expressed their support as well.

A motion was made by Selectman Lynch that Chairman Jeffrey Jones be authorized to sign all documents related to the CDBG funding. The motion was seconded by Selectman Randall and unanimously Voted.

Chairman Jones thanked everyone for taking the time to attend and provide input to the Public Hearing. He said he would entertain a motion to close the Public Hearing. His motion was moved, seconded and unanimously Voted.

Chairman Jones said he would entertain a motion to open the Selectmen's meeting in order to address a number of Board of Selectmen administrative issues unrelated to the CDS and the CDDG funding. The Minutes of this portion of the Selectmen's meeting will be kept in a separate Meeting Minutes document. The motion was moved, seconded and unanimously Voted.

Prepared by:

Patricia B. Lushoushi

Attested by:

[Signature]

**Town of Essex Planning Board
Minutes
Wednesday, March 15, 2006, 7:30 p.m.**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:35 p.m. by Rob Fitzgibbon, Chair.
Attendees: Michael Cataldo (MC), Rob Fitzgibbon (RF), Andrew St. John (ASTJ) Kim Jarvis (KJ), Bill Holton (BH)
Secretary: Mary-Ellen L. Feener
Absent: Jay Sweet, Building Inspector, Bill Sanborn

Map 24 – Lot 50

Joseph Parady (JP)

JJP: I believe you guys already heard about this at the first meeting and had some questions for me. Basically it is just rebuilding a duck blind that is on an existing footprint.

The Board reviewed the map of the lot.

ASTJ: There is somebody's houseboat here?

JP: I do not know.

RF: Who owns the rest of the marsh?

JP: I know there is a Frank Hart who owns this parcel (indicating on map), who signed as an abutter.

BH: Do you own this piece of property?

JP: I just purchased it.

BH: Who did you purchase it from?

JP: Richard Oakes.

RF: We assume you duck hunt?

JP: Yes I do. Bill also told me that you may be picturing a houseboat type deal.

RF: The thing is that our bylaws do not have any definition as to what a duck blind is, so we obviously understand is a kind of semi-permanent, temporary structure that you stand in and shoot ducks.

JP: Correct.

RF: I think the thing we were concerned about is that according to the existing footprint, what is it 25 square feet?

JP: Sixteen by twenty four.

RF: Because this is in a marshland area and it is a conservation sensitive area and there is concern from the citizens regarding houseboats in that area down river, we wanted to make sure we understood what was planned.

BH: What are the dimensions?

JP: It will be sixteen by twenty four and an eight-foot wall height. I contacted the Division of Marine Fisheries and Wildlife and the biologist wrote me a letter and I have been working with Ducks Unlimited. I work for the city of Gloucester Police Department and we have a few houseboats there as well and I know what happens there. The last thing I would want to do is jeopardize that and be on the front page.

RF: Does the Fisheries and Wildlife have any guidelines?

KJ: It says in the letter they don't.

JP: I can't say there is a guideline. I can say that there is someone who had the standard size there and he tried to go bigger and he got caught. Basically, if you go down the end of Island Road, Bob Brophy has one just like the one I am planning.

RF: Is there a standard you have four feet and then your friend has four feet.

JP: No, it isn't going to be big enough so I can have twenty guys out there.

BH: Was there an existing blind there at one time?

JP: Yes, I have that information. It has a pitched roof.

ASTJ: Do you plan on having heat, electricity, running water, bathroom?

JP: No. I would be getting there by boat and my boat has a bathroom.

ASTJ: The letter from Fisheries and Wildlife states that there are no regulations for the building of a duck blind.

RF: I looked on-line and I couldn't find anything regarding the size and building of a duck blind in Massachusetts.

RF: You have Con. Com. approval right?

ASTJ: (Reading the approval) DEP says, determination rebuild old duck camp on existing footprint using only handheld tools the camp will be rebuilt on old pilings. The work described within the buffer zone as defined but will not alter an area subject to protection; therefore said work does not require filing a notice of intent. Construction of the camp is restricted to the sixteen by twenty four footprint and before any construction is done a copy of the deed transferring ownership of the property must be provided to the Conservation Commission. If the Con. Com. is approving it, I would like to entertain a motion.

BH: I can't entertain this without giving my own opinion on it. My feeling is that we are living in 2006. Back in 1935, 1945 and 1955 there was a lot of duck hunting and there were a number of blinds down there. Right now there are a lot of boaters down there and it is a high profile area, a sensitive area. Mr. Parady may have all good intentions, maybe in a few years he would want to sell it and then there would be a new owner, new intentions and there we sit with a duck blind which now could turn into an entertainment spot and I honestly can't support this.

RF: What would you recommend?

BH: I would vote no.

ASTJ: Based on what Bill? I am completely sympathetic with your thoughts, but I wonder if there is something in the bylaws that says we can vote no.

BH: We can vote no because it is not appropriate for the area. This is not a house on the lot which doesn't meet square footage.

KJ: It is a use permitted in our bylaws.

JP: Sir, I understand your concern.

ASTJ: Is there a way we can constrain the use?

BH: We can put the restrictions on it, that doesn't mean that they would be enforced later. Not that Mr. Parady will abuse it, but that structure will be there for a long, long time. This is a precedence we are setting.

ASTJ: And the letter from the Fisheries and Wildlife?

BH: Yes, I can see their point and it is a good one, they are on the side of the fish and game tradition.

MC: Can we put a restriction on it?

RF: Would that hold up in court? I must say that the DEP says that it does have some restrictions and they and Con. Com. seem o.k. with it. I can see the point of precedence, but I would say that we could put a restriction on it. Once a duck blind, always a duck blind.

JP: What else could it be turned into?

ASTJ/RF: A houseboat.

ASTJ: We have all seen house boats out there and one of those things wouldn't be the end of the world, but we wouldn't want to see them dotted along the shore nor would we want to have a line of duck blinds along the shore.

BH: Another question I would have is how does this fit with the Wetlands Protection Act?

KJ: Clearly it must because the Con. Com. and the DEP has signed off on it.

BH: We have our own bylaws.

KJ: The Con. Com. has to review it relative to the state and local bylaws.

BH: Our bylaws?

KJ: Yes.

BH: Our Planning Board Bylaws?

KJ: The Con. Com. is responsible for upholding our bylaws.

ASTJ: Our bylaws allow a duck blind.

KJ: My opinion is that the Con. Com. has approved it and it is a permitted use and if it is going on existing piling, I don't have a problem with it.

RF: The section of our bylaw that discusses permitted use is Section 6-6-10.3 Wetlands Use Regulations and it specifically states it is a permitted use. Interestingly enough it mentions houseboats as well. I called Greenbelt today and their response was 'oh, o.k.'

JP: I have actually spoken to Mr. Rimmer several times about this and I am actually trying to put him in touch with Ducks Unlimited to help out with the marsh as they did on Island Road.

RF: My concern would be that these structures are a semi-permanent or a portable structure and I would be concerned if there was any state or federal rules about taking it away or any other regulations we should worry about.

KJ: I think then it would fall to the Conservation Commission. (Reading from bylaws) What this specifically says is the following uses are exempt from the provisions of this bylaw.

JP: It took me months to find this parcel because it was an existing footprint. I couldn't just put pilings into the ground. This is a one of a kind.

BH: I will vote for this with restrictions. I am just afraid of the future. We are going to have a beer celebration down there and this is an open invitation for misuse.

RF: I don't know how the restrictions would be enforced.

KJ: I think we need to be careful about always reading into what may happen to things. When it comes to a use on the marsh, I would presume the Conservation Commission would be more responsible.

BH: I am saying I would vote for it with restrictions.

ASTJ: Looking at the bylaw, this is not really part of our review.

BH: I think when we first heard about this was that we wanted to define what is a duck blind. Can it be a float up and get your drink place?

RF: There are no definitions as to what consists of a duck blind in either our bylaws or the state laws.

KJ: Now, our bylaw discussing duck blinds includes houseboats, which is what you are discussing.

ASTJ: Exempt from provisions of this bylaw. I have to say, I share your concern (Bill) but I must say that in the future we may want to take this situation into consideration and go to the town. However, in reference to Mr. Paraday I don't see it being a problem. If it became a problem we could go to the town and ask for some rule to regulate it.

MC: Another thing is that if we agree that the use is a duck blind and if it became something else it would need to come before us.

RF: I don't know what else it would become that was not also exempt.

ASTJ: If I was being totally honest here, I would say that I don't think that Mr. Parady needs to be here; he could walk away right now.

BH: So he doesn't need an application?

ASTJ: No.

KJ: We need to acknowledge this because he went before the Con. Com. and he is citing a building for a building permit.

BH: It is time for a bylaw change.

ASTJ: The fact that this is the first time in four years that this has come up, I am not as concerned.

JP: Believe me, this is rare that the opportunity comes up there are many places you can do this; there is a lot of Greenbelt land. The Con. Com. was very concerned about the marsh, but the fact is that the pilings were there.

MC: The fact is that if you were building a garage on the existing footprint you would only have two years to rebuild it. I would wonder how long this footprint was there, but they may be a lot older than three years old.

ASTJ: Under permitted uses of the Wetland Use Regulations after the section which states that they are saying that they are exempt, it goes on to say that all existing non-commercial uses of the land, prior to the adoption of this bylaw, within the jurisdiction of the bylaw, may be maintained or sold to the fullest capacity provided that no action was taken to encroach further on the wetlands.

BH: O.k. you have convinced me.

ASTJ: (to Bill Holton) I share your concern and it may be something that we could examine in the future.

RF: I would like to make a motion to approve a building permit to build a sixteen by twenty four foot duck blind on the great bank marsh located on map 24, lot 50, owner's name is Joseph Parady. We find that per discussion and review of Section 6-6-10.3, Wetland Use Regulations and finding that the use has been approved by the Con. Com. that said use is approved by the town of Essex and it should be built on the preexisting piles and the use as delineated in the application be the only permitted use and a change of use be subject to further review.

MC: I second.

All in favor?

Aye.

Vote passed unanimously.

It was decided that the Planning Board would begin a file regarding said property with a copy of the approved meeting minutes.

The Board reviewed the Mass General Law regarding Open Meeting Law and the form as required by the Town Clerk.

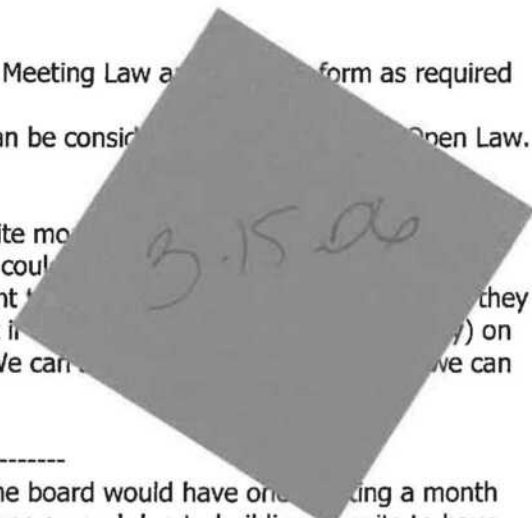
RF: One thing that I have mentioned before is that email can be considered an Open Law.

ASTJ: Only if we talk about sensitive issues.

KJ: Right.

RF: Ray Randall said to me, you guys should use the web site more. One concern he was concerned about is if using the web site as a bulletin board could be considered an Open Law.

KJ: I went to the MACC meeting a few weeks ago and I went to the meeting where they had an article on email. One of the points they make is that if you put anything on any of our emails, it automatically becomes public record. We can't say we can't pass on information.



The Meeting Schedule was discussed. It was decided that the board would have one meeting a month during the summer months with the provision that if there was a need due to building permits to have another meeting it would be posted and held.

The Board approved the schedule and the Planning Board secretary hours.

280 Southern Avenue – Paul Pitman

Mr. Pitman met with the Board for an informal discussion regarding his desire to subdivide the existing 10-acre parcel into three smaller lots. One lot would be approximately 6 acres with an existing house and two approximately 2.25 acre lots. The Board did tell him that he might be able to build 3 houses on a lot as condominium units. The Board reviewed the plot plan and the deeds for the property.

Mike Cataldo discussed accessed and adequacy of driveways and referred Mr. Pitman to Bylaw 6-5.14 regarding driveways. The Board suggested that Mr. Pitman contact a lawyer to discuss his options regarding condominium and subdivisions. They also stated that he could chose not to consult a lawyer and apply for a special permit for a subdivision that the Board could possibly reject the application. If that was the case he could apply to the Board of Appeals. The Board and Mr. Pitman discussed the criteria for a subdivision and also giving land to a conservation group.

Essex Park Drive

The Board reviewed the draft letter for the decision regarding the Preliminary Plan for Essex Park Drive.

Arielle Lane

It was decided that Rob Fitzgibbon would complete the letter regarding the approval of the As Built for Arielle Lane. The Board signed the As Built plan. The book keeping for subdivisions was discussed and it was decided that a new system would be adopted when the Town begins their new accounting system in July. The Board signed the invoice for the return of the funds held by the Town to the developer.

Lowland Farms

The Mylar for the ANR was signed. The fact that Kopelman and Paige, Town counsel, has not returned a decision regarding building house which exceed 2,500 square feet, was discussed and it was decided that Mike Cataldo would follow up with the law firm. The Board reviewed the draft of the decision for the Special Permit and it was decided that Rob Fitzgibbon would complete the decision for signatures by the next meeting.

Regular Planning Board Business

- Jay Sweet's resignation and Open Seats
- Upcoming Town Meeting
- Mail
- Payroll

RF: Motion to approve meeting minutes for February 22, 2006 as amended.

KJ: I second.

All in favor?

Aye.

Motion passed unanimously.

RF: Motion to adjourn the meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously and the meeting adjourned at 10:30 p.m.

Next meeting is set for Wednesday, April 1, 2006 commencing at 7:30 p.m. at the T.O.H.P. Burnham Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: 
L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, April 5, 2006**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:38 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Bill Holton (BH), Andrew St. John (ASTJ), Mike Cataldo (MC),
Building Inspector: Bill Sanborn
Absent: Kim Jarvis (KJ), Jay Sweet (JS)
Secretary: Mary-Ellen L. Feener

Building Inspector's Report:

BS: The first one is a request of Karen Mountain. I believe she is here. She is interested in purchasing some property on Route 133, 132 John Wise Avenue. What she is wanting to do is see if she can operate a landscaping business and reside in the existing property. There is approximately four acres. I will try to give you a quick run down (referring to plan.)

The Planning Board reviewed the plans.

ASTJ read the letter presented from the potential buyers of 132 John Wise Avenue. "Attached is a rough drawing of what we are proposing on doing at 132 John Wise Avenue allowing us enough room to run our business and live in this property. We are interested in purchasing this property for a family home and work, looking to run our small business from this property. We envision adding more farm like characteristic, such as the barn which would allow us storage space for our business but remaining a rural appearance. Other possible future additions would be to update the chain link fence with a split rail fence and perhaps add a farmer's porch to the existing house. We are aware that the Town's concerned about preserving the existing appearance of this area and we agree that it is an important point. A desire to live in the beautiful town of Essex is why we are excited to get the pre-approval so we can operate our business from this property and to have an aesthetically pleasing property.

It was decided that it would not be a home occupancy; it would be a change of use. The addition of a use would trigger the need for site plan review.

MC: I don't see why it wouldn't work, there is nothing in our bylaws that says it wouldn't work.

ASTJ: I wouldn't want to assure her that it is definite.

MC: I would make sure that you make it a contingency of your sale.

46 Wood Drive - Kevin & Joan Street

BS: Application is for the citing of a new building, Map 4, Lot 99B. It has the sign offs from BOH, Con. Com., and Fire Department. Applicant wants to build a new barn, this is for review and the property meets all the required setbacks.

The Planning Board reviewed the plans.

ASTJ: Motion to approve the application Kevin and Joan Street, 46 Wood Drive, Map 4, Lot 99B, for the construction of a barn as a new accessory building finding that it has all the necessary approvals from BOH, Fire Department, Con. Com. and under Section 6.4.2 it is not substantially more detrimental than the existing non-conforming use.

RF: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

53 Rear John Wise Avenue – David Lane - Jud Lane present

BS: Applicant would like to tear down existing garage and build a proposed barn; this is the siting of a new building. He has approval of the BOH, Con. Com., and the Fire Department. The new building will not be exactly the same footprint as the existing structure.

ASTJ: Jud, does this sit on the footprint of the old garage?

JL: It shows the existing and the proposed on there (referring to plan). It doesn't match up exactly. The barn doesn't have a cupola anymore, but it is the same barn.

The Board reviewed the plans.

MC: How big is the building?

BS: Thirty feet wide by thirty-one and twenty five feet high.

ASTJ: The use of the new structure is?

BS: A two-car garage and an apartment above.

ASTJ: What is this a third apartment?

BS: Yes. There is two now and a third is being added.

RF: So, current use is as a two family or is it a three family?

JL: It is two separate parcels.

ASTJ: The antique store and the barn is on the same lot, right?

JL: Right.

MC: Are you on septic yet?

JL: No septic.

ASTJ: With septic you will be able to do all this?

JL: Yes. What we did was there was a building permit we had approved about five months ago and we were going to move bathrooms into bedrooms because really the old bathrooms were in outhouses; just a very small room. We took the bedroom and made it into a larger bathroom.

ASTJ: If I were to describe this is wouldn't be a change of use, but a change of occupancy. The use is still residential, but he is changing a two family to a three family.

BH: He has the square footage.

ASTJ: Yes, he does. It has the B.O.H. approval. Five bedrooms total for the three units; does the unit above the garage have one bedroom?

JL: It is a two bedroom.

ASTJ: So the second floor in the house is a one bedroom?

JL: The second floor has two bedrooms the first floor has one bedroom.

ASTJ: Depending on how you count?

JL: No, it is pretty apparent. There is a kitchen, one room, one bedroom.

The Board reviewed the bylaw regarding multifamily properties.

MC: What is the building being used for?

BS: An accessory building.

BS: What he did a few months ago was to obtain a permit to move the bathrooms. It does conform to the lot. It changes the property from a residential two to a residential three.

ASTJ: The total is less than 2,500 square feet?

Judd Lane: Yes.

MC: Your Dad's lot is separate?

Judd Lane: Yes.

MC: So it conforms to the lot in terms of the addition. The change is basically residential two going to residential three. The commercial barn is it on the same lot?

JL: Yes.

MC: I make a motion to approve the application of Curly Cove Realty Trust, for construction at 53 Rear John Wise Avenue for the rebuilding of an existing garage with a two-bedroom apartment above it finding that it has the necessary approvals and it is not more detrimental than the existing non-conforming use. It has the approval of the DPW, Con. Com., Fire Department and the Board of Health.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

8 Eastern Avenue – Joanne Henderson

BS: This is going to be a 6-4.2 finding. Applicant is requesting to put a 10 x 14 foot addition to an existing workshop. It is an existing shed and he wants to make it a workshop. He has approval from BOH, Wastewater and Con. Com. He is going to keep it under ten feet because if he built as originally proposed at 12 feet he would need to obtain a variance. His existing shed is five feet from the set back, side yard set which is required to be ten, and he is going to keep it in line so that requires a 6-4.2 finding from the Board.

MC: Who signs off on the approvals for Wastewater? BOH or Wastewater?

BS: Wastewater.

MC: O.k.

BH: Where there is located is right behind the corner of the Silly Goose?

MC: No, isn't that considered Main Street? No, you are right. Which way does the numbers run?

BH: He is showing that there is no lot on this?

MC: Yes. Map 38, Lot 16.

BH: The Silly Goose is right here at 4 Eastern Avenue.

BS: I think you are right, Silly Goose is 4, or something.

ASTJ: I thought the Silly Goose was the last property on Main Street.

The Board determined the location of the lot.

ASTJ: We just need to have locus maps with applications.

RF: What importance is this?

MC: I would just like to know what we are approving.

RF: Why does the BOH need to sign off on this?

BS: If they are tied into sewer they do not need to be approved by the BOH.

BH: Is this going to have plumbing? why is it required on the application? (Reading from the application), description of work to be performed, adding a 10 x 14 foot addition to shop for workspace, hooked into sewer..."

BS: Yes, but I think I wrote that myself for my notes.

RF: Why don't we hold it until verification?

BS: What is happening is before everyone needed to be signed off by the BOH, so now we ask them if they are tied into the sewer.

ASTJ: As long as it says on plumbing, none.

BS: We can write it on the application and vote for it that way.

The Board reviewed the plans.

BH: I make a motion to accept the application for a building permit of Joanne Henderson of 8 Eastern Avenue for a 10 x 14 addition to an existing shed with no plumbing finding that it meets the requirements of the Town of Essex Bylaws, that it has all the necessary approvals and that it is not substantially more detrimental than the existing use.

ASTJ: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

162 Main Street – Eric Vennerbeck

BS: Applicant would like to add a 10 x 16 deck to the back of the house and it requires a 5-4.2 finding. The Board reviewed the plans and the application.

BS: The deck isn't going to meet the twenty-foot setback.

BH: This is Landry's place and this is Richdale, where is the house?

BS: This is the very small white house next to Richdales with the garage.

MC: It is the property that just sold.

ASTJ: Move that we approve the application of Eric Vennerbeck of 162 Main Street, Map 38, Lot 11, for the construction of a 10 X 16 deck at the rear of the house. It requires a 6-4.2; finding that it is not substantially more detrimental than the existing structure and that the neighborhood will not be downgraded by the addition of this deck.

RF: I second.
All in favor.
Aye.
Motion passed unanimously.

7 Dodge Street – Mark & Courtney Lane – Map 41, Lot 27

BS: Approval of BOH, Con. Com., Wastewater, and what they are doing is adding a deck to the back of the house and a dormer to the second floor and it does require a 6-4.2 finding due to the location of the deck which does not meet the setbacks. The house itself sits thirteen feet from the sideline; the closest corner of the deck would be thirteen feet.

The Board reviewed the plans.

RF: The current side yard set back is what?

BS: Twenty feet; there are no exceptions in Essex.

MC: There aren't any new bedrooms or bathrooms? It has sewer approval?

ASTJ: (Reading from application) Second floor three bedrooms, bath on each floor, and approvals from BOH, Wastewater, Con. Com., Fire Department. DPW says not applicable.

BH: This is the concern here; thirteen feet here.

BS: Yes, he can't put it any closer; it would be a variance.

ASTJ: My concern would be that I would want to make sure that because it is not parallel to the lot line, it is obviously closer here, thirteen feet here, I want to make sure it doesn't go closer than thirteen feet.

BS: They are aware of that; if they go plus thirteen feet they would need a variance.

ASTJ: What they are going to do, see, is extend this line of the house back and they will not be thinking of the thirteen feet; make sure they know that.

BH: We had that problem at Deer Park remember that?

MC: Motion to accept the application of Mark & Courtney Lane, 7 Dodge Street for an addition of a second floor; three bedrooms and a bath and a first floor addition of a deck that they are adding to the back finding that it has all of the necessary approvals, Con. Com., BOH, Wastewater, Fire Department and finding also that under a 6-4.2 finding it is not substantially more detrimental than it's previous use.

ASTJ: I second.

All in favor.

Aye.

Motion passed unanimously.

108 Martin Street – Conrad & Robin Garfield

BS: It was a retail shop that is now a florist shop. It is on the corner on the way to the dump. They are looking for a foundation only because they are putting on a pre-fab.

MC: How big is the lot?

BS: Not much, six thousand feet maybe.

MC: The lot was previous in existence for retail use.

BH: There was traffic in and out of there in the summer.

BS: There is a house that was closest to the point.

MC: At one point it is only 5 feet from the road?

BS: Yes.

BH: The house is only 1.7 feet from the road.

BS: That happens in Essex, they are improving the setbacks from what they are, I think all it requires is a 6-4.2 finding.

BH: I do too. I think it is an improvement.

ASTJ: I do too, what are they planning to do with this (referring to the building used for retail).

BS: They were planning on tearing it down, now they are not so sure, they may want to leave it that is why I scratched out to be raised, because they haven't decided, it would be accessory use only.

BH: When Kevin lived here he had a kitchen a living room a bedroom and it was tiny.

MC: As an accessory building it will not have plumbing or sewer?

BS: As an accessory building it will not have anyone living there.

MC: I am just questioning that if it did (have someone residing there) that it will not in the future.

BS: It would just be an accessory building.
RF: Can we approve it contingent on this building being an accessory building?
BS: Yes.
MC: It sure isn't big enough for two dwellings on one lot.
ASTJ: I question why are we staying so close to the lot line. I understand that the law says they don't have to, but I would like to see them move the structure away from the lot line.
MC: Why can't they just move it back?
BS: They could, but they probably want to keep away from the neighbors or have more yard.
ASTJ: I would like them to move it away from the lot line. I would like them to have the required setbacks.
BS: They can't meet the required setbacks.
MC: If they moved it to the left they could.
ASTJ: They have a one hundred and thirteen feet here, if they moved it a bit they wouldn't be as close to the street.
BH: What is the problem you have with this Andrew? This is the back of the house. There is another house here and another house here...
ASTJ: I am not seeing any plot plan as to how they are going to access the house, where is the driveway what is going on here?
BS: They are going to access the property off of Western Avenue, Martin Street, whichever it is.
ASTJ: I would like to see them move away from both lot lines and there is no reason why they can't put the house in the middle of the lot.
RF: If you moved it would it not be more detrimental.
ASTJ: Right now I am seeing a larger house, close to the lot line; that is more detrimental.
BH: You have one foot four inches and one foot seven inches here.
ASTJ: That is a previously existing structure.
BH: It is legally non-conforming.
ASTJ: Why would you build a new building and you have the opportunity to improve the situation, why wouldn't you.
BH: Because they want to have a yard, you can't have a yard over here.
ASTJ: What are the side yard requirements for residential?
BS: Twenty-five feet.
BH: Why would we ask them to meet the requirements if it is a non-conforming lot?
RF: Maybe we should ask them if they could come back to meet with us.
ASTJ: Maybe this is a matter of judgment, but I am thinking that five feet to the lot line is very close.
MC: I would just like to have someone explain to me why this is where they are choosing to put the house here.
BS: Because they want to have a yard.
BH: When I see this triangular lot of property with two abandoned buildings on it; an abandoned business and an abandoned residence and there is someone who wants to build on it, I want to encourage them to build on it.
ASTJ: I do too. I am saying a better use of the land is to put the yard between the house and the other house.
BH: This is twenty feet, how can you have that as your yard?
BS: If you think of it when you go by here, this has traffic on both sides; you would have more privacy in the yard with this location.
RF: We are all assuming it is a yard.
MC: Should we have them come in?
ASTJ: We are making a lot of assumptions here, why don't we have them come in.
BH: Yes, let's have them come in and explain it to us.
MC: Yes if we are saying it isn't substantially more detrimental I would like more clarification.
BS: O.k., I will ask them to come in.

The Board discussed 126 Main Street. The Building Inspector issued a cease and desist order due to the businesses, the change of use, the lack of handicap parking. 60

BS: I talked to her in January (2006), she was supposed to come in and straighten the matter up and she has basically blown me off since. I have issued her a cease and desist.

BH: Have you received a reply?

BS: No. I met her out there once because the police were complaining about the church and I told her she was going to have to make the place handicap accessible and I haven't seen her since.

ASTJ: This is the one next to the church?

BS: Yes. The problem with this property is that the previous owner came before the board to change the use. An apartment above and a retail below; two units, and that is the use of the property. She can't just go change it back and she needs to add the handicap accessibility and everything else. She put the sign up in the front and I haven't even approached her about that yet.

The Building Inspector discussed 60 John Wise Avenue, Pallazola Brothers and the fact that the owners did not pick up their decision from Town Hall and that they are currently doing what appears to be a lot of work/more than what was approved by the Planning Board. The owner did not obtain a proper building permit. It was decided that the Building Inspector would visit the site and/or contact the owner.

BS: The other concern I have is Pallazola Brothers. I can't believe no one has called my office yet. Is he doing more than you approved? Mary-Ellen says he has not picked up his decision and he has not picked up a permit from me for change of use.

MC: Why don't you issue a cease and desist.

BS: I think what I will do is go over there first and talk to him.

160 John Wise Avenue – Mugford

Larry Graham, Gateway Consultants Inc. engineer presenting plan
ANR Application

Larry Graham presented the plans for the subdivision of the property from one lot to two lots.

The Board reviewed the Plan and the Five Criteria of an ANR.

MC: I make a motion to approve and endorse the ANR plan for the subdivision of land located at 160 John Wise Avenue find that it conforms to all the requirements of a an approval not required plan and that each lot has the required lot area and frontage and adequate access on John Wise Avenue.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

Subdivision Rules and Regulations review The Board discussed concerns, issues and what is working with the current subdivision rules and regulations. The Board also went over the notes regarding each concern that has been brought forward by a Planning Board member or a citizen using the Subdivision Rules and Regulations or an issue noticed by the Planning Board secretary.

The Board discussed the Upcoming Town Meeting and strategy for the meeting.

Kim Jarvis and Bill Holton had volunteered for the Conomo Point Committee.

Rob Fitzgibbon had written a letter that he shared with the board to send to the concerned residents who are abutters of Arielle Lane.

The Board reviewed the letter written from Ken Hildonen regarding the letter he sent to Peter Van Wyck: 'Dear Pete, I would like to thank you for the opportunity of having you plant trees along side of my property that abuts your Apple Acres road. However, I would like to decline the proposal because we do not know at this time what work we will be doing to our property at 40 Apple Street, Essex, Mass and do not want the whole length on that side taken away by trees. Our right to pass and repass is in the title

and recorded in Plan Book 94, Plan 23 at the Registry of Deeds. Thank you for your time, Sincerely
Kenneth H. Hildonen Jr.'

Rob Fitzgibbon read the draft letter regarding the Essex Park Drive decision to the other Board members which stated that the Board had decided that before Mr. Van Wyck could proceed with the preliminary plans for Essex Park Drive prior to the completion of Turtleback Road, " The Planning Board felt it would be remiss to approve a preliminary plan for a subdivision whose means of access is over a roadway that is both incomplete and substandard." The members offered critiques and edits and it was decided that the Planning Board secretary would send the letter to Mr. Van Wyck the next day.

The Board members read the letter from Town Counsel, Kopelman & Paige regarding their decision for Lowland Farms. There was no further discussion regarding Kopelman & Paige's decision during this meeting. The Board was decided to discuss the letter at the next meeting.

Meeting adjourned at 11:00 p.m.

Next meeting is set for Wednesday, April 19, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: 
L.W. Holton, Clerk

Meeting Minutes
Essex Planning Board
April 26, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order by Rob Fitzgibbon, Chair of the Essex Planning Board at 7:50 p.m.

Present: Andrew St. John (ASTJ), Michael Cataldo (MC), Bill Holton (BH), Rob Fitzgibbon (RF)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen Feener

Absent: Kim Jarvis

Observing: Citizen, Amy Reilly

108 Martin Street – Connor and Robin Garfield

BS: This is one we discussed before, 108 Martin Street, it is presently a retail shop on property, they want to tear down the building and put up a single-family house. The questions we had was where was the house cited on the property and whether it could be moved or not. The people inquiring are Connor and Robin Garfield and they are present for meeting.

The Board reviewed the plans.

MC: We were concerned about the setback from the road.

BH: We also assumed at the same time you wanted to save this section for yard.

Connor Garfield: Yes, we have a one year old baby and we wanted to save as much as possible and take advantage of the most of the yard.

RG: We figured that the pre-existing building is closer to the road than we are proposing.

RF: Are you keeping the little hut?

RG: No. We were for a little while with keeping it as a shed.

RF: Are you open to considering it? I think it is a beautiful building.

RG: We were for a little while, but now, no we are not considering it.

RG: If you want it, you can have it.

MC: When we talked at the last meeting our concern was the five feet off from the road and by pushing the building off to the left you could at least get the building more than five feet from the road.

CG: How much more off the road would you want?

ASTJ: We were suggesting that the building is set back ten feet instead of five feet.

RG: Why ten feet?

ASTJ: As a set back, ten feet is a more reasonable distance.

RG: What about the pre-existing building which is only a foot from the road.

ASTJ: This is only a suggestion. Building a house that close to a road can cause you any number of problems in the future.

MC: Are you going to fence in the yard?

CG: We have a stonewall in the back and at some point we would like to fence in the yard.

ASTJ: That makes sense since you will have kids in the yard you might want to do that and again if you want to get a fence in you will have to keep in mind the setbacks.

RG: I am not sure we would want to fence in the entire yard, because the stone wall looks so nice. If anything there will be a fence for privacy in the front on Martin Street.

BH: So, this distance from (pointing to plan) this property line to here is what you are calling fifty-nine point seven.

BS: Yes.

BH: Moving the house to left will eliminate the yard. I don't have any problem with this the way that it is; it is a 6-4.2.

ASTJ: It is definitely within their rights. As an architect and a surveyor it would look better with more space, but it is up to you.

MC: It has DPW, Wastewater approval?

BS: Yes. I believe because it is a business it had to have one and a half betterments. This is a change of use. They will loose the retail because it will be a single-family residence. It didn't need the approval of the Board of Health.

RF: I wasn't as concerned with the privacy of the house as I would like it to be retail property.

BS: They can't do that because the DPW put a restriction on it.

RF: What about retail use?

BS: They will loose the retail ability because of the change of use.

RF: Is there any historical value to the house?

CG: No.

RG: I have a question, why is the five feet nine not enough?

MC: Because normally you are supposed to have twenty feet and the road is a busy road and the front road is on Martin Street.

ASTJ: Because when you step out your front door you will be bang right out on the street. You are completely within your right to do it this way and what we are telling you are just are suggestions.

MC: We just had questions and suggestions.

Bill Sanborn suggested a move of two feet from the street.

RF: I would like to make a motion for a building permit for Connor and Robin Garfield, of 108 Martin Street. The proposed is for a change of use from a retail shop to a one family, this is falling under a 6-4.2 finding because it is not substantially more detrimental than the existing non-conforming use.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

48 Lufkin Street – Nina Fletcher

BS: This is for the building of a new garage with a walk out basement. There is no plumbing, but there will be some type of propane or electric heat on the base level. It does have the approval of the BOH and Con. Com. This is the citing of a new building. The Planning Board reviewed the plans.

ASTJ: What are they going to do below?

BS: They are going to mainly use it for storage.

MC: I make a motion to approve the building permit for the construction of a new garage with a walk out basement finding it has received the approval of the BOH and Con. Com. and that it adheres to the Town of Essex bylaws.

RF: I second.

All in favor

Aye.

Motion passed unanimously.

77 Eastern Avenue – Nancy Roberts

BS: The next one is for 77 Eastern Avenue. It is an existing three family house. And due to severe rot once work was started they are going to demolition and rebuilding of a three family. There was a previous permit issued, I forget exactly when it was, because they were going to renovate. There is the site plan. This will be a 6-4.2 finding. It does have all the necessary approvals from B.O.H. and Con. Com. they are going to build exactly what is there now.

The Planning Board reviewed the plans.

ASTJ: Is it a two family?

BS: A three family.

MC: And you said it was already a non-conforming use?

BS: Yes it is.

RF: Same footprint exactly?

BS: Yes.

Nancy Roberts was present for the meeting.

Nancy Roberts owner of 77 Eastern Avenue: All I can say is that we started remodel and we began to take down the wall and we found out that there was knob and tube wiring and it would not be up to code and then we realized the building has settled and sunk three feet and there was beetle damage and rot. It is very sad and it is going to be very expensive. It would cost more to save it than it would to rebuild.

BH: Were you ever in front of the Planning Board before in eighty-one? You look familiar.

Nancy Roberts: I don't think so, I have always lived in Essex. I don't remember being here before. Oh, yes I do, I was regarding 63 Main Street, Brigid's property. IT

BS: Has your property always been a three family?

NR: I have owned this house for forty years and it has always been a two family and then my nephew wanted a place of his own and he built a tiny efficiency for himself and then all of a sudden the Town started charging me for a three family and they made it a three family.

ASTJ: I move for the approval of the application of Nancy Roberts, 77 Eastern Avenue for the demolition and rebuild as exactly as was of a three family for a 6-4.2 finding. Finding it meets the requirements of the Town of Essex Bylaws and that it has all the necessary approvals and that it is not any more detrimental.

BH: I second.

All in favor.

Aye.

Motion passed unanimously.

14 Centennial Grove Road – Diane & Kelly Corrao

BS: To put a second story on an existing house. These are the plans. This is just basically a review of the board. The owners have all the necessary approvals, B.O.H., DPW Wastewater. It meets all the requirements. This is the citing of a building.

The Planning Board reviewed the plans and the 6.4-2 Bylaw.

MC: Is there a business on this?

BS: I don't know.

RF: Is there any issues with calling this a 6.4-2 finding?

BS: No.

The Planning Board discussed if what the owners are proposing should be a 6.4-2 finding.

ASTJ: It is a non-conforming lot; it is only 31,000 foot lot.

MC: The lot is non-conforming.

BH: They are not changing the footprint.

ASTJ: He is going higher.

BH: It is a larger house.

MC: But they are building on a non-conforming lot.

RF: It would be a 6-2.2, right?

BS: You could, it is a good argument.

BH: What is he wanted to raise the roof up two feet because he wanted more headroom?

BS: You could argue that case, there is a case that just came down from the State Supreme Court and they were split on a decision regarding non-conforming lots. What you need to do is make two determinations. The first is does it increase the non-conforming nature of the lot and if it doesn't you don't need to do anything, if it does then you need to do a 6-4.2 finding. You need to make the determination does it increase the non-conformity of the lot.

MC: Theoretically, no because they are not doing anything but going up. It is a non-conforming lot to begin with.

Rob Fitzgibbon read aloud the Bylaw 6-4.2.

BS: Going up to a two story is still non-conforming because of the setbacks.

MC: Is there a business on this?

BS: I don't know I didn't check into that?

RF: If we didn't use a 6-4.2 finding can someone come to us and say heh, you are increasing the non-conforming use.

MC: I would vote it that way.

BS: What you really want to do is look at it and say, what is the non-conforming nature of the lot?

MC: It doesn't have enough square footage.

BS: Then you want to say, what they are doing does that increase the non-conforming nature of the lot by the frontage.

ASTJ: The answer is no.

BS: O.k., then after making that decision you don't need to make a 6-4.2 finding.

ASTJ: I see it that it doesn't increase the non-conformity, but it is an extension of a non-conformity and it would require a 6-4.2 finding.

BS: That is what the board needs to look at, does it increase the non-conformity.

BH: I see that it doesn't need a 6-4.2 finding because it is not changing the lot footage. The footprint stays the same, the lot stays the same, the frontage stays the same, all they are doing is going up. You are not changing the use.

MC: In my mind you are starting with a non-conforming use to begin with because the lot as it is configured it is non-conforming and we are granting an extension of that non-conformity.

BH: another Planning Board already made a decision that it was a non-conforming use. Now, we are not changing that non-conformity. We are not changing the lot size...

ASTJ: They are adding a bedroom.

BS: For the 6-4.2 finding you all need to agree.

ASTJ: Lets agree it is an extension of a non-conforming use.

RF: I would like to take a poll as to what each member thinks regarding a 6.4-2 finding.

MC: I agree.

BH: Based on what our Bylaw reads, I do not agree.

ASTJ: I believe it is increasing the non-conformity of the property and it is a 6.4-2 finding.

BS: For the record, it is increasing the non-conforming nature of the property and it requires a 6-4.2 finding.

RF: Yes, for the record the Board is stating that the application requires a 6-4.2 finding due to the fact it is increasing the non-conformity of the lot.

MC: I make a motion to approve the application of Diane & Kelly Corrao to erect a second floor addition on a house located on 14 Centennial Grove. Finding that it meets the Town of Essex Bylaws and it is not substantially more detrimental than it's current use under Bylaw Chapter 6-4.2.

RF: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

54 Lake Shore Drive – Michael Galli

BS: He wants to tear down the existing dwelling and construct a new dwelling. He has as the approval of Fire Dept., Con. Com., and BOH. The lot is seven thousand, five hundred and forty two square feet. It will be a 6-4.2 finding because it is a non-conforming lot. The Planning Board reviewed the plans.

ASTJ: I have a concern because there is no set back dimension on the plan. The way demolition works is that they come in and make a big hole and then they need to know where to put the building. Their neighbor could be upset because it could move three feet over. If it were on an existing foundation we would not need to be as concerned.

The Board requested that the Building Inspector requests that a new plan with dimensions be presented before they vote.

Lowland Farms – Peter Van Wyck, Myles Cambridge

BS: Did anyone read the letter from Kopelman & Paige?

MC: Yes, but not a determination.

RF: Do you want me to read the letter for the record?

MC: I don't think you have to read it.

BS: I have read the letter (referring to the decision written by Town Counsel, Kopelman & Paige) several times and it is my opinion that site plan review is not required.

RF: I would agree with that, my only question is that should be worried about any other requirements from the 1994 zoning. Is there anything in the zoning laws from 1994 that we should be mindful of or are we free and clear?

BS: The only thing I am aware of is the site plan review.

RF: The reason I wanted to bring this up at the meeting is because it's not that as if we keep a laundry list of zoning changes.

BS: You should.

RF: We should, but I just want to make sure there isn't something we should be aware of.

BS: I think you just have to use your best judgment and knowledge of what you have because you don't have a laundry list.

RF: (talking to secretary) Put that on our list of this year's goals.

BS: I believe that if site plan review came into existing in 2000 and I don't know of too many changes regarding one or two family dwellings since 1972.

RF: Over the weekend I read all these changes, MGL, that Mary-ellen (secretary) had forwarded to us (the Planning Board) and it wasn't light reading. I did notice that I found language written in our bylaws that were taken from Mass General Laws after 1972. Particularly when it came to 6-4.2 finding you can find it here since 1975.

BS: Yes, because in 1975 is when they (Mass General Law) came up with 40A. Prior to that 40A was called something else, the Zoning Act.

RF: My concern was that regarding this piece of property is there any component that we shouldn't be aware of in regards to the citing of the building. Would that be a conflict of the Bylaws?

BS: I don't think so.

ASTJ: I am willing to take the chance.

MC: Me too.

BS: If we look at everything else as it applies today except for the site plan review. It is not really hurting anything and it is left up to the applicant to bring it to the Board's attention.

MC: That is the premise of the whole question given to Kopelman & Page.

RF: O.k., now that this question has been cleared up, what do we need to do?

BS: We need to approve the citing of a building.

Dwelling 2 – Lot 3 – Peter Van Wyck

BS: Citing of the location of house 2, Map 9, Lot 3 on Lowland Farms. Applicant is requesting to construct and 1.5 story wood frame house. I don't believe Lowland Farms has been assigned numbers yet. The BOH, Con. Com. and Fire Department have approved it.

MC: How many buildings on this lot?

BS: There were two.

MC: Is this the one which we had the question about the drainpipe?

ASTJ: We did not approve this third one (taking pen and crossing it out on plan) not approved.

BH: Myles, this is lot 1?

RF: What is the big lot marked 8?

BH: MC: This is the driveway we talked about during site plan review?

Myles Cambridge: Yes.

MC: So the improvements we suggested are going to be made?

BH: There is 1,2,3,4.

The Board requested the original plan for Lowland Farms.

MC: While the secretary goes to get the plan, do you want to discuss the letter we received from an abutter? Should we take it up with Peter while we are here?

RF: Should I read the letter for the record?

MC: O.k.

The Board looked at the plan.

BH: (pointing to plan) This is Browning's, this is Hildonen's.

MC: He is an abutter and he is claiming that the drainage has been moved since we signed off on the As Built.

ASTJ: Is this something we should have Larry Graham review?

MC: I guess it is there now according to the As Built we received.

ASTJ: I don't think we can discuss this now.

The Board reviewed the original plan.

BS: Where did you get the map and lot numbers?

ASTJ: Where did who get the map and lot numbers?

MC: Our assumption is that Apple (engineering company who submitted plan approved by Planning Board.)

BS: These are the Town's Map and Lots what are they doing on Lot 3?

MC: These are subdivision lots.

BS: I don't care about subdivision lots, I want map and lot. Which one was recorded?

MC: Has this plan been recorded for the subdivision?

PVW: I can't answer that it is up to my lawyer.

MC: Considering a past history Peter, we need verification that this plan has been recorded.

RF: Do we need a book and page number?

BS: We need a Mylar and the book and page.

RF: Can we get that from Russ (Brown)?

BS: There is nothing we can do without the proper parcel numbers. Is there anything else we are going to need on this?

MC: I don't think so.

BS: In view of the letter from the attorneys, where do they stand with the special permit application for 2,500 square feet?

ASTJ: What are you talking about?

BS: The way this started was that they came in for the special permit because the buildings would be over 2,500 square feet and I am just wondering is it sitting in limbo or is it done?

ASTJ: We approved it.

RF: We had a public hearing.

ASTJ: Basically, the way it worked was that Peter put us on notice that due to the decision of the recent bylaw pertained to them, but they were willing to go through the special permit process. The letter from Kopelman & Paige came back saying that we

didn't think that this subdivision needed to be approved under these provisions but it didn't matter.

RF: On February 15th, we voted to approve the site plan.

BS: I wanted to make sure it came to an end somehow.

MC: On March 1st didn't we sign off on something?

BS: I just want to make sure because if so many days have passed and I don't want him to come back and say that the time had passed.

ASTJ: It's done and a mute point, we approved it.

RF: On March 1st, we approved the ANR for Lot 4 on Lowland Farms.

BS: I would just be concerned, that the ninety days is over.

MC: One way or the other he needs to file that plan.

BS: We need to make sure that people know that they need to file the plans.

ASTJ: Did you hear that Mary-Ellen, we need to make sure that people do that?

Mary-Ellen: Yes, the draft you will be reviewing later actually says that.

RF: We were talking about drafting a letter regarding the site plan review decision since the time of the public hearing and since we received Kopelman & Paige's decision even if it is a mute point we should have an official decision.

The Planning Board had been waiting for the determination from Town Counsel, Kopelman and Paige and now a member will need to volunteer to write the decision regarding the Special Permit Application made by Peter Van Wyck in March 22004.

63 Main Street – Brigid Venti – Informal Discussion

RF: I believe this property came to our attention by our Building Inspector, Bill, because it was zoned as a residence, but it is used as a business. Maybe, Bill you can explain as to why you brought this to our attention?

BS: It came to me as a complaint made to me regarding this property. To back up a bit, the building was changed two or three years ago to retail on the first floor to a two family residence. The use was changed from retail to residential I believe in 2001. Then the property was purchased and there are now two retail shops on the first floor and a residence on the second floor. In the Town of Essex, the Planning Board needs to approve a change of use. In Essex there is no mixed use and the lot is non-conforming and it doesn't meet either a two family or a single-family requirements. You need to provide the lot area for both or the three uses. The lot I believe is non-conforming as it is and doesn't meet the requirements for a single family or the two family which was approved by special permit. The question is, how do we resolve the issue?

BH: We went from a single family to a two family?

BS: No.

BH: Way back was it a single family?

Brigid Venti: Nancy (referring to Nancy Roberts previous owner) mentioned to me that the last thirty years prior to her change it was a two family and it had a mixed use. It had the antique shop in the front. I run a very part-time business which is appointment only so what I have done is included in my letter and floor plan is that I use the front two rooms for my very part-time appointment only business and I would like to keep the two family status because the Town of Essex does need affordable housing and I would like to keep the rents low because Essex needs affordable housing. I spoke to the Police Chief and he said that I do have six-car parking. I also run an appointment only business.

RF: (Reading from letter from Brigid Venti) 'Dear Bill Sanborn and Town of Essex Planning Board, Please accept this letter with my application for a change of use back to "Mixed Use" for 63 Main Street. 63 Main Street was changed in 2005 by former owner Nancy Roberts from a "Mixed Use" to a "two family" status. I would like to return to a "Mixed Use" status and keep my two small (appointment only, I am sole proprietor with no employees) business in the front of the building while offering Essex residents affordable housing with under priced rentals, which is difficult to find in town. I have off street parking for 6 cars, which satisfies 1/5 car parking for a 3 bedroom property (6-5.8b). I did have the Chief of Police verify the parking capacity. My office square footage is 224 sq. feet which satisfies one parking spot per 300 sq. ft. of office space 6-5.8j). There is a front and side door entrance for the business area as well as emergency egress for the rentals. My awnings are under 32 sq. ft. limitation for each business, at 30 sq. ft. each (6-6.5d). As mentioned by Ed Perkins, I have a two-year window to return to previous use as long as the impact and use is not increased (6-4.3). My two small businesses are on a very part time basis therefore I will be keeping the impact and use of the property at it's former level or actually less. As soon as the town puts in a grinder pump under my driveway I will be hooking up to the sewer. I have enclosed letters to my abutting neighbors to let them know of my request for a change. Thank you in advance for your help with this and look forward to continued good relations in the future. Very Best, Brigid Venti. CC: Bill Sanborn, Inspector of Building, Ed Perkins, Planning Board, Essex, Legal Counsel: Norman, Metaxes and Pidgeon.'

BS: One of the comments I would like to make is regarding the two years. Ed Perkins told me that you had a two-year window and that isn't true. When someone changes the use of a property they loose their rights immediately and there are a number of court cases out there that support the fact. When you have the two-year window is when if you have an abandoned building which was a business, you can go back to it and have it as a business.

BV: Can you tell me where that information is from?

BS: I am sure that Kopelman & Paige, if Brendhan would allow it, could dig up at least five cases that support the decision. It is pretty clear in state law when it comes to non-conforming uses.

BV: The way it is now is on the second floor unit there is a two-bedroom unit, which encompasses the second and the third floor. On the first floor there is a one-bedroom apartment.

MC: Basically you are going to have two business and two apartments.

Brigit Venti: I have two very part time businesses.

MC: We don't have clarification for full time or part time businesses; either they are or they aren't (businesses).

BV: I mention that only because of the intensity of use. I don't feel that I am increasing the intensity of use.

BH: What were the complaints?

BS: That there are businesses being run there without permits.

MC: We abandoned the business use over two years ago when the building was converted to two apartments. I guess the question is now that there are not only the two apartments, but two businesses as well.

ASTJ: The original had two businesses and two apartments.

Nancy Roberts: There was one apartment upstairs and two antique stores on the first floor. That was changed further back.

Nancy Roberts: One of the reasons why it is only two apartments is because the Town would only allow two apartments or a business below and an apartment above and a business below.

MC: That would be considered a home occupation.

Brigid Venti: My intent is that once I sell the house on John Wise I would reside in the house and continue using it as a home occupation.

BS: The only problem with that is I don't see how they could allow the two businesses for a home occupation.

MC: Right.

BV: Except the corporation is one corporation.

MC: You are doing two different things.

BS: Zoning doesn't take into consideration as to who owns the businesses, what they are.

RF: There was also the issue of signage.

BV: My awning?

BS: I don't think I mentioned that to her. That requires a permit.

RF: So the question is use. She either changes the use or what; she goes to the Board of Appeals and ask for a variance?

BS: The Zoning Board could give her the variances necessary, but Ed Perkins said that it wasn't for the Board of Appeals. My interpretation is that she doesn't meet the lot area and there are no grandfathered rights.

MC: There is no going back.

BS: The Zoning Board could grant her the variances necessary for her to operate a business there. I believe the Zoning Board needs to give her the variance; there is no basis for a 6-4.2 finding.

RF: Is there anyone else from the public who would like to speak?

Bill Gorham, Lynn Maccetti – Representing the First Universalist Church as Trustees of the Church.

BG: We are here representing the First Universalist Church and I want to start off by saying that as a church we have no ego...

BS: Can I interrupt for a moment?

BG: Yes.

BS: You are representing the church in what capacity.

BG: As a trustee, we are all here are trustees and we are three trustees representing the nine trustees. I wrote a letter.

RF: (Reading letter from First Universalist Church of Essex). 'It has come to our attention that Ms. Venti intends to change the use of the property abutting the first Universalist Church of Essex (FUCE) on 63 Main Street. We of the First Universalist Church feel that the location of the property line between the two properties should be established based on a professional survey incorporating adequate historical research and benchmarks before a change of use can be granted if said change of use is dependant upon the driveway for adequate parking and access. The driveway between the properties has been used by the FUCE for access to the side entrance and for delivery and maintenance purposes for over 150 years. The church has maintained the driveway, a side garden and a neighborly relationship with the abutters throughout this time period. When

Ms. Venti moved into the property in the fall of 2005 she proceeded to paint a line on the ground from a granite highway marker on the sidewalk parallel to the church foundation. In addition to the paint, she removed the forsythia hedge, the side garden and edging. We believe that the painted line is incorrectly placed and that the changes to the landscaping are mistakes made based on this line. In response to the situation the Board of Trustees retained the services of Hancock Associates, Land Surveyors of Danvers, to recommend a course of action and provide an initial opinion on the property line. After researching the deeds it is clear that the church owns some amount of the driveway. In addition there appears to be deeded access that was formed when the Venti property was originally broken off as a separate lot. The original deed from the 1800's and all subsequent deeds make frequent reference to the First Universalist Church as a preexisting structure and property from which the Venti property is measure. Hancock Associates performed a quick measurement of the Venti property frontage based on the current deed and came to the conclusion that there is a mistake in that deed. It also appears that the painted line from the highway markers was not professionally researched or placed. As stated above the First Universalist Church of Essex is of the firm opinion that an accurate and professional survey is required to establish the property line before any changes are made to the use or layout of the driveway.'

BS: That issue was raised to me way back from the beginning. I am not going to say I am a surveyor or anything, but I went out to look at the markers and I don't which markers they were, whether they were highway markers or lot markers. It does not look as if the church has a normal width to come out of that property from that door. But, giving the situation and the use of the property and how it has been laid out, my orders from the police department was that no one is to park in front of the door way or to block the egress from the street and if it is they are to be removed and the Town will remove it.

BV: Can you site where it discusses the emergency egress?

BS: From that door to the street there will be no obstruction for forty-two feet is a building code.

BV: That would be three feet? There is actually five feet there.

BS: I am not going to argue with you about that as to where the property line. I am just saying that from that door to the street there should be nothing blocking the egress.

MC: Are there six parking spaces you are quoting that are available?

BV: Yes. It is a non-issue really.

BH: Where are those six places now?

BV: The drive way is actually sixty feet long from the street, it is actually a little bit longer, there is seventy feet from the corner of the house, but Hancock can redefine that, it isn't a problem. There is parking at the rear of the building here and there are other spots here in addition to the six spots in front of the Village, public parking. So, I feel the intensity of the use of the building would not be increased and considering it's long history of a mixed use property, in addition to the fact that it would be a hardship because my house hasn't sold and not being able to rent out those units would be a financial hardship for me. I would really look forward to having them changed to mixed use. In addition to that, you are probably familiar with this, Chapter 40A on zoning, the state laws, MGL laws, allows that if there is not a change in an intensity of use or adversely affecting a neighborhood, and the church has not had any complaints until tonight and it has never come up before so I don't see that as being an issue and if they come to find out

inches
amended
6-14-06

that my property line needs to go back a few inches that isn't a problem because we wouldn't want their emergency exit to be blocked anyways.

BS: According to 40A regarding intensity of use and whether or not parking is a problem I do believe the definition is that you are increasing the intensity of use.

RF: What chapter are you citing?

BV: Section six.

RF: (Reading from MGL), existing structures and uses of subdivision plans.

BV: Right, there was a paragraph regarding pre-existing non-conforming uses may be extended.

RF: That is close to our 6-4.2 finding which is based on this; you want to have mixed use, but Bill, we don't have mixed use.

BS: She is extending the use when it comes to the businesses. It is fine that she is saying that it is just her and her husband running the real estate shop and so on, that's fine. There is no problem with that. Now, the problem is that you have a retail real estate business and a sewing shop. She could sell that building tomorrow and Century 21 could come in with a hundred real estate agents and there is nothing you could do about it because it is already permitted. That is why it isn't how you are using it, but how it can be used. We need to look at what can happen when you sell the property. That is why there are all the regulations and that is why we are talking about intensity of use.

BV: That would be speculation.

BS: That wouldn't be speculation because you have only two people working there now doesn't mean there couldn't be more in the future.

BH: This would be a Board of Appeals issue.

MC: What we can do is write you a letter stating that you can only have two residences there and then you can go to the Appeals Board for the change of use.

It was determined that the Planning Board would write a letter denying her a change of use to run her businesses and have the residences. The letter will require a copy of the building permit stating that the Planning Board that the property needs to remain as a two family had made a decision. Brigid Venti could approach the Board of Appeals. It was also noted that any dispute between Ms. Venti and the Universalist Church should be handled privately between parties. It was also noted that Brigid Venti could not count on the public parking spaces as her parking.

Nancy: I want you to check the folder and make sure the right date is added when the conversion happened it isn't 2005.

It was noted that at a future date the Board would discuss the use of Public Parking and Mixed use.

126 Main Street – Joe Miletello and Brett Longo – Informal Discussion

Joe Miletello and Brett Longo presented the proposed plans for the conversion of the motel into seven condominium units and to keep the front building and to convert it to two condominium units.

Brett Longo: In the scope of time, what we decided to do is bring together a plan and then discuss it with different boards. We went to the Conservation Commission in the fall and we decided to come to the Planning Board to present our preliminary thoughts. We did retain an engineer, but we are still in the beginning stages and looking for feedback and comments from the town boards and we appreciate the opportunity to have you look at it. What I have done here is show the motel as it exists; sixteen units and a four bedroom home which is currently a two family.

BS: Are they on separate lots?

BL: This is all one parcel.

BL: Our proposal would be to remove the motel and keep the existing house and to convert that to nine condominium units. We would keep the driveway where it is and the units would be in the style with a garage in the lower existing level and two floors up from there as living space.

BS: What is the elevation?

Brett Longo: The elevation of the garage is I believe 8 or 9 feet, first floor would be seven feet.

MC: Are you aware that it is in a flood plain?

BS: You would need to design on piles and because it is on a flood plain you would need an elevation of ten feet.

BL: Yes. This is just to show land use, I believe it would be on piles.

RF: The condominium units are what two stories high?

Brett Longo: Two, two and half stories.

MC: When you went before the Con. Com. did they discuss Rivers Act?

Brett Longo: We did and we hired a company to come in and verify. They came in and did test borings and in their opinion Chapter 91 only came into play because of the docks, not because of the buildings.

MC: I don't believe the Rivers Act precluded the construction two hundred feet from the river.

BL: I don't believe that is the case because this is an existing use as the motel. If it was a barren lot it would be an issue.

ASTJ: I am not sure that is the case. We have two things going on here, Chapter 91 and the Rivers Act is an entirely different issue.

RF: Aren't they the Con. Com.'s issue?

MC: Yes. That is why I am surprised it didn't come up in conversation with Con. Com.

Joe Miletello: Our conversation with them was very informal. We are looking to improve the current situation. We want reduce impervious area. Even when it rains the run off into the street is a lot.

MC: The motel has flooded twice that I know of.

ASTJ: We all have some experience with the Rivers Act and Chapter 91. What we are suggesting is that you get your lawyer involved. What we feel that is with the Rivers Act you need one hundred foot setback and I think you could have Chapter 91 issues.

RF: This is a piece of property that comes under multiple jurisdictions. The Planning Board, the Con. Com. I like the idea of having residential places right near the center of Town and what I think you are really going to have to make sure that you have an application that is rock solid.

Joe Miletello: We do believe in the project. The buildings look so bad and there are a whole slew of problems with that property. Ultimately we would like to live there; the current owner, Brett and myself.

RF: I can see in a subdivision like this that there is one retail anchor.

Town Meeting Discussion

OSRD Rob will present the proposed bylaw to the Town.

Andrew will present Building Zone Bylaw to the Town.

This Saturday, Mike Cataldo & Andrew St. John will be at the Post Office and Rob Fitzgibbon and Bill Holton will be at the dump handing out flyers.

Regular Business

Mike Cataldo will write the decision regarding Lowland Farms Site Plan Review for next meeting.

Mary-Ellen will obtain for the next meeting the folder for Western Ave. Shanks need file, meeting minutes.

36 Lakeshore Drive, M-E will remind Bill that he wanted more information; meeting minutes.

Meeting Minutes

ASTJ: Motion to approve the Meeting Minutes of January 18, 2006 as amended.

RF: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Mail and Payroll

RF: I make a motion to adjourn the meeting.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously and the meeting adjourned at 10:26 p.m.

Next meeting is set for Wednesday, May 3, 2006 commencing at 7:30 p.m. at the T.O.H.P. Burnham Library.

Presented by: M.E. Feener

Mary-Ellen L. Feener, Secretary

Attested to: L.W. Holton

L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, June 8, 2006**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:50 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Bill Holton (BH), Michael Cataldo (MC), Kim Jarvis (KJ)
Building Inspector: Bill Sanborn
Absent: Andrew St. John (ASTJ)
Observing: Amy Reilly (AR)

Building Inspector's Report

RF: There is no building inspector's report due to his illness.

RF: Walter Rich can only do inspections. I know that Bill Sanborn has talked to you about the Assistant Building Inspector's position.

BH: The problem with that is that I am not certified to be an Assistant Building Inspector. I am licensed as a builder, but not as an inspector. I asked Brenhdan and he said that the Town would pay for it.

MC: Would that be a conflict of interest?

BH: It could be, I would have to go to the ethics commission.

RF: I mention this because you guys called me a few days ago about the issue on Turtleback Road.

KJ: I think it would be nice that the Town knows that we are a Board that are interested and involved in a Building Inspectors activities.

Turtleback Road Extension Discussion

Larry Graham went to visit the site to view the bituminous curb.

RF: The question I have for you guys is that in regards to the concrete thing; the asphalt thing. I understand that what Andrew St. John was concerned about the asphalt berm; I thought we decided that it should be granite. The letter states that Larry responded to a question approached by Peter regarding a granite curb and Larry said that it would be o.k. but not the length. What we should do is ask Larry for a response.

MC: I don't know at what point we receive an As Built? When was the decision regarding the road made between Peter Van Wyck and Larry Graham?

ASTJ: This thing is a little bit confusing. The original letter was presumptuous, the next letter stated granite at a longer length. The issue here is not about what was done, but the procedure. It is now granite right?

MC: No. We sat here at the last meeting and discussed the fact that the granite would be good for a winter of plowing. The other issue is that we did go to Lowland and Mr. Hildonen was right about the drain pipe.

RF: Mary-Ellen could you invite Larry Graham into the next meeting.

ASTJ: The thing about an As-Built is that with an escrow account and so the money holds them.

KJ: What we can do is not give a building permit before we see an As-Built for the road.

ASTJ: What happens is when there are three units on a subdivision is that the developer. A suggestion could be that we require a final paving before a permit is given. A developer is upset with this, but tough.

MC: This is about process. My concern is that he made alterations on Lowland Farms without us and what is our recourse, 'tell him to move the drain back?'

ASTJ: With Lowland Farms we do have some leverage. Before he comes in the next time we need to be clear as to what the process is and here is step one, step two, step three.

MC: Today, we don't really have a process, we have just reacted.

The Planning Board reviewed the Plans for the house built on Lot 38, Turtleback Road and discussed the setbacks. The setback must be 25 feet. The Planning Board will send a letter to Myles Cambridge, the builder of the property, regarding the Board's concern regarding the front set backs.

RF: Does anyone know what the process is?

ASTJ: Before we say anything to Peter, we want our process set in stone. It will be in the Bylaw, but we are going to have to be careful. By the same token there are things we can ask him for and at the trigger points.

MC: Are we going to talk about the foundations at Lowland Farms? I am concerned that they were put in before any permit was issued.

The Planning Board decided to formally send a letter to the Essex Building Inspector regarding the installation of the foundations prior to the issuance of any permits.

The Planning Board reviewed the schedule and looked for other times to meet for administrative review the Subdivision Rules and Regulations. June 28th will be the first meeting.

Main Street Discussion

ASTJ: What is important is what is on paper.

BH: How Bruce starts his conversations with is, 'what they intended to do'.

RF: On the 15th I am going to go to the Village Center meeting.

ASTJ: If by fact, by proscriptive use in a court fight against the church and the parking spots are given to the Church then would it be a moot point.

BH:

ASTJ: Let's talk about this for a minute. A, by the By-Law and B, what we would like to see. It is my understanding that Bruce and her argument is that a Home Occupation doesn't have to be occupied to be operated. The second issue is what is good for the Town. I don't think there is anything wrong with the bank with a living area on top. What is the difference for the bank.

KJ: Scottie Robinson said that the apartment over the bank was allowed because it was considered to be a business.

RF: My concern is that we set a precedent here if we don't react.

The Board discussed the Mass Highway project, parking on the street, businesses downtown.

Conomo Point Committee

KJ: We were all sworn in at the meeting last night. There were five previous members and the rest of us are new members. We were broken up into sub-groups. The properties north of Robins Island's Road are to become Town occupied as what was approved at the Town Meeting.

Everything west and south is what we are addressing now. DEP has issued a consent order and until 2007 the Town has to decide what is going to happen.

The Committee as a whole are going to focus on the properties south of Robin's Island Road and broken down to three sub committees; the Title V committee, financial and one reviewing the plan.

The Meeting Minutes of April 26, 2006 – The Board discussed amending already approved meeting minutes it was decided that the Board would discuss the issues at the next meeting.

The Board reviewed the copy of the Mashpee procedures that Rob emailed to the other members. It was decided the edit the line regarding signs to read, no signs regarding Planning Board business. Under Roman Numeral VI, it should state 'more than' not 'more that'. Number 5 brings up phone conversations and emails. The Board decided that Rob would contact the State Ethics commission. Roman Numeral VIII, the numbering needs to be redone.

Rob Fitzgibbon will write a letter to the Palazolla Brother's regarding the fact that they have not picked up a building permit for a change of use or the formal decision from the Planning Board.

The Board reviewed the meeting minutes.

ASTJ: Motion to approve the meeting minutes as amended.

BH: I second.

Regular Planning Board Business

RF: Motion to adjourn the meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:05 p.m.

Next meeting is set for Wednesday, June 14, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by: M-E-F
Mary-Ellen L. Feener, Secretary

Attested to: L.W. Holton
L.W. Holton, Clerk

Town of Essex Planning Board Meeting Minutes
Wednesday, June 14, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:45 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Bill Holton (BH), Michael Cataldo (MC), Kim Jarvis (KJ)

Building Inspector: Bill Sanborn (BS)

Absent: Andrew St. John (ASTJ)

Observing: Amy Reilly (AR)

Building Inspector's Report

BS: I want to thank you for your plant and cards. I will plan on doing office time next week.

42 Spring Street -Dick Tomaiolo (DT)

BS: The owner wants to convert an existing garage to a music studio. It is a bit complicated. Here is the original site here; he does have approval from the Con. Com., Fire Department and Wastewater. What is difficult here is that there are a number of properties and easements here. There is a property here that has exclusive use of the garage but it is not on the same property.

MC: Is this a conforming lot?

BS: Yes, but it does not have frontage due to the easement.

DT: This is a road used as frontage. It is a very old road with maps that are dated as old as 1950. My son is a musician. We haven't used it for cars for years. My son actually has a garage band.

MC: What if his son wants to convert it to a music studio and we have approved a commercial use.

BS: Would it be a home occupation?

DT: Yes, but I wouldn't want it to be that way.

BS: DPW approved it providing that it is not used as a business or residential property.

KJ: David Irwin is actually applying for the permit, not Dick Tomaiolo, because he is the owner of the land.

BS: I would suggest a 6-4.2 finding.

MC: Can we say that if the property is conveyed to anyone else, they new owner would have to come before the board.

BS: It would be a 6-4.2 finding, only for the use of a home occupation.

BH: Why would it be a 6-4.2 finding?

BS: Because what we are saying is that it is a non-conforming use.

MC: With the covenant that if there is a transfer of the property and the garage is to be used for something else other than a music studio, the new owner would have to come before the Planning Board for a change of use.

MC: Motion to approve for the building permit of David Irwin of 42 Spring Street for the private use as a music studio under a use agreement with Richard Tomaiolo, under the Town of Essex Bylaw 6-4.2 finding that it also has all the approvals of the necessary Boards and it follows the Town of Essex Bylaws. I would also add that there be a covenant that if the property changes title than the new owner would need to go before the Board to obtain a new change of use for the building if they were to use the building for any other purpose other than a music studio.

BH: I second the motion.
All in favor?
Aye.
Motion passed unanimously.

42 Wood Drive Marshall Carpenter (MC)

BS: Applicant is seeking a permit to build a one-bedroom structure with an unfinished second floor. The lot size is big enough so that they may build another house. The owners will be using the property as an in-law dwelling. It has the approval of the BOH, Con. Com. and the Fire Department. Conservation determined that your approval isn't needed.

RF: It seems pretty cut and dry.

KJ: If you count the garage and the building, it is over 2,500 square feet.

Michael C.: Do we count that?

BS: If it is attached.

The Board reviewed the plans and it was determined that the house exceeded 2,500 square feet. If the owners chose to either add a breezeway or detach the garage they would be fine with building the property.

Turtleback Road

The Board and the Building Inspector reviewed the draft letter to be sent to Myles Cambridge regarding the building on Turtleback Road. The Building Inspector's opinion regarding the pouring of a foundation prior to obtaining the building permit was that the Myles was apologetic and that he would also talk to him.

3 Harlow Street

Bill Sanborn recused himself from acting as the building permit application.

As a citizen and an owner of the lot he did discuss the property with the board.

He stated that the side yard set back would be now twenty feet. All utilities will be through Gloucester. It was decided that it would need approval by the BOH, Con. Com. and a plan that has more details and to scale with more accurate information. The Board will review the new plans on June 28, 2006.

160 John Wise

Kim Jarvis did have a conversation with Wally Bruce and Bob Brophy and they confirmed that the blasting and moving around we saw was for the leveling of the ground. As agreed upon a letter will be sent to the Palazolla Brothers.

Myles Cambridge – 38 Turtleback Road

The Building Inspector and the Board discussed with Myles Cambridge the set backs of the new construction located at 38 Turtleback Road and the set backs of the building.

BS: Why did the foundations go in early?

Myles C: My understanding is that there was the approval coming from the Board and there was a delay because there wasn't a quorum of the Planning Board.

BS: I understand that there was a delay. I understand your situation, things happen; the wheels in Essex do turn slowly.

Myles C: We did leave it open for you.

BS: Yes. You did.

Myles C: I do apologize to the Board and I will not make an assumption again and I will follow your rules.

Turtleback Road – Myles Cambridge (MC), Russ Brown (RB) representing Peter Van Wyck

Rob Fitzgibbon read the letter from Larry Graham for the record.

Michael C.: Our last meeting we received a letter from our clerk of the works regarding granite being put in instead of asphalt. Larry Graham needs to give us documentation regarding the change of granite to asphalt.

RB: I will call him tomorrow.

Michael C.: It is our job to call him.

RB: I just want to keep making progress.

KJ: The fact that he went out there and paved that makes us happy.

RB: The fact that the Board is holding him hostage you do have leverage.

Michael C: My only concern is that if you can get us the As Built and then make sure the road is completed correctly.

It was decided that at the meeting on June 28, 2006 the subject of Turtleback Road would be reviewed.

23 Centennial Grove – Informal Discussion

Don Grino (DG) – attorney representing Kyle Symmes

DG: My client would like to have an ANR approved by the Planning Board. Before the Symmes family starts the ball rolling we want to find out if the Board would approve an ANR. I am looking for the Board's guidance as to what the Symme's next step should be.

BH: Are there any existing houses.

MC: Have you looked into our bylaws?

DG: Yes.

KJ: This is really a shared way.

DG: That's where I think there is a relationship with 81L and your bylaws.

RF: Is this a public way?

DG: This is a private way.

KJ: Does this cross land owned by the town?

DG: Yes. However, as in the case of the Shank's, they have a prescription.

KJ: Do they have frontage?

DG: No.

BH: There is an abundance of case law regarding ANRs, ways and so on.

DG: If we were to go before you we wanted to get some feedback from you prior to starting the process.

KJ: The house that does not worry us the most; the fact that you haven't any frontage that is what makes us worry.

BH: You would be going for a forty-foot right of way?

MC: It would be an easement.

KS: It is stone based now and we would like to keep it that way.

MC: Is there anyone involved as an abutter who may not want this to happen.

It was suggested that the attorney review the Subdivision Rules and Regulations.

MC: My suggestion is that you raise some very valid arguments and we suggest that you send a letter to the Planning Board.

The Board discussed the draft letter to be sent to Mr. Dan Rice and Ms. Susan McLaughlin regarding Lakeshore Drive.

The Planning Board secretary will request of Scottie Robinson if she would take over as the Con. Com. liaison

Regular Business

Mail
Invoices
Payroll

RF: Motion to adjourn the meeting.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously. Meeting adjourned at 10:13 p.m.

Next meeting is set for Wednesday, June 28, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by: M-E Feener
Mary-Ellen L. Feener, Secretary

Attested to: L.W. Holton
L.W. Holton, Clerk

*Town of Essex Planning Board
Minutes
Wednesday, June 28, 2006*

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:50 p.m. by Rob Fitzgibbon, Chair.

Attendees: Kim Jarvis (KJ), Bill Holton (BH), Amy Reilly (AR), Rob Fitzgibbon (RF)
Building Inspector: Bill Sanborn (BS)
Absentees: Scottie Robinson, Michael Cataldo, Andrew St. John
Secretary: Mary-Ellen L. Feener

Building Inspector's Report

BS: This first one is for the Town of Essex, 30 Landing Road for a Municipal Garage. The application has the approval of Con. Com. It does not need the approval of the BOH because it will be on sewer and Waste Water Management approved it.

The Board reviewed the plans.

KJ: Here is a question. Is site plan approval required for buildings other than dwellings?
Bill Holton read Bylaw 6-12.2.

KJ: They are not within the Watershed Protection District.

It was decided a Site Plan Review was required. The application could be presented at the next public meeting. The fees for the application will be waived due to the applicant being a municipality. The cost for advertising will be the DPW/Town responsibility. The Board did review the plan to ensure it had all the requirements for site plan review. Rob Fitzgibbon will call Paul Goodwin as a 'good neighbor' department to department. Kim noticed that the building on one page stated 80 x 80 and on another it said 100 x 80. Also, it was requested that grading is shown and if the salt storage building is not where it is where it is shown on the plan the Board requested more information regarding the building and the floor drains.

42 Wood Drive – Marshall Carpenter

BS: You saw this one at the last meeting. You were questioning if it was over 2,500 square feet. This is the actual footprint of the house (referring to plan). It is less than 2,500 square feet. It had the approval of the Board of Health, Con. Com. and Wastewater. DPW approved curb cut. When the applicant files his As Built the site plan will reflect the change.

AR: Motion to approve the application of Marshall Carpenter, 42 Wood Drive to site the building of an addition of to the existing dwelling finding that it has all of the necessary approvals and meets within the by-laws of the Town of Essex.

The Board and the Building Inspector discussed Wind Power and the ability of someone to have one a windmill on their property.

KJ: Is there anything in 40b? Solar Power has exemption.

BS: I don't think so. I haven't seen anything regarding wind power exemptions.

It was decided that Kim Jarvis would contact a person she is acquainted with who works with the state and ask for his feedback regarding regulations for windmills. The Board Members will review the Town By-Laws and M.G.L. regarding windmills. It was decided that research would be down prior to the next meeting and at that time the Board will discuss the information the members found out regarding windmills. Bill Sanborn will contact the owner explaining that the Board was going to do more research.

RF: Did you check on Mr. Albright's building permits for Lakeview?

BS: Yes. He has everything but the occupancy permit. It was my understanding that he has sold the property as a two family.

RF: What about the fence?

AR: Susan McLaughlin contacted her lawyer and she wanted to put a fence up and her lawyer said you couldn't because it is a Right of Way.

BS: I did explain to her that there isn't adverse possession because of Right of Way. It is a town issue because it is a private road.

3 Harlow Street

The Building Inspector recused himself regarding the property he owns located on 3 Harlow Street.

BS: I have a building permit application for the Board to present to themselves.

The Board reviewed the plans.

The foundation was shifted back four feet to meet the requirements. The revised plan was dated 6-28-2006. Con. Com. gave their approval. All utilities will come from Gloucester and the majority of the dwelling will be located in Gloucester.

The Board reviewed 6-4.2 and 6-4.3.

Motion to approve the building application for 3 Harlow Street, owner William Sanborn for a foundation only permit. Application has all the necessary approvals and under a 6-4.2 finding it isn't more detrimental than it's existing non-conforming use and finding it meets all of the requirements of the Town of Essex Bylaws.

The Board discussed 6-4.2 and 6-4.3. In conclusion 6-4.3 says you can increase it and you can do it by right. 6-4.2 says that give the right increase the non-conformity only with the approval of the Planning Board.

Myles Cambridge reviewed his plans of Lot 38 Turtleback Road to make sure it is within the required setbacks. Myles presented to the Board the stamped As Built. The Board agreed that the dwelling was within the required setbacks.

Rob Fitzgibbon read for the record the letters from Larry Graham, Clerk of the Works:

Dated June 14, 2006

Dear Board,

In the past several weeks we have been inspecting progress at Turtleback Road. Mr. Van Wyck has been working to accomplish the punch list items identified as T1-T7 of our October 31, 2005 letter to the Board.

He has completed all seven (7) items. However, Item T6, the 300' +/- of bituminous berm, although installed has not been properly backed with fill, loam and seed.

We would like to communicate to the board that although only 1" of top course (see Item T2) was required, the paver applied a little over 1 1/4" on the job.

It is my understanding that Mr. Van Wyck will be requesting release of all held surety. We recommended the Board hold back \$2,000 to assure that the curb backing mentioned above is completed. We offer no objection to the release of all other held surety.

A Copy of the As-Built plans prepared by Apple Associates, Inc. is enclosed for the Board's records.

If you have any questions, please contact me. Very Truly Yours, Larry Graham, H.L. Graham Associates Inc.

Dated June 26, 2006

Dear Board,

This is a follow-up letter to my June 14, 2006 letter to the Board. The bituminous curb backing referenced therein has been completed to my satisfaction. There is no need for the Board to retain the \$2,000 surety previously recommended.

If you have any questions, please contact me. Very Truly Yours, Larry Graham, H.L. Graham Associates Inc.

The As Built was reviewed. All but \$4,000 was returned from the escrow account. Two thousand dollars was held back to ensure the seeding took hold and two thousand was held back in case there are any other outstanding invoices. It was decided that Amy Reilly would drive on Turtleback Road to inspect the road to make sure the turf has been established.

The Application of a Preliminary Plan for Essex Park Drive was officially submitted to the Planning Board. The Board reviewed the required checklist of requirements. The Board discussed that the Public Hearing will be held on August 16, 2006. Rob will write a letter for Mary-Ellen to give with the plans to be given to DPW, Con. Com., and Fire Dept., Police Department regarding the road.

Regular Planning Board Business

It was decided that Rob would discuss asking the Con. Com. if they would like to have a liaison come to the Planning Board meetings. The Planning Board decided that during each meeting it would

RF: Motion to amend the April 26, 2006 to reflect a change to forty-two feet to forty-two inches.

KJ: I second the motion.

RF: Motion to add as an amendment to the Subdivision Rules and Regulations of the Town of Essex Planning Board, it is required that an As Built plan for the subdivision road is required and that no building permits will be issued until the as-built plan has been accepted by the Planning Board.

KJ: I second the Motion.

SR: All in favor?

Aye.

Motion passed unanimously.

It was decided that this would be added as an amendment to the Subdivision Rules and Regulations.

RF: Motion to approve the meeting minutes of June 8th, June 14th and February 1st and January 4th of 2006.

AR: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

RF: Motion to amend the April 26, 2006 meeting minutes so that page 11 which now reads, "BS: From that door to the street there will be no obstruction for forty-two feet is a building code" should read, BS: From that door to the street there will be no obstruction for forty-two inches is a building code".

BH: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

BH: Motion to adjourn the meeting.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 11:00.

Next library meeting is set for Wednesday, July 12, ~~2005~~ commencing at 7:30 p.m. at the ~~2006~~ Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: L. W. Holton
L. W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, July 12, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:42 p.m. by Rob Fitzgibbon, Chair.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Andrew St. John (ASTJ), Rob Fitzgibbon (RF), Amy Reilly (AR)

Building Inspector: Bill Sanborn (BS)

Absentees: Kim Jarvis (KJ)

Building Inspector's Report

BS: I do not have any applications to present to the Board.

The Town of Essex Department of Public Works – Paul Goodwin (PG)

The Board reviewed the application of the Town of Essex DPW for a Special Permit for a building that exceeds 2,500 square feet and discussed the plans.

SR: I am concerned about the water run off potentially going into the river. This is one of my main concerns; the environment.

BS: You can always put it on as condition of the Special Permit that if you want to have it paved then it would need to come before the Board.

SR: Any impervious surface would give me concern.

PG: Can we pave right before the garage to make the transition to get into the garage easier?

SR: Yes.

It was recommended that Paul Goodwin make sure the floor drains are shown on the plans and that any changes to the plan be shown as well.

Lot 39 Turtleback Road - Myles Cambridge

Myles Cambridge presented the application and plans for a building which exceeds 2,500 square feet. The Public Hearing will be held on August 16, 2005 at 9:45 p.m.

Rob Fitzgibbon & Michael Cataldo will inspect the property during the first week of August. They received permission from the owner and they will notify him when they visit the site.

54 Rocky Hill (Kyle Gayle, Nevers End Realty Trust, owner, not present)

The Board discussed the correspondence from the Law Offices of Philip D. Moran, PC.

RF: I contacted the Essex County Greenbelt and Martha Hoar, MECT for their feedback regarding building at this property. Basically, what this boils down to is that we have a lot of good information on our side regarding the ten-lot maximum.

Bill Holton volunteered to research the information regarding the lot restrictions. Rob Fitzgibbon will write a letter in response to Mr. Moran's letter.

149 Eastern Avenue (Mark Gallagher, owner – not present)

The Board discussed the use of the property with the Building Inspector and the cars in the front yard. The Building Inspector stated that the cars are twenty-five feet from the street and that the owner is working with other boards and has plans to do a few things with the property. The owner has not approached the Planning Board with any plans at this time.

Turtleback Road (Peter Van Wyck – owner, not present)

The Board determined that the files could be viewed by the Public if requested due to the fact that the As Built was accepted.

The Board will do a trial run of having a meeting begin at 7 p.m. for the meeting on August 16, 2006.

Rob Fitzgibbon, Amy Reilly, Andrew St. John will form a subcommittee and hold meetings in September so that at the first meeting in October 2006. Amy Reilly to chair and schedule subcommittee meetings.

Scottie Robinson, Mike Cataldo and Bill Holton will review the ANR draft and work on the list of dates for submissions of different applications. They will present input at the August 16th meeting.

36 Story Street (Joan Bucklin – owner, not present)

The Board members reviewed the application Definitive Subdivision Plan of 36 Story Street and the criteria if they may accept the application. The Secretary will let the owner know that it was not accepted due to the roadway and the drainage. The board also has concerns regarding the frontage. Rob Fitzgibbon will be sending a letter which will be mailed by the secretary to Griffith Engineering and Joan Bucklin.

RF: Motion to approve the meeting minutes of June 28th 2006 as amended.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Regular Business

Mail

Invoices

BH: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:35 p.m.

Next library meeting is set for Wednesday, July 26, 2006 commencing at 7:30 p.m. at the Town Library..

Presented by: M.E. Feener

Mary-Ellen L. Feener, Secretary

Attested to: L.W. Holton

L.W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, July 26, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:25 p.m. by Acting Chair, Scottie Robinson.

Attendees: Acting Chair, Scottie Robinson (SR), Kim Jarvis (KJ), Bill Holton (BH), Amy Reilly (AR), Andrew St. John (ASTJ) (*arrived at 7:36 p.m.*), Michael Cataldo (MC) (*arrived at 7:40 p.m.*)

Absentees: Rob Fitzgibbon (RF)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener

Regular Business

- Mail
 - Invoices
-

Building Inspector's Report

57 Eastern Avenue – Robert Hanlon

BS: The application is to move an existing one and a half story 25 x 45 barn from his neighbor's house to his house. It has a twenty-foot side yard set back and it does not exceed 2,500 square feet. This is a siting of a building. It has the BOH, Con. Com. and DPW approval.

SR: Is it one story?

BS: He has it as a two-story. It is really one and a half.

SR: Are the set backs good?

BS: Yes.

SR: Is he doing any plumbing or that sort of thing?

KJ: The structure is on an existing lot. It is just an existing lot and he isn't doing anything special. (To Bill Sanborn) Is this just for our information?

BS: No, it is the siting of a building.

The Board reviewed the application and the plan.

KJ: I move to approve the siting of a 25 x 45 barn to be located on 57 Eastern Avenue by Robert Hanlon from his neighbors yard to his yard. It has the approval of BOH, Con. Com. and DPW.

AR: I second.

All in favor?

Aye.

Motion passed unanimously.

(63 Main Street – Brigid Venti, owner, not present)

BS: I would like to mention the letter from Town Counsel, Kopelman & Paige regarding 63 Main Street. I would at this time like to suggest that everyone reads the letter and then at the next meeting it can be discussed.

SR: Is that soon enough for you?

BS: When is the next meeting?

MF: August 16th.

BS: What happened to the first and third weeks?

MF: This is still from the trial run of a summer schedule, after that meeting it will be over.

BS: I don't know if I will be there. I would like to have all the board members read it and really understand it so that we are all on the same page. I am reading it as if the owner doesn't need to go to the Board of Appeals as we had thought.

It was decided that Mary-Ellen would contact Rob Fitzgibbon upon his return from his vacation trip and inform him of the letter from Kopelman & Paige and request that Rob contact Bill Sanborn in order that he may listen to his input regarding the letter and the situation since Bill may not be able to attend the next scheduled meeting. It was also discussed that following the August 16th meeting a letter be drafted and sent certified mail as soon as possible to the owner of the property located at 63 Main Street.

DPW – Public Hearing

Representing the DPW: Walter Rich (WR), Michael Galley (MG), Scott Dewitt (SD), Paul Rullo (PR)

SR: I would like to move to open the Public Hearing on the matter of the Department of Public Works application for a Special Permit to construct a building which exceeds two thousand five hundred square feet and I will ask the DPW members here tell us what they want to do.

Mike Galley: I guess I will open the meeting. I am Mike Galley, Assistant Superintendent for the Essex DPW and exactly why I am here is to apply for a Special Permit for our vehicle maintenance building which exceeds 2,500 square feet. I guess I will have Walter Rich talk next.

WR: Good evening, my name is Walter Rich and I am the Chairman of the DPW Commission. The three of us are here representing the DPW. We applied to Bill Sanborn (Building Inspector) for a permit to build our new building at the transfer station. We have been in the process of doing this for I don't know, somewhere in the vicinity of two years and we had been unable to get proper verification on the lot and financial resources. Finally, we just came to the point where we have everything. We have the site of the building and we have the right amount of money. The building we are proposing is the same one we had tentative verbal approval from the Selectmen and the Board from before, not official approval, to construct the salt shed and a DPW building. At the time the building was going to be 100 x 100, but we found it to be too costly and we have had to revise the plan to bring it down to an 80 x 80 building. Once we were able to obtain the correct financing to build two months ago we then started going ahead and then we found out that we needed to have a special permit. I must say that I was negligent having been on the Planning Board at one time that I didn't realize that they had a Special Permit required for buildings under Site Plan Review. In our haste, we did not realize we needed a permit and we are here tonight to construct an 80 x 80 building that will be 20 foot high DPW facility.

BH: Walter, this plan now shows the changes in the previous plan Paul (Goodwin of DPW) gave me before that were written in red?

WR: Yes that is correct. This shows the same site plan with the same location for the salt shed and a reduced sized and a slight change in location of the building itself. These are the only changes to this plan that I am aware of.

MG: Parking.

WR: Parking; that's right. We did eliminate the parking that was going to be in back of the original garage. It was going to be a paved area. We changed all that and eliminated that now and changed the location of the barn so that there is only access at the front of the barn. Before we had a drive thru situation, now we have eliminated that so we only have access from the front. The whole area is now going to be gravel and there will not be any pavement.

SR: Permeable gravel?

WR: The kind that allows water to go through? Yes.

SR: I am going to invite the board to ask questions?

Andrew St. John (ASTJ) arrived 7:36 p.m.

BS: One of the questions I have since the building has been moved is there access to the back?

WR: There is an area here; approximately 20 feet that will be graveled. I don't know what you mean about access; walking or driving access?

BS: Both.

WR: There will be vehicle access, but it is for emergency, fire department use only.

SR: What is this? Is that a stone wall or a...

WR: That was the limit of whatever they called that?..

SR: An orange colored geo style textile marker.

WR: That is right.

KJ: That is for the landfill.

SR: So that isn't an impediment for getting in there?

WR: No.

BS: The floor drains; are they tied into sewer?

WR: Our original plan had septic that has been eliminated. Our new plan has a grinder pump on the road and it will be on sewer by gravity; so we have contracted with Albanese to do the site work. The floor drains will be going into a separate holding tank and they are part of the original contract with the builder and they are going to run into a floor drain and it will be filtered and monitored.

SR: Is it shown here?

WR: No, I am sorry, I don't have that plan; it isn't shown on this plan. That was one of the changes we needed to do is to have the floor drains going into a tight tank.

SD: It was allowed for us to do it by the state for us to go into the sewer, but our own town sewer regulations will not allow us to do it.

SR: Does anyone else have any questions?

BJ Frye (BJ), Apple Street

BJ: One of you mentioned that there were boundaries of the property?

SD: Originally, years ago, we had a plan that we submitted to the DEP and they wanted more definite lines as to where our land fill was going. What they called the landfill area and the reconstruction area; they wanted more definitive lines.

BJ: When and where will the sewer happen.

SD: On the left side of the road.

BJ: That is my side.

SD: Yes. It is already in the road. The pump is already there. It is before you get to the brook.

Michael Cataldo (MC) arrived 7:40 p.m.

BJ: The gravel area in the back of the building. What is going to be using that access? Foot access, fire access, would cars use it? It is not part of the regular activity>

SD: If you look at the salt shed it will be similar to that and we don't use that area on a regular basis, the primary area will be in the front.

BJ: Is the salt shed separate?

SD: Yes.

BS: The only thing I would bring up is that there would be no storage behind the building or equipment near the building so that there can be access around the building for emergency situations.

SR: I want to outline specifically what the site plan review process states. Our chairman could not be here today so he asked me to step in for him. You (the men representing the DPW) understand that when we go over this list and if we approve or deny or approve with conditions.

SD: What does the planning board want these days, paving or stone?

ASTJ: At this point there is 'X' square feet of surface. If you are going to increase the impermeable surface than there is a conflict. You need to figure out where the run off is going and how and let the Conservation Commission know; it all makes sense.

SR: We would also include that the exterior building remains accessible is maintained and that the grinder pump and the floor drain and the holding tank is maintained with the DPW. It also includes a focus on traffic on the adjacent roads.

ASTJ: I would also like to add, not that I think it is going to change what is happening with this particular application is that all of this is part of the Essex DPW and you don't show what is going on in the dump, excuse me, the transfer station, gives me pause. What is going on here definitely effects what is going on here. Another time would be good for us to see that.

BH: Site visit.

ASTJ: I will do that anytime.

BH: That can be taken care of by a site visit and it isn't required on this application or plan.

ASTJ: Bill, well, true.

Scottie read the criteria of Site Plan Review. The Planning Board reviewed each requirement of site plan review and the application and the plan before them.

SR: This is the opportunity for the members of the community to say this is a deterrent or this is a positive thing for the community. We have one community member here (referring to BJ Frye).

BS: I have one more question. Employee parking?

SD: Employees are parking all over.

WR: There is no defined parking now. Basically it is where they park now; across from the garage. Primarily where the recycling goes.

BS: how many vehicles are there?

WR: Total? I would say roughly six.

BJ: Regarding the buildings, what is the big thing on the right? Is that temporary?

WR: The salt shed. Is that what you are talking about?

BJ: The big one you see? Is that temporary?

SD: That is a storage trailer.

BJ: They are big.

ASTJ: For the Boy Scout cans?

WR: The temporary trailers and the metal containers will stay. We had put on temporary roofs so that we could use them, but they will have to be moved. The trailer will be gone. And then there will not be a building per se; the roofs will be removed and it will be two metal containers used for parts storage. They are used as storage. Money was a big issue and this is the best we could come up with.

ASTJ: If you could afford it you would store your items in another place? Let me lead off saying that I admire that you have done this within budget constraints and have completed it. What we are faced with is to review what is already here, the Town, and making sure it all works together.

SD: To be honest with you. The building is going to be fixed, but we may be moving the other items around to see how they work on the lot.

MC: Can I ask a storage question?

ASTJ: Let me finish. (To Michael Cataldo).

ASTJ: I would suggest that to make your own lives easier that you find somebody and you have someone do a site plan sketch. There must be someone on your staff in your crew who could draw a site plan. We would like to know, what the entirety, the global concept. If you are able to come up with a global concept so we could say that makes sense; here is this, there is that... When you are describing to us it is here (directed to Bill Holton) and we can do a site visit, but a full plan is recommended.

SD: It will change. Snow is an issue down there.

ASTJ: And, I hope you will agree with me that if you have a drawing that shows all of the pieces then it is a lot easier to say, this makes more sense over here instead of over here.

MC: My question has to do with interior storage. Are you going to put the plows in the building?

WR: If they gave us all the money we wanted we would have put everything in the building. The answer is we may be forced to put some of the items outside the building. We have a limited space.

MC: There are not going to sprinklers?

WR: No. It wasn't required and it wasn't in the budget.

MC: After what happened in Gloucester you guys are still not considering to try to find the money?

SD: You can't use the word Gloucester. It was not a matter of something we would not have liked to have, but even with the budget we have now, the budget is fifty eight thousand dollars short and the Selectmen have agreed to fund us that amount of money. We were hoping to do this for four hundred thousand.

MC: (to the Building Inspector) they are not required?

BS: Not by law.

MC: I would like to make sure it is in our meeting minutes that it was recommended.

BS: I would like to point out for the record that I have already expressed my opinion. I think it is a bad idea to build a building that will store all of your equipment and then not have a fire sprinkler. In Gloucester it was December 15th and it snowed and all of the equipment burned down; it does happen. I strongly recommended it as well.

SD: I think I remember figures around fourteen thousand.

BS: What size water lines are going in the street?

SD: Eight inch wide.

BH: Conceivably you can ask the Selectmen for the money later on.

AR: I am curious, you will be storing gasoline inside the building.

BS: I can answer that for them, no they are not.

MG: They will be kept in trailer in fire cabinets.

BH: This is something that can be discussed later.

WR: I don't think anyone would disagree with you about the fire sprinklers; it is just a matter of the budget.

BS: I am curious as to when they could do a system because it is pretty bad when the worse case scenario happens.

SR: Any other questions or comments.

SR: Motion to close the public hearing.

ASTJ: I second.

All in favor?

Motion to close the public hearing passed unanimously.

SR: We will get back to you.

William Taylor – ANR Application 166 Eastern Avenue

William Taylor (WT) presented his plan to the Planning Board and the Board reviewed the plan.

This plan already was approved by the Con. Com. Scottie Robinson went over the criteria of an ANR.

WT: I am dividing the land where my antique store is located into two lots. One is 3.08 acres and the other is 1.093 acres. I want to sell the three-acre lot.

The Board reviewed the plans.

WT: I paid for a sewer hookup here and I have the approval of the Conservation Commission.

ASTJ: To do what?

WT: Build a house; I am not going to build it, but a buyer can.

MC: Weren't you here a few years ago?

WT: Yes, I believe so.

MC: Back then I believe we had some concerns about the wetland issues and that all of the wetlands needed to be indicated on the plan.

WT: I have all that and the Con. Com. Reviewed it all and they actually approved this house. I actually tore down the house where I live today and they are rebuilding it.

ASTJ: No way they tore it down?

WT: It took one hour. It was falling apart.

MC: Where are you living now?

WT: I am just going to live with my girlfriend's place for a time, which is not a good idea. I obviously need to follow everything the Con. Com. said.

MC: The buildings on the original lot, they are not making it more conforming. Does it have enough area?

WT: Yes it does; it has 44,000 square feet of continuous upland.

ASTJ: They are reducing the non-conformity.

SR: What is this line right here?

WT: That is a road.

ASTJ: Existing?

WT: Yes, existing.

SR: Is it a driveway?

WT: Yes, it is a driveway. It is a gravel road which the Con. Com. said had to be raised eight inches or something.

SR: There are three standards for ANRs. You must have adequate access on a public road, they must meet the minimum frontage requirements; which they do, and we have to determine that the vital access to such lots otherwise exists. Meaning that these roads provide the access. Harlow is a village street and it can be there.

MC: The buildings on the original lot were they conforming when you subdivided?

WT: They are no less conforming.

ASTJ: There is no creating a greater non-conformity.

SR: They are not close to the edge of the lot lines.

WT: There is plenty of space actually.

ASTJ: He is reducing the non-conformity. What a good thing William.

MC: How many dwellings are there on the original lot. The caboose? How many dwellings on this lot?

KJ: That is not necessary for this ANR.

ASTJ: From our point of view; we are interested, but it is necessary for us to know for the ANR.

SR: It is a good question though because we might have to advise him.

WT: The caboose is on wheels; it is movable.

MC: No it is not. It can't be an accessory building and movable.

ASTJ: Before you make an ultimate decision would you come before the Board?

SR: What is going on with these buildings now?

WT: I rent out the caboose and I rent out this antique shop. I closed my business as of May 1st, so there are two businesses in two separate buildings.

SR: So you have two separate businesses on this lot?

WT: Yes. This was actually Farmer Dan's farm stand for years.

WT: By the way I have two sewer hookups on one lot.

MC: So the second hook up is for a potential house?

WT: No, that has a separate hook up. I went ahead and did the third hook-up even though I don't have a water hook up for this building because I wanted to keep my options open. I did that so I could have more choices five years from now.

ASTJ: So the two new lots will be 1.09 acres and 3.08 acres on Harlow Street?

SR: Sounds good.

ASTJ: I only need to point out as a matter of interest that this town has one acre zoning and 1.09 acres does not give you adequate area for two units on that lot.

WT: Because of septic?

ASTJ: Forget septic right now. You did say you actually have two separate sewer hookups right now.

WT: Yes, but I don't use one.

ASTJ: All I am pointing out right now is should you raze everything on this lot you would only be able to build a one family dwelling right there.

SR: I think you are mistaken. He could do a two family house; he could do a duplex on that lot with no problem. He also could do two separate units because this is a very old street.

ASTJ: Scottie, there is one dwelling there at the most right now. So for putting two there...

SR: He needs eighty thousand square feet for putting two units.

KJ: But one building could have multiple dwellings.

WT: This could be a commercial with apartments upstairs.

ASTJ: You need adequate area for two..

SR: Separate buildings; but I believe it would be 40,000 square feet each. It isn't an acre.

ASTJ: An acre per dwelling unit.

KJ: No it is not an acre; it is 40,000 square feet.

SR: Slightly less than an acre. He has eighty thousand.

WT: At this time, I don't plan on doing anything on it. I am selling the land right now so I can rebuild my house.

Kim Jarvis read the zoning requirements.

ASTJ: I just didn't want to do an ANR that ended up in a bad result.

SR: Do we have the check, the application and the plan?

ASTJ: I move we endorse the application of William Taylor for an ANR application for the land.

SR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

The Board reviewed the process for an ANR and the approval of such an approval. It was determined that the Board would sign the approved application and plan and that the applicant would be able to leave with said forms and file the necessary paperwork accordingly. It was also decided that the application should be signed by the acting Chair and the Clerk.

ASTJ: You need to give us proof of the recording.

MF: I thought once it is recorded the information is given by the Registry to the Assessor's office. We do not collect anything from the applicant.

(Keith Symmes – Centennial Grove)

Keith Symmes (KS) attended the meeting. Though not on the agenda; Mr. Symmes requested that he be able to approach the Board and the Board members agreed. Mr. Symmes asked for a site visit by the planning board members. The Board agreed to discuss the plan with Keith Symmes.

KS: If you would just give me a few minutes then we could set up a time for a site visit?

SR: I don't have a clue what is being asked of us because I wasn't at the last meeting.

MF: It is on the next agenda.

SR: Then we should wait until the next meeting. Does anyone else have some advice?

KS: At the last meeting it was decided that they wanted to do a site visit before they can do an approval, but they can't do the approval before they do the site visit. So if at the next meeting they can do the approval then I would like to get the site visit scheduled.

SR: What is the application ~~be~~ before us?

now

KS: It will be an ANR.

SR: O.k. and we talked about it and people said we wanted to do a site visit? So should we agree now to do a site visit before the next meeting since it is already on the next agenda? Is that reasonable?

KS: That would be fine. I just wanted to bring the plan so you would have something to reference before you did the site visit.

SR: O.k. why don't you give us the plan.

KS: Briefly, this is the old plan and we tried to embrace the spirit of it and this is the new plan, stipulating a forty-four foot road being laid in with the appropriate curbs. I have multiple copies depending on how many you want to have and then depending on the changes you suggest we will put them onto a Mylar.

SR: Why don't you leave us three?

KJ: Did you or somebody say that the Town was going to grant this?

KS: We will come back at a later date to formally do this; but I do have a deeded right of way to Arielle/Icehouse.

BH: Is this near the Shank's property?

KS: Larry Shank's is right above me.

MC: One of the questions I have is what if the town doesn't allow this?

KS: I don't need this access because I still have a right of way access on the other side.

SR: We would not be able to give you approval for an ANR because you do not have frontage. You need to have frontage; we don't care if you have access.

MC: If you did what the Shanks did and go before the Town Meeting and have that approved as a road then we could approve an ANR.

SR: And that was because the Town wanted to put the sewer in that way and it would cheaper for the Town.

MC: We can come look at it but I think we would end up asking for a legal opinion. Basically, there is a Town land lock on this end.

KS: Yes, the Town granted access right here, but it is not formal frontage. It is all easement.

SR: That is not a road. We can't give you an ANR, if it doesn't have frontage.

KJ: That is the same issue we had on Southern Avenue with the lot that didn't have additional problems on it.

KS: With the deeded right of way out to Western Avenue here created in the 1800's.

SR: If you don't have frontage that is too bad. We cannot create an ANR for something that doesn't have frontage on a road. Regardless of how you get there. I don't care if it's your grandmother's lot; if you don't have frontage, you can't do it.

ASTJ: We are talking about the prerequisite for our ANR applications.

SR: Yes, you need three things; frontage, frontage on an adequate road and frontage that you can get through.

MC: What Shank's did was bring it to a Town Meeting to have it approved.

ASTJ: Yes, and until that is done we can't approve an ANR.

MC: When you built this one we established it was going to be three houses on one lot as condominium.

KS: Yes.

BH: Let me clear now. What you are trying to do?

KS: I want to sell it.

MC: Theoretically, this is a paper road.

SR: Is it more than 1,200 feet?

KJ: The total measurement is a bit over six hundred and eight three feet.

MC: It doesn't really join a town road.

KJ: If your neighbors pass over the land then you may have what is referred to as squatter's rights. However, due to the fact it is town land abutting your lot, it doesn't apply.

SR: I think the big thing is getting it established.

Kim Jarvis, Bill Holton, Amy Reilly will meet on Sunday, July 30, 2006 at 8:30 to do a site visit.

Arielle Lane – Alan Kirker

Alan Kirker, Arielle Lane

Kevin Goldenbogen, 2 Ice House Lane

ASTJ: It is my understanding that as this letter indicates that the Board has no jurisdiction or standing. The engineer retained by the Town has been quite clear that the problems with the road predate the Arielle Lane subdivision.

ASTJ: Larry Graham may have made suggestions that may have improved the situation. However, this does not make Larry, the Board or the Town responsible for the problems with this subdivision.

SR: I understood that the plans are o.k. and the same conservation occurred three years ago. It was my understanding that it was something was going to be done.

AK: Larry Graham recommended these things to be done.

ASTJ: No, he made these suggestions, they are not a requirement. Sir, what would you like us to do?

AK: I would like the board write a letter to Scott Boches saying that he should follow through with what Larry Graham suggested.

Keith Symmes: This is my land. This is where Mr. Goldenbogen is and this is where Mr. Kirker is located.

SR: So can I get back to what can we do for you. What do you think is the remedy?

AK: We sent plans of what could be done to remedy it.

KJ: When we came out on February 3 we noticed that there were not any issues on the road that would have been caused by the new construction of the subdivision.

ASTJ: Again, what Kim is indicating is that it is a tricky engineering issue and I can think of a dozen issues that arise during the process of building a subdivision. However, it is important to note that site visits were made by the board and the engineer hired by the Town.

MC: We did discuss this with Larry Graham

ASTJ: So the grade of the road hasn't changed significantly?

KJ: We found no evidence of erosion when we did a site visit.

AK: That is because I kept filling it in.

ASTJ: There is clearly some work that needs to be done to satisfy the situation. I don't think We are not mediators. Basically, what we do is that we see drawings come in and when they are complicated we hire an engineer, which we did with Mr. Graham. His last letter to us showed some suggestions he made.

AK: Doesn't he have the right to have the plans changed as they are happening?

ASTJ: Yes he does and he did give his recommendations, which he felt were satisfied.

AK: So the only thing I can do is hire a lawyer and go after Scott Boches and the Town?

SR: We would request that we have time to review the current files and to discuss the situation with Larry Graham our engineer and for us to be able to have time to re-discuss your concerns. We will contact you once we have done that.

(Vote for DPW Special Permit)

Bill Holton will write the decision with the following conditions:

- There will be a grinder pump with a gravity feed to sewer
- Floor drains on holding tank to be inspected and maintained by DPW – keep maintenance log
- If the DPW would like to put further pavement down they must come to the Planning Board for a modification to the Special Permit
- If any structures other than temporary structure are to be erected the DPW must present to Planning Board or a modification of the special permit
- Accessibility around the building must be maintained.

ASTJ: Move to accept the application of the DPW special permit with the conditions as discussed.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting Minutes

MC: Motion to approve meeting minutes of July 12, 2006. as amended and modified.

BH: I second.

All in favor?

BH: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:35 p.m.

Next library meeting is set for Wednesday, August 16, 2006 commencing at 7:30 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: L. W. Holton
L. W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, August 16, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:50 p.m. by Rob Fitzgibbon, Chair.

Attendees: Kim Jarvis (KJ), Bill Holton (BH), Amy Reilly (AR), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Michael Cataldo (MC)
Secretary: Mary-ellen L. Feener (MF)
Absentees: Scottie Robinson, Building Inspector: Bill Sanborn

Meeting Minutes

ASTJ: Motion to approve the meeting minutes of June 14th,

RF: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

KJ: I move to approve the minutes of July 12th.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

July 12th and July 26th of 2006 as amended.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Building Inspector's Report

15 Tree Hill Road, Stuart Pratt (contractor for owner)

Bill Rice, contractor hired by Stuart Pratt, 15 Tree Hill Road presented an application to the Planning Board to rebuild a new garage on an existing footprint. The application has the approval of the Conservation Commission.

RF: For the record I am Stuart Pratt's brother-in-law and this is for the property where I currently reside.

ASTJ: It is nice of you to come before us, but I am not sure as to why you are here.

There is no place for the Board to document they reviewed the application on the application. I see no reason as to why we need to approve something here.

RF: I agree.

BR: Do I need you guys to sign off on anything?

ASTJ: No. Just tell Bill that we didn't have any problems with it.

BR: There is no reason for you to initial off on the sign-off sheet?

RF: No.

KJ: Should we not initial the application that we reviewed it?

ASTJ: There is not place for us to sign or initial. It is not a special permit. Thank you very much for bringing it in.

KJ: I disagree. I believe we need to approve the citing of the building. We have the authority to do that and then the Building Inspector may authorize a building permit. The Board discussed the Bylaws and their authority to approved.

MC: I move that we vote to accept the building permit for the building of a garage on an existing footprint for Stuart Pratt, 15 Tree Hill Road; finding it meets the Town of Essex Bylaws and if it has all of the necessary approvals.

KJ: I second the motion.

All in favor?

Aye.

Motion approved.

Rob Fitzgibbon did not vote.

Thomas F. Lawler (TL), 51 Eastern Avenue

Thomas F. Lawler (TL), 51 Eastern Avenue presented an application to the Planning Board to remove an existing half story garage/barn and replace the barn with a new half story garage barn in a similar but not same location. Wastewater, but not Conservation Commission approved application. Thomas Lawler needs a permit so that he can build on the original footprint when the old barn is taken away. If he doesn't receive the permit now and the barn is taken away he would need to have ten-foot side yard set backs. The Planning Board reviewed the plans.

MC: What would the second floor be used for?

TL: Just for storage, as it is now. It is really a half story.

MC: Basically the issue is you are saying it isn't for habitation.

TL: Absolutely not. I was told I couldn't even have a sprinkler out there. The Building Inspector told me that I would have to obtain permits to do such a thing.

MC: We can make the approval with that as a contingency. It was in the minutes we just reviewed from July 26th regarding Robert Hanlon's application to take an existing one and a half story 25 x 45 barn from his neighbor's house to his lot.

ASTJ: Do you have the application?

TL: Right here. The only thing I don't have is the sign off from the Conservation Commission. I am not sure why I need to have their approval, but he (the Building Inspector) circled it on the form.

MC: It is a 6-4.2 finding with the condition if necessary it will have the approval of the Conservation Commission.

KJ: We do have the authority to accept the application. We will make note that if applicable the approval from the Conservation Commission will be obtained.

ASTJ: Motion to accept the application of Ken Lawler 51 Eastern Avenue of for the removal of the existing barn and build a new barn with the provision there will be no habitation; finding it meets the Town of Essex Bylaws and if it has the approval of the Conservation Commission if applicable.

RF: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Andrew St. John volunteered to review the information regarding Wind Turbines that was collected by the Board Secretary and will present the information to the Board at the next meeting.

Bill Holton was reminded that he was going to request that Walter Ewaschuk provides the maintenance plan for his building on 229 Western Avenue.

36 Story Street – Joan Bucklin

Orestes ‘Russ’ Brown (RB), legal Counsel representing Bucklin

Russ Brown, legal counsel representing Joan Bucklin, 36 Story Road, presented an ANR application. The Board reviewed the previous plan that accompanied the application of a Definitive Subdivision Plan submitted by Griffith Engineering, which was rejected by the Planning Board.

KJ: Is this removing land to the existing subdivision road?

RB: No, they were overcomplicating the process.

ASTJ: What you are saying now is with this lot you have existing frontage.

KJ: The full frontage would be one hundred and ninety six.

MC: Can you use this easement as frontage?

KJ: It is at the end of the road.

ASTJ: If you think of it, the land would be flat and this is where the driveway would be.

MC: It has already been approved as a subdivision road.

ASTJ: If this is a subdivision road; now we have a problem. We have the turn around for a reason.

KJ: So we are breaking the discussion regarding Joan Bucklin’s application of an ANR plan so we can begin the public hearing for Essex Park Drive.

Public Hearing – Essex Park Drive

Orestes ‘Russ’ Brown (RB), Legal Counsel representing Peter Van Wyck.

Peter Van Wyck (PVW) owner

The Board made sure they had the correct copies of the plans.

MF: For the record the copy Rob has is the one that was with the Town Clerk.

RB: On page one you can see the plans with the exception of the waivers listed above on the right corner of the first page. (Russ reviewed the requested waivers). Other than that the road will be forty feet in width and all the utilities will be underground. It does take into account that there is a vernal pool and there is the ten-acre Conservation Easement.

RF: The idea is that since this doesn’t have access off of Apple Street it would have less of an impact to the Town.

RB: I suppose it is possible that we have a secondary emergency access. There are a lot people who don’t want to see a road going off of Turtleback Road.

KJ: Did a letter go out to all the departments?

MF: Yes it did.

BJ Frye, Conservation Commission, Apple Street: We have been meeting only once a month for the summer. We had a full agenda last night. There are three vernal pools which I believe don't show on this. The Conservation Restriction is not being held up because of Conservation Commission. Did Peter sign it?

RB: Yes he did. The last I heard was that the Selectmen wasn't signing it because the Conservation Commission did not sign it. For the record I have a Mylar plan and an easement ready to be recorded.

MC: For the record, there are twenty-one lots showing on the plan. For planning purposes we should know from day one how many dwellings will be built on each lot.

RB: Peter wouldn't want a restriction as to the number of houses on one lot at this time.

ASTJ: In other words we have to go by the assumption that there will be sixty dwellings in this subdivision.

MC: We have gone in circles about this with similar subdivisions presented by Peter in the past and we have to say it is going to be sixty units and if that is the case we need to officially say it is time for a traffic study.

AR: I agree absolutely.

ASTJ: That is interesting. I thought in terms of the Preliminary discussion, we do not mandate a traffic study, we can suggest it. This is a public hearing; let's let the public speak.

RF: Is there anyone else on the board that has questions? If I remember correctly was that it was something we kept suggesting and then the Preliminary Plan was withdrawn.

KJ: I would like to have it be on the record that I would like the Planning Board to push for the comments from the Police and Fire Departments and the Conservation Commission. We already know that the Police has commented and the Conservation Commission will respond.

It was decided that Mary-Ellen, Board Secretary would contact the departments the following day from the meeting.

RF: Is this septic? Did BOH approve?

RB: Actually it is septic and one lot on sewer.

RF: Was a letter sent to the DPW for their response?

MF: Yes. All departments received requests for responses.

ASTJ: I have a question on the subject of the famous ten-acre Conservation Restriction. I am seeing it on sheet 3 of 7 but I am not seeing it delineated.

BH: It is on five of seven.

ASTJ: O.k.

AR: I would personally like to see this road connected to the end of Turtleback.

MC: No. That was before your time.

KJ: That was in a previous plan and it was withdrawn.

MC: It didn't make the cut.

BH: What is with lot 21, sheet five? Is it going to be included in the Conservation Restriction?

RB: That is the Perkin's lots. Though the ten-acre isn't a buildable lot, Peter would like to use it for technical frontage for the Perkin's lots.

MC: You might as well label it not a buildable lot. So in the case of something like lot thirteen it is thirteen acres. It is my contention that it would be three houses on the thirteen-acre. My assumption is that it could be developed further.

RB: That is why we are submitting a Preliminary Plan. All of this is open to discussion. We basically want to get the feelings of the Board regarding what we are trying to do.

MC: Even when we count the twenty-one lots and say, o.k., there are three dwellings on each lot and if I look at a thirteen acre lot it is my assumption that the most we can have is three houses on the thirteen acres.

RB: That is very rough topography and I doubt there can't be any more percs on there. A lot of what is going on with the subdivision has to do with what is happening with the septic systems. If there aren't any perc sites then there isn't anywhere to build houses.

ASTJ: We are not provided with information regarding perc sites.

RB: They are shown on page six.

ASTJ: Fine, I don't want to interpret the perc sites. If we are willing to say we would go ahead with this plan would you be willing to say that you will do no further subdivision.

RB: All of that is for discussion on the table.

PVW: I would like to do that. To tell you the truth we thought three houses to each lot.

RB: Peter, we are not talking about just the three houses on each lot, we are talking about further subdivision.

ASTJ: Further subdivision... We have a thirteen-acre lot here which conceivably you can increase your subdivision road to obtain more lots.

RB: I would say all of that is on the table for discussion.

ASTJ: What I would like to do is turn it around because what we are looking at is a subdivision plan and in order for us to evaluate it we need to know the intentions it is coming towards. You have given us a couple of good hard pieces of information. One is that you don't want to be restricted to twenty houses. That is a piece of information for our evaluation. The second piece of information is that there may or may not be plans to do further subdivision. If we approved this subdivision with the provision that no further subdivisions will be built off of this subdivision.

RB: There are no further plans for subdivision. Correct me if I am wrong. (turning to his client, PVW) Peter does not have any intent for further subdivision.

BH: Nor will there be more than one dwelling on one lot.

ASTJ: That is a separate issue and Peter has said he would not agree to it.

KJ: I could be wrong and I need to look into it myself, but I believe there may be a sewer threshold issue with the one lot that you are planning to have on sewer. I believe the threshold is for thirty thousand. Have you looked into the threshold for septic per unit? I want to suggest you look into this.

RF: I would like to open the discussion to the floor.

Jim Dooda, (JD) Essex Park Road: I know at previous meetings there was discussion if they could go through Essex Park Road at all due to wetlands. The previous owner of the property stated that there are wetlands at the end of the road.

KJ: Wetlands is something the Conservation Commission will address.

JD: The other comment I would like to make is if this was going to just be one or two houses that may be o.k. but I may have to have up to sixty-three dwellings going past my house. I see the Turtleback Road people here and they have done well with squashing the plan to have the dwellings go off of Turtleback Road. I would urge you not to allow it to happen to Essex Park Drive. If you don't have to do it; I urge you not to do it. If there are waivers you can do, please do it. It seems like an awful lot of traffic going past my front door.

BJ Frye, Apple Street: The bridge on Essex Park Road collapsed fifteen to twenty years ago and my question would be would the bridge hold that traffic. I don't see any reason why the waivers should be granted. I ask you please to think before you grant any waivers. I think that if possible to put a limit on the number of dwellings that can be built before you approve a plan. If twelve hundred feet is all you have then that is all you should be allowed to use. That's all for now.

Jean Raney, Turtleback Road: In terms of the length waiver I would support that.

Myles Cambridge (Myles C)15 Turtleback Road: I have frontage on Turtleback Road. I think the road has many different scenarios to consider. One is a through road which I understand the board approved.

KJ: No. That was withdrawn.

Myles C: Let me restate that; Town Counsel suggested that it could be a through road.

ASTJ: What happened was that Peter presented a Preliminary Plan that had a through road and after discussion at great length, Peter withdrew the plan without prejudice because he understood that if he had left it on the table it would probably be rejected. We have worked very hard to only consider what is on the table in front of us.

KJ: There was no determination by the board.

ASTJ: He could come back and actually resubmit it, but the overwhelming opinion of those who spoke on this particular subject stated it was not a non-starter.

Myles C: If it is the choice of a through road which I believe would greatly impact Apple Street and that area as opposed to Essex Park Drive, I think Essex Park Drive would be the best option.

ASTJ: I want to reinstate that we can only consider what is before us.

PVW: Just because I withdrew the first plan without prejudice that doesn't mean that I wouldn't go back to that plan. The issue is will the board allow a longer road. It is your choice to allow the waiver.

KJ: It is written in the Bylaw. There are three options: there are cul-de-sacs that need a waiver, there are cul-de-sacs that don't need a waiver or we could allow the waiver to extend the road.

Myles C: My point being that either restrict him to the mandated length, give him a fire gate or allowing him to do the through road. If those are the choices I would prefer and I know my neighbors would prefer not to see a through road. If an access road had to be there for safety that may have to be there.

ASTJ: We are not in the business of designing Mr. Van Wyck's subdivision and again we have worked very hard to get to the point to only consider what is on the table before us. We have learned that if we consider options at any given instance with Mr. Van Wyck, we get nowhere. We must only deal with what is before us.

PVW: I would like to make a clarification I did not withdraw the first plan until I had an indication from Town Counsel that I could use Turtleback Road as a through road. I went in a different direction as to allow the Board to have a second option.

ASTJ: You retained your option to put it back on the table.

PVW: I went in a different direction to give the board a second choice of what they might consider as really as the better of the two options.

ASTJ: I just want to make it very clear as to the function of the Planning Board. We do not consider options, we consider what is in front of us and either say yes or no. I agree with you, you withdrew the option.

PVW: We carried the legal issue so that it was determined that I have the rights to use Turtleback Road and to assume that I will not use it would be a wrong assumption if I am not allowed to do what I want to do. The issue is that if the Board wants to allow a longer road. That is the simple thing; will the Board allow the longer road.

ASTJ: One assumption you are making here, which may or may not be true is that all the options were considered. The Board actually never had any further time to discuss the subdivision itself. I also want to make sure the public isn't misled that if we request the waiver of the road oat Essex Park Drive then the Turtleback Road option is a slam dunk for you because it is not.

Jean Rainey, Turtleback Road: In terms of the length waiver I would support that.

Agatha Zakawas, Turtleback Road: None of us want to really have a street going pass our houses.

JD: There is options that no one else has mentioned that if you can't go through Turtleback and you can't go through Essex Park Drive then just leave the land alone.

RF: He has the right to develop the properties adhering to the bylaws.

MC: I want to point out that the abutters on the plans do not appear to have been updated.

ASTJ: I would like to read some of the comments made by fellow board member Scottie Robinson. She suggests that now the traffic study be done; that every one of the proposed streets be no longer than allowable in Essex; she questioned if the ten acre Conservation Restriction shown on the plan was in effect; she questioned septic run off; she questioned if any of the properties are within the water resource protection district, there was no delineation on the plan; many of the lots are large enough to accommodate at least three residences and she urged the Board to proceed with a definitive number of dwellings that are allowed, the issue with the abutter list and finally lot angles and the irregularly shaped lots and that the Board review the Bylaw guidelines regarding irregularly shaped lots. I (Andrew) would like to return to the issue of possible number of houses. Not each lot has three acres and they certainly do not have three acres of upland.

MC: That is not a determination we are going to discuss based on what is in front of us.

ASTJ: That's right. This is an important point.

RB: I will have our engineer calculate how many houses can go on each lot as the maximum and how many could you do without waivers.

The board agreed it would be helpful.

ASTJ: We would request that you look at each option.

Rob Fitzgibbon will type a letter and Peter will sign it for a 60 day continuation.

RF: I would like to make a motion to extend our hearing until September 20th at 8 p.m. for Essex Park Drive.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Lot 39 Turtleback Road – Public Hearing
Myles Cambridge (Myles C), owner

RF: I would like to open the meeting for a Public Hearing for Myles Cambridge to build a building that would exceed two thousand square feet.

The Board reviewed the plans.

RF: While I was away was there any discussion regarding visiting Lot 39?

The Board did not have any discussion.

RF: (Reading from notes) Amy and Michael to visit this weekend.

MC: We forgot.

RF: Was the purpose of the visit because this required a permit? (Reading from notes) I think the question was regarding the leeching, fire, etc. Have those permits been obtained yet?

Myles C: No.

RF: (Reading from notes). Bill Sanborn had a question regarding drainage control and he suggested a downspout here on a revised plan for the perimeter drain.

ASTJ: My recollection of the discussion wasn't a citing issue, it had to do with drainage. Is that a problem?

Myles C: No, not at all.

ASTJ: You would have no problem with an approval that stipulated downspouts going into the perimeter drains, foundation drain heading either south or southwest.

RF: I think the reason we were talking about walking the property is the drainage. Would it be possible to do it this weekend?

Myles C: Yes.

MC: I can do a walk at 8 a.m.

KJ: We will meet at 8 a.m.

ASTJ: Myles you better call them all to remind them.

Myles C: It is the lot right next to the Handy House.

It was discussed that the BOH will be looking at the leeching.

Myles C: I am not in a rush to build. I will be hammering ledge and then working on a foundation.

MC: After you get the permit.

Myles C: I ask the Board permission to be forgiven for previous sins.

RF: We will go visit the property this Saturday at 8 a.m. and then at the next meeting we will discuss it.

KJ: Does anyone from the public here have comments?

No one commented.

RF: Motion to close the public hearing for Lot 39 Turtleback Road.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Centennial Park Road – Keith Symes – Informal Discussion
(Mr. Symes was present; not on agenda to present to the board)

Michael Cataldo read the draft letter for Mr. Symes for the record.

'Dated August 16, 2006. Dear Mr. Symes, On Sunday, July 23rd, members of the Essex Planning Board visited your property to conduct a review of your request to file an ANR plan for property on Assessor's Map 8, Lot 50. It is our understanding that the property is currently one parcel and the dwellings on it are owned as condominiums on common land. Your intent is to file an ANR plan to subdivide the property using frontage on the road listed on the plan as a private way. During the earlier discussion with the Board you mentioned that you did not own the road from your property to Centennial Grove Road and realized you would need to receive authorization from town meeting to lease the land to construct the access. The plan also indicates you do not own the road which leads across your neighbors' property to Ice House Lane. After viewing the property and the plan presented to us we wish to offer the following information for your review. In order to qualify for an ANR approval and avoid the full subdivision review, you must be able to demonstrate your lots are either:

- In a previously approved subdivision.
- Along a public way;
- Along a way that is used and maintained as a public way as certified by the Essex Town Clerk;

On a way that previously existed when the town adopted the subdivision control provided that the planning board considers it adequate with regard to width, grade and construction. Additionally, we have further questions about your ability to improve the road to the standards necessary for four or more dwellings considering you would have to use the abutting property owned by Christopher Cushna. We are also concerned with the nonconforming front yard requirements for #25 and the status of the accessory buildings located on lot #27. We do not believe you qualify for an ANR approval under any of the qualification categories listed above. Because at this time the road does not offer adequate access or meet the standards set in the Town By-Laws, we would be unable to process or approve your application. If you receive approval from Town Meeting and can address the other concerns expressed by the Board, please contact us again. Sincerely, Rob Fitzgibbon, Chairman.' It was decided that Michael Cataldo will forward the completed letter to the Board Secretary and she would forward it to the Chair.

36 Story Street – Joan Bucklin (owner, not present) - ANR Application continued

The application was accepted by the Planning Board.

63 Main Street – Brigid Venti, (owner, not present)

RF: I compiled comments from other members of the board that I will read now.

AR: I think we should give her a letter and tell her she has such and such days or we will take you to court.

RF: Who should this come from, Bill? (Sanborn)

AR: Yes.

The board further discussed the situation and it was decided that Rob Fitzgibbon would draft a letter to invite Brigid Venti to a planning board meeting.

35 Rocky Hill Road – (Keith Gale owner, not present)

It was decided that the subject of 35 Rocky Hill Road will be continued to the next meeting.

The board reviewed the faxed information sent to the Planning Board on Wednesday regarding the next meeting.

BH: Motion to adjourn the meeting.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:28p.m.

The Board discussed the policy of keeping groups/citizens to be informed.

Next library meeting is set for Wednesday, September 6, 2006 commencing at 7:00 p.m. at the Town Library.

Presented by:  Attested to: 
Mary-Ellen L. Feener, Secretary L.W. Holton, Clerk

**Town of Essex Planning Board
Meeting Minutes
Wednesday, September 6, 2006**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:09 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Bill Holton (BH), Andrew St. John (ASTJ), Amy Reilly (SR), Kim Jarvis (KJ), Michael Cataldo, Scottie Robinson (SR)
Building Inspector: Bill Sanborn
Secretary: Mary-Ellen L. Feener

Regular Business

0 Harlow Street – William Taylor (owner, present)

Due to the fact that the parcel contained registered land on file with land court, the owner needed an additional Mylar signed for the already approved ANR that the Board signed.

Mail

The Board reviewed information sent by the Manchester Planning Board regarding the proposed Manchester-Essex High School and determined that these documents were for informational purposes only and that the Board did not need to respond.

The Board members reviewed the remaining mail.

Essex Park Drive – Peter Van Wyck (owner, not present)

The Conservation Commission had requested to meet with the Planning Board to discuss Essex Park Drive. Present members of the Conservation Commission were Wally Bruce (WB), chair and Bob Brophy (BB) and B.J. Frye (BJF).

WB: There are two other members here with me tonight; Bob Brophy and B.J. Frye and we represent the Con. Com. A number of weeks ago you asked us to comment on the proposed subdivision plans for the subdivision. I think it was the consensus of the Board that what we knew of Essex Park Road and what we saw on the plan was probably different and it was hard for us to make comments. What we saw as the lots were different. Our concerns were based on a plan that were originally done by Peter, by Apple Associates and it was done for an ANRAD, a wetlands delineation, and it was to that we wanted to address the board as to what were the wetlands issues and we wanted to speak about that directly. We couldn't speak on the lots.

KJ: Did you take any consideration as to the roadway alignment?

WB: No we didn't. We thought that it would be best if we presented the ANRAD map and Mary Rimmer's comments regarding areas within the site, which were of particular interest for wetlands issues.

SR: Who is Mary Rimmer?

WB: Mary Rimmer was hired by the Conservation Commission through Peter to review the ANRAD done by Apple Associates. Do you folks have a copy of that map?

MF: I don't think so.

The Board reviewed the files and there wasn't a copy of the ANRAD.

WB: Other members of our Board would tell you that it is difficult for us to refer to your maps. We have here Mary Rimmer's comments as to vernal pools on the site which now have to be protected and that needs to get intertwined with what you folks are looking at so that you can get the entire picture but I don't think that will happen in fifteen minutes.

ASTJ: What we can do is take an initial look at it now and if we have any questions we can ask them and then we can look at it in detail later on.

RF: When did Mary Rimmer write this report?

WB: This was done on April 15, 2005.

ASTJ: In April. So let me see if I can get this straight. You have reviewed Mr. Van Wyck's application in light of this?

WB: No. The only thing we have done on this property is review an ANRAD.

SR: So, you didn't review the proposal he made to us. What you did was review the entire property without boundaries, so you know what is here.

WB: There are preliminary things like Western Avenue and a preliminary roadway. This (the ANRAD) was just a site.

BB: What I would like to see is that this is all coordinated. From this (the ANRAD) what we would like you to do is say he can or can not do this first. For fifteen years it has always gone to the Planning Board first.

KJ: What we really need to be looking at where the roads are because there are a number of wetland property for where the roads are proposed and your comments on those would be of interest to us. The citing of houses is going to be way further down the road.

SR: We are nowhere near there.

ASTJ: I would also like to observe that we are wasting our time here because there is a very straightforward approach because Apple Associates should be looking at the roads.

BS: The reason I send people to the Conservation Commission prior to coming here (the Planning Board) is so that they don't come here and we say o.k. you can put your house here and then we send them to Conservation and they say no it is near a marsh or in the middle of a pond. Now they would have to come back here and do it again.

ASTJ: They need to come to you with roads, lot lines and houses.

BS: That is what I would say. You should have a plan that shows this is what is going to be done and if this is going to be changed you need to come back to us. If you want to move a house, or you want to move a driveway, you need to come back to us. If you look at this map, there is a lot of wet; that is something I would be concerned about.

WB: The problem we have with that is that Peter Van Wyck in particular, has shown us the plan and then the Planning Board makes some revision to it and then it comes back to us and we go out for notices of intent.

BS: That is something that happens everywhere. What other towns have done is to take a plan for instance, he gives it to you with all the lots lines, the overlays and the driveways and then you review and then you say this is what we want. Then the Planning Board should get a plan that is stamped and says, approved by the Conservation Commission. That plan has been approved in red ink. Now when it comes to the Planning Board the Board knows what was approved. We try not to make people go back and forth, but changes happen in projects like this and it does happen. The same should have a stamp too. There should be at least three stamps on a set of plans.

BJF: I just wanted to say that I feel very strongly about what I have said in the past regarding not extending the road length and controlling how many houses will be built. When I see what is going on at Lowland Farms, with the continuing addition of lots and more comes and more comes and there is nothing anyone can do. Scottie and I have looked at it all and the impact of it.

ASTJ: B.J., you understand that we have to do what is allowed under the Bylaws of the Town of Essex and under those bylaws it allows certain things.

BJF: So, you think it is a possibility that the road may be extended.

ASTJ: I am not saying anything right now except that I do know that there are people in the Town of Essex that think that the Planning Board has powers that they don't have.

BJF: I realize that, but it is something to look into. Jim Sprague of the D.E.P. suggested before that this should not go on like this and that you need to look at the whole thing, look at the whole wetlands situation, go for what you are able to sustain.

ASTJ: We have asked Peter for that information.

RF: I have a question for the Con. Com. I look at this piece of property and I realize that there is probably a lot of wetlands there and as Andrew pointed out we follow the Bylaws of Essex and I look at this parcel and I say, gosh, we tried to put forward the OSRD last year and I can see this type of parcel being very appropriate for this type of development so we can maintain the number of dwellings while having a cluster type of development. I would ask the Con. Com. that this is something to consider because this parcel would be a good place to have an OSRD because it could keep safe the wetlands and the vernal pools but still allow Peter to develop the upland to the extent it would be profitable for him.

WB: I think the Commission has tried to talk to Peter with this in the past and we think it is great. I as a member of the Commission I am all for it. One other thing I would also caution is that there is a Ten Acre

Parcel and one thing I think I told you Rob is that the Commission's understanding is that it is not a Conservation Restriction as of now.

BJF: I believe that Peter did not want to pay for any markers, but I think there is a letter from Kopelman and Paige that says that the markers were part of the original agreement.

ASTJ: My understanding is that in order for Turtleback Road subdivision to be completed this C.R. was supposed to be final and as far as I am concerned this (Essex Park Drive) does not go any further.

SR: Yes.

Rob Fitzgibbon gave the Board an update from Brendhan Zubricki, Town Administrator, which stated that the progress of the Conservation Restriction was now in the control of Orestes (Russ) Brown, the legal counsel for Peter Van Wyck.

Building Inspector's Report

16 Tree Hill Road – Stuart Pratt

BS: My first application is to demolish an existing garage and to build a new garage on the existing footprint, 25 x 45. It does have sign off from the BOH, Con. Com.

ASTJ: We reviewed this last week.

BS: You may have, but I don't have any way to tell if you did and I was told by the applicant he felt that he walked away thinking that he didn't need your approval.

MC: I know we approved it.

SR: Does anyone know what the building is o.k. for in terms of sewerage?

It was decided that the DPW would be contacted regarding citizens adding additions to the existing sewer system.

MC: I make a motion that we approve the application of Stuart Pratt of 16 Tree Hill Road to demolish an existing 25 x 45 garage and to rebuild it on the existing footprint and it will not have a bathroom. It has the approval of the BOH and Con. Com.

RF: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

4 Lakeview Road – Patricia Hogan

BS: Applicant is looking to build a one-story, 20x27 addition for one full bath and laundry and remove two stairwells in existing dwelling. It has the approval of B.O.H., Con. Com., and DPW.

KJ: Is this a 6-4.2 finding?

BS: It is a 30,000 square foot lot but the road was in existence prior to when you started the non-conforming

ASTJ: When are we jamming new construction on a lot we need to look at this?

SR: And it is in the Watershed District. That is what the Watershed District is for, we do want to know even when a shed goes up.

BS: This will make my life a lot harder. I will have to come to you every time.

MC: My only question is there anything in the condominium documents that stop them from doing this?

BS: I have them right here. I can tell you though that the condominium documents are no concern of the Board.

KJ: I move that we accept the application of Patricia Hogan for the building addition of a full bath and laundry room at 4 Lakeview Road finding that it has the necessary approvals from the necessary boards and that it follows the bylaws of the Town of Essex.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

63 Main Street – Brigid Venti (owner, not present)

RF: I have a few questions. Regarding 63 Main Street, you stated you can not take any action when it comes to the parking.

BS: I have decided not to take any action.

RF: Can you also fill in the Board regarding the emergency exit of the First Universalist Church of Essex?

BS: I was told by the Town Counsel that I cannot interact between two parties when it comes to the emergency exit.

BH: Had the change of use not occurred then we would not have this issue. It is a Planning Board issue.

KJ: The change of use has triggered this issue.

ASTJ: I don't think there is anything that the Board has acted on which caused this change. It is merely that it was brought to our attention.

BH: The change of use is for two apartments and two stores.

KJ: I feel that we have the change of use issue; there is also a parking issue.

Andrew St. John read the last paragraph of the letter received by the Planning Board from Kopelman & Paige regarding 63 Main Street. 'The purposes of this opinion letter is limited to addressing the zoning status of the Building and its proposed uses. It is my understanding that there are other issues that may affect the proposed uses, including the Building's allotted capacity for use of the Town sewerage system, and requirements for accessibility to physically handicapped persons under the state Building Code and the regulations of the Massachusetts Architectural Access Board. In my opinion, these are independent requirements and regulations that must be satisfied in addition to obtaining necessary zoning permits. I do not offer an opinion as to the conformance of the Building and the proposed uses to these non-zoning requirements'. Dated July 25, 2006

The Board decided to send Brigid Venti a letter following up from the previous letter written by Rob Fitzgibbon asking her to contact him to discuss the property. This letter would request that Mrs. Venti appear at a Board meeting on a specific date to discuss the property and the requirements for a change of use.

149 Eastern Avenue – Mark Gallagher (MG) (owner, present; resides at 147 Eastern Avenue)

BS: I have asked Mr. Gallagher to appear and we have been checking into the project and I find no violations at this time. He has Conservation's approval.

RF: This is by Essex Seafood, correct?

BS: Yes. I will let Mr. Gallagher let you know what is going on and where we are. I would like to stay on this project and I have found no violations and no need for a building permit at this time. We are working on it though and he is in the process of obtaining a permit.

Mark Gallagher presented the approved septic plan to show the Board what he is intending on doing. The Board reviewed the plan.

BS: How many acres?

MG: Six. There is one acre that is wet; give or take. This was my design that was approved by the Conservation Committee to cross the wetlands.

BS: Is the wetlands a confined area?

MG: Yes. It is just right here (pointing to the plan)

MC: Do you have one hundred and fifty feet of frontage?

MG: No, one twenty-six.

MC: So, between the two you have a hundred and fifty feet of frontage?

MG: Yes.

ASTJ: So, what are we discussing?

MG: A proposed building?

MC: Is this the same lot that has all the cars?

BS: Which I did notice are moving up into the twenty-five foot set back and you need to move them back.

MG: O.k., they are all going to be moved soon anyways. This is the proposed building, this is the septic and this is the buffer zone.

SR: So what are you doing now? You haven't made a proposal for a building permit.

MG: What I am doing now is that Mr. Sanborn suggested that I come in tonight and give you guys an idea as to what I am proposing to do.

SR: The reason he asked you to come in to us is because we are getting complaints from your neighbors that you are doing something; that's what I am asking. You haven't put in an application, so what is going on, why are they upset?

MG: Because I am getting ready to um...

BS: He has gone to Conservation and he has put this road in here and due to neighbor's concerns, Conservation Committee called him back to a meeting, when was it, last night?

MG: Last night.

KJ: Is it a road or a driveway?

BS: It is a driveway.

MG: I am intending to build a house and a garage.

MC: What are you doing with this existing building?

MG: I am planning on leaving it there.

BS: You will have a house here and a house here and a shop here.

MG: The shop would be basically around here.

ASTJ: When you say shop, do you mean retail?

MG: A business shop.

BS: Business use, auto repair.

BH: So would that be a home occupation then?

BS: No. It is going to be a business use.

BH: How many square feet?

BS: Six acres. He has the area for the two houses and the use.

MC: But he doesn't have the frontage.

BS: Yes, but he can solve that issue.

MG: The reason I would be mixed use is because I own a parking lot right here. The property line is right here where the railroad ties are.

ASTJ: So, you rent them parking space basically?

MG: They have an easement.

SR: They have an easement. So it is not commercial use.

MG: Right, but I have the right to pass and re-pass.

SR: That does not constitute a commercial use for your property.

BS: He does have enough lot area to have a commercial use.

SR: Yes, I am not arguing that.

MG: I have less than two employees right now, so it could classify as a home occupation right now.

ASTJ: Your business is auto repair?

MG: Yes.

ASTJ: At another location?

MG: Yes, I have been there for thirteen years.

ASTJ: So your final intent is to build first a shop and then a house on the same parcel.

MG: If I don't go broke.

ASTJ: And your intent is to keep the existing house so that you will have two houses and a shop on the property. Do you have any sewer betterments?

MG: Yes. There is one betterment here if this septic system fails.

ASTJ: The new properties will connect to a septic system.

MG: Yes. This plan is for a three bay garage and a new house.

MC: And your building is under 2,500 square feet?

MG: Yes.

BH: These letters you received from neighbors addressing screening and lighting; how are you going to address that?

MG: Before anyone came to me, I met with Ivan and he came by and expressed some concerns he had. Before I discussed it with anyone regarding what my plans were, I had started to address those issues entirely on my own. Ivan came over to my house and I showed him what I planned to do.

BH: Who is Ivan?

MG: Ivan Muise, he lives here. I showed him where I proposed to put the building and where I was going to situate the building and where it would be less inconvenient to the neighbors. Some people thought I was going to have the building face them. I thought it best to turn it so the back would be towards the neighbors because of lighting and noise from any activity going on would be sheltered from sight and less

of a nuisance. I proposed to go back twenty-five feet back where I was going to put the building. I went over and showed him Filias's building and showed him what I was going to do. I had agreed to put arborvitaes behind the building.

Michael Cataldo read a letter for the record dated August 17, 2006 given to the Board by Mark Gallagher. Dear Mark, we wanted to say thank you for speaking to Ivan about your plans for your property. Even though we still would prefer that the auto shop is going back into the woods we appreciate the fact that you are trying to be considerate to your abutting neighbors. As you may guess, other neighbors are also concerned as well and we hope to work with you and the Planning Board to make your shop blend into the neighborhood as easily as possible. Thank you again for your time. We hope to keep the lines of communication open. Sincerely, Ivan and Lillian Muise.

MG: I did tried to go to talk about this with the neighbors before everyone was upset.

SR: I guess they are because I have heard from other neighbors that they are concerned.

ASTJ: So this project requires a change a use from basically residential to commercial.

BS: Adding a use. I would not say it is changing a use, it is adding a use. It makes a big difference.

ASTJ: Under our bylaw that constitutes a change of use and that requires a site plan review. What we are going to need is a site plan and this will give the neighbors time to voice their concerns as well.

MG: I have given this some thought and I have read the bylaws front wards and backwards and it is my belief that this falls under home occupation.

MC: Even if it does; if you look at 6-6.1.2 you would still need to come in for site plan review.

MG: I am willing to work with anyone and I even mentioned to the neighbors before I got these letters, to Felicia and Ivan and his wife.

KJ: What this is is that it is triggered if the building is a certain size or if there is a change of use and what it really addresses is that it gives people the opportunity to see if the traffic is appropriate, if the screening is appropriate, if there is going to be lighting issues and so on. What that does is gives the Board the opportunity to write a document that says you have agreed to put a row of arborvitaes between your building and the property line and then we just list those things down and it is usually pretty straight forward. Nine times out ten it is a limit thing and we write the list unless it is controversial.

MG: O.k.

KJ: You may want to get a copy of the requirements for site plan review. It is pretty straightforward.

ASTJ: My suggestion is that you get your designer. Is this Apple?

MG: It is John Judd, Gateway.

ASTJ: To show the buildings on the one plan with the septic system.

Mark Gallagher updated the board of his progress with other Town of Essex committees and departments.

BS: I don't think he needs to get a site plan review. He does have an existing building that he is changing the use in and he is building a new building and it is only for buildings over 2,500 square feet or a change of use of a building.

KJ: A change of use of a building.

BS: For a new building it has to be over 2,500 square feet.

SR: When you have plans, bring them in.

MG: That is fine, this is a preliminary talk.

KJ: In any event, we are still going to want to see plans that show the building, the septic and all that; whether site plan review or not, we review this anyways.

ASTJ: We need to look at this carefully and decide if we agree with Mr. Sanborn or not.

MG: Are there any copies you need or anything.

KJ: No. Thank you for coming in.

RF: Mary-Ellen just asked, where does it go from here? Does he go on the agenda to come back in?

MG: I have some more work to do myself.

SR: We are going to let him figure it out.

ASTJ: He will get back in touch.

KJ: He'll figure it out; we'll figure it out.

ASTJ: We will have another informal discussion next week; give us another fifteen minutes next week (to Mary-Ellen).

A citizen asked about how to find out what items would be on future agendas.

BS: One side note that you should be aware of (to the public). If he comes in and it is determined that he doesn't need a site plan review, he can bring a permit into me before the next meeting and I can bring

that permit application right down here; just like I did earlier tonight, and bring it to the Board on a 6-4.2 finding.

SR: If he comes back with only a building permit.

ASTJ: (to Bill Sanborn) Excuse me. You said, if it is determined. It will not be determined if he needs site plan review until the next meeting. It will not be determined. You are not in the position to determine it. This Board will determine it.

SR: Bill may show up with building permits.

ASTJ: That's up to him and then we will have a discussion on this matter.

BS: All I am saying is that it is very possible that a permit (application) may show up before this board without it being listed on an agenda.

49 Story Street – George Andrews (owner, not present)

Michael Cataldo inquired about the barn. He said that some of the abutters have inquired about the barn and that when the owner was in for a building permit he said that he was going to repair the barn. The Building Inspector said that he would look into the matter.

36 Story Street – Joan Bucklin (owner, not present) Orestes 'Russ' Brown (RB), legal counsel for owner

Russ Brown officially withdrew the ANR application.

54 Rocky Hill Road Informal Discussion – Kyle Gale (owner, not present)

The Board discussed the original agreement in 1984, which stated that there could be no more than 10 lots on this private road.

The Board reviewed the research completed by Bill Holton regarding Rocky Hill Road, dated August 25, 2006, 'In response to Attorney Moran's letter dated June 29, 2006 here is my research for the records, drawings and minutes of Planning Board meetings going back to Feb. 1984 when the controversy arose about public ways vs. private ways. On Feb. 15, 1984, Mr. Fred Richardson appeared before the Planning Board for the first time with Attorney Mark Glovsky seeking a Form A for his property along both sides of Conomo Drive. The Planning Board maintained from the start that Conomo Drive (now Rocky Hill Rd) was not a public way and if Richardson wanted to subdivide the land the road needed to be brought up to Essex Subdivision Standards Sec. 3.05 (Access Adequacy for 1-10 dwelling units) at his expense. At the May 2, 1984 P.B. meeting, Glovsky stated, "his client would only pay for the road improvements for that portion of Conomo Drive that covers his land and will upgrade according to PB standards." This was for three (3) buildable lots. Further meetings occurred on June 18, 1984; July 18, 1984; September 5, 1984, October 17, 1984; October 30, 1984, December 12, 1984. At the December 12th meeting, John Tierney (Town Counsel) attended at the request of the P.B. The final agreement relating to road improvements, bonds, Form A acceptance etc. was worked out for 3 house lots. On June 19, 1985, Mr. Richardson again approached the P.B. with plans for the remaining 61 acres which he would like to develop. The P.B. determined that they would allow further development if Mr. Richardson improved the road to the ten houses or less standards (Sec. 3.05) as he did for the first three lots. On July 17, 1985, Mr. Richardson retruned to the P.B., with a plan for the road improvements and further lots were accepted under a Form A. With regard to Attorney Moran's letter of June 29, 2006, he states what Attorney Glovsky stated during the Richardson application for a Form A in 1984-1985, that Conomo Drive (Rocky Hill Road) is a public way and his client should be allowed a Form A for his four acre property. While it is true that the Town Meeting voted on July 1946 to "accept Conomo Drive from Andrews St. to Pond St., as it will be laid out by the County Commissioners", the actual layout process required by MGL Ch. 82 and MGL 79 never took place. Additionally the Town Clerk, as I understand it, will not certify that the road is maintained and used as a public way. These were the two arguments used by the P.B. in the Richardson case. Richardson chose to make the necessary improvements to Conomo Drive and make it conform with our SDCL 3.05 rather than fight the issue in court. The P.B. was right, in my opinion, to deny the original Form A application based on (1) inadequate access (2) a non-public way. I recommend that we hold Mr. Gale's Form A application to the same standard. However, the problem that remains is the ten dwelling units limitation. Currently there are ten units on Conomo Drive. This is the maximum numbers allowed under the SDCL 3.05 (2b). Strictly speaking, adding additional dwelling units to Conomo Drive would

require the entire road, beginning at Pond Street and running to the Gale lot be brought to the higher standards. (See 3.05) This should be a subject for discussion. Also, Conomo Drive could be classified as a dead end road since the section beyond the steel gate is impassable. I believe it currently exceeds the maximum 1200 feet cul-de-sac rule in our SDCL. A future problem also exists for us or other Planning Boards. That is the continuation of Conomo Drive through to Andrew St, and then we will be faced with the issue of the inadequacy of Andrews St itself which is very much below standards."

MC: One thing we need to address at some point is the question is who owns the road? I own the road. Theoretically, even though I may have given the town an easement, because I own it, I can control what is going on there. We haven't explored this issue.

The Board had further discussion regarding subdivisions, ANRs and public and private roads and drafted a list of questions they would like present to Town Counsel regarding this lot and other questions and concerns.

Chris Winfrey, Rocky Hill Road: When we purchased our property from the previous owner, Martha Hoar, we were had the understanding that we had a conservation easement on our driveway and the impression I have on that is that the road can not be repaired or made larger because of that restriction.

Helen Bethel, Manchester-Essex Conservation Trust (MECT): There are actually three conservation restrictions which were approved by the Selectmen of Essex just a couple of years ago and the Secretary of Environmental Affairs and they are all recorded with the Registry of Deeds so they are available to you or I can get you copies. The three restrictions affect the three properties immediately adjacent to the lot you are discussing; the Hoar's, the Carpenters and the Minkin's. If you know the area, the Hoars and the Carpenters access their home by a common driveway which is on the Carpenters land and goes along the Hoars land. All of the Hoar's frontage has been given to this conservation restriction and on the opposite side of the road, the south side, the Minkin's did the same thing. All of their interests in a forty four foot right of way is in a conservation restriction which in affect says it will not be changed and that is their position that the road can not be changed.

BH: What you are saying is that these restrictions are so the road cannot be changed?

Helen Bethel: Yes, that is what the restrictions are for; that is not to say there isn't a condition that can override that; but those were put into affect for these reasons.

KJ: Do these properties meet; or is there a forty-foot right of way in between?

Helen Bethel: I have reviewed all the deeds of Rocky Hill Road and they differ. At the foot of the road, Mr. Richardson retained ownership in the right of way. At that point it was to get the town to accept it as a road. When he became aware that it wasn't working out; subsequent deeds to the middle and the top of the road don't talk about a right of way or ownership by Mr. Richardson. Which means the homeowner has ownership to the middle of the road. I would also like to point out that the original owner, Mr. Richardson died and his widow gave the MECT a deed that says all of her remaining land in the Town of Essex goes to us, so our position is that we own the road.

MC: It gets more complicated.

Helen Bethel: It is a complicated issue.

AR: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

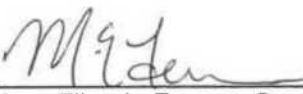
Aye.

Motion passed unanimously.

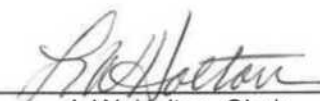
Meeting adjourned at 11:05 p.m.

Next library meeting is set for Wednesday, September 20, 2006 commencing at 7:00 p.m. at the Town Library.

Presented by:


Mary-Ellen L. Feener, Secretary

Attested to:


L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, September 20, 2006**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:10 p.m. by Rob Fitzgibbon, Chair.

Attendees: Rob Fitzgibbon (RF), Andrew St. John (ASTJ) Kim Jarvis (KJ), Scottie Robinson (SR), Amy Reilly (AR), Michael Cataldo (MC)
Building Inspector: Bill Sanborn
Secretary: Mary-Ellen L. Feener
Absent: Bill Holton

Regular Business

- Invoices
- Mail
- Meeting Minutes

RF: I make a motion to approve the meeting minutes of August 16, 2006 as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

RF: I have received some feedback about keeping our meetings on time. I have my stopwatch here. I also want to remind people that the Building Inspector's report is for building permit applications only; not conversation regarding theory or zoning. I believe that it was Mary-Ellen who mentioned that it would be great if we keep it to one conversation at a time. It becomes difficult to hear.

Building Inspector's Report

BS: The first order of business is that I will not be here for the first Planning Board meeting in October.

BS: The first application is for the Town of Essex, 17 Pickering Street. Map 37, Lot 1. It is to demolish an existing building and to replace it with a new building. The existing building is the Scout House and the new will be the Senior Center. It will be a modular type building and I believe because it is non-conforming it needs a 6-4.2 finding. The Board reviewed the Site Plan.

RF: I want to remind everyone that we worked with the Selectmen to obtain a grant to be able to build the Senior Center.

SR: Are these the modular down by the school.

RF: It may be.

SR: Is it two stories?

BS: Yes.

BS: It has the approval of the B.O.H. Wastewater, Conservation Commission and the Fire Department, 911.

KJ: Is it going on the same footprint?

BS: Yes. My understanding is that they wanted to do it that way so they would not need to seek any variances.

ASTJ: The height isn't on the plan.

KJ: Thirty feet, eight inches.

ASTJ: I lied. It is actually two and a half stories.

BS: According to Essex you would measure from the mean of the gable end, then it would actually be less than thirty feet.

ASTJ: On the existing footprint issue can you remind me what provision or Bylaw ordinance this would fall under?

BS: A 6-4.2.

ASTJ: A 6-4.2 finding is an extension, correct?

BS: It would be a 6-4.2 finding because it is non-conforming. It would be a contradiction of terms if you decided not to use 6-4.2 finding because you used it at the last meeting for a building on a non-conforming lot.

RF: Yes. We had a public hearing on this on March 13th.

SR: (Reading from Bylaws): 'Any building or structure or use of a building, structure, a building with its adjuncts, or premises existing on or immediately previous to June 7, 1972, even if not in conformity with its provisions, may be continued, maintained, and rebuilt if damaged or destroyed, provided that such rebuilding takes place within tow years of such damage or destruction. If authorized by the planning board said structure or uses may be extended or altered, provided that no such extension or alteration shall not be substantially more detrimental than the existing nonconforming use to the neighborhood...'

ASTJ: What was confusing me was your statement that it was on the same footprint. Now given all that, I will make a motion to approve the application of the Town of Essex, 17 Pickering Street, which used to be the old Scout House and will now be a Senior Center, under a 6-4.2 finding because of the fact it is a non-conforming issue and finding that it meets all of the requirements of the Bylaws of the Town of Essex.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

MC (to the Building Inspector): Can you fill me in with what is going on with Main Street and Brigid Venti?

The Board reviewed the draft letter written by the Planning Board Chair, Rob Fitzgibbon.

Rob Fitzgibbon discussed the grants that the Board may be interested in pursuing and which ones they may be interested in researching.

Pollution Grant

Essex County Community Fund, the ECCF

SR: I actually do this for a living. If we had a project I would write it up. I believe the ECCF is more involved with non-profit entities, not municipalities.

RF: What do you do? Get the project first or get the grant?

SR: Rob, the one from ECCF may be something that is interesting to the Conservation Commission or the DPW.

RF: I will forward this grant information to them. The last one I have is the John and Abigail Adams Grant that fosters art in the communities. I was thinking this might be interesting to the Ship Building Museum. I called Tom Ellis about this one and I have not had any feedback from him.

ASTJ: I would suggest a letter.

Essex Park Drive – Continuation of Public Hearing

Peter Van Wyck (PVW), owner – Orestes (Russ) Brown (RB), Attorney

The Board Chair, Rob Fitzgibbon at 8:10 p.m., opened the hearing and he recapped for those present what had occurred at the last public hearing for Essex Park Drive.

RF: For the public, the twelve hundred feet is the length of road allowed. It is the maximum allowable length of a road according to our bylaws.

Russ Brown made 11 x 17 copies of the yield plan which was drawn by the engineers working with PVW and which showed what they believed is the maximum amount of possible lots.

SR: This shows a twelve hundred foot road?

RB: This shows a twelve hundred foot road from Western Avenue. It is ten lots. Ten large lots which vary from three acres to twenty-two acres.

SR: Some of these we would not allow as lots because of pork chopping. Lot 1 (one) you can have something that narrow.

RF: By right, isn't this to show something theoretical?

ASTJ: The process we are here to discuss and correct me if I am wrong Russ, is what we have suggested is that we look at the maximum yield of the subdivision. If you did come to us with this plan, we would not allow lot 1 because there are specific requirements about the lot size.

SR: There would be issues with lot 2 as well.

ASTJ: I think that what you are looking to have is three houses on any lot.

KJ: There are also load guidelines which don't apply to any of these except where you have very narrow grades.

RB: On which lot?

KJ: On lot 1.

RB: I could come to you and have these lots approved as an ANR for each lot.

ASTJ: There is precedence for disallowing lots like this and I will be glad to look it up for you. They are dub-bell lots I believe they are called.

RB: It may be that instead of thirty houses we may have twenty-five. It is at least twenty anyways.

PVW: I would like to talk to you hypothetically if we are talking hypothetically. What if we were to do a circle right here? It is the same as Turtleback Road.

KJ: Wasn't that already suggested to us?

RF: (Reading from notes), I think what we were trying to do is that we were trying to set a baseline. Given this plan what we are looking as is that we are looking at is twenty lots.

RB: Beginning with lot 8 we can do three houses on each lot.

KJ: Bear in mind the slope. I would find it hard to believe that in reality that this is a buildable slope.

RB: That is just earth moving.

KJ: You might. Would you really blow out all of that ledge and tear it out. It isn't the kind of building Peter has done to date and it would cost a lot of money to get there.

RF: What is suggested is that you go back to Apple (engineers) and say can you get these lots right?

RB: I am looking at the elevation here.

ASTJ: That's a ten percent grade. That is pretty steep.

PVW: What number do you want to come to? Thirty, twenty?..

KJ: We are trying to come to what would be an adequate number for a reasonable plan without asking for any waivers. We will be looking at this when the road goes in.

RB: I get the point. If he came in with this plan with some minor alterations then he could get this as a matter of right. I guess that is what I would assert. It seems that he could. We could make some alterations on this and add this back property to lot three and clean that up. I am looking at, and I will redraw the plan, but without addressing if it would be practical economically to build three houses on each lot.

SR: Yes.

RB: I guess that is where we get into grades.

KJ: It is not up to us in regards to economical feasibility, but it is up to us in regards to subdivision plans and we will be looking at the grades when we are looking at the roads.

SR: Absolutely. It is up to him if he wants to put up that cash or not.

KJ: Right, but we would also like to see a plan that is a realizable plan and not just a piece of paper exercise. This is a paper exercise in subdivision planning. You might as well not even show us the topography if we are going to do it that way. What we are looking for is what is realistic. I mean realistically, will the Conservation Commission let you cross that wetlands, maybe not, maybe this should be looked at as what would a real plan be.

SR: I have seen developments of properties in the area, and I will tell you a thirty-foot grade is nothing.

RF: I want to interject here. It is about 8:35 and we have until 8:45 for the public hearing. I want to table this discussion so we can let Mr. Van Wyck and Mr. Brown know of the feedback we have received from other boards. I want to make sure that we have enough time to review the letters we have received from other departments.

Rob read for the record the letter written by Elaine Wozny, Health Inspector dated September 20, 2006.

'Just to let you know I did again review Peter Van Wyck's information which you gave me regarding the proposed subdivision between Turtleback Road and Essex Park Drive. From my review, I see nothing Board of Health regulated to deny the proposal. However, this does not guarantee Board of Health septic system or building permit approval. All association information for this must be submitted to and approved by the B.O.H. separately. As an aside, I know I would personally appreciate it, as it would make my job much easier, if each lot was given a unique and permanent ID number to follow it through the entire process from preliminary plans to certificate of occupancy. In the past,

properties have changed lot numbers repeatedly and have been extremely difficult to follow.'

RF: We also received something from Michael Galli who is the Chief Operator of the DPW and his comments for the Preliminary Plan were that the water main should be connected from Essex Park Road to Turtleback Road so not to be dead-ended. Even if the roads do not connect the water main should connect. All roads should be constructed so that the Town at a future town meeting may accept them. Grades of roads and drainage so not to affect Essex Park Road, and number four at the time the Water Department would like some information how a development population would affect the Town-State withdrawal permit as to how much water we pump on a daily basis. Presently, the Town is close to withdrawal capacity. We also got some feedback from the Police Department, Chief Silva, the thing he mentioned in this letter and he also mentioned in conversation with Board member Kim Jarvis, was that basically sidewalks and lighting. The one thing for people to keep in mind is lighting and that it will all be lit up and this will make the look and feel of the subdivision different. The Selectmen's office had no comment. The Secretary made copies of these letters for Peter Van Wyck and Russ Brown.

RF: Comments from the Board.

KJ: I would just like to stress my previous comment I brought up with the yield plan was that whatever Preliminary Plan we have, presumably this one, goes into Definitive Subdivision Plan that the proponent takes a look at the road guidelines in the subdivision rules and regulations because there are some steep slopes and we are going to make sure that any roads built in this subdivision are going to be at the standards specified in the subdivision rules and regulations for slope and width and that sort of thing.

RF: I would just like to mention to the Board members that the Town-State withdrawal permit regarding daily water pumping and that the Town is at it maximum water capacity.

RB: Is there a current restriction as to hook ups to the Town Water Supply?

SR: Not to my knowledge, but there might be soon.

MC: I don't think there is.

RB: There is nothing in place; his letter was stating an additional burden.

SR: Yes.

ASTJ: He is raising a flag.

RB: Some of that could be solved by having wells. We will have our engineer look into that. I guess, yield plan, this was an exercise to give us a plan roughly to show what Peter could do as a matter of right. The Planning Board could come in and say, o.k. if this is what you can do, this is what you do and then that would be all he could do. Then you could say is there a trade-off, could it go in a better direction.

KJ: I would think this is what you would want us to do and not have something in here that you would not be comfortable with doing.

RB: I guess. Peter would have to comment because it is his ideas of aesthetics. I suppose this could be made to work aesthetically and financially that would have to be determined as to what these houses would be worth. There is nothing here that offends me personally. It looks as if he had longer roads and the lots were spread out in a better fashion than he presented it, it looks better aesthetically the way he presented it. That is a highly subjective observation and that is a decision for the Planning Board to make, but I

think that the Preliminary Subdivision Plan asks for twenty lots because it also asked for waivers this Board has the right to put limitations in exchange for the waivers. There is a lot you need to think about.

RF: Let me add the comments of one more of the Boards. The Con. Com. says they met last night and they made the following comments. The first comment was, what would be the total area of roads crossing the wetlands. Number two, in reference to Mary Rimmer's report; she identified a number of areas which are potential vernal pond habitats. Any potential habitat needs to be identified and allowed protection. It was suggested in Ms. Rimmer's report, that this measure be taken prior to N.O.I. (Notice of Intent), as the preliminary roadway would be a concern; further review of this matter is needed. Number three, there is concerned expressed regarding the condition of Essex Park Drive, particularly at the Alewife Brook crossing. Another thing I wanted to mention is the big thing for them is to have the Conservation Restriction put to bed. I have talked to Brendhan (Town Administrator) regarding the status of the C.R.

RB: John Goldenrosen said we were good. I guess we are waiting on the Selectmen.

RF: That's why I called Brendhan to see how this moves forward. I know for us, the Board, in regards to the Agreement for Judgment, we would like to have this put to bed.

ASTJ: There seems to be two issues here. The first being what is the road. The second is wetlands issues. We don't have much authority in that regard. Another issue is for us is the number of houses. I am careful to say the number of houses and not the number of lots because I am trying to get an idea of the potential number of houses. I am trying to get at that once we know what that is then we can work out the best way to make that happen.

PVW: I think you are going in the right direction. We made a logical stab at what the lode was and we made a logical stab here and we said thirty and then you said twenty by right.

ASTJ: We are closing in on it. I actually think it is twenty myself.

RB: I agree then. I just want to make sure we have a consensus here and if I bring the engineer in here and there was a consensus on the number of houses here we would know the number by right. If we all have a consensus on it, then we go to step two, which would be how do we make the best plan for that number of houses.

RF: Let me ask a question here, the Preliminary Plan has up to sixty units on it?

MC: Yes, because there were thirty lots.

ASTJ: Twenty lots with three houses each on them.

RF: The Preliminary Plan before us has theoretically sixty units on it.

SR: Are all the lots the right size?

ASTJ: I don't think so.

The Board reviewed the plan.

SR: It is less than sixty units but more than twenty units.

ASTJ: This Preliminary Plan that was submitted, I thought, had so many problems, that was the reason we asked them to come back starting from scratch. O.k. what is the by right situation here? I think I would think I would like to consider this as the Preliminary Plan (indicating to the yield plan brought by Russ Brown).

RF: Let me ask you this, do we need to continue this public hearing?

MC: If they are going to submit more information then we should.

ASTJ: We would have to continue because Russ has made it quite clear that he would like to go back to Apple Engineering and develop a more by right plan.

MC: I make a motion to continue the public hearing for the Preliminary Plan Application for Essex Park Drive to October 4, 2006 at 8:30 p.m.

RF: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

149 Eastern Avenue – Informal Discussion/Present Application for Special Permit
Mark Gallagher (owner) not present

Mark Gallagher had contacted the Planning Board secretary to say that he was not ready to present an application to the Board at this time. Due to the fact that there were citizens present at the meeting who requested to speak to the Board regarding a proposed building of a garage on the property owned by Mark Gallagher at 147 Eastern Avenue and letters from these citizens stating their concerns, the Board agreed to answer their questions and take comments from the public.

RF: The Building Inspector said at the end of his Building Inspector report a comment regarding zoning districts. There is nothing in our bylaws to prevent Mr. Gallagher doing what he is doing.

SR: Right.

KJ: Right. As long as he meets the guidelines; dimensional and so forth.

SR: Mary-Ellen, when you talked to him did he say anything about site plan review?

MF: I believe he was told to go to the Building Inspector. I believe at the last meeting someone directed him to the Building Inspector.

SR: Yes, we talked about it at the last meeting. I wanted to know if that was what he was doing or...

MC: I think because we said it was a change of use.

RF: My recall from last meeting there was nothing to prompt him to come in right now because all he was doing was putting in his driveway.

MF: He did come in to get the subdivision rules and regs.

RF: By right people can do what they want and without zoning districts there is nothing people can do. Zoning districts would separate business, commercial and residential so on and so on... What we have seen repeatedly is that someone comes in for a home occupation and then it becomes a thriving business and then we have all sorts of issues with parking and so on. Without zoning districts there is not anything someone can do and someone can put up an auto shop right next to their cute little house and that is all it is.

SR: That is how it is.

RF: I know in the 1980's the idea of zoning districts was shot down by the Town.

ASTJ: Zoning Districts have been suggested numerous times. We as a Planning Board are very much in favor of zoning districts, but it is going to take a great deal of work and changing a lot of minds in the Town to re-introduce the subject of zoning districts.

SR: Having said that; you can put a business next to a residence but there are requirements regarding screening, setbacks and the land owner would need to come

before us and say this is what I want to do and we can ask are you going to be running trucks at ten o'clock at night and we can say you need to screen your area and ask what will you be storing on site. It has to do with the change of use for which they would need to come before us for site plan review. Then they would need to discuss height, setbacks etc. and people from the public would be invited to the meeting. We would look at safety and character of the Town and traffic and so on...

MC: For some of you who lived in the area (on Eastern Avenue) you will remember that Palazolla Brothers wanted to build across the street there that is the process we went through. That does not mean we can necessarily say no, but it does give us some tools to work with and it does mean we can set some limits.

RF: There has always been an issue with the question of once this change of use is in place what is going to happen in the future. Going back to the home occupation that balloons into a thriving business. Thank you for concern. Unfortunately, there is not a lot we can do.

SR: Specifically, we can't say we are having a public hearing to discuss this, that and the other thing because he hasn't applied for any type of permit yet. We understood that he was going to come in again this evening and give us some type of application, but he isn't here, so obviously he isn't going to do that.

KJ: He is within his rights to build his driveway and cut down his trees. Any work he is doing currently is primarily under the jurisdiction of the Conservation Commission and he has gone before them.

Helene Muise, 135 Eastern Avenue: This has been going on for a long time and he has been clearing whole areas of trees and...

KJ: That is not part of the Planning Board's jurisdiction.

Edward Ackerly, 131 Eastern Avenue: Is it because he already has a thriving business already in another neighborhood that he can run his business there?

SR: Just because he has a business somewhere else does not mean he can run a business at his residence. He would have to come to the Board for Home Occupation. He has no permission of any kind to conduct business at that address as of now.

ASTJ: He would have to apply for a permit and we would have a public hearing at that time which you will receive a notice about and be informed.

KJ: And it will be posted at Town Hall and in the Gloucester Daily Times. There are a number of triggers which would cause a site plan review.

Edward Ackerly: So until he applies for a permit we will not be informed. What about the cars in front?

SR: That is an enforcement issue and it is the Building Inspector's responsibility. You need to involve him in an official capacity.

ASTJ: The Building Inspector has talked to him repeatedly about that issue.

RF: Just to recap the meeting on September 6th, (reading from his notes). Mr. Gallagher talked about the fact he had approved setbacks from the town. The Building Inspector did mention that you (Mark Gallagher) would need to move the cars. There was discussion regarding the Con. Com. who were re-evaluating what they had previously approved. We talked a little about his easement and the parking. We had a discussion about change of use vs. adding a use. Would be what he is doing be an added use to what is already there on the lot? This was all part of the conversation. The consensus was that this would require a special permit for site plan review, change of use.

Ivan Muise, 135 Eastern Avenue: How far can his building be near my side yard, lot line?
He seems very close.

SR: Is it a side yard or a back yard.

The Board referred to the Bylaws.

Ruth Ann Savage, 138 Eastern Avenue: I can't remember, does anyone from the Board go out on a site visit?

MC: Yes.

Due to the late hour, the chair ended this conversation so the Board go on to the next agenda item.

Southern Avenue - Informal Discussion

Deirdre Henderson, owner

Tim Muldoon (TM), Apple Associates

TM: This property belongs to Deirdre Henderson of Southern Avenue and the property is located near 608 Southern Avenue, Mr. Ramsdal's house.

MC: This is a land locked lot.

TM: This is the first time I have seen this project.

MC: We have standards of adequacy.

TM: Even if you approved the one in 1974.

MC: That isn't precedent.

TM: What if we were to build a road?

SR: Yes. You could do a road.

132 Main Street – Informal Discussion

Greg Dolan (GD), Atlantic Engineering

The Board and Greg Dolan from Atlantic Engineering had an informal discussion with the Planning Board regarding his clients' proposal for the property located at 132 Main Street.

Wind Turbines

Board Member, Andrew St. John gave the Board an update regarding the research he had completed and the research the Board Secretary had completed which he reviewed regarding wind turbines.

Regular Planning Board Business

RF: I make a motion to approve the meeting minutes from September 6, 2006 as amended.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

RF: Motion to adjourn the meeting.
ASTJ: I second the motion.
All in favor?
Aye.
Motion passed unanimously.
Meeting adjourned at 10:15 p.m.

Next meeting is set for Wednesday, October 4, 2006 commencing at 7:00 p.m. at the Town Library.

Presented by: *M. E. Feener*
Mary-Ellen L. Feener, Secretary

Attested to: *L.W. Holton*
L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, October 4, 2006**

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:10 p.m. by Rob Fitzgibbon, Chair.

Attendees: Kim Jarvis (KJ), Amy Reilly (AR), Rob Fitzgibbon (RF), Michael Cataldo (MC)
Absentees: Scottie Robinson, Bill Holton, Andrew St. John
Building Inspector: Bill Sanborn
Board Secretary: Mary-Ellen L. Feener

Regular Business

A get well card for Board member Scottie Robinson was signed.

Rob Fitzgibbon, Chair, read a letter from the Town Treasurer/Collector regarding Mark Gallagher, Tax Map #15, Lot #47, 147 Eastern Ave., Essex. 'On May 7, 2001 the Town of Essex voted to adopt Article #12 (accept the provisions of M.G.L. Ch. 40, Section 57) thus allowing the Town license authorities to deny applications for, or revoke or suspend licenses and permits for non-payment of taxes. The above property was placed in Tax Title on August 28, 2006. Therefore please do not issue any licenses or permits until the aforementioned Tax Title account is in good standing. Once the account is in good standing we will notify all departments.)'

Subdivision Rules and Regulations

Each member of the Board received an edited/draft of the current Subdivision Rules and Regulations. The agreed upon course of action was that the each member will review the draft and present any edits or comments at the next scheduled meeting. At the next meeting on October 18, 2006, a final draft will be agreed upon. As soon as the new edits are typed copies will be given to Essex Departments along with a cover letter from the Board requesting comments and review. Rob Fitzgibbon will discuss with the Town Administrator, Brendhan Zubricki if it would be advisable to have legal counsel review the draft version. December 6, 2006 is the projected date to have the completed reviewed draft of the Subdivision of the Rules and Regulations by all departments and the Board.

- The Board discussed the application process for Definitive Plans and the questioned if the Conservation Commission should be required to review an application prior to the Planning Board.
- Rob Fitzgibbon will contact Wally Bruce to discuss this issue.

Building Inspector's Report

11 Lowland Farm Map 9, Lot 3 – Peter Van Wyck

BS: This is the third of the houses to be built. This does not require site plan review as was deemed to be the case with the applications for the other two properties that were built.

MC: Is this the correct number of the house?

BS: I don't know how they are going to be numbered. That is why we refer them to the Fire Department.

The Board reviewed the application and the Board reviewed the correspondence from the legal counsel for the Town, Kopelman & Paige regarding the lots at Lowland Farms and which lots could potentially be required to follow current zoning regulations.

RF: Motion to approve the application for a building permit of Mr. Peter Van Wyck at the Lowland Farms subdivision, Map 9, Lot 3, this is a permit to construct a new 2,800 square foot single family, four bedroom, eight total rooms, finding that it meets all of the requirements of the bylaws of the Town of Essex and may I also clarify that this is subject to the Mass General Laws Chapter 40, Section 6, Paragraph 2-5.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

6 Walnut Park – Jonathon Pelikan & Sara Raticheck – Map 36 – Lot 83

BS: He is applying to tear down the existing structure and build a new house with a detached garage. He does have a driveway permit from the DPW. Approval from Wastewater, Keyspan, Mass Electric, Con. Com., Fire Department for 911 sign offs, and the DPW. He is building on the existing footprint and adding to the existing building on a non-conforming lot. There will be a new garage and there will be a new farmers porch, a screen porch in the rear of the building. He is also going to need a 6-4.2 finding due to not having the correct setbacks.

The Board reviewed the plans.

AR: Motion to approve the application of Jonathon Pelikan and Sara Raticheck for the tearing down of the existing structure, construction added to what will be rebuilt on the existing footprint and for the construction of a new garage under a 6-4.2, finding that it is not substantially more detrimental and it meets the Town of Essex Bylaws.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Executive Session

The Board called an Executive Session regarding pending litigation regarding the property located 63 Main Street.

KJ: Motion to close executive session.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

36 Story Street – Bucklin (owner not present)

The Board asked the Building Inspector for his input regarding the upcoming discussion regarding Story Street.

BS: I would have to say it was built that way and the end of the road is there. Bucklin claims that the Kempsey's covered it over. I would not say it might not also be shy of materials. What I would have to say is that what is there is there. All the monuments were in.

Board Secretary Mary-Ellen Feener will look at the meeting minutes to see if there was any more information regarding 36 Story Street.

KJ: Motion to adjourn the meeting.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:40 p.m.

Next meeting is set for Wednesday, October 18, 2006 commencing at 7:00 p.m. at the Town Library.

Presented by:



Mary-Ellen L. Feener, Secretary

Attested to:



L.W. Holton, Clerk

**Meeting Minutes
Essex Planning Board
October 18, 2006**

The meeting was called to order by Rob Fitzgibbon, Chair of the Essex Planning Board at 7:12 p.m.

Present: Scottie Robinson (SR), Michael Cataldo (MC), Bill Holton (BH), Rob Fitzgibbon (RF), Amy Reilly (AR), Kim Jarvis (KJ)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen Feener

Absent: Andrew St. John (ASTJ)

Rob: Update on 63 Main Street and my understanding is that Brendhan Zubricki, Town Administrator and Bill Sanborn, Building Inspector are working on drafting a cease and desist letter.

Finance Update

Rob Fitzgibbon met with the Finance Committee Monday evening.

- It was approved that all the board requested was approved. Items requested were:
- To hire a company to bind the Subdivision Rules and Regulations.
- Stamps for the planning board to stamp plans.
- The finance committee also approved the consideration of a Technical Consultant/Planner. They said that the Board could choose if the board could have a planner hired for ten hours a week or per project.
- The finance committee also talked about the Community Preservation Act and asked if the Planning Board could present it at the next Town Meeting. The Planning Board will discuss the CPA at the next meeting.
- The finance committee said what the board wants to spend sounds fine and that the board should put the items wanted on the next budget request. However, it was fine for the planning board to begin spending these funds and to invoice for these expenditures.

Rob met with Ray Randall, Selectmen. He mentioned to Rob that he would like to have the DEP fine Peter Van Wyck and that the Board read a letter written by the board in February 2006. Rob read the letter for the record, 'We, the members of the Essex Planning Board have reviewed the plans submitted by Peter Van Wyck for a gas line extension on Apple Street. We do not have jurisdiction over this matter because it is within a public way. Sincerely, L.W. Holton, Clerk Essex Planning Board.' It was decided that Rob would contact Paul Goodwin of the DPW and discuss the options to have this issue taken care of swiftly. The three scenic roads are Choate, Story and Apple Street.

Rob also mentioned that Barbara St. Andre is no longer with Kopelman & Paige. Russ Brown (attorney for Peter Van Wyck) has been contacted with this information due to the ten-acre parcel.

49 Story Street

49 Story Street, George Andrew's barn. The Building Inspector will be sending the owner of the barn a letter.

There was no Building Inspector's report due to the fact that there were no building permit applications.

The Great Marsh

Scottie Robinson is a member of the eight towns on the bay.

MC: Motion to authorize the mailing of the letter written by the chair approving the letter he wrote agreeing to the name change of the Parker River/Essex Bay Area of Critical Environmental Concern to the Great Marsh ACEC.

KJ: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

199 Western Avenue

It was decided that a follow up regarding Western Avenue, Walter Ewashchuck's maintenance agreement will be postponed until the next meeting.

66 John Wise Avenue

The Board followed up on the Palazolla Brother's decision. There has been no comment from anyone in the community. It was decided the Board would readdress this site during the winter due to the fact the owner will be running a snow plowing business. All members agreed that this will be a good idea to wait until wintertime.

147 Eastern Avenue

The Board reviewed the letter written by Mark Gallagher. To whom it may concern: As you know, I have submitted a plan to use my land for my business. I have worked with an engineer, John Judd, to satisfy the town's wetland requirements and with the building inspector to locate my building in an appropriate site on my property. Recently I was advised that it may be necessary for me to obtain a special permit to locate my building and operate my business, Specialized Auto at my home. However, I believe that my business does not need a special permit at all. I have reviewed the bylaw carefully and believe my proposal falls squarely onto the "Home Occupation" provision (Section 6-6.2). Please accept this letter as my request that the planning board agree that I may proceed to locate the building according to the building permit application that I have submitted to Mr. Sanborn. I attach a copy of my site plan and building application plan so that you may review and confirm the details in this letter.

MC: I would like to talk to Mr. Gallagher. I would like to know how many cars you have in the front yard and how many in the back yard.

Mark Gallagher, 147 Eastern Avenue: I have seven in the front and two boats right now.

Bill Sanborn: I don't think he is a home occupation. I have an application here now and I think the board should approve the application now because he is a change of use. My argument is that the bylaws do not state that he needs to come here for a site plan review.

BH: Why do we not want to go through the site plan review process?

BS: The applicant can tell you why, he doesn't have to but you can ask him.

BH: What is it Mark, you want to get building.

Mark Gallagher: Yes that is it.

SR: Can I ask a couple of questions? What is the name of the business?

MG: Specialized Auto.

SR: I looked that up on the state list of corporations. The only owner for Specialized Auto was not you.

MG: I am not incorporated. If you go to the Town Hall in Essex you can get my business certificate.

KJ: I think as a board that we should make sure that the bylaw sections 6-5.1 through 6-5.8 are followed.

SR: I am very concerned that the Building Inspector has had to talk to you numerous times regarding the cars parked in the front of your yard and your total disregard of his talking to you.

MG: There was a boat there that my friend dropped off and then I sold it.

SR: We are concerned that you don't just flaunt those rules and disregard the rules. We are not discouraging a business.

MG: Trust me, I wish it were not there myself.

SR: Mark, we are saying do it, not just wish it. That is why I went on-line to look up your company name so I could see where your other business is located and go see what that looks like.

Attorney Orestes 'Russ' Brown (RB), representing Mark Gallagher: Here are the small copies of the plans.

BS: It is only within the twenty-five feet set back.

RF: I think one of the reasons all these people are here is due to the fact that they are concerned about the neighborhood and the safety of the area would this be under 6-6.12.2.

KJ: I will make a comment. I live down the street from the other auto body garage on Grove Street in the area and I don't find that they are a detriment to the safety of the neighborhood.

MG: When I first thought this was a problem, I tried to be proactive and meet with everyone in the neighborhood.

The board reviewed Essex Bylaw 6-6.5 regarding business use.

SR: What is the frontage of this lot?

BS: We had this before with the landscaper on Southern Avenue and there is a house already there.

SR: I am just asking a question.

MG: It is one hundred and twenty six feet.

RB: And he owns the lot next door. That is misleading.

SR: Any buildings on that property next door.

MG: There is a house and a small shed.

MC: How long have you owned the lot next door?

RB: He could combine the two lots.

RF: If we are looking at these plans and it indicates that it is owned by someone else we can not include it in frontage.

KJ: The question I have is where are the cars going to park on this lot?

MG: This particular plan was drawn up before the septic design. The building is going to be twenty-five feet from the property line and then there will be pavement from the buffer zone and around this way.

KJ: How many cars are you expecting to see?

MG: My daily amount of cars I do daily is from 3-7. Probably under thirty.

KJ: How many employees?

MG: I have two.

KJ: Would you keep them in your other work site?

MC: Would you at any time have cars for sale?

MG: I would imagine that if I was to have them in the road, I would be able to have two in the front. I would have to obtain a used car license. I would like to obtain a five-car license.

SR: Mark can you show me where the parking is located for your house?

Mark Gallagher showed the Board where his own parking for his house is located.

SR: Where would you want to put the cars on the road?

The Board discussed with Mark Gallagher that any driveway must be approved by the DPW and that a set back would be twenty-five feet.

MG: All of my cars are sold word of mouth. It isn't a problem right now.

RF: What about signage?

MG: I do need a sign. A lot like what Howie has now.

RF: One thing I would say is that Mr. Gallagher brings up a good point is that there is a lot of traffic right now in the area due to the existing business of Essex Seafood.

MC: I am not as concerned with the building as much as I am with the traffic.

SR: I am very concerned that he does one thing and then does another.

MG: I will do it tomorrow. I was never told that I had to and I will do it.

Bruce Fortier, 186 Southern Avenue: This fellow is in Laurel Lane which is an industrial park and the Planning Board has no intentions of enforcing the bylaws of the town. I look now at the Telephone Exchange and that it is no longer. If this fellow meets all of these requirements, since 1978, when we put these bylaws in place and you can't have the same requirements for a sweater shop. The fact that the laws are inadequate then the Board should do something about it.

Ruth Ann Savage, 138 Eastern Avenue: I am not clear of what is going on.

SR: We do not have an application before us. His application will be for a new building permit. (To Mark Gallagher) I don't think it is funny that your girlfriend says it is Sanford and Son. I would be anxious to see if he really takes those cars out tomorrow. I know we don't have a law that says you can't work on a Sunday, it would have to be disturbing the peace. If he wants to be a good neighbor, he should prove it.

Edward Ackerly, 131 Eastern Avenue: I did a lot of work for someone and I had experience with this, I believe it is a junkyard. The second is a question, if this is going to be for business use, could he add a house?

RF: Yes, he can have three structures on a lot.

After Board discussion the board agreed that the process would be that Mr. Gallagher may apply for a building permit since it meets the bylaws.

Lilian Muise, 137 Eastern Avenue: One thing that was mentioned at a previous meeting was that the seafood business is using his driveway is that an issue?

KJ: There isn't an issue because the easement.

BS: Easements are between two property owners; the town does not have jurisdiction over that.

Essex Park Drive – Public Hearing Continued

Orestes 'Russ' Brown (RB) legal counsel for PVW, Peter Van Wyck (PVW) owner

Rob Fitzgibbon opened the public hearing for Essex Park Drive at 8:45 p.m.

RF: Where were we at last time?

RB: I believe that I was trying to talk to the board about getting waivers and it was discussed that the board wanted to see the amount of lots. Originally, we had a through road which also had twenty lots. We thrashed out the issue of Peter's ownership of Turtleback Road. If I remember correctly, the concept of the through road was shelved. That plan was withdrawn.

SR: What do you want from us?

RB: What did you think of the through street plan. I believe the board wanted a traffic study and the idea being thrashed around was that the through street could be for emergency purposes. Now, where we left off with the current plan that requires waivers. The feeling I got from the board was that it was not amiable for waivers.

RF: Mr. Brown can you tell us the status of the ten-acre parcel?

RB: Last I remember was that you were going to call Kopelman and Paige to find out who the contact person is going to be.

RF: Yes, I did and I will forward the information to you, her name is Deborah Allison.

RB: As far as the Board and Mr. Van Wyck and the lawyers involved is that we are ready to go. We are just waiting to hear from the Selectmen. B.J. Frye at the last meeting said it was not a Con. Com. issue. I will call Kopelman and Paige and say I am ready to send it along.

RF: I will call Deborah Allison tomorrow.

Russ Brown gave Rob Fitzgibbon his business card with his contact information.

RF: I feel that as a board we haven't had a lot of time to talk about the plan at hand.

SR: Can I give you some feed back? We had a lot of comments back from some of the other Essex Departments and we received a comment from the Water Department. I talked to Mike Galli of the DPW and he said we could put limitations on what we pull out of our wells. He told me that we are actually getting very close and high as to the threshold of what the Town has for available water. I think we need to seriously think about what works for the developer and what works for the town, but if this one project is going to bump us up to no one else being able to take water from the Town water system then we need to consider this when writing our decision. If he did wells then it would be out of Mike Galley's concern.

BS: Aren't they talking about the capacity the plant can treat and then it would have to be upgraded.

BH: That water treatment plant was designed for an upgrade in 2010.

SR: We need to list everything and anything we think of regarding the preliminary plan.

RF: I would like to ask the board members what they think of the extension of the 1,200 street.

AR: I would like to see a through road.

BS: Does Mass Transportation need to sign off on this because of the railroad land?

RB: I did a title search going back over a hundred years ago and I saw nothing going that far back.

I will certainly look into it.

BH: If you look at Rocky Hill Road it is longer than 1,200 feet but there is a limit of the number of the houses that could be built.

MC: I agree with Bill. Maybe there is a way we can reach a compromise, we could give the waiver, but we would have to consider an exact number of dwellings.

KJ: I agree too. For the Board, let me just mention that the subdivision road have street lamps and sidewalks.

Peter Van Wyck: It is expensive building more than thirty houses. There is about twenty perc sites. The law does say that I can put more than one house on the lot. I would be fine with limiting it to thirty. I don't know if I would go that route but I need the option.

BH: I have never sat down with you with a plan that is iron clad. This is frustrating.

PVW: Once we get the road configuration we don't know what it will be.

RF: Motion to continue the public hearing for November 15th at 8 pm.

MC: I second that motion.

36 Story Street – Joan Bucklin, owner, not present – Orestes Brown representing J. Bucklin

The board discussed the As-Built and the site visit completed by the Board members, Mike Cataldo and Rob Fitzgibbon which did show that the road was definitely there.

BS: The only question I had when I was out there and what I couldn't really tell where the road is located.

RB: I know that Joan is a going to be a bit frustrated and she paid her engineer and she paid for Larry Graham and they missed this and they signed off on it. The road which Larry Graham signed off on was seen by Larry Graham.

BH: I suggest that we just use this plan. Where is this plan wrong.

SR: I do not like the reference to existing right of way on the ANR plan.

BS: Is this a drainage pit. Is there any easements?

RB: Maybe we can have Vernon LeBlanc redraw the ANR plan and make sure that all is correct.

KJ: It would be interesting to see if the drainage pipe passes the lot line.

RF: Mike and I walked the lot and the drainage is definitely there.

Russ Brown officially withdrew the application for the ANR of 36 Story Street, Bucklin.

132 John Wise, Karen Moulton – Informal Discussion

132 John Wise, Karen Moulton. The board agreed with the Building Inspector that site plan review was not required and that Karen Moulton can proceed with her building permit application.

The Board brought up that the Site Plan Review should be more exact and it was decided that the Board would discuss this at the next meeting.

Island Road, Scott Pulver – Informal Discussion

Scott Pulver and the Board had an informal discussion regarding what could be completed regarding a potential subdivision on Island Road. Mike Cataldo brought up that the Fire Department should be contacted because of the lack of a fire hydrant. The board discussed road configurations, subdivision application vs. ANR.

Lot 39 Turtleback Road, Myles Cambridge

The 90 days for a decision has passed. Myles Cambridge may bring his application and have it signed by the Town Clerk tomorrow.

Regular Business

Mail

Invoices

Payroll

AR: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:22 p.m.

Next library meeting is set for Wednesday, November 1, 2006 commencing at 7:00 p.m. at the Town Library.

Presented by: _____

Mary-Ellen L. Feener, Secretary

Attested to: _____

L.W. Holton, Clerk

**Meeting Minutes
Essex Planning Board
November 1, 2006**

The meeting was called to order by Rob Fitzgibbon, Chair of the Essex Planning Board at 7:10 p.m.

Present: Scottie Robinson (SR), Michael Cataldo (MC), Bill Holton (BH), Rob Fitzgibbon (RF), Amy Reilly (AR), Kim Jarvis (KJ), Andrew St. John (ASTJ)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen Feener (MF)

A local group of Boy Scouts earning badges entered the library and joined the meeting.

RF: Welcome Boy Scouts. We are the Essex Planning Board and we also have the Building Inspector here and a secretary. We are elected to the board and there are seven members and our authority is derived from Chapter 6 of the Town of Essex Bylaws and Mass General Laws. Basically, what we do is say someone wants to build something like porch. They come here and we discuss it and then we vote on it. We also make recommendations to the Town. We write a paragraph that is published for the Town regarding growth and development and we can propose ideas. We also propose new ideas for the town meeting. The Town Meeting is in the spring and then the citizens' vote. Right now we are doing regular business and reviewing meeting minutes. Later on we will be discussing specific properties.

RF: I make a motion to approve the meeting minutes of October 4, 2006 and October 18, 2006 as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Building Inspector's Report

132 John Wise Avenue - Karen Moulton - Karen Moulton (KM) applicant present at the meeting

BS: I have two different applications tonight. The first one is 132 John Wise Avenue, Karen Moulton is in the process of buying the property and what she is applying for here is a change of use. Currently there is a single-family property on the lot. What she is planning on doing is adding to that house a landscape business. She has included a site plan of what she wants to do. She does have the approval of the B.O.H., the Con. Com. and the Fire Department for 911.

SR: I don't understand Bill you said it is a change of use to what?

BS: It is going to be a single-family residence and a business use.

SR: So is it a home occupation or not?

BS: No.

SR: O.k. is she going to keep her three vehicles in an enclosed area? In a building?

BS: Not in a building, no. This is the site plan. You may ask her questions if you want.

MC: Does this need a site plan review?

SR: That is what I am thinking.

KJ: What about refuse disposal? Loam, fertilizer etc.

KM: Most of it goes to I think it is called Brookings in Hamilton? I am not saying that we might not keep something in a truck overnight, but we dispose of items in Hamilton. We are not going to have mounds of debris at the property.

SR: Are you putting up a new building or what?

KM: This is the existing house and this is the existing garage. What I am intending to do is put in an additional driveway to place the trucks. What I want to do is add screening. There is already a lot of natural screening here. My husband who is a landscaper said it was seasonal screening. What I would like to do is add some spruce and pine trees that would keep green all year round. There is level difference from the road from this proposed parking area from the road, approximately eight feet down from the street level.

MC: Have you talked to the Conservation Commission at all?

KM: Yes. They signed off on the application.

BS: One thing that isn't signed off but you will need to do is to get the DPW to sign off on the driveway. I don't think I asked you to do that.

KM: Even if it isn't a new driveway?

BS: I would ask the DPW.

ASTJ: I would suggest that you use an pervious surface for the driveway.

KM: That is o.k.

ASTJ: Well, the Conservation Commission would have something to say if they would pave the driveway.

KM: This orange stuff here is the buffer zone and I understand that this is why the Conservation Commission didn't have any issues because I was outside of the buffer zone.

RF: The Conservation Commission didn't have any conditions?

KM: The Conservation Commission did not, but the Board of Health said I would have to make it a three bedroom from a four bedroom because we have employees and we will have to make a bathroom in the basement. Even though they would not be using my bathroom, due to the septic flow, I have to have a bathroom for them. I said that I was only going to have two children and a three bedroom is fine. The downstairs will become my office and the other bathroom will be there which is fine.

SR: I have a concern with screening. Bylaw 6-5.6 Screening of Open Uses. 'It shall be completely screened by a sightly fence or densely planted evergreen shrubs or trees at least six feet in height.'

KJ: Spruce and pine are evergreen trees.

KM: I can definitely keep that in mind. The only thing is not to bring up the past because I know every situation is different, but as Palazzola has done when I was here at their last meeting was that you can only plant the trees so many feet apart in the beginning.

KJ: When we had the Palazolla Brother's discussion relative to the screening was that the neighbors did not want a thick dense screen.

BS: I think in this case, it is the opposite because it will not block the view and it would screen the trucks even more from the street.

SR: What is the footprint of the house? The reason I am asking is because for a change of use of a building of a certain height triggers a site plan review.

KM: I am not changing the residence.

SR: But the property is going under a change of use. I am asking what the footprint of the house is?

BS: This is for a mixed use; a residence and business.

KJ: It is approximately 1,400 square foot footprint.

SR: I would just be concerned about the screening.

ASTJ: The DPW has given their advice due to the increase of traffic.

RF: Should she go to the DPW and then come back to us?

ASTJ: I would like to see what the DPW says. This is a significant increase on the driveway.

BH: There is no more increase than the golf course across the street. It is a busy street.

ASTJ: I am not saying it isn't a busy street, I would just be curious.

BS: Are we saying three vehicles or one?

KM: There are four vehicles plus my husband's vehicle and mine.

MC: How many employees?

KM: Six, right now.

ASTJ: And they will all be parked there during the day?

KM: Yes and our trucks will be gone. It is not a nursery or a store.

ASTJ: We have a concern about retail in that area.

KM: That is not us. We go out and mow lawns and go home.

SR: There are specific rules about where your parking can be when you have your business and I think you should know that info.

KM: The two thousand square feet per vehicle and information like that?

SR: Yes.

KM: I went through your bylaws and made sure I knew everything.

The Board reviewed the plan.

KM: That is my technical drawing of the truck and the trailer. My only concern is that my P&S is contingent on your approval and I am going to have a baby in the next few weeks and I can't buy the property until I have your approval and I am trying to sell my house. Not that my problem is your problem but I may be homeless if I have to wait for another week.

KJ: Is our main concern the DPW? Could we give our approval contingent on the DPW?

SR: I don't have any other concerns, but I don't think that is a good idea.

ASTJ: We are not required to do a site plan review for this therefore we are not required to issue our

letter of conditions. When we did the Palazolla's it was site plan and we were able to add that if they ever intended to do retail there that they would have to come back to us. I would be interested in there being a way for us to articulate this at this point.

KM: I would be very willing to say that this is not going to be retail, nursery. This is going to be my home where I am going to raise my children for the rest of my life so I don't want it to be retail either.

ASTJ: Never is a long time.

KM: I know my word doesn't mean anything, but that is not in our plans.

RF: The question is do we approve this with the contingency of the DPW or?...

MC: I say yes.

ASTJ: I don't have a problem with that?

A citizen (Bruce Fortier of Southern Avenue) stood up during the meeting not addressing the chair or identifying himself and began to talk to everyone in the room: Will you answer a question for those of us who are listening? What is that you board members have approved here? This applicant has come before you because of a building permit. They are using an existing building in conformity with the law regarding business use, then what on earth are you talking about?

ASTJ: It is an informational discussion.

The citizen (B. Fortier): I understand it is informational, but shouldn't you be discussing that what she is doing doesn't require your approval or anyone else's including the DPW?

SR: I don't think that is quite correct, because she is changing the use.

The citizen (B. Fortier): No, no, she isn't changing a use; she is adding a use. (Laughter) The property adjoining me, I was the one with the McCain property when the person wanted to have a landscaping business, which is not inappropriate in this situation and the McCain property and the new owner wanted to have a landscaping business in addition to, and he was going through the same thing the lady is going through and I happened in the meeting and I said, what is wrong with you that is a conforming property?

SR: He needed a building permit also.

The citizen (B. Fortier): She doesn't need any approval.

RF: Let's cut to the chase. Mr. Fortier, the Building Inspector comes to us with applications and building that he wishes to discuss with us.

Citizen (B. Fortier): There is no change of use.

ASTJ: That is your opinion Mr. Fortier, can we get on with the meeting?

RF: Mr. Sanborn would you like to reply or do you want to just get on with the meeting?

BS: I have my job and I do my job as I see that I need to do it. If someone has a problem with how I am doing my job then there is a process in the bylaws on how they can handle that problem. The applicant doesn't seem to have a problem.

KM: No problems.

BS: Regarding the issues that have been discussed, I would suggest, especially since the applicant has been before this board three times now and since I think there is a legitimate concern about the driveway and she does something in order to go ahead and purchase the property and we aren't just tying her up, we are tying up a lot of people doing this, is that the DPW has the authority to rule on driveways if they wish and they can waive that if they want to. It isn't a site plan review. How much traffic is being put on because of the driveway we can discuss it, but in the end I don't think it is going to be anything adverse to the road. I think the building permit can be approved based on approval from the DPW issue a driveway permit or having the DPW state that it isn't needed.

SR: What is the building permit for then?

BS: The building permit is for a change of use.

SR: Oh, o.k.

BS: For a change of use of the property.

The same citizen (B. Fortier) stood up: A building permit is only for...

SR: Hold it, hold it Bruce.

KJ: (Reading from the Bylaws). Conforming use, 6-6.4.1, 'and no land shall be used in excess of conformity to the provisions of this chapter.' So, it directly applies to land use.

SR: How big is the acreage?

KM: Four point two acres.

BS: Again, that would be my suggestion.

ASTJ: Good.

RF: So, approve with the fact the DPW needs to either apply or state that they do not need to apply for a driveway permit?

BS: Yes.

SR: I make a motion that we accept Karen Moulton's application for a change of use for the property located at 132 John Wise Avenue in Essex from strictly residential to residential and business, non-retail business use, contingent on the approval of the DPW for the enlarged driveway.

KJ: I second.

All in favor?

Aye.

Motion passed unanimously.

147 Eastern Avenue - Mark Gallagher - Mark Gallagher, (MG), applicant present.

BS: The second application is to install a foundation for a building that will be used to repair autos and sell autos at 147 Eastern Avenue. This permit will include the sale of ten cars per the applicant's request and it will be a residence on the property and the foundation for a business.

SR: So it will be for a change of use like we just did?

BS: Yes. A change of use to a business use.

ASTJ: This will be a retail business so this is different.

BS: The permit application is for a foundation only and a change of use.

MC: This is the revised plot plan.

SR: Who owns this building? Is it Mark Gallagher?

BS: Yes.

ASTJ: This is for auto repair and sale?

BS: On the permit application it states ten vehicles.

KJ: Ten vehicles at any given time?

MG: Ten for sale at any given time.

SR: No, no, no, no, no...

A citizen (Bruce Fortier, Southern Avenue) stood up and began talking to everyone in the room: You can only approve a building permit as it pertains to building laws.

Gavel was used by chair.

BS: If the applicant wishes to withdraw his application he is free to do so.

MG: (To the Building Inspector): When we spoke just a couple of hours ago we discussed the idea that I am going to apply for a ten car used car license.

SR: Where do you apply for that?

MG: With the licensing board.

SR: With the state?

MG: I believe you start at the town level and you apply for a Class II used car license and then after that you can go to the state and the state approves your building and issues you the dealer plate which allows you to move the cars around.

KJ: So, we are the licensing board you start with, is that what you are saying?

MG: I have not applied for my used car license. I figured it was a moot point since I don't have my building erected yet. I was in Mr. Sanborn's office earlier today and we were going over the building permits and he asked me how many cars was I intending to sell and I told him that I was going to go to the licensing board and I was going to apply for a license to sell ten used cars at one time.

BH: That's all Mark? That's all you are going to do over there?

MG: We went over the repair of the cars and I said I work on between three to seven cars a day.

BH: Yes I know I read all that.

MG: We decided around thirty cars.

BS: Let me clear up where we are going with cars. He told me that the license he was going to apply for was for ten cars. All I am going say is that if, this permit has nothing to do with his building permit. But, for the zoning, if we are going to allow him to have ten cars, twenty cars whatever, we can do that under this permit, the sales license does not regulate that.

MG: You asked me for sale.

SR: We are also talking cars for repair.

MG: The cars for repair are different than the number for sale. I also want to bring up the fact that everyone is concerned about what is going to happen because of my garage. I have taken photos to show the board the property surrounding my lot and the trash and stuff that people have put around my lot. Some of these items are old, but that Budweiser can looks new.

The board examined the photos taken by Mark Gallagher.

BH: Wait. You want to put in a foundation for a building where you are going to sell ten cars, but the fact is that you are going to want to move your business from Laurel Lane over to Eastern Ave. And use that building. Isn't that correct? Isn't that what you intend to do?

MG: I wish to move my business to behind my house and run my business behind my house. This way I am not a tenant at will. I have been a tenant of will for over thirteen years. I would like to move my business from Laurel Lane. (MG currently is selling vehicle from this lot with the license of Charlie Cole.)

BH: So why are you coming before us tonight with this scheme of getting ten cars?

MG: We are getting way off base here with what we are trying to accomplish here tonight.

KJ: My understanding is that before when he came before us it was to discuss moving his auto body business here. What he is saying now is auto repair business here. What he is saying is that he would like to do this here, but while he is doing that he will also be in the process of obtaining a license to sell ten cars at any given time. So, while he is servicing autos he will also have some for sale.

ASTJ: This is irrelevant. How is this any different when he first came?

BH: It is not.

MC: My question is that this is a non-conforming lot. How can they grant a permit for anything on this lot?

MG: At the last meeting Mr. Sanborn stated that it was a pre-existing non-conforming lot and it was not an issue and we had spoken about it at the last meeting.

BS: I think this goes back to the time regarding the property on Martin Street when Town Counsel said that you could make a lot more non-conforming under 6-4.2.

MC: If I don't find it substantially more detrimental. If I do find it more detrimental then I can vote no.

SR: Correct.

Orestes (Russ) Brown (RB), legal counsel for Mark Gallagher identified himself to the board.

RB: I am getting a little bit confused as to what is going on here. There is an application for a building permit and it is taking a direction in a special permit kind of way, which is probably not appropriate, and I am hearing talk about non-conforming uses. I want to figure out where is board going? It is not that he is trying to put in a non-conforming building; he is trying to put in a building with a conforming use.

KJ: On a non-conforming lot because it does not have enough frontage.

RB: Actually he owns two lots.

MC: It does not show it on the plan here.

RB: O.k. is that where this board is going. Does he have to have an ANR plan to show that he has a conforming lot?

KJ: Yes. If that is what he does then he should know that he is only allowed three buildings.

RB: The wording of the Bylaw 6-6.5 says that, it doesn't say more than one structure is permissible use and may be constructed on a single lot, the only limitation is which states, preceding, more than three residential structures.

BS: You are talking about a non-conforming lot.

MC: You couldn't put a business on this lot as it is now because it is a non-conforming lot.

RB: That is probably true. (Laughter)

MC: Though the lot next door may be owned in common ownership there is nothing that states that this is true. We are going on with the plan that is in front of us.

MG: This is a new revision from last week's plan. At last week's meeting, Mr. Sanborn indicated that he thought this was a pre-existing non-conforming lot and (to Bill Sanborn), you did indicate that. So, we all agreed upon that and we all need to read the bylaws and know the bylaws.

SR: No. It is a pre-existing non-conforming lot, but when you change the use...

MG: This was a week ago.

SR: Well, we have had a week to think about it Mark.

MG: Well, I need some time to read the bylaws too. (Laughter) And, you may be a little more knowledgeable than I.

MC: So, you understand our issue and point Mr. Brown?

RB: Yes, I understand now.

SR: He needs us to say it is not more detrimental to the neighborhood.

BH: No, he needs more frontage.

RB: With the one hundred and fifty feet of frontage he has a totally conforming situation and he is entitled to obtain a building permit as a matter of right.

BS: The Planning Board still has the right to approve.

RB: Yes. The Planning Board has to do what they have to do and then you have the appeal process. As I was saying that if he has the hundred and fifty feet of frontage and he has six acres then he can have at least three principle residential structures.

KJ: It says the erecting of more than one principal structure....

ASTJ: *Structure.*

KJ: ... Is permitted, notwithstanding no more than three principal residential buildings. What it says to me is that you can have one building or you can have three houses.

A citizen (B. Fortier) stood up without being identified or asking to address the board and talked to everyone: No, you are reading it wrong. That is exactly the opposite of what is right before your eyes.

RB: I think it says that you have zoning here where all these different kinds of uses are allowed. More than one structure is permitted. Then it says you can't have more than three residences. It does not have any designation there be it business or residential.

MG: All I want to do is put my garage and a house on the hill and conform and that is my plan.

MC: The remedy here is to take this and do an ANR.

ASTJ: A remedy.

BS: Or you can deny it and then if it is denied it can be taken to the Board of Appeals or the application can be withdrawn.

MG: My tenants have been there for over a year. I bought it for the frontage.

MC: Is it three hundred feet?

MG: Roughly two hundred and thirty when combined.

RB: You can approve an application to build that garage because garages are allowed as accessory uses. He would not be able to move his business there until he became back with his ANR and then he would be good to go.

SR: I don't think that would be a good idea because he has already said he was going to put his business there.

RF: We have to act on this now because it is before us now.

SR: Let's take an action. This is not rocket science.

RB: We will withdraw the application without prejudice and come back with an ANR.

123 Main Street - Eian Woodman - ANR Application

The board reviewed the plans of Eian Woodman, 123 Main Street. It was decided that an ANR application would be approved due to the fact that a transfer of a portion of the abutting lot will be given to the lot belonging to Eian Woodman at 123 Main Street. Bill Sanborn brought up the question of a 6-4.2 finding. Mike Cataldo brought up the point that a 6-4.2 finding could not be recorded. The Board signed the ANR application and the plans.

KJ: For the proponent, Eian Woodman, we, the Planning Board make a finding that the proposed addition meets the setbacks and the proposed change of the lot line by taking two hundred and five square feet from lot 48A, 123 Main Street and transferring it to lot 48B, 123 Rear Main Street is not substantially more detrimental and is covered under Section 6-4.2 of the Town Bylaws.

SR: I second.

All in favor?

Aye.

Motion passed unanimously.

ASTJ: I make a motion that we accept the application of Eian Woodman of 123 Main Street, Book Number 24088, Page 237, Map 37, Lot 48B and 48A finding that it meets the requirements for a 6-4.2 finding under the Town of Essex Bylaw.

RF: I second.

All in favor?

Aye.

Motion passed unanimously.

17 Lufkin Point Road - Mark Glovsky (MG), legal counsel for the owner of the property, Lisa Lambert (LL), present

MG: You may recall that we came before you in June to have an informal discussion of a proposed subdivision plan and at the time one member of your board questioned the configuration of the lots in conjunction with the town's bylaw of depth definition. I don't know when the last time it was you took a look at your lot definition but it is impossible to apply it. I do have a plan and I do have an application. I understand that you have two people missing for the agenda and I will try not to take up a lot of your time. First of all I have always appreciated it that Essex has its own way of doing and seeing things and it is challenging. Chapter 40A and the Subdivision Control Law does set certain parameters when it comes to going to the Zoning Board. What we did was instead of coming to you was that we revised our plan and filed an application with the zoning board.

MG: Anyway Chapter 40A, Section 8 gives property owners the ability to go to the zoning board if they are aggrieved by the decision of the planning board in certain circumstances or special permit granting authority. Section 10 gives the owner the right to go directly to the Zoning Board. That's what we did. I talked to Bill Sanborn and what he said was that what we were proposing could not be done and we would have to go to the Zoning Board. We obviously could file anything specifically. We couldn't file with you because we needed to go to the Zoning Board first. So, we are in a bit of a catch 22. When I filed my variance application recently I said on the paper that we were turned down and I put not applicable because I came to the Planning Board for an informal discussion because we did not apparently meet the requirements in respect to lot depth.

Consequently, we tried to file on that basis and we were told that until we had an official denial from the Planning Board then we can't go on to the Zoning Board. So, I am back here tonight. I can file Form A and I have one filled out and we have a plan here, technically it is not an ANR plan, but it shows the division of property and it is certainly not a plan I would show to you as an ANR in good faith, but if that is what it takes to get to the Zoning Board then that is what we will do. With all due respect but there really ought to be a mechanism in Essex so that if a property owner wants to do something and it doesn't conform with zoning then they can go to the Zoning Board for a variance.

AR: I agree.

MG: I know Essex has had a way they have done things for a long time and when you question that you are told that this is the way it is done in town and I just would say from your standpoint, from Bill Sanborn's standpoint it would save a lot of time and aggravation if somebody took a look at that and maybe even asking town counsel to set up a procedure. In any event, I am sorry to come here with a little bit of frustration that may be apparent. I have the Form A, I don't think it is the appropriate way.

KJ: I think it would be important for us to look at the plan.

MG: Now, the way I would have preferred to have done this quite frankly is not to have a subdivision road but to just divide the property with a line and have inadequate frontage on Lufkin Point Road and then apply to the Zoning Board for a frontage variance and as a condition of the variance to have no more than one house per lot. Right now we have the ability on the property is to build two houses. That's all we want to do. Lisa Lambert is going to continue to live there she is not a developer. We could do it as a condominium, but that is not an appropriate way to divide single family property and from a practical planning standpoint, if we were to go to the Zoning Board for a variance for frontage and a condition that there be no more than one house on each lot then we would be in fact reducing the density to a point less than what it could have been had we maximized the development. So, in any event...

SR: Am I correct that you want us to deny this so you can go to the Zoning Board of Appeals?

MG: Unfortunately yes.

SR: Can we do this? Great.

MG: It is not really a Form A plan. You can say that this stinks as a Form A plan and then the Form A plan is denied.

SR: I am just concerned that though several people have not shown up this evening we still have a lot more stuff to do and it is nice to talk hypothetically but I think we just need to take a vote and move on.

That would be my preference.

MC: This will get you to where you want to be.

MG: I will tell you what I had to do on the application. I had to write that we are applying so that you will deny this Form A application on the basis due to frontage on the existing drive and all you have to say is that the frontage is inadequate.

MC: I make a motion that we deny the application for the plan that does not require approval for 17 Lufkin Point Road owners Lisa Lambert and Joan Kitsis for a subdivision of Lots 1 & 2 plans dated October 13, 2006 which contains 89,460 square feet finding it does not have adequate frontage.

RF: I second.

All in favor?

Aye.

Motion passed unanimously.

132 Main Street - Board Discussion

SR: You asked me what is relevant in our bylaws. Not much unfortunately. I went down and looked at the property. I talked to the manager who was also on site at the time and she walked around with me. I don't know if you all recall. (To the owners) do you have a copy of the plans with you right now? This is something similar to Peter Van Wyck's original plan for Lowland Farms in that it had multiple multi unit buildings only this is on a very small lot and we don't have anything in our bylaws that allows for two and three family units on less than the square footage required for each one as an individual residence. The proposal was for seven townhouses? O.k. Seven houses and two with the existing structure. The only way I could understand how we could come anyway near their proposal was if it was completely destroyed under a 6-4.3. I don't want to say, if it burned down and even then it would be a change of use so it would be iffy. It is an unusual property. Scottie referred them to the Zoning Board of Appeals.

The Board continued discussing the property located at 132 Main Street. It was decided that if the owners would probably want to apply for an ANR, Form A Application at the next meeting and a time on the agenda was set.

Regular Business

BH: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 10:44 p.m.

Next library meeting is set for Wednesday, ~~December 6~~, 2006 commencing at 7:00 p.m. at the Town Library. November 15

Presented by: M.E.F.

Mary-Ellen L. Feener, Secretary

Attested to: L.W. Holton

L.W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, November 15, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:10 p.m. by Rob Fitzgibbon, Chair.

Attendees: Kim Jarvis (KJ), Bill Holton (BH), Amy Reilly (AR), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Scottie Robinson (SR)
Absentee: Michael Cataldo (MC)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)

Meeting Minutes

RF: Motion to approve the meeting minutes of November 1, 2006 as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Building Inspector's Report

49 Story Street – George Andrews (GA) owner, present

BS: The first application is for 49 Story Street, George Andrews. The barn collapsed last winter. The owner is going to tear it down and build a new barn and enlarge it.

The Board reviewed the plan for the new barn.

SR: What is the total square footage of the building? The footprint?

GA: Not more than 1,800 square feet.

BH: Will you convert it to a dwelling?

GA: No. It will be two-car garage with storage.

SR: Will there be water or heat.

GA: No. There is none now. We disconnected the electricity last week.

KJ: I move that we accept the application for a building permit for 49 Story Street owned by George Andrews for the demolition and reconstruction of a barn with a 328 square foot addition to the original structure, which will not be inhabited. The application has the approval of the Con. Com. and does not need the approval of the BOH. It has the approval of the fire department. We find that this is a 6-4.2 finding noting that the reconstruction is not more detrimental than the existing.

RF: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

152 Eastern Avenue, Map 15, Lot 43 – Chris Nunes

BS: He is going to build a 32 x 48 two-story storage barn for a workshop. The square footage will be 1,536 square feet. It has the approval of the Con. Com. and the DPW-Wastewater. Approval by the Fire Department was not needed.

RF: Will it have water and heat?

BS: It was approved but I am not sure if it will have heat in it.

SR: Is he going to extend his driveway? Is he going to use it for his business?

BS: Not that I am aware of. He has no water, no sewer and it is not to be used for human habitation. He is a contractor and he is just going to use it for his business.

SR: Can we say not for a business use? If he has a business there shouldn't we know now?

BS: He isn't going to run any business out of it. He is a one-man operation anyways isn't he?

BH: Yes.

BS: I think he just wants to use it for storage.

SR: So it would be an accessory building on a residential property, right?

BS: Yes.

BH: What is the height there?

RF: Twenty-five feet.

BS: To answer your question on the curb cut there was nothing signed off for a curb cut, The DPW did sign off for Wastewater and if they had an issue with the curb they would have said it then. I know there is an existing driveway. I don't know anymore than that.

KJ: It does say that it exists.

SR: Is there plenty of setbacks, there is no non-conformity?

BS: There is fifteen feet on the sides, so yes.

AR: I move to approve the citing of an accessory 32 x 48 two-story barn for a workshop at 152 Eastern Avenue owned by Chris Nunes that will not be inhabited.

SR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

2 Patriots Lane – Michael McNiff

BS: This is for the application of a new building at 2 Patriots Lane the owner is Mike McNiff. He references lot 4A, Assessor's Map 8 lot 32H and the dwelling will have a less than 1,500 square feet footprint. It would probably be on a subdivision plan. The lot has 44,059 square feet. It will be a three-bedroom residence with two and a half bath. They have approval of Wastewater and curb cut is not necessary. It does have Con. Com. approval and they could not yet get a sign off from the Fire Department for 911, but they will before the permit is given.

The Board realized that there is a piece of the property that was at one time owned by the Railroad. Bill Sanborn said that if he wants to build where there is an easement then the State Department of Transportation has to hold a public hearing to see if he can build on the property.

AR: So they own permanent eminent domain?

KJ: The Railroad is the only people who can do that.

SR: Couldn't this easement be something else?

BS: That is what I have to find out. I would suggest the Board approves this application with a stipulation and then I will find out if it is under the railroad's jurisdiction. The only reason they would deny it is that if they had plans like in Newburyport to build the extension of the railroad they said no.

ASTJ: I move that we move to approve the application for a building permit for Mike McNiff of 2 Patriot's Lane, Map 8, Lot 32H for a new three-bedroom residence finding it meets all the requirements of the Town of Essex Bylaw.

RF: Do you want to add anything about the railroad?

ASTJ: No. It is none of our business.

BH: Why isn't it our business?

ASTJ: If the railroad wants to deny him for some reason, nothing in our bylaw requires us to protect the railroad's interest in this case.

BS: It is a building code issue not a planning issue.

KJ: We don't even know for certain if it is on railroad land.

RF: O.k. I second.

All in favor?

Aye.

Motion passed unanimously.

163 Main Street – Brigid Venti (not present)

The Board mentioned the letter, which was sent by the Town Selectmen, and the Building Inspector drafted by the Town Legal Counsel regarding 163 Main Street (Brigid Venti, owner).

A copy of this letter was sent CC (Carbon Copy) to the Planning Board and the Board Members did have copies for their review at the meeting with the regular mail.

BS: She has contacted the state Building Inspector's department and they called me. I explained them the situation and asked them if they wanted to be involved and they said not at this time.

BH: So where does the Town stand with the Venti issue?

BS: Where it stands is that there has been a criminal complaint for putting up the fence without a permit and refusing to stop on the stop work order that was filed with the assistance of the Police Department in the District Court. I signed this letter last week and then Brendhan (Town Administrator) was going to write some notes and then send it out and Ms. Venti must have received it by now.

The Board discussed the fact that both properties Brigid Venti owns in the Town of Essex are currently for sale and there may be reason for concern if the property being discussed 163 Main Street would be sold while there is a cease and desist order etc. on the property. They questioned if the information would be shown if someone reviewed the Registry of Deeds available information and/or if making sure it is public knowledge is legally correct. It was decided that Bill Sanborn and Rob Fitzgibbon would contact Brendhan the next day with this concern.

BS: I did put a stop work order on the building, but it disappeared. Someone insinuated that the owner ripped it up. I will tell you I have been to Superior Court quite a few times, one thing that gets the judges upset and the thing they will yell at you for and they will yell at whoever is in their sight is if you don't stop when someone tells you to stop and leaving something unsafe and not taken some action to stop it.

ASTJ: Is that fence still blocking the handicap exit of the church?

BS: No. That is what she called the state for because she sent me a letter on November 8yh, 2006 asking me to do a 106 Inspection on the Church (The Universalist Church which abuts 163 Main Street) and the Building Code states that a church has to be inspected every five years and the certificate posted and I guarantee you that you go in ninety five percent of the churches in the state and not many of them have them done. It is not a top priority for building departments. I will get one done though.

104 Eastern Avenue – residence of John Cary

BS: On Monday night I received a phone call from the attorney of the owners of the property on the corner of Eastern Avenue and Lufkin Street, formerly owned by the Kennedy family. They moved everything up out of the garage. The call was regarding the fact that the owners felt that the contents were just holding the exterior up. They wanted me to come look at it. I said o.k. I'll come by around 4:30. I figured this was one of those incidences that they just want the approval to take it down. They should have probably called me two years ago. Originally they wanted to preserve their rights to have that barn which sits right on the road. On Monday I ended up calling the police and we closed the road and they had to tear the building down that night. They came in for a permit tonight.

Note: Planning Board Secretary later found out it was the residence of John Cary.

147 Eastern Avenue – Mark Gallagher (not present at the time of discussion)

AR: I do have one question. The meeting minutes mentions something that you said about ten cars in regards to Mark Gallagher. Did you have any issues with the number of cars?

BS: That was when he wanted to get his used car license, which would allow him to sell the ten cars.

ASTJ: This has almost nothing to do with what we do.

AR: No, no, I understand that, I was just curious.

ASTJ: The ten cars is just a license comes in increments of ten.

BS: The only reason I brought it up was because if he (Mark Gallagher) has the number of cars that everyone keeps saying he owns the big issue could be that he says, I have forty cars here but I am only selling these ten, with the intention that he is going to be repairing them and selling them and for him not to leave the number open ended.

SR: The sale number wouldn't be open ended, but the number of other vehicles could be.

BS: Right. He could have thirty cars there, but at no time would more than ten be for sale. That is what I was trying to cover. He did come to see me tonight and he did say something about putting up temporary buildings down in the far corner of the lot to store all the cars in so no one could see them and he wanted to know if he could apply for the permit and I said he can't until he gets the ANR approved and the ANR is recorded. He may be asking if the Board will approve the permit once he gets the ANR approved and that is totally up to the Board.

RF: On that note, due to the questions raised by this Board, I emailed Gillian from the Assessor's Department. Richard Cairns, the Town Assessor stated that 'logically if a garage is within the sight line of abutters, adds traffic to the street and adds industrial noise it would affect market value.' That was a question that came up at one of our prior meetings. The Assessor went on to say that he could not specifically state that the market value would change until sale prices in the area reflect a change in comparison to other locations.

BS: Under that same argument, you could say that in general any house in Essex must be depreciated in value because anyone can put up any type of business.

SR: Right.

BS: The neighbors have an argument, but they don't have an argument because it could happen anywhere in Essex.

ASTJ: We have no protection.

BH: We have a Planning Board and the Planning Board rules on the gray areas in my opinion. That is why we have the Planning Board. We have bylaws, which are loose and full of holes. We have a Planning Board to make sure that we are meeting the health and safety of the community.

RF: One more thing I will point out regarding this issue and a question we had. A quick observation from Wally Bruce (Chair of the Conservation Commission) was (RF reading from notes), 'I think I can speak for the Commission in saying that we all express concern that the project may move beyond the buffer zone and this is why we made it clear to him that if that his plan work adversely affects these areas. As I am sure you are aware, the Conservation Commission had many questions though not relevant as to what we were charged to review and we are keenly aware that we were not provided answers. Mr. Gallagher was asked how surface water and building run off was going to be handled. Mr. Gallagher stated that he was going to direct run off behind the building. The Commission is unsure as to what this meant. The Commission is concerned as to how much water will be handled, will there be oil and gas are great issues to the wetlands.'

SR: I think we can make an applicant aware of these issues.

KJ: I would think that at this time the Con. Com. has only looked at the driveway, not the construction.

Essex Park Drive – Public Hearing Continued

Orestes 'Russ' Brown (RB), legal counsel for owner- Peter Van Wyck (PVW) owner

RF: I make a motion to open the continuation of the public hearing for Essex Park Drive. It is now 8:12 p.m.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

RF: Gentlemen where did we leave this last time?

RB: We were asked to show the potential number of dwellings in the subdivision. A concrete plan as to where and how all these houses would appear in the future instead of a piece meal development.

SR: Is this based on the Preliminary Plan?

RB: Yes it is. It is a very busy plan.

The Board reviewed the plans that showed 30 house sites, which was presented by Russ Brown. The Board reviewed the access, frontage of each lot, wetland buffer zones and questioned if each proposed lot was buildable. The Board reminded Mr. Van Wyck of the request by the Board of Health and the Planning Board that the lot numbers are in consecutive order and if the need arises to change the lot numbers that these changes occur in a logical manner. The Chair mentioned that the Chamber of Commerce brought up the issues regarding the impact on the Town and the Town's schools, water and sewer that new construction may bring in the future. The Board also requested more information regarding the Conservation Restriction.

SR: Is there any chance you are going to walk us through these lots?

Russ Brown and the Board reviewed each lot in the subdivision.

RF: Motion to continue the Public Hearing for Essex Park Drive to December 6th, 2006.

KJ: I second the motion.

All in favor?

Motion passed unanimously.

RF: We will need an extension for the writing of the decision.

Both Russ Brown and Peter Van Wyck agreed to extend the time for writing a decision to ninety days as of November 15, 2006.

The ANR Application for Joan Bucklin was not presented at the meeting.

147 Eastern Avenue – Mark Gallagher – ANR Application

Mark Gallagher (MG) owner, present & Orestes 'Russ' Brown (RB)

The Board reviewed the application for the ANR to combine two adjacent lots owned by Mark Gallagher, which would give one lot the frontage of 226.87 feet. The Board made sure that Mr. Gallagher understood that the application was for an ANR not for a building permit and the use of the property. Mr. Gallagher is proposing to have two houses on one lot in the future.

RF: I make a motion to accept the ANR application for Mr. Mark Gallagher the location address 147 & 149 Eastern Avenue, Assessor's Map, Lot 15, Lots 45 & 47. The application is to combine the two lots, which would comprise of 6.42 acres and the frontage would be 226.87 feet.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

11 Southern Avenue – Alex Westerhoff – Informal Discussion

Alex Westerhoff informal discussion with the Board regarding the Bill Allen Estate which he may be purchasing that is located at 11 Southern Avenue

Planning Board Meeting Schedule

ASTJ: Motion to approve the meeting schedule for November 2006 through February 21, 2007.

RF: I second.

All in favor?

Aye.

Motion passed unanimously.

Rob met with the Chamber of Commerce and gave the Board an update.

RF: Motion to adjourn meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously. Meeting adjourned at 10:15 p.m.

Next library meeting is set for Wednesday, December 6, 2006 commencing at 7:00 p.m. at the Town Library.

Presented by: 
Mary-Ellen L. Feener, Secretary

Attested to: 
L.W. Holton, Clerk

Town of Essex Planning Board
Minutes
Closed Agenda
Wednesday, December 13, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at by Rob Fitzgibbon, Chair.

Attendees: Bill Holton (BH), Rob Fitzgibbon (RF), Michael Cataldo (MC), Amy Reilly (AR)

- Ⓜ Make sure things are complete
- Ⓜ Provide a staff report
- Ⓜ Pre-application conference

Interview with Horstley-Whitten Group, Planning agency from Newburyport, MA (<http://www.horstleywitten.com>)

Horsley-Whitten has been around since 1988, based in Sandwich but has office in Newburyport. Do work nationwide, even in Hawaii!! – Ellie and Nick – Ellie does a lot of watershed management work – storm water management - does a lot of work with engineering group.

Nick – lots of work in Amesbury and Newburyport – did the smart growth toolkit for the state –

Ellie: have developed a set of Power Point presentations for various growth programs –

Nick: Do a lot of site plans – reviewing a proposed development

Possible idea: preliminary subdivision plan – (have someone else pay for it?) –
And have them review it. –

Michael: infrastructure issues (e.g. subdivisions attached to a country road)

In this environment to build high-end real estate – but there's no linkage –

Nick: TRD (transfer of development rights) program is interesting

Rob: Have you ever created a "5 year plan" or master plan or a "Planning Board Punch List" for a town?

Nick: Yes that has been my life. Was in charge of implementation committee – has to write report to city council every year. Wrote master plan for Newburyport- got 18 zoning regs passed – 80% success rate (usually town success rate of 30%) . Ran a monthly growth management committee. Started the Master plan in Amesbury.

Bill: How would you propose working with the board?

Ellie: We'd start out we'll work out 10 hours a week – digest stuff on the agenda. Start with 10-12 hours a week – sit in on meetings. Lot of work could be done via email. We could propose that and then maybe have add ons.

Nick: Would love do some maps – advanced planning side – tackle and prioritize these issues. Start building those relationships.

Rob: Would you be willing to consult on a biweekly basis? Be interested in hosting a workshop?

Nick & Ellie: Yes!

Mike: Two things looming:

- Sewer moratorium – it is built so that you can't add flowage for 5 years.
- Chapter 40B thing

Discussion re: the two properties that will affect Chapter 91.

Possible consulting engagement: They can do a 6-month or 12-month contract

They do a lot of grant work -- non-point source grants -- CZM,

- Note: a Town can't get grants for admin work, but can get \$ for special project

Discussion re: financing strategies: The idea of creating "reserve fund" accounts. Money from Planning Board fees (e.g. application fees, etc.) go into these funds, which then are used for Planning Board activities. Reserve for appropriation for filing fees, \$ comes from ZBA and PB -- this money is earmarked for funding. Other towns also have a Reserve for engineering services.

Will need to front load it into our budget --

Explained to HW the Board's task of creating the 2007-08 budget.

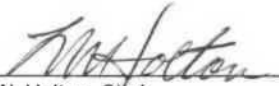
HW: Is willing to provide two proposals as "strawmen"

- "A La Carte" option: proposal to engage with Essex on a specific, limited project (e.g. write a wind turbine bylaw). This option may include a proposal or proposals to host a workshop for the Board.
- "Consulting" option: A longer term, 6 to 12 month contract for 10 hours of planning services a week. Planning services would include attending bimonthly Planning Board meetings, keeping track of reviewing plans, schedules, and timelines & identifying areas of risk and opportunity in our current zoning and subdivision regulations and assisting the Board in the preparation of proposed legislation for Town Meeting to address these areas of risk and opportunity.
- As a ballpark figure, the potential range between these the two types of proposals above could be \$10,000-\$50,000. HW did discuss strategies for how to mitigate the expenses falling all on one department -- for example, with the consulting agreement, having the expense spread across different budgets (e.g. Town Administrator, Zoning Board of Appeals, Planning Board) and modifying the contract to serve the needs of the various departments. (For example, if the cost is shared from the three departments mentioned above, then 33% of HW time is spent on grant-applications for the town administrator, etc.)

Minutes of this meeting were taken by the Chair, Rob Fitzgibbon.

Next library meeting is set for Wednesday, December 20, 2006 commencing at 7:00 p.m. at the Town Library.

Presented by: _____
Mary-Ellen L. Feener, Secretary

Attested to: 
L.W. Holton, Clerk

Town of Essex Planning Board Minutes Wednesday, December 20, 2006

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:42 p.m. by Rob Fitzgibbon, Chair.

Attendees: Bill Holton (BH), Andrew St. John (ASTJ), Rob Fitzgibbon (RF), Amy Reilly (AR), Kim Jarvis (KJ)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)
Absentee: Scottie Robinson (SR)

Regular Business

The Board discussed the property owned by Keith Symmes, Units 23, 25 & 27 Centennial Grove Drive and assisted the Chair with drafting a letter/response to Town Counsel, Kopelman & Paige.

The Board discussed a letter written by the Dept. of Public Safety Architect and Access Board regarding Brigid Venti – 63 Main Street, sent to the Building Inspector. It was noted that the Building Inspector has not cited Ms. Venti regarding any handicap ramp/access. The Chair asked if the Building Inspector had talked to the Town Administrator, Brendhan Zubricki or Town Counsel regarding ensuring that the public is aware of the cease and desist order due to the fact the property is for sale.

Andrew St. John brought up the concern regarding other home occupation businesses that exist. Mike Catlado asked if you had a business and then sell, it would the handicap access concern become an issue. The Building Inspector said that this only would occur if there was a change of use.

The Board discussed the duck blind owned by Joseph Paraday and the fact that the Conservation Commission has the construction of the duck blind as a current agenda issue and it was a topic covered by the Planning Board last spring. DEP had become involved because the Con. Com. did not obtain the correct sign offs. An investigator had contacted the Building Inspector for DEP but he did not have a chance to speak to him. The DEP was not informed.

Rob discussed the interviews with Ellie and Nick of Horsley and Whitten which the Board held at the last meeting. The Board may request that they give the Board information regarding potential grant money. At the last meeting the Board requested a proposal from them.

Building Inspector's Report

114 Western Avenue, Colleen Perreault – Map 32 – Lot 31

BS: This application is for 114 Western Avenue, Colleen Perreault. She is putting on an addition to one half of the building and renovations on the other half of the house. The lot is 39,640 square feet and has the approval of the Wastewater/DPW and the Fire Department 911.

The Board questioned the brook that runs near the property and the fact that the property is in the Water Protection District. The Building Inspector stated that since they were not altering the exterior of the building then the rule he follows is that they do not need the approval of Conservation Commission. He also stated that he understands that the Boards want to work together, but he pointed out when you have to ask the applicant to delay work for a few weeks in order to work with other boards then there should be a better system to present applications to the necessary boards.

ASTJ: I would like to make a motion to approve the application of Colleen Perreault of 114 Western Avenue for a second floor addition to one half of the property subject to the review of the Conservation Commission.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

67 Western Avenue - Todd and Christine Twombly- Map 36 – Lot 1

BS: Application is to put an addition to a single-family house with a kitchen, two bedrooms and bathroom to be added. It has the approval of Wastewater/DPW, Conservation Commission and the Fire Department 911.

They do not need the approval of the Board of Health due to the fact the property will be converted to sewer. It is on 70,052 acres and the footprint of the house will be well under 2,500 square feet according to Kim Jarvis.

The Board reviewed the plans.

ASTJ: I make a motion to accept the application of Todd and Christine Twombly of 67 Western Avenue for the addition on a single-family house finding that it meets with the Town of Essex Bylaws.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

21 Western Avenue – John Duncan

The Building Inspector talked about the barn belonging to Mr. John Duncan of Western Avenue. The Building Inspector talked to John Duncan and he told the owner that the barn on the property needed to be taken down immediately. The owner has not respond to date.

Due to the fact that the Building Inspector had received a few complaints from citizens, he asked the Board if they knew of any bylaw regarding drainage. The Board did not know of one. There is building codes regarding gutters and the placement of gutters. The owner has changed the building plans not the footprint of the building. The Board asked if the property was located in the Watershed Protection District and the Building Inspector said that he believed it was in the Watershed. The Board would want to talk to the owner if it was in the Watershed District. Kim Jarvis read and reviewed 6-13 of the Bylaw.

The Board asked the Building Inspector about the status of Mark Gallagher's application and he reported that Mark is currently working with engineers to develop a new plan and that at this time he is not ready to move forward.

160 John Wise Avenue - Skip Crocker – Informal Discussion

Skip Crocker is intending to purchase the Mugford property on John Wise Avenue. Mike Cataldo asked if there was water or sewer and there is not. Skip said that they might shrink wrap on the property. The most he would move is three boats a day. He would use his own truck with a trailer. The boats are thirty-five feet and under. Twenty of them are on their own trailers, they would shrink wrap them and keep them out of sight. Skip would like to scrap the surface and cover with an impervious surface. He showed the Board where he would like to lay lint pack. He would not have any signage. If he wanted to widen the driveway he would need to talk to the Conservation Commission. The Board discussed the fact that it would be a change of use from a residence to a commercial property and a site plan review would have to occur. The Board agreed that it might be a good property for the purpose for which he is requesting and they said that the property should be adequately screened. They may rent out the current property. Andrew St. John did bring up the fact that there are citizens in Essex who are concerned about John Wise becoming a commercial corridor.

The Board is going to keep the Public Hearing open for Essex Park Drive until the Conservation Restriction is resolved. The Board did discuss the writing of the decision of a Preliminary Plan and the writing of a decision for a Definitive Plan. The need for the traffic study by the applicant is an issue. Currently the Police Department is doing a

traffic study and they will share the information with the Planning Board. The Board agreed the issue of traffic is paramount. There is a cold spot on Western Avenue which freezes more quickly than in other areas and the Police Department may say that this is a concern.

132 Main Street Board Informal Discussion

Andrew St. John will send a letter to Brendhan Zubricki, Town Administrator to request why the Board would like to contact Kopelman and Paige.

The Board Secretary directed the Board member to the memo dated December 19, 2006 from the Essex Board of Selectmen regarding the Notice of Opening and Closing Date for the Annual Town Meeting Warrant & the Due Date for Annual Town Meeting Reports.

The Secretary also pointed out that each member had copies of the information regarding Railroads that was brought to the Board's attention by Andrew St. John.

The copies of the response from Paul Goodwin regarding Amy Reilly's question about **Belcher Road**.

Three of the Board members, Bill, Amy and Kim gave an update as to the meeting they attending on Tuesday, December 19, 2006 regarding the Manchester-Essex High School.

The Board formally accepted the ANR application of **Joan Bucklin, 36 Story Street**.

Rob gave the Board an update as to his meeting with the Board of Selectmen and the current owner and potential buyer of **52 Lufkin Point Road - Lufkin Marina**. Rob had suggested that they contact the DPW and the Con. Com. Mike Cataldo suggested that the applicant have the approval of the state and Bill Holton mentioned that the Fire Department should be contacted.

BH: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 9:45p.m.

Next library meeting is set for Wednesday, January 3, 2007 commencing at 7:00 p.m. at the Town Library.

Presented by: M E L Attested to: L W Holton
Mary-Ellen L. Feener, Secretary

L.W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, January 3, 2007

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:44 p.m. by Rob Fitzgibbon, Chair.

Attendees: Bill Holton (BH), Andrew St. John (ASTJ), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Scottie Robinson (SR), Mike Cataldo (MC)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)
Absentee: Amy Reilly (AR)

Regular Business

160 John Wise Avenue - Skip Crocker Application for a Special Permit

The Applicant gave the board his necessary application form and the plan.

SR: First of all we are talking about the Mugford property which was residential?

RF: Yes.

MC: One of the things I was thinking of when we were talking about after we talked last time was that it was strictly going to be used for business that can make a difference. The woman who bought Stavros's house said she was going to use the house and have a business.

Skip Crocker: We decided to fix up the house and install the septic system and rent the house out.

BH: So, it would have multiple use.

ASTJ: Mixed use. The non-covered issue in our bylaw. I am pleased to say that the house is not going to be vacant or abandoned. In terms of the bylaw are there any issues with this change of use?

MC: That is why we recommended a site plan review.

Skip Crocker presented his plan and the application.

BS: There is a house on the lot and what is going to be on it?

MC: It is a residence.

Skip Crocker: We are going to be renting it.

BS: I think this is a thing that needs to be fixed. I don't see why he needs to go for a special permit.

ASTJ: This says for commercial use as well.

SR: What is the number bylaw you are looking at?

ASTJ: 6-12.4.2. It does say for commercial purposes. So, I basically think we need a site plan review. (To Skip Crocker), Don't get me wrong here, this is about process.

The Board reviewed the bylaw.

The Board accepted the application and a date was set for the public hearing.

Building Inspector's Report

147 Eastern Avenue – Mark Gallagher

Orestes 'Russ' Brown, (RB) legal counsel for Mark Gallagher and owner Mark Gallagher (MG) present

BS: This application is for a foundation only permit for Mark Gallagher of 147 Eastern Avenue.

MC: Was it approved by Conservation Commission?

BS: The previous plan was approved by Conservation Commission and this is a new plan which was not before the Conservation Commission.

BH: This is a new building permit application.

ASTJ: This is a building permit application. This is the first time we have seen this building permit application.

BS: No, it is not.

ASTJ: Didn't we just approve an ANR? This is a whole different deal.

BS: No, we have been dealing with this building permit application since this whole process started.

SR: No.

ASTJ: O.k., but he didn't have the frontage.

BH: He didn't have the frontage so he put the lots together for the ANR.

BS: You looked at this before and there were other issues.

KJ: Not before the ANR. The ANR makes a clean slate.

BS: So now it is back again.

BH: So now we have a building permit application which includes a change of use.

ASTJ: Didn't we just say that a change of use requires a special permit and a site plan review process?

SR: Yes, we did.

BS: There is no building on the lot how is it a change of use.

KJ: Same situation as the Crockers.

ASTJ: Same deal.

BS: He is building a building. There is no building of which we are changing the use.

ASTJ: The last one we said there was no building proposed so there was some small piece of logic to what you said.

Now, there is a building part of the whole deal he is asking for new construction isn't that site plan review. To give him a building permit he has to have a legitimate use for that lot and a change of use requires a site plan.

SR: I would agree.

MC: It sounds like the conversation we just had.

BS: You can nit pick it around. It is a vacant piece of land.

KJ: It is not a vacant piece of land. There is actually two houses on the lot.

BS: There is a house on the lot.

ASTJ: I don't want to argue with you about this Bill.

BH: O.k. chill out.

RB: Under what bylaw, 6-6.12?

KJ: Yes.

The Board reviewed the bylaw.

RB: He has a conforming lot with two residential structures which are conforming and he is allowed to have his business use.

ASTJ: The bylaw allows for a mixed use but this is clearly a change of use.

RB: Which bylaw is that?

MC: 6-12.2.

The Board reviewed the bylaw.

RF: I think a site plan review would be a good idea.

KJ: Not a good idea, it is a requirement.

RB: So your reading of this is that a change of use. No permit for the any kind of construction if it is more than 2,500 square feet. So, how do you read that sentence to be change of use?

ASTJ: What we have been consistent with since I have been on the planning board is that any change of use we have required a site plan review. It is actually 12.1 and 12.2 combined.

RB: That is one interpretation.

ASTJ: Or if it is commercial it is required. (Reading from Bylaws) Required approval includes proposals for commercial, industrial, office, multifamily dwelling, residential development, municipal, utility, and recreational purposes.

SR: We have applied it to everything in the past that has come before us in a similar situation.

KJ: To rephrase it, if Hardy's Hatchery wanted to change the use from agricultural to residential they would need to apply for site plan review.

RB: If I don't see it in the bylaw, then I can't see how we do it.

RB: I honestly don't see it.

BH: Has this new plan gone to Con. Com.?

BS: No.

~~KJ: This~~

RB: My advice would be that it was a matter of right?

Mark Gallagher: Bob Brophy, the site overseer reviewed the plan.

BS: Let me know what I told Mr. Gallagher tonight. If anyone comes to me and they are going to disturb the soil then I send them to Conservation. Conservation did sign on this plan where it was paved. Now, the new plan has paving up to and past the building, they need to bring it before the Conservation again.

MC: The plan you gave them differs from the plan you gave us. We were told that you were going to go back to Con. Com. and have them review it.

RB: I know that we talked about the Con. Com. and there was some review that you wanted from the Con. Com. ?

BS: There is a building permit before you for a change of use.

SR: I make a motion to deny Mark Gallagher's change of use for a building permit located at 147 Eastern Avenue because the Planning Board

ASTJ: I second.

All in favor?

Aye.

Motion approved.

Bill Holton abstained.

~~Mark Gallagher: I am sorry, but I have~~

36 Story Street ANR – (Joan Bucklin, owner, not present)

The application was to subdivide Lot 2 from Lot 1.

BS: Could I make one comment?

SR: The only thing I was going to say is that I think it was approved when Wesley was on the board and he paid great consideration for fire trucks. Can I ask, is this a driveway?

RB: Yes. This is a driveway.

MC: In realty on paper it is a driveway

MC: Motion to approve the application for 36 Story Street, Map

BH: I second the motion.

All in favor?

Aye.

The Board reviewed the memo written by Andrew St. John to be given to the Town's legal counsel regarding 132 Main Street.

Gordon Martin from the Finance Committee discussed the Community Preservation Act with the Planning Board and the Board unanimously stated that they would assist him with whatever was needed to have this approved.

Regular Business

The Board discussed the following items:

Conomo Point Committee

April Bowling of the Open Space Committee

Town Meeting Warrants

Site Plan Review

New Application Form

New Requirements – plans - engineers

Home Occupancy

Wind Turbines

CPA

OSRD

ASTJ: Motion to adjourn the meeting.

MC: I second the motion.
All in favor?
Aye.
Motion passed unanimously.
Meeting adjourned at 10:25 p.m.

Next library meeting is set for Wednesday, January 17, 2007 commencing at ~~7:30~~ p.m. at the Town Library. 7:00

Presented by: M.E. Feener Attested to: L.W. Holton
Mary-Ellen L. Feener, Secretary L.W. Holton, Clerk

Town of Essex Planning Board
Minutes
Wednesday, January 17, 2007

The meeting was held at the Burnham Town Library in Essex and was called to order at 7:15 p.m. by Rob Fitzgibbon, Chair.

Attendees: Kim Jarvis (KJ), Amy Reilly (AR), Andrew St. John (ASTJ), Scottie Robinson (SR), Michael Cataldo (MC), Rob Fitzgibbon (RF)

Absentee: Bill Holton (BH)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

17 Lufkin Point Road – Lisa Lambert & Joan Kitsis (owners, not present)

KJ: On this appeals decision regarding 17 Lufkin Point Road, Lisa Lambert and Joan Kitsis, this property is adjacent to the property which originally was owned by Louis Lima. We may want to look at some of their information.

The board reviewed the meeting minutes of December 20, 2006.

KJ: Motion to approve the meeting minutes of December 20, 2006.

MC: I second the motion.

All in favor?

Motioned approved unanimously.

There were no building permit applications presented by the Building Inspector.

Martin Street, Guerin (owner), unoccupied house

Mike Cataldo asked the Building Inspector what was the status of the property and mentioned that it is beginning to appear to be a safety issue. Mike also asked at what point the Town comes back to an issue.

The Board and the Building Inspector discussed other barns in the area. George Andrews, Story Street had obtained a building permit to tear down his barn but has yet to do such to date.

The Board discussed the question as to when the Essex Police Department would be ready to share some of the traffic information they have been gathering with their new equipment. Kim Jarvis volunteered to ask the Police Chief.

John Duncan, Western Avenue has not taken down his barn. The Building Inspector did send him a certified letter.

63 Main Street – Brigid Venti

The Board discussed the email sent by Brendhan Zubricki, Town Administrator an email regarding the decision not to record the cease and desist with the Registry of Deeds for 63 Main Street, owner Brigid Venti.

39 Story Street – Joseph Ginn III

The Board discussed the fact that the three scenic ways Apple, Choate and Story. The reviewed the driveway permit application approved by the DPW. Mike Cataldo

volunteered to contact the DPW to ask what exactly the work was to be completed and why would it have been approved by the DPW since it is on a scenic road.

Greenscapes NorthShore Coalition

The Board reviewed the message sent by Peter Phippen regarding the new program started by the Greenscapes North Shore Coalition to protect the regions water resources.

Conomo Point Committee

Kim Jarvis updated the Board regarding the Conomo Point Committee. The plan at the moment is for the Town to take control of the properties north of Robin's Island Road. The question is will the Town take control of the properties south of Robin's Island Road. The committee has a month to make a decision. The Committee is also discussing what is going to happen to the land north of Robin's Island Road in 2011. The financial model is including funding for removing houses and abandoned septic systems if they were abandoned. In an ideal world the Town would go after the owners, but that is not always an simple solution. The Committee is working on a safe solution. The State wants to know what the Town will be doing.

The board discussed ENF which could trigger the involvement of MEPA (Massachusetts's Environmental Protection Act). www.state.us.mepa

The Board discussed Wind Turbines. The State does have building requirements as to the construction of the Wind Turbine.

Essex Park Drive – Continuation of the Public Hearing

Peter Van Wyck (PVW) owner, Orestes 'Russ' Brown (RB)

The Chair, Rob Fitzgibbon called the continuation of the Public Hearing to order at 8:12 p.m. and he discussed what occurred at the last public hearing meeting.

RB: We haven't had any progress on a traffic study. On the ten-acre parcel we have come to a stand off. The Town Council feels that the Con. Com. is the only Board that can accept the C.R. without it having to go to Town Meeting. Deborah Ellison, Kopelman & Paige. The Board reviewed the letter written.

The Board decided that a board member talk to Brendhan Zubricki, Town Administrator regarding the requirements set by the Conservation Commission.

MC: Would you be willing to put up any markers?

PVW: I want to deal with the original court order. I would like to point out that some day when it is subdivided there will be markers for the lots.

MC: One thing we did talk about was putting in some type of boundaries so we knew where the parcel was located.

SR: Yes, we had just talked about markers where the angle changes.

MC: In this case, there will be development all around this and I think our concern when this first started is that this doesn't become 'Sam Smith's' front lawn.

PVW: I am curious, what information would you glean from a traffic study?

KJ: A traffic study may show the influence of traffic that goes in and out and we were told by the Police Department that there is an issue on the main road with black ice. This has to do with the way Essex Park Drive meets with Western Avenue.

SR: And it goes over Alewife Brook. If we consider a road length waiver we would want to know the impact of the traffic in the area.

RB: We will do the traffic study.

The Public Hearing will be continued to March 21, 2007 at 8 p.m. The secretary will contact PVW to sign the agreement for a continuation and send Russ Brown and PVW a list of qualified people to do a traffic study.

Scottie Robinson and Rob Fitzgibbon will talk to both the Conservation Commission and the Town Administrator, Brendhan Zubricki.

Informal Discussion – Lufkin Marina

Sue Lufkin (SL) and George Lufkin (GL), owners, John Barrows (JB), Marchionda & Associates, Brian Lever (BL), Lever Development, James McKenna (JM), Attorney representing the Lufkins

James McKenna began the discussion with the Board by giving a brief overview of the proposed project.

John Barrows reviewed the proposed plans with the Board. The plan illustrated nine potential new buildings with two duplexes, each two bedroom units and the existing house would remain.

SR: May I ask, how much land is there?

George Lufkin: Twenty-six acres.

SR: Would they be condos?

JB: Yes. We are considering them to be 55+.

John Barrows stated that there is public water going down Dodge Street and that they would have to have an on-site septic treatment. An issue they need to consider is the access into the lot due to an area located within the 100 year flood zone. The Essex Fire Department recommended having an additional turn around for fire trucks. The Police Chief mentioned lighting. The current drive varies in areas from 18-20 feet.

RF: Would the marina be owned by the condo association?

BL: Most likely the marina would become a condo unit and the residential would become a condo unit.

SR: I am concerned with the length of the road? It would exceed twelve hundred feet which is what the standard. If it is a condo association with the cul-de-sac and not a public road then would that be an issue and the marina has been existence for a long time.

KJ: We should still know the exact length.

MC: Another thing you should consider is the requirements and the standards for the adequacy of a road.

SR: That may be width or anything else you may have to ask waivers for...

MC: How do you plan to do your construction? Can you do it on pylons?

JB: Actually landfill is allowed.

BL: One of the things that has not been mentioned yet is if the Essex River Cruises wants to stay they can stay. There may have to be some trade offs.

Mike Cataldo brought up the question of drainage and Kim Jarvis brought up the question of water quality.

Rob Fitzgibbon asked that when they met with the Selectmen, did they bring up the questions of affordable housing or retail?
BL: In term of the net impact on the town regarding the taxes alone and also keep in mind that there will not be any children.

Mike Cataldo brought up the fact that when considering the area, the wetlands would not be included.

Rob Fitzgibbon brought the fact that the applicant may be applying for a special permit under the Bylaw 6.9.12-K.

132 Main Street Informal Discussion

The Board was told by Greg Dolan that the Registry of Deeds that there is one lot, not two lots as the Town Assessor's Department has it. The Board did state that they would be open to viewing the documentation from the Registry of Deeds.

The Board agreed that hypothetically the applicants may be allowed to pursue their objectives with a 6-4.2 finding. However, they cannot confirm until they hear from Town Counsel.

The Board has not received a call back from Town Counsel.

The Board suggested that the engineer talk to MEPA to see if they would have any concerns or issues.

If they did apply for a special permit it would be under the Essex Bylaw 6.9.12-K.

The Board discussed that they would like to have an 's' added to 6-9.12-K.

Regular Business

RF: Motion to adjourn meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously. Meeting adjourned at 10:02 p.m.

Next library meeting is set for Wednesday, February 7, 2007 commencing at 7:00 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: L. W. Holton
L.W. Holton, Clerk

**Town of Essex Planning Board
Minutes
Wednesday, January 31, 2007 7:00 p.m.**

The closed agenda meeting was held at the Burnham Town Library in Essex and was called to order at 7:05 p.m.

Attendees: Michael Cataldo (MC), Scottie Robinson, (SR), Amy Reilly (AR), Andrew St. John (ASTJ)
Absentees: Rob Fitzgibbon, Bill Holton, Kim Jarvis
Secretary: Mary-Ellen L. Feener

The closed agenda meeting was held for the purpose of finalizing and voting on the proposed articles for the warrant to be presented for the annual town meeting.

Wind Turbine – Proposed Amendment – Article XXd

MC: Motion to approve proposed article to amend Section 6-6.9 Special Permits, Section E of the Zoning Bylaw that currently reads: Installations of radio, telecommunications, cellular and television facilities, including free standing tower structures, shall be permitted subject to the following requirements, and such other conditions as the special permit granting authority may impose under G.L. c. 40A and this By-Law. By inserting the terms "Wind Turbines", after the words "television facilities".

SR: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Wind Turbine – Proposed Amendment – Article XXA

ASTJ: I make a motion to approve the proposed amendment to Section 6-3 Definitions of the Zoning Bylaw and adding a new Section 6.3.46 to read: Wind Turbine – a mechanical or electromechanical wind energy converting system (WECS) including the supporting structure and any energy transmitting conduit or shaft; includes both horizontal and vertical axis systems.

MC: I second.

All in favor.

Aye.

Motion passed unanimously.

Wind Turbine – Proposed Amendment – Article XXb

AR: Motion to approve the proposed amendment of Section 6-5.3 of the Zoning Bylaw by inserting the term "wind turbines" between the words "observation towers, television...".

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Wind Turbine – Proposed Amendment – Article XXc

SR: I would like to make a motion to approve the proposed amendment of Section 6-6.9, Section E of the Zoning Bylaw by inserting the term "Wind Turbines," after the words "television facilities".

AR: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

Proposed Amendment – Section 6-6.12 – Article XXf

AR: I make a motion to amend Section 6-6.12.2 Projects requiring site plan review' by inserting the phrase "or site", between the words "building" and "shall be given".

ASTJ: Second the motion.

All in favor.

Aye.

Motion passed unanimously.

Home Occupation – Section

OSRD – Section

ASTJ: I make a motion to adjourn the meeting.

AR: I second the motion.

All in favor: aye.

Meeting adjourned at 9:15 p.m.

Next meeting is set for Wednesday, February 7, 2007 commencing at 7:00 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: A. Reilly
Amy Reilly, Clerk

Town of Essex Planning Board
Minutes
Wednesday, February 7, 2007

There was not a meeting due to a lack of a quorum. The next meeting is set for Wednesday, February 21, 2007 commencing at 7:00 p.m. at the Essex Fire Station meeting Room.

Presented by: M.E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: Judith C. Feilly
~~L.W. Holton, Clerk~~ Co-Clerk
Amy Reddy

Town of Essex Planning Board
Meeting Minutes
February 21, 2007

The meeting was held at the Town of Essex Fire House Meeting Room and called to order at 7:08 p.m. by Chair, Rob Fitzgibbon

Attendees: Mike Cataldo (MC), Scottie Robinson (SR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ), Amy Reilly (AR)
Building Inspector: Bill Sanborn (SR)
Secretary: Mary-Ellen L. Feener (MF)

17 Lufkin Point Road Application of a Definitive Subdivision Plan

Dan Ottenheimer, Mill Rive Consultants
Lisa Lambert, owner (present)

The Board reviewed the application of Lisa Lambert presented by Dan Ottenheimer regarding the Definitive Plan Application of Lisa Lambert and Joan Kitsis of 17 Lufkin Point Road. The public hearing date was set for April 4, 2007.

Building Inspector's Report

4 Harry Homans Drive – Beth and Jeff O'Neal

BS: The first application is for Beth and Jeff O'Neil of 4 Harry Homans Drive for a side yard addition and the remodel of the existing exterior. It will be a two-story 35 feet high addition. It has the approval of the B.O.H., Waste Water, the Con. Com. And the Fire Department 911.

SR: Is this a single family home and it will continue to be a single family home.

BS: Yes.

SR: Are there any businesses on the property?

BS: No.

MC: Motion to accept the application Map 31, Lot 42, 4 Harry Homan's Drive, of Beth and Jeff O'Neal for a two story addition and exterior renovations. It has the approval of the BOH, Wastewater, Con. Com. And the Fire Department 911, finding it meets with the Town of Essex Bylaws.

ASTJ: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

2 Andrews Street, John & Margo Kusulas

BS: This is an application for a 56 x 36 barn to be built and it will be 19 feet high. The barn will be used to house horses. Application has the approval of the B.O.H., the Conservation Commission and the Fire Department.

The Board discussed the use of the barn and questioned parking and what the building would be used for; personal keeping of horses or for the Boarding of other horses and the impact of the extra traffic to the area and they asked if the applicant could present a site plan and or further elaborate on the use of the barn. The Board discussed the fact that the applicant is not a commercial use or an agricultural use.

SR: Motion to vote to accept the building permit of Margo Kusulas for the construction of a twelve-stall barn on 2 Andrew Street.

RF: I second the motion.

All in favor.

Aye.
Motion passed.
Michael Cataldo present.

The Building Inspector also brought up the concern of citizens regarding the zoning concerns in the town of Essex and the fact that there has been letters from the citizens regarding this concern. The Board agreed that this was a concern.

Andrew St. John brought forward the request that any correspondence that specifically addresses any concerns regarding zoning that were brought to the Board not only be filed with the specific property, but also in a separate file to track these letters, emails. The Secretary will begin this as of February 22, 2007.

Ed Howard – Informal Discussion

Mr. Ed Howard came to the Board regarding his desire to bring together an advisory Board with the concept that they would be doing some long range planning for a town. The Selectmen had already met with Ed Howard and agreed that a notice could be posted in the newspaper to see if there would be volunteers to assist with this endeavor. He would like to bring together citizens of the town to form an advisory committee. His philosophy is that the town should be a town where businesses can thrive. He suggested that at least the town should hire a part time planner as an outside professional. The Planning Board has requested a part time planning consultant who would act as a consultant in areas that need improvement and also a part time Planner to oversee the workings of the Planning Board. Ed Howard stated that the focus should be town inclusive. He truly believes that civic pride becomes contagious and that if you can stimulate the town the town can become excited. The Board and Ed Howard discussed more about the committee. The Chair discussed in brief the history of the town and local businesses. The Chair also mentioned that the Planning Board had recently reviewed the Open Space Committee presented to the Board by April Bowling. The Chair suggested the Village Center District might be a concept that the committee may be interested in researching. Ed Howard said the next step was that he will be meeting with the Selectmen next Monday and they will be reviewing the response from possible volunteers for such a committee.

132 Main Street – Informal Discussion & Application for a Special Permit

Greg Dolan, Atlantic Engineering
Brett Longo, potential buyer

Rob Fitzgibbon read for the record the letter written to the Board from Attorney Joel B. Bard, Kopelman and Paige: Dear Member of the Planning Board: You have requested an opinion regarding a proposal that has come before the Planning Board for the Essex River Motel property at 132 Main Street. While no application has yet been submitted to the Board, it is my understanding that there is interest in purchasing the property, razing fifteen existing detached motel units, replacing the motel units with several condominium units, and transforming an existing office and an existing two-family house into additional condominium units. In your January 16 letter, you also state that the parcel is currently nonconforming to the Town's Zoning By-laws in terms of lot area, density and use, although I have not been presented with any details concerning either the current nonconformities or the particular proposed project. You have specifically asked for a response to a letter written by attorney Robert W. Anctil in which Mr. Anctil states that the proposed use of the property represents an alteration of a preexisting nonconforming use pursuant to section 6-4.3 of the Essex Zoning Bylaw and that the Board should make a finding that the proposed use is not substantially more detrimental to the neighborhood than the existing nonconforming use. It is my opinion that the proposed use of the property as residential condominium units is subject to the provision of section 6-6.9k of the By-Law. That section governs the use of property for a multi-family dwelling units and states that such use may only be allowed upon the grant of a special permit by the Planning Board. Therefore, regardless of the lot's status as pre-existing nonconforming, a special permit is required for the proposed use. Section 6.4.3 authorizes the Planning Board to allow nonconforming use and structures to be 'extended or altered.' This proposal, however, would change the nonconforming use rather than extend or alter it. Since the zoning Bylaw does not allow for changes in non-conforming uses, the Planning Board does not have the authority to allow a change through the process described in

section 6-4.3. *Blasco v. Board of appeals of Winchendon*, 31 Mass. App. Ct. 32 (1991). In addition, section 6-6.9k sets forth certain dimensional requirements including for example, lot area, frontage, setback, building height, lot acreage and bedroom and parking limitations. It is my understanding that the proposal would not meet the standards set forth in that section. In my opinion, if the proposed multi-family project will not meet the dimensional requirements, the project will require a dimensional variance. Therefore, if the proposal were to go forward, it would require both the grant of a special permit under section 6-6.9k for the proposed use and a variance with respect to the dimensional requirements.

The Board discussed the fact that applicant was not given Appendix B of the Bylaws which the Board recently voted to use and not the Appendix B which was handed out to the public with the Subdivision Rules and Regulations. This was an administrative concern of the Board and the Town Clerk does not hand out the Appendix B with copies of the Bylaws.

The Board discussed that they can accept the application because they can give variances for things other than use under M.G.L. 40A Section 10. The Board did not accept the application due to an incomplete application packet and a time on the next agenda was set for the complete application to be presented.

160 John Wise Avenue

Peter Kelleman, 94 John Wise Avenue - Asked about the site plan review and asked why site plan review for a change of use.

Adam Doyle, 170 John Wise Avenue - We have major concerns regarding our potable well which we have a quitclaim deed on this property and we are concerned with fire safety.

Dottie Paige, 170 John Wise - brought forward her concerns regarding the winterization of the boats and concerned with the environmental issues and her views will now be altered.

A citizen who was not identified brought up his concern with traffic.

The Board reviewed the letter from Charles Story which they had not yet had an opportunity to review.

The Board explained to the citizens regarding the Zoning Board of Appeals decision that they made at a meeting last night regarding their determination regarding Site Plan Review did not include words change of use of a lot and Bill Holton stated that he had talked to Ed Perkins, Chair of the Essex Zoning Board and that this was going to be the final decision of the Board. The Board did tell the citizens that this meant that Skip Crocker does not need to present a site plan review.

The Board encouraged citizens to go to Town Meeting and participate in town government. The Board discussed with the citizens that Essex has no zoning districts.

Skip Crocker spoke to the concerned citizens and stated that he was working on some of the concerns of the people and that he was available to answer any questions and discuss any concerns. He is researching the concerns in the letter which was discussed.

Conomo Point Committee Update from Kim Jarvis

Kim gave the Board an update regarding the fact that she will not be able to attend the Conomo Point Committee's next three meetings after the next meeting and suggested a Planning Board member attend these Thursday night meetings; Bill Holton, Amy Reilly and Scottie volunteered to take turns to attend the meetings. Scottie will attend the first meeting schedule

Regular Business

Payroll and Invoices

Mail

Articles for the Warrant for the Town Meeting

The Board set a date of March 10, 2007 at 10 a.m. for the public hearing. The Board reviewed the notice and Rob will email the notice to Mary-Ellen for sending publication to the newspaper tomorrow. Amy Reilly will type the home occupation by Monday morning.

Meeting Schedule

The Board approved the meeting schedule.

Meeting Minutes

The Board decided to review meeting minutes at the next scheduled meeting.

MC: I move to adjourn the meeting

ASTJ: I second

RF: all in favor?

Motion passed unanimously.

Meeting adjourned at 10:00 p.m.

Next meeting is set for Wednesday, February 21, 2007, commencing at 7:00 p.m.

Presented by: M. E. Feener
M-E Feener, Adm. Assistant

Attested to: Amy Reilly
Amy Reilly, Co-Clerk

Public Meeting

Town of Essex Planning Board
March 7, 2007

The Meeting was held at the T.O.P.H. Burnham Library and the meeting called to order at 7:15 on March 7, 2007.
Attendees: Rob Fitzgibbon (RF), Michael Cataldo (MC), Amy Reilly (AR), Andrew St. John (ASTJ).
Building Inspector: Bill Sanborn
Secretary: Mary-Ellen L. Feener (MF)

123 Main Street

Greg Dolan, Atlantic Engineering

- Application for a Special Permit was accepted by the board and a public hearing date was set for April 18, 2007.
- Rob will contact Kopelman & Paige to discuss the necessary variance for this property and the engineer for the project.

Building Inspector's Report

4 Eastern Avenue

BS: Application is for a 6-4.2 finding for a small dormer to be added to the property located at 4 Eastern Avenue, owners, Jim and Ann Trudea. Replace the roof and strip and replace existing roof shingles and to build a new front dormer for a bathroom. A 6-4.2 finding is required because of the dormer. It has the approval of the Fire Department and Waste Water.

Scottie Robinson (SR) arrived at the meeting at 7:32 p.m.

4 Eastern Avenue – Jim and Ann Trudea

MC: Motion to approve the application of Jim and Ann Trudea, 4 Eastern Avenue for a 6-4.2 finding that it is not substantially more detrimental than its previous use.

ASTJ: I second.

All in favor.

Motion Approved.

Scottie Robinson did not vote.

3 Hardy Lane – Bob Morin & Toby Nathan

BS: Application is to add a 12 x 24 carport and 12 x 12 deck to existing cottage. Application has the approval of the BOH, Con. Com.

ASTJ: Motion to approve the application of 6-4.3 finding that it meets with the Bylaws of the Town of Essex and has the necessary approvals.

26 Story Street – David and Shannon Alger

BS: These are two applications for the same property. The first application is for the demolition of the existing property and the second to install a 24 x 36 foundation for a modular home. Applicant can not get the plans for the modular home because of the modular company. It has the approval of the B.O.H., Con. Com. And the Fire Department.

The Board and the Building Inspector discussed the process of approving the foundations for modular homes. It was requested by the Board that they be shown the building plans once the house plans are obtained. Andrew St. John

asked to be on the record that it would make more sense that the applications for modular homes be presented with the drawings of the property.

MC: My only concern is that we are working with you in this review piece.

ASTJ: And, it would be nice that this didn't happen in two pieces.

MC: Motion to approve the application for the demolition of the current structure located at 26 Story Street of David and Shannon Alger finding it meets the Town of Essex Bylaws.

RF: I second the motion.

MC: Motion to approve the application of David and Shannon Alger of 26 Story Street for the installation of a 24 x 36 Map 35, Lot 28 under 6-4.3 it's a non-conforming pre-existing use and requesting that the house plans are shown to the board when they are ready.

Bruce Fortier was asked by the Board not to interrupt the public meeting without requesting to address the board.

22 E. Gregory Island Road -Connie Tippen

BS: This is just a review for the board of a remodel of a mudroom and a kitchen.

The Building Inspector is still working on having the owner of the barn on Western Avenue, John Duncan take care of the shed/barn.

There were numerous citizens attending the meeting to discuss 160 John Wise Avenue.

Peter Kellerman, Apprilla Farm, 94 John Wise Avenue: The letter is not dealing with the particulars of 160 John Wise Avenue. Our very careful reading of the bylaw leads us to question what constitutes site plan review.

The Chair, Rob Fitzgibbon, read a letter from the office of Glovsky & Glovsky. Dear Members of the Planning Board: "Please be advised that I have been retained by the following individuals to oppose the plans of Crocker's Boat Yard to establish a boat yard storage facility at 160 John Wise Avenue ('the Proposal'):

1. Mr. and Mrs. Anderson Storey (Abutters); 158 John Wise Avenue
2. Mr. and Mrs. Charles Storey (Abutters to Abutters); 143 John Wise Avenue
3. Mr. Peter Kellerman and Ms. Maria Benotti (Abutters to Abutters); 94 John Wise Avenue
4. Mr. and Mrs. Barbara Doyle (Abutters to Abutters) 170 John Wise Avenue

It is my understanding that the Proposal was discussed at your last open meeting. The specific discussion revolved around the application of the site plan review requirements of the Town of Essex Zoning Bylaw ('Zoning by Law') to the Proposal. It is my understanding that the Planning Board concluded at that time that it does not have site plan review authority over the Proposal. While it is our opinion that the Town of Essex Zoning Bylaw does not permit a commercial use to be added to an existing single family residential use on the same lot, such as Crocker's Boat Yard proposes, we acknowledge that issue does not fall within your jurisdictional province, and therefore, will not elaborate on it herein. In the event, however, that it may ultimately be determined by the Board of Appeals and/or a court of competent jurisdiction, that the Zoning Bylaw does not permit a commercial use to be added to a single family residential use upon the same lot, then it seems clear to us that Section 6-6.12.2 of the Zoning Bylaw requires site plan approval before such a mixed commercial and residential use may be implemented. In our opinion, the proposal constitutes a 'change of use for any building' within the language of the Bylaw, thereby triggering site plan review. The addition of such an intense commercial use to a lot bearing a single-family dwelling, constitutes a 'change of use for any building', within the spirit of Section 6-6.12.1, entitled "Purpose," expressly states that 'the site plan review by law regulates the development of structures and sites...' Further, the second sentence of 6-6.12.2 can be read as independently requiring site plan approval for the Proposal since it involves 'commercial...purposes.' Massachusetts common law is clear in requiring that a municipal zoning by law be read as a whole, to render its various provisions harmonious, and interpreted in a common sense fashion, so as to avoid illogical results. To say that the zoning Bylaw

imposes site plan review over a 101 square foot addition to an existing 2,400 square foot single family residence, but not to the type of intensive commercial use which Crocker's Boat Yard intends to add and to an existing single family use, would render the site plan review provision nonsensical and absurd. Such an illogical interpretation should be avoided. It seems clear that when Town Meeting voted to adopt site plan review, that it intended for that review to apply to the type of use now proposed by Crocker's Boat Yard. For this reason, we ask that you reverse your position and advise Crocker's Boat Yard. For this reason, we ask that you reverse your position and advise Crocker's Boat yard that the proposal is subject to site plan review. Should Crocker's Boat Yard purchase the subject land and begin operating a boat storage facility there, it is my clients' intention to appeal that action to the Building Inspector in the first instance, secondarily to the Zoning board of appeals and ultimately to a court of competent jurisdiction, if required. Thank you very much for your attention, and please do not hesitate to contact me if you have any questions. Very truly yours, Glovsky & Glovsky, Kevin M. Dalton."

The Board explained that in the meeting minutes which will be reviewed from the February 7, 2007 meeting explained the reason as to why the Board cancelled the public hearing for 160 John Wise Avenue which the citizens may request a copy of said approved meeting minutes at the office of the Planning Board tomorrow and request to be heard by the Board of Appeals.

The Board discussed the upcoming public hearing this Saturday, March 10, 2007 regarding items on the warrant.

Conservation Restriction Update

Scottie met with Brendhan Zubricki, Town Administrator and Wally Bruce (Con. Com. Chair). They discussed the fact that there are several opinions as to what Peter has to do and it was decided that Peter did not need to do anything other than what was in the Agreement for Judgment. Scottie was asked to contact Orestes 'Russ' Brown, legal counsel for Peter Van Wyck if he would do specific steps for the CR. If he refuses on the record the next step would be to go to Con. Com.

Rob had a new update that the Conservation Commission will sign off on the Conservation Restriction.

Letter from Mr. Ed Howard. Board of Selectmen, CC: Planning Board, Ed Perkins. 'If you are of the opinion that expanding the town's tax base is important, then the following may be of interest to you. In a conversation with Ed Perkins, he reminded me of a study which was done some 35-40 years ago for the Town of Essex, which, in short, recommended developing land for commercial purposes on Southern Avenue near the Essex/Manchester line. It might be timely for this study to be revisited. It was most likely done by Whitman & Howard Engineers & Architects or Community Planning Services. Dedicated commercial land might provide elbowroom for everything from boat storage to industry and at the same time expand the tax base. Respectfully, Edwin M. Howard.

ASTJ: Motion to approve the meeting schedule.

MC: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

ASTJ: Motion to approve the Planning Board minutes of February 21, 2007 as amended.

AR: I second the motion.

All in favor.

Aye.

Motion approved unanimously.

MC: Motion to approve the meeting minutes of September 27, 2007 as amended.
SR: I second the motion.
All in favor?
Aye.
Motion passed unanimously.

BH: Motion to approve the meeting minutes of September 20, 2007 as amended.
ASTJ: I second the motion.
All in favor.
Aye.
Motion passed unanimously.

AR: Motion to adjourn the meeting.
RF: I second the motion.
All in favor?
Aye.
Motion passed unanimously.

Meeting adjourned at 9:24 p.m.

Next meeting is set for Wednesday, March 10, 2007 commencing at 7:00 p.m. at the Fire Station Meeting Room.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: Ameia Berry
~~L.W. Holton, Clerk~~
AMEIA BERRY CLERK

Public Meeting

Town of Essex Planning Board

March 10, 2007

Meeting called to order at 12:00 by Rob Fitzgibbon, Chair and he explained to the public that this was to be a informative meeting.

Rob explained to the public and gave a general overview of what is being proposed for articles for the warrant.

Attendees: Scottie Robinson (SR), Michael Cataldo (MC), Bill Holton (BH), Amy Reilly (AR), Rob Fitzgibbon

Absentees: Andrew St. John, Kim Jarivs

Secretary: Mary-Ellen L. Feener

Seventeen members of the public attending this meeting.

Site Plan Review

Proposed Amendment: Section 6-6.12.2 – Article XXf was read to the public by Rob Fitzgibbon regarding Projects Requiring Site Plan Review and the amendment to insert the word site between the words "building" and shall be given" and further explained the purpose of the proposed change. He discussed the fact that the Essex Zoning Board of Appeals recently determined that this bylaw did not include the change of use for site.

Bill Holton discussed with the public the inconsistency between 6-12.1 and 6-6.12.2. 6-6.12.1 does say site where 6-6.12.2 does not include the word site.

Bruce Fortier, Southern Avenue talked about what he sees a serious concern for the planning board as the lack of definitions. He states that the change of use of a site could include a vacant lot of land where a property owner wants to build a house and that there is no grounds for the board to refuse the proposal of a site plan review. He further stated that someone could be ready with cash in hand to purchase a buildable lot and then with the whim of whichever planning board member decides to show up for a meeting can say you may have to wait 90 days for approval. He said that changing this is going to expose a property owner to the whims of a planning board member shows up at a meeting.

Peter Kellerman, John Wise Avenue stated that he found this section of the bylaw complex and though he found the intent correct, he suggested that the wording be more clearly stated. He read an example of what he would propose.

Scottie Robinson talked to the public regarding what specifically is written after 6-6.12.2 regarding what is required of a site plan. She discussed how it could be up to the boards to determine what does trigger a site plan review. She used examples.

Michael Cataldo offered a brief observation and explained that the Board members meet twice a month now and the reason they are proposing this change is due to what they are seeing before them now as a board. Though perhaps historically this has been an amendment which has been changed in the past, this is a concern of

Lillian Muise, Eastern Avenue said that regardless of what is being proposed is a way for the planning board to have some control over a situation similar to the one that is happening in our neighborhood.

Wind Turbines

Rob Fitzgibbon discussed the proposed the amendments regarding wind turbines.

Scottie Robinson reviewed with the public the bylaw sections to which these amendments will be added.

Bruce Fortier, Southern Avenue suggested that the board propose a special section in the bylaws regarding wind turbines.

Mr. Kellerman and his son suggested striking the two-mile radius.

The Board agreed that this was an important concern and Scottie Robinson suggested that the board may add the word telecommunication towers in regards to the two mile radius.

Bruce Fortier explained to the public what are a monopole tower and the type of wind turbine that was recently installed at the Manchester dump.

Home Occupation

Rob Fitzgibbon reviewed the proposed home occupation bylaw amendments with the public.

Scottie Robinson explained to the public that if you are operating a home occupation business this proposed bylaw change was not to stop any small business but to allow the board to have review.

David Lenzi, 57 Wood Drive brought up a concern regarding his business. He did say that he obtained a business permit from the Town Clerk.

The board continued with regular business.

Andrew St. John (ASTJ) arrived at 1:22 p.m.

The Board reviewed the meeting minutes of January 31, 2007.

MC: Motion to approve the meeting minutes of January 31, 2007 as amended.

BH: I second the motion.

All in favor.

Aye.

Motion passed unanimously.

AR: Motion to adjourn the meeting.

RF: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Meeting adjourned at 1:45 p.m.

Next meeting is set for Wednesday, March 21, 2007 commencing at 7:00 p.m. at the Town Library.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Attested to: A. Reilly
Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
April 4, 2007

Meeting called to order at 7:28 p.m. by Chair, Rob Fitzgibbon and was held at the Essex Fire Station Meeting Room.

Attendees: Scottie Robinson (SR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ)

Building Inspector: Bill Sanborn (SR)

Absent: Michael Cataldo

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

Story Street, Shannon & David Alger

BS: This was an application that you reviewed at the last meeting on March 7, 2007 for a modular home. The Board had requested to see the plans. The Board issued the foundation permit at the March 7, 2007 meeting. Here are the plans for the Board to review.

The Board reviewed the plans and found that they were adequate and they had no comment.

160 John Wise Avenue – Skip Crocker

BS: The applicant recently purchased the property and he is looking for a change of use for seasonal boat storage. It does have the approval of the DPW, B.O.H., Con. Com. and Fire Department. The change of use is for a mixed use. They own two lots. One lot has a residence and a garage. The change of use is for the lot with the residence and the garage, Lot A.

The Board clearly clarified that the proposed driveway drawn on the plan by the applicant was not something they were reviewing and approving. The Board noted that at their meeting on April 3, 2007 the Conservation Commission signed off on the permit application. The Board also reviewed the land use requirements. The Board asked about vehicle parking on the lot. Skip Crocker stated that there will be no vehicles stored on the lot. The bylaw does say that the property will need to be screened. The applicant stated that he was already in the process of utilizing the existing trees on the lot and recently purchased some six foot arborvitae. The Board reviewed the plans.

Bruce Fortier, Southern Avenue requested that he talk to the board. The Chair requested that he wait until the Board review the application. Bruce Fortier was asked to please stand down and refrain from speaking without being recognized by the chair. Bruce Fortier did sit down and refrained from interrupting.

The Building Inspector suggested that the Board stipulate what type of trees would be used. Kim Jarvis suggested white pine which grow two feet a year, arborvitae. The Board discussed that they could be more descriptive about what type of screening.

Andrew St. John stated that he would like to once more acknowledge the disagreements which characterized the entire process. He made comment regarding the numerous letters from the citizens who reside in the area and that legal counsel had to be approached by the Board. He personally said that he personally felt this was not a good use of the site.

Kim Jarvis suggested that as the proponent stated that where there are gaps that there are white pines 6 foot center and arborvitae 6 foot center. The applicant stated that he will be putting them 3 feet apart which the Board agreed.

For the record the Board discussed why Skip Crocker did not need to apply for site plan review.

RF: For a similar situation on the other side of town an applicant requested to have a hearing with the Zoning Board of Appeals.

We verbally told this applicant based on what the ZBA told us and on February 21st we told the applicant he did not need to go through site plan review and on March 1st 2007 a letter was sent to the applicant.

R: I am disappointed that we did not need to have a public hearing on this because the citizens in the area are in distressed and we would like to have some input regarding hours of operation and so on.

Skip Crocker: I would like to point out that there are other people in town who have been able to open a businesses without a permit or a public hearing, like Starvos's and they were able to have a business within two weeks. I would like to see consistency with how people are treated when they would like to have a business. I have worked hard to please everyone involved.

Bruce Fortier stated that there are only two lines in the Bylaws regarding storage.

SR: I make a motion that we approve the application of Crocker's Boat Yard, Pembroke Realty; of 160 John Wise Avenue for a change of use from strictly residential to residential and commercial use and the Board and I would also like to note that we are requiring that the property is properly screened as stated in the Town of Essex Bylaws.

Bruce Fortier interrupted the Board to state that there is no such thing as commercial use.

KJ: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

10 Ice House Lane – Helen Sylvia Kirker

BS: The application is for a change of use for a home occupation and an 24 x 24 addition to the existing dwelling for an office with a bath. The application has the approval of BOH, Con. Com. Fire Department and the DPW.

The Board questioned why it was a change of use. The Building Inspector stated that it was a 6-4.2 finding and according to the building code it would be a change of use. The Board stated that Arielle Lane was not noted on the plan presented to the Board. The Building Inspector asked why would Arielle Lane have to be on the current lot.

The Board requested a plot plan that shows Arielle Lane and the property. The Board asked for an updated plan and the Building Inspector agreed.

17 Lufkin Point Road - Public Hearing

The Chair officially opened the public hearing for 17 Lufkin Point Road at 8:11 p.m.

Present: Mark Glovsky (MG), legal counsel for applicant, Dan Ottenhymer (DO) Mill River Consulting and Lisa Lambert (LL) owner

DO: We are showing you a three lot subdivision because we want you to know that the applicant is not going to go this route. There would be a right of way here and then an access right here for the two lots. We are proposing to widen this drive and then off of that right or way there would be a new drive to exist this proposed house.

Dan also pointed out the areas as to where the septic and wells would be placed for the existing dwelling and where the proposed septic and well would be placed.

DO: From the site visit one of the things that was discussed was the emergency turn around. I wasn't there, but that is what I was told.

ASTJ: Can you show us where the existing septic system is?

Dan pointed out where the septic is located and he also clarified the reasoning as why the proposed septic plan would be going where it was due to soil testing and ledge there was a limited area for a new system.

MG: What Lisa Lambert and Joan Kitsis are trying to do is be environmentally sensitive and to keep the neighbors happy with the country feel of the property. These lots will be deed restricted and we are willing to have you say that there will be no further subdivision of the lot.

ASTJ: What is the size of the remaining lot?

DO: Two and a quarter acres.

ASTJ: According to Essex Bylaw they could build another house on that lot.

KJ: In regard to the waiver a sediment and erosion control should be shown when applying for a building permit under federal regulations.

The Board reviewed the waivers and discussed the site visit. Andrew stated that the site is very high.

BH: There is a long list of abutters. Are there any here tonight?

None were present.

SR: In 6.06 requested waivers, you state that you do not want to present an As Built plan for the driveway, you actually mean the road and the same goes with the streets and plan profile that also refers to a driveway not a street.

The Board referred to the questions proposed by the Conservation Commission, read by Bill Holton.
s the lot to be divided into 2 or 3 lots?

DO: Two.

Is any work being done within the buffer zone?

DO: No.

Scottie Robinson reviewed the comments from Police Chief Silva.

"Dear Essex Planning Board, I received a copy of the plans identifying a proposed subdivision at number 17 Lufkin Point Road in the Town of Essex. There are two items of concern which would be beneficial to help the police department if we were called to this location for service. I believe that it is paramount that homes in this area should be well lighted, and house numbers should be clearly marked and easily visible as described in the Town By-Laws. If police or emergency personnel respond to this area, it would provide safety to the members of the police department, and could assist our department locating homes during an emergency. I do not believe that the subdivision as proposed would uniquely create a traffic problem or hinder emergency response provided that the private way is maintained and clear of the elements of weather. If I can be of further assistance to your board during his process, or if you need additional information, please feel free to contact me."

Bill Holton reviewed the input from the DPW which stated, 'in regards to the development at 17 Lufkin Point Road any input from the DPW is not applicable at this time. Lufkin Point is a private road and this address does not have municipal water or sewer. The only possible issue I can see at this time is if more truck traffic from construction causes further damage to Conomo Point Road (which is already in poor condition). Any comments/questions let me know.' Paul Goodwin, DPW

Bill Holton also reviewed the letter from the BOH: We have reviewed the above referenced Definitive Subdivision Plan & find no negative issues as they pertain to the BOH. The applicant should be aware that this statement does not guarantee Board of Health septic design or well approval for any of the proposed lots. These are separate issues and must be addressed as such.

SR: Can you tell me why you don't want monuments?

DO: This is the proposed road and we felt that putting monuments here and here would not be necessary since a surveyor can easily do there job without them.

SR: Who is going to own the roadway?

MG: The owners.

SR: The reason I am asking is the maintenance of the road.

MG: One thing I would suggest is that with your approval you require a maintenance agreement to be recorded.

SR: What are you going to name the street?

LL: I believe we suggested 15. The neighbors are 9. We thought 9, 15, and 17 would be fine.

SR: We may have to run that request by the Fire Department.

The Board also questioned the comments of the Fire Chief regarding a 16 foot road. It was decided that the Chair will follow up with the Fire Chief.

The Clerks will decide which clerk will write the decision.

The Board will review the information at the next scheduled meeting.

The Public Hearing was closed by the Chair at 8:45 p.m.

Katherine Stein, 45 Forest Avenue – Informal Discussion

The Board directed her to apply for an ANR to bring before the Board to request what she is requesting.

Conservation Commission

Amy discussed the fact that the Con. Com. denied her a seat on the Board. It was decided that Rob will contact Wally Bruce and discussed this situation.

Meeting Minutes

SR :Motion to approve the meeting minutes of March 7, 2007 as amended.

AR :I second the motion.
All in favor?
Aye.
Motioned passed.
Kim Jarvis refrained from voting due to the fact that she was not present for the meeting.

ASTJ: Motion to approve the meeting minutes of March 10, 2007 as amended.
SR : I second the motion.
All in favor?
Aye.
Motioned passed.
Kim Jarvis refrained from voting due to the fact that she was not present for the meeting.

229 Western Avenue – Walter Ewaschuk

Bill Holton had been put in charge of overseeing the maintenance agreement that was required by the Board. What the owner would like to do is pave the drive. Per Bill he is following the maintenance agreement and a copy could be obtained. Scottie asked about the DPW reviewing the maintenance agreements and enforcing them. It was decided that Rob Fitzgibbon would contact Paul Goodwin of the DPW. The Board did review the bylaws regarding the question of the paving, no conclusion was made by the board.

Conomo Point Committee


Kim Jarvis gave the Board an update of the Conomo Point Committee. The committee wrote a warrant article. Also, another group wrote a warrant article with ten signatures for the warrant.

The Board reviewed the Wetlands Protection Act.

KJ: Motion to adjourn the meeting at 9:45 p.m.
AR: I second the motion.
All in favor?
Aye.
Motion passed unanimously.

Next meeting is scheduled for April 18, 2007 at the Essex Fire Station Meeting Room at 7 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
April 18, 2007

Meeting called to order at 7:11 p.m. by Chair, Rob Fitzgibbon and was held at the Essex Fire Station Meeting Room.

Attendees: Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Michael Cataldo (MC)
Absent: Andrew St. John, Building Inspector: Bill Sanborn, Scottie Robinson
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There was no building inspector's report.

10 Ice House Lane

At the meeting on April 3, 2007 the Board reviewed the building permit application for Sylvia and Alan Kirker, the Board requested more information regarding the plan. At tonight's meeting, Mr. Ed Bjork, Apple Street brought the building permit application for the Kirkers. The Board reviewed the plans.

KJ: I move that we vote to approve the building permit application for Allan and Sylvia Kirker of 10 Ice House Lane to build a one story addition with one bathroom. The application does have the approval of the Board of Health, Wastewater, the Con. Com. and the Fire Department 911. It meets the guidelines of the town of Essex with the exception of being 10 feet from the property line which is determined to be no more detrimental and may be approved with a 6-4.2 finding.

MC: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

245 Western Avenue – George Lee

Currently Mr. Lee is looking to run a clam business at the location. There will be no storefront and the building was used previously as a machine shop. There are twelve parking spaces in the front of the building for use of the entire building with the exclusion of the residential units above. The Board agreed that this did not require a site plan review or a 6-4.2 finding and that he could proceed in obtaining his occupancy permit during the regular business hours of the Building Inspector.

Regular Business

- The board reviewed the road maintenance agreement for 17 Lufkin Point Road sent by legal counsel, Mark Glovsky.
- The Board discussed the fact that there had been a note from Dick Carter, Fire Department that the road for the proposed subdivision plan application for 17 Lufkin Point Road would be 16 feet. 6-5.14CA, minimum driveway standards as it applies for a common driveway. It was decided that Rob Fitzgibbon will talk to him tomorrow and then on April 25, 2007 they will review and discuss.
- It was decided that the secretary will make sure that the Conservation Commission has a copy of the Board decision regarding the property owned by the Palazolla Brothers on John Wise Avenue and to give a copy of the Con. Com. notice to the Building Inspector.
- Kim gave the Board an update about the land use map she is working on for use by the Board.
- Mary-Ellen will contact Nancy, from Wellspring to talk to the Board. Rob will send the contact information to her.
- Michael Cataldo contacted the DPW to remind them that Story Street is a scenic drive due to the fact that there was a proposal to put a sidewalk on Story Street and it would require a public hearing due to the fact that it is a scenic drive.
- The secretary brought forward the question as to if the articles for the warrant was valid upon the first day of the warrant and in affect until Town Meeting.

132 Main Street Public Hearing

The hearing was called to order by Rob Fitzgibbon, Chair at 8:02 p.m.

Karen Westphalen of Atlantic Engineering reviewed and explained the proposed plans to the Board. She further discussed that the site is within the 200 foot of the Essex river area. Seven of the proposed condos will be in new buildings and the existing structure at the front of the lot will be used for units. They are proposing to widen the existing road to be twenty feet. Improvements to the site include an increase of distance from the property lines; the side and the rear setbacks. The distance between buildings will be larger. A big improvement on the storm water management. Currently there is a lot more pavement on the site and it would be a reduction of over 3000 square feet of impervious area. There will be a storm sceptor and a sediment foray and a grass swale.

MC: Will you be filing or have you filed a MEPA.
Greg Dolan, Atlantic Engineering: We don't need to file with MEPA.

Brett Longo discussed the building plans with the Board.

Kim Jarvis reviewed the calculations for the proposed dwellings and the average height/mean height would be 31 feet.

The entire lot is 3,2655 square feet with a frontage of 332.16 feet. The floor plans have not been finalized.

The Essex Board of Health dated March 29 2007 read for the record by Amy Reilly. 'We have reviewed the "Permit Plan for Residential Development at 132 Main Street in Essex, Mass', dated September 19, 2006 and signed January 15, 2007. The only noted item of concern to this Board is the issue of daily sewer flow for these properties. The DPW has an approved bedroom flow count of 3 bedrooms for Map 37 Lot 29 and 9 bedrooms for Map 37 Lot 29A, for a total property count of only 12 bedrooms. Our file has a 19 bedroom (2090 gpd) septic system permit written up, but never issued or completed. The Assessor's numbers, before the last reappraisal, were 0 bedrooms for the cottage (now changed to 1), 9 bedrooms for the motel (now changed to 14), & 3 bedrooms for the house (now changed to 5) – old total 12 bedrooms/new total 20 bedrooms. There is apparently a major discrepancy between the existing DPW approved daily sewage flow and the proposed 23 bedroom daily sewage flow. We suggest this issue be addressed & settled prior to any plan approvals or demolition of the existing buildings. Sincerely, Kelly B. Hurlburt, Chair and Lynne Marchetti.'

Athan a. Vontzalides, Attorney at Law, 27 Lowell Street, Peabody Massachusetts representing Edward Howard: Mr. Howard is not opposed to anyone working on improving the area. Atty Vontalides discussed the current motel and the size of the existing buildings and the fact that currently there is an open space. The proposed subdivision will use more square footage and in turn use up more land area. Atty Vontzalides stated that the plans did not propose the buildings but he would assume that the buildings would be three stories high. He said his client refers to this as the Great Wall of China and he would agree with his client. He also pointed out that the lot has one third of the area required for a multi-family dwelling. The new construction would not have conforming front yard or back yard set backs and he also stated that he felt that the proposed building is also substantially more detrimental than the proposed building. In addition, regarding the impervious coverage what he does know about the land is that the portion of the river front area which is current undisturbed will now be affected. It is also in a flood zone and it is known that it floods. The motel is seasonal use but with the proposal for year round residence and when it does flood it will be hazardous to the owners safety and health and he pointed out the idea when/if there was a flood the vehicles belonging to the new property owners could potentially pollute the river. Atty Vontzalides suggested that fewer units be built to lessen the density of the proposed buildings.

Ed Howard, Main Street, brought photos for the Board regarding the flood plain and pointed out that the land is filled land. Kim Jarvis stated that filled land does fall under Chapter 91 which would be more a Conservation Commission decision.

Jeff Butler, 129 Main Street (also speaking for his son Joshua 131 Main Street): Based upon the plans I viewed of the other day, my view of the river will be entirely blocked and it is an aesthetic of mine, but something I hope the Board will take into consideration. Similarly to Mr. Howard's counsel there is concern regarding property values. My driveway is across the street from the proposed driveway and it is a difficult driveway to get out of now and I am concerned about the added vehicle traffic.

Susan Kane, 147 Main Street responded to the Board's question regarding the flooding of the site.

Martha Parsons, 136 Main Street (tenant of Mr. Howard): If these were built I would not have a view of the river and that is the only reason I live where I live and I hope you will take this into consideration.

The Board discussed views and the fact that they do not have any jurisdiction regarding views.

Jim Appleyard, 5 Riverview Hill: If you allow this kind of density what is it going to do to this town, this violates everything here and it makes me think what is going to happen next. I hope the Board says we aren't going to take this and this is enough to the developers.

Joe Miletello, one of the co-applicants, realtor: I sell real estate throughout the North Shore and every downtown throughout the North Shore looks a hell of a lot better than the downtown of Essex and in my opinion it is disgusting. We are looking to improve the businesses and lessen the flooding problem as it is; keeping it the way it is now isn't going to change the problem. We are looking too not decrease the percentage of building upon the lot.

Kim Jarvis asked the applicants if they had spoken to the Building Inspector and the Conservation Commission regarding the floodways and the flood storage. Kim pointed out that there would be state building code issues.

132 Main Street public hearing adjourned at 8:45 p.m.

45 Forest Avenue – ANR Application

Kevin Steen & current owner Jerome French present

The Board reviewed the plan and the necessary information as required by the Town of Essex bylaws.

AR: I make a motion to approve the ANR application of Kevin Steen 245 Forest Avenue for the combination of lot 6 into his existing period Book 295 Page and Lot 6 is not a legal building lot and is marked on plan as such.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

Peter Kellerman, John Wise Avenue Informal discussion

He inquired with the Board regarding Storm Water Management plan as to who has jurisdiction. Rob Fitzgibbon brought up the proposed Open Plan being brought forward by April Bowling and he believed that this stated that this is a glaring hole in the Town of Essex Bylaws. Bill Holton pointed out that this has been a unique case. They did discuss that the Building Inspector is responsible for the Building Permits. Kim Jarvis pointed out that typically in larger cities it is the DPW who oversees Storm Water Management. The Board discussed that the DEP may be contacted.

Board discussion regarding the property owned by Walter Ewashchuck, 229 Western Avenue. The Board determined that 229 Western Avenue can pave the driveway because he is exceeded the 2,500 sq.

AR: Motion to adjourn the meeting.

MC: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

Meeting adjourned at 9:50 p.m.

Next meeting is set for Wednesday, April 25, 2007 commencing at 7:00 p.m. at the Town Library.

Presented by: M E Feener Attested to: L W Holton
Mary-Ellen L. Feener, Adm. Asst. L.W. Holton, Clerk

Draft Public Meeting
Town of Essex Planning Board
April 25, 2007

Meeting called to order at 7:15 p.m. by Chair, Rob Fitzgibbon and was held at the T.O.H.P. Burnham Library.

Attendees: Amy Reilly (AR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ)
Building Inspector: Bill Sanborn (SR)
Absent: Michael Cataldo, Scottie Robinson
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

8 Lufkin Street –

The Board had an informal discussion regarding the proposed building design by the Whitmans and they reviewed the plans. The Board and the Building Inspector agreed that it would necessitate a 6-4.2 finding and site plan review.

16 Harlow Street - Jan Burgess & Carol Smith

BS: This is for the removal of a sitting room and screened porch and construction of a two story addition for a family room and expansion of a third bedroom and new screened porch. It has the approval of the Conservation Commission and the DPW. The Board reviewed the plans.

AR: This is for the removal of a sitting room and screened porch and construction of a two story addition for a family room and expansion of a third bedroom and new screened porch. It has the approval of the Conservation Commission and the DPW and this is a 6-4.2 finding that it is no more detrimental than its current use.

BH: I second the motion.

All in favor?

ye.

Motion passed unanimously.

147 Eastern Avenue – Mark Gallagher

Orestes (Russ) Brown, legal counsel representing Mark Gallagher

The Building Inspector informed Russ Brown that he had received a complaint regarding the boat in the front yard. Russ assured Bill that the boat would be removed by the morning.

BS: This is for the citing of a building to be used as an auto repair shop and for a foundation only permit. This application has the approval of the Board of Health, the Conservation Commission, the DPW and the Fire Department 911.

The Board reviewed the plans. Andrew St. John stated that there should be a line indicating the end of pavement of the driveway. Andrew also questioned the drainage.

Lillian Muise (LM), 137 Eastern Avenue and _____, abutters present as well

BH: Mark could have gone before the Board of Appeals for a variance; he did not need to go the ANR Route. I have heard that he is upset about the ANR.

RB: That was my decision and I informed my client of this fact.

BH: Is he going to contemplate legal action for the time taken by the ANR?

RB: Lawsuits against government officials and powers are not always fruitful.

RF: Do any of the Board members have any questions?

ASTJ: I just want to take our time to review this plan.

RF: He does have screening and drainage.

AR: I am concerned about not being able to enforce all this to be followed.

The Board discussed the bylaws regarding car storage in the front yard.

BH: I want to suggest that we make sure the applicant has a copy of the bylaws along with the building permit. The Board viewed Bylaw 6-5.11.

LM: Does he need to keep the cars in a certain area?

RF: This is a steep grade and a curb right here.

BH: That's a good question and I do know Con. Com. will be very involved in this property. They have been to the property twice and they are

LM: I am concerned that there is a stake that is fifteen feet from my property.

BH: He would have to do an As Built.

LM: The problem is that there is a hill and it goes down.

BH: I would not suggest that you go measure it

ASTJ: I think the issue here is that no inoperable unregistered motor vehicles should be allowed in the front yard.

: It is o.k. if it had dealer plates on them?

ASTJ: Yes.

: No more than two.

ASTJ: Hypothetically there is nothing that stops him from working on the cars and then bringing them back out front>

BH: He is ~~only~~ going to have only twenty-five cars?

RB: That is his writing. That sounds correct and typical.

The Secretary read an email from the Town Administrator's Administrative Assistant for the record. Pam wrote on November 2, 2007, 'I have checked the files and Mark (Gallagher) does not hold a Class II license in his name for the business at Laurel Lane. That Class II license is in the name of Charles F. Coles, Jr. d/b/a Dynamic Auto Brokers. A new license requires a public hearing and also that the abutters be notified. The old files also contain requests to the Chief of Police for background checks and the Tax Collector for unpaid taxes.'

Bill Sanborn suggested that the Planning Board had the ability

ASTJ: Motion to approve the permit application for a foundation for an auto repair shop finding it meets with the Town of Essex bylaw.

AR: I second the motion.

All in favor?

Three Board members Andrew St. John, Amy Reilly, Rob Fitzgibbon approved the application.

BH: I want to vote as present. I am concerned with my role as assistant to the Building Inspector. I don't want to be going down to the property for any violations.

There was a quorum and the quorum did not approve.

Russ Brown stated that he would need to go to the Board of Appeals. If he misses the dates it could be fatal.

BH: And can it come back next week?

The Board reviewed Roberts Rules and it was decided that the Board could proceed.

ASTJ: I make a move to reconsider the vote.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

ASTJ: I vote to approve the application of 147 Eastern Avenue, Mark Gallagher for a foundation permit finding it meets the Town of Essex bylaws.

AR: I second.

All in favor?

Aye.

Motion passed unanimously.

Russ Brown and Bill Sanborn discussed the fact that there was a change of use. The secretary commented that the vote did not include a change of use.

The Board brought out the plans again and reviewed the fact that there are already two dwellings on the combined lots and that no new dwelling will be constructed.

ASTJ: I make a motion to amend the last vote that was just approved and the amendment moving from a two single properties and an auto repair shop resulting in three principal structures on this lot. Let it be noted that the Town of Essex Bylaws state that there can be only three structures on one lot.

BH: I second.

RF: Are there any comments from the Board members? Are we certain?

ASTJ: Don't do this Rob. We do the best we can.

All in favor?

Aye.

Motion passed unanimously.

Russ Brown pointed out the fact that he believed that the Bylaws state three residential structures on one lot.

17 Lufkin Pont Road

Dan Ottenhymer,

Lisa Lambert, owner of 17 Lufkin Point Road

No abutters were present

The Chair discussed the comments that were made by Richard Carter of the Fire Department. The Fire Chief stated that as long as a vehicle can turn around and doesn't need to back out and that two cars can pass by each other he was fine. He did say that he talked to the applicant and he said he was fine with the whole thing.

Dan reviewed the plans with the Board.

AR: My concern is can a fire truck turn around by the proposed house?

The Board discussed the fact that there are existing homes in Essex that have precarious situations for fire safety and a fire truck to be able to turn around. If the Fire Department is in agreement as to the plan and what the applicant is requesting than should the Planning Board be involved?

The Board reviewed the file and discussed.

Items that were discussed as potential contingencies

- Make sure our approval contains language about the road layout. Any development on this subdivision has to include the road as laid out on the plan we are approving.
- Two lots, not three lots.
- Road maintenance and easement agreement is recorded with the registry of deeds

ASTJ: I make a motion to approve the subdivision plans of Lisa Lambert and Joan Kitsis of 17 Lufkin Point Road for a subdivision.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

132 Main Street

For the record Rob read the comments of Kim Jarvis (Board member unable to attend this evenings meeting). 'Rob, My opinion in response to some comments from the last meeting, in the event that you send me to the Lions.....I think it appropriate that I put these comments to you as the chair in the event I am not present. I am in favor of the project.

Increased traffic - I disagree that increased residential traffic is a problem. This project is within the village center. We have as a board discussed the notion of a village center district that would encourage business and perhaps mixed use in this area as it already has similar uses and is already dense. If there is an opinion that the increased traffic from the proposed condos would pose and unacceptable increase of traffic this directly conflicts with any discussion of encouraging business in this area, presuming that businesses would be retail in nature, encouraging multiple trips to a site, hopefully encouraging visits to other stores, shops, restaurants in the village center.

Density - Again, presuming that the project area is within the village center, it is likely inappropriate to discourage the density as the strip of retail and restaurants goes certainly as far as Silly Goose, and may even be considered as far as the church along Eastern Ave. I don't believe we should be creating less density in this area.

Concerns

Sewer - I don't believe that we should provide an opinion and conditions until we have a definitive answer on the betterment question from a representative of the Wastewater department - with concurrence from Brendhan. Sewer is a big issue. It is completely appropriate for the board to inform the proponent of the need to eliminate units if the betterment indicates that. (Or...Boards of Health, Selectmen, Assessors, who is the AUTHORITY? Get the answer from Brendhan)

Floodplain - the building inspector should be consulted prior to our opinion and conditions as they apply to building in the floodplain. The engineer has satisfied my question regarding compensatory storage, but there may be some requirement relative to storage of vehicles within a structure, or blow away walls, etc that may be in the

building code. Not a bad place to indicate a reminder that the proponent adhere to any particular building code issues. We should ask the Building inspector if he has encountered any projects in Gloucester where the Planning Board has set a limit on the first habitable floor elevation. I'm not sure if we have the authority Conservations: We absolutely should not provide an opinion or conditions without input from Con Com. They should be made aware of our deadline for comments and made very aware of the location of the project within the 200 foot riverfront zone, the 100 foot wetland buffer and presumably filled tidelands (Chapter 91).

It would be irresponsible of the board to grant a project with conditions without the consideration of the above issues, as they certainly will come up during the course of building permits. We should verify the date that we need to provide our opinion by and if we need to pass to next week to get the above issues resolved we should seriously consider doing that. Kim'

Robert Ancil, Attorney for the Applicant: Can you go over that list again?

RF: I was just beginning to go over the list of things we need to review.

Brett Longo: Projects I have been involved in 232 Beach Road, Salisbury, The South Beach Landing are located in a flood plain zone and I have never heard of concern for the vehicles; more regarding the utilities above and so on.

Bill Holton brought up his concern regarding the flooding and he asked Brett Longo for his input. Brett stated that after the meeting last time he thought about this concern and the safety aspect.

RF: So Bill what you are saying is that

edd, could not
hear tape

Susan Kane: We move everything out in the wintertime. We have done the motel over seven times. In the fifteen years I have been there it is only the ones at the end of the driveway, directly on the ground have flooded.

Brett Longo: Perhaps one of the things we can look at is not having the garages and we can have the parking on higher ground. We never explored really the filling of anything. There was filling above the high water mark. Below the watermark is what triggers the Chapter 91. Now, does that mean can we go in and fill in some of that site? Theoretically you can't keep back the ocean and we could fill in.

RF: I received an email from Brendhan (Zubricki), Town Administrator which was how can this be built because it is new construction in a flood plain.

It was decided that the Board would contact the Building Inspector.

Brett Longo: The issue of living space in the flood plain is that you can not have habitable space on a ground floor in a flood plain.

Andrew St. John asked for elevations on the plans. The plans illustrates that there is reduction of the lot coverage from 25% to 20%. The Chair pointed out the fact that a lawyer representing abutters

Motion to approve the meeting minutes of April 4, 2007 as amended.

I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Motion to approve the meeting minutes of April 18, 2007 as amended.

I second the motion.

All in favor?

Aye.

Motion passed unanimously.

AR: Motion to adjourn.

ASTJ: I second the motion.

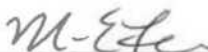
All in favor?

Aye.

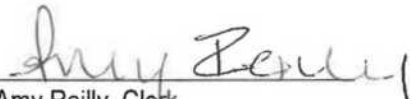
Motion passed unanimously.

Next meeting is scheduled for May 2, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
May 2, 2007

Meeting called to order at 7:05 p.m. by Chair, Rob Fitzgibbon and was held at the T.O.H.P. Burnham Library.

Attendees: Amy Reilly (AR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ), Michael Cataldo (MC), Scottie Robinson (SR)
Building Inspector: Bill Sanborn (SR)
Secretary: Mary-Ellen L. Feener (MF)

8 Lufkin Street – Theresa & Mark Whitman

The owners of this property submitted an application for site plan review. A public hearing date was set for June 6, 2007 at 8 p.m.

Building Inspector's Report

There were no building permit applications presented.

132 Main Street

The Board discussed Chapter 91 and the proposed project that the Planning Board is reviewing under site plan review.

The Building Inspector and the Planning Board discussed the bylaws.

The Building Inspector and the Planning Board discussed that M.G.L. 40A and how per the Building Inspector it states that a change of use would require a building permit application.

1 John Wise – Michael Coleman – Informal Discussion

The Board suggested that the applicant go to the Building Inspector for a building permit application.

132 Main Street

Discussion regarding vote and writing decision

Applicant Brett Longo will inquire more regarding the DPW-sewer concern and he will make copies of the Chapter 91 information he obtained for the Planning Board.

Rob will email Town Administrator, Brendhan Zubricki regarding sewer hook ups for the two lots.

17 Lufkin Point Road

The Planning Board reviewed the draft decision regarding 17 Lufkin Point Road written by Clerk, Amy Reilly and made suggestions. The Board discussed when the decision should be filed with the Town Clerk.

147 Eastern Avenue – Mark Gallagher

The Board discussed the idea from the prior meeting which was brought forward on April 25, 2007 as to remind him which bylaws he would need to follow. The Board re-discussed this idea and it was decided that the Planning Board is not an enforcement board and that they would not pursue or set precedence with this applicant by sending any applicant copies of which bylaws an applicant would need to follow.

Essex Park Drive

Kim Jarvis will draft the letter for the traffic study.

Public Hearings/Subdivision Applications

The majority of the Board members appeared to be in favor of rotating the responsibility of overseeing a public hearing, subdivision application from start to finish. At the onset of a permit application a board member will be in charge of the application and ensuring that the proper procedure is being followed from start to finish. This member will make any and all inquiries to other Boards, town legal counsel etc. and the board member will write the final decision. The Chair will monitor the process.

ASTJ: Motion to adjourn.

MC: I second the motion.

All in favor?

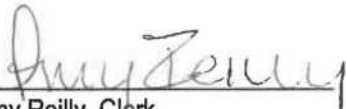
Aye.

Motion passed unanimously.

Meeting adjourned at 7:35 p.m. Next meeting is scheduled for May 16, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:

Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting

Town of Essex Planning Board

May 16, 2007

Meeting called to order at 7 by Rob Fitzgibbon, Chair and he explained to the public that this was to be a informative meeting.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Rob Fitzgibbon (RF), Andrew St. John (ASTJ), Amy Reilly (AR)

Absentees: Kim Jarivs (KJ), Michael Cataldo (MC)

Secretary: Mary-Ellen L. Feener

Essex Park Drive Continuation of a Public Hearing

Peter Van Wyck, owner – present

Peter Van Wyck verbally agreed to extend the public hearing until September 19, 2007 at 8 p.m.

Site Plan Review Discussion

The Board and the Building Inspector discussed the new bylaw amendment approved at Town Meeting regarding site plan review and asked each other hypothetical questions regarding what would specifically require site plan review. The Board decided that they would contact town counsel and then officially set a policy to follow for consistency regarding Site Plan Review. Then the Board would discuss officially at a meeting the policy.

Building Inspector's Report

15 Tree Hill Real Estate Trust Wind Turbine

The Board and the Building Inspector discussed the letter sent to the Building Inspector.

"Dated: May 11, 2007: Re: Pratt Wind Turbine, Dear Mr. Sanborn, I represent Elizabeth Pratt, Trustee of the 15 Tree Hill Real Estate Trust and have a variance hearing scheduled with the Zoning Board of Appeals for May 22, 2007. That variance was predicated on the belief that windmill towers fell under Section 6-6.9(e) of the Bylaw. I have been advised that the Planning Board, in whole or in part, based upon the advice of Town Council, have determined that windmill towers are not covered under 6-6.9, and as of this time, my client may simply apply for a building permit and build the tower as a matter of right. It is my understanding that you are meeting with the Planning Board on May 16, 2007 and would request that this matter be clarified with the Board. I will call you on May 17th to determine how we should proceed. Thank you. Ralph Pino. Pino & Shea, Attorneys at Law."

The board discussed Bylaw 6-6.9. It was determined that the Building Inspector can not issue building permit. Andrew St. John volunteered to write a letter to the ZBA regarding the Planning Board's input on Wind Turbines.

1 John Wise Avenue

The Board determined that the applicant needs to go through a Site Plan Review for a change of use from the current Commercial Use to Residential Use.

147 Eastern Avenue – Mark Gallagher

The Building Inspector received a complaint from a resident regarding the two boats in the front yards of the property owned by Mark Gallagher. The Building Inspector asked the Board which Bylaw would pertain to having boats in a front yard. It was decided that the Building Inspector would write a letter to the resident who wrote the complaint and he will CC the letter to the Selectman and the Planning Board.

44 Main Street – owner Coviello

The Building Inspector received a call from Mark Hall who states that the Planning Board is not enforcing the storage of items on the lot which are visible to the abutters. The owner will be putting up a fence to screen the items on the lot. The Board discussed the Bylaw about displaying goods and Michael Cataldo brought up the concern regarding other businesses in violation of the bylaw and the fact that it is not consistently being applied. The Board gave the Building Inspector their support regarding the issuance of a building permit for the fence.

The property located John Guerin on Western Avenue and the condition of the property. Michael Cataldo noted the property is falling down. The Building Inspector stated that he would follow up with the owner regarding the fascia boards that appear to be falling down.

Dick Low – Discussion regarding Affordable Housing – Cape Ann Habitat for Humanity

Ann Noble Kiley, Jason Levendusky, Dick Low

They are a self supporting independent organization of Habitat for Humanity though they do work with the national organization. They work with local Cape Ann communities and the Massachusetts DHCD to help address affordable housing needs. Serving the communities of Essex, Hamilton, Gloucester, Rockport, Manchester, Wenham, Ipswich and Rowley. The web site is capeannhabitat.org. They requested to talk to the Planning Board to ask for the Board's assistance with identifying appropriate Boards, Committees and groups we should work with and to determine opportunities for building or renovating homes meeting affordable housing requirements in the Town of Essex and how to begin process to locate potential building sites.

Rob Fitzgibbon read the email from Kim Jarvis regarding the Town lots that may be potentially a spot for affordable housing.

Andrew St. John suggested a CDC designation and he asked since they are in a sense a developer and they hold the mortgage and they are a 1563.

Bill Holton asked about selling and if the owner wanted to sell would it be still considered to be affordable. Dick answered that yes that it is in the deed.

Bill Holton asked if the development in Ipswich were legal lots. Ann Kiley stated she believed that a few waivers were granted.

Bill Holton brought the up the point that some of the town lots may be expensive to maintain.

17 Lufkin Point Road

The Board reviewed the draft decision and it was decided that the changes would be made by the Co-Clerk Amy Reilly.

132 Main Street

The engineer for the project was present. The Board reviewed the information they received and it was discussed that a decision needs to be filed with the Clerk by July 17th (no later the than July 11th meeting).

Adjourned at 10:20 pm.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Amy Reilly
Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
June 6, 2007

Meeting called to order at 7:13 p.m. by Chair, Rob Fitzgibbon and was held at the Essex Fire Station Meeting House.

Attendees: Amy Reilly (AR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ)
Absent: Michael Cataldo (MC), Scottie Robinson (SR)
Building Inspector: Bill Sanborn (SR)
Secretary: Mary-Ellen L. Feener (MF)

5 Scot's Way – Holden LLC – ANR Application

Applicant is requesting to combine two lots. The Board reviewed the plan. Bill Holton asked if Scot's Way is a public way. Andrew St. John said that it was not officially a town road but was used as one. Kim Jarvis made note that it was in the Watershed District and would follow the zoning requirements and regulations for the Watershed District. Andrew St. John requested the Mylar show the street address and to identify Lots 8 & 9. It was decided that the applicant could bring the Mylar plan to the Town Hall for the Board Secretary to bring to the next meeting.

ASTJ: I make a motion that we accept the ANR for 5 Scot's Way, Assessor's Map 31, Lots B & C contingent on provide correct information on the plan as requested.

KJ: I second.

All in favor.

Aye.

Motion passed unanimously.

Building Inspector's Report

94 John Wise Avenue – Peter Kellerman

BS: Application is to remove the existing entry and deck and to construct one new entry/green house/porch to existing house. It has the approval of the BOH, Con. Com., and the Fire Department.

The Board reviewed the plans. The Board asked the set backs from the side and asked about the square foot print. Andrew St. John pointed out that few houses in Essex have footprints over 2,500 square feet.

39 Lufkin Street – Gregory J. Mahoney

BS: Application is to demolish the existing house and to build a new house. I also believe that they are looking for a 6-4.2 finding because he wants to keep the existing house until the new house is done. It was discussed that if the Board made it a contingency of a vote that a CFO (Certificate of Occupancy) be given until the first house is demolished. It has the approval of the Con. Com., the DPW and the Fire Department.

ASTJ: Motion to approve the application for demolition of the building at 39 Lufkin Street, and for the construction of a new dwelling contingent on that the certificate of occupancy not be given for the new dwelling prior to the demolition of the original dwelling.

BH: I second the motion.

All in favor.

Motion passed unanimously.

Lot 5 Lowland Farms – Peter Van Wyck (owner) – Ken McDonald (builder)

BS: This is for the construction of two new four bedroom dwellings with two car garages on Lot 5 Turtleback Road. It has the approval of BOH, DPW, Con. Com. and the Fire Department. The Board reviewed the plans. Both buildings have a footprint larger than 2,500 square feet and the Board requested that the plans be identified clearer.

49 Story Street – Jon and Holly Andrews

BS: Applicant has the approval of the Con. Com. DPW and Fire Department for a one story addition and sun room and to demolish a shed.

61 John Wise Avenue – Pallazola Brothers

BS: I met with the attorney last Saturday and they have paved the drive which appears to be larger and into wetlands. They need to record the decision by the Planning Board. The Attorney stated that he recorded it, but the Building Inspector has not seen the document showing the recording. A building permit has not been issued.

Stuart Pratt – Wind Turbine

Bill Holton asked for the facts from the Building Inspector regarding the application for the wind turbines. Bill Sanborn stated that he spoke to the attorney and told him that he did not see how the bylaws address wind turbines. Bill Sanborn said that the attorney dropped off an application for a wind turbine and he denied it. The lawyer decided to go to the Board of Appeals. Bill Holton asked how it came about as a variance. Andrew St. John said that if the Bylaw is silent on an issue than half the town believes that it is allowed, and the other half says that it is not allowed just because it isn't there. Bill Sanborn stated that he has not seen the Board of Appeals decision prior to a Building Permit Application. He suggested that once they see the Board of Appeals decision then they may appeal it. The Secretary will submit in writing to the Town Clerk.

8 Lufkin Street – Theresa Whitman(TW) , Jane Walsh (JW), Mark Whitman (MW)

Theresa Whitman presented the plan to the Board. She reviewed the requirements for a site plan including the property is not within a wetland buffer zone. Minimizing soil erosion the building will be done from the back to the front and after the fact any land disturbed will be hydro seeded. The driveway is pitched both down and out so there are not pools being created. The Board reviewed the list of requirements for a site plan review with the applicant Theresa Whitman. The footprint of the structure is 2,850 square feet.

Andrew St. John asked about the abutter's property that appears to be over the lot line. Teresa showed the Board the original plan. Andrew St. John asked if she has had a conversation with the Pereens about offering them an easement so that they would be able to keep their property where it is currently located. Theresa stated that she met with them a few months ago and offered to sell them the land and share the costs which she stated would be approximately \$2,000 - \$3, 0000 and per Theresa they refused.

The Chair reviewed the application and the folder.

Kim Jarvis asked about drainage and said that there should be a swale so that the drainage would not cross a property line. As far as maintenance is geared towards is if there is a big storm is to keep that the sediment controls is maintained. The Board also discussed that the driveway would be reviewed when buildings permit review due to the pitch. They said that they would like to see a drawing of the driveway when the building permit application is presented.

David Savory, 9 Lufkin Street

Aside from the Pereens we are the most at risk here as abutters. Our concern is the size of the home. Last year when Mrs. Whitman came to us we thought it would be a cape. We bought a home on Lufkin Street and I was born and raised in Essex and now our view of the marsh.

Bill Holton asked if the house was across the street and the applicant replied yes.

Briar Savory, 9 Lufkin Street

We bought that house with the intent of building up one day and always having the view.

Rob Fitzgibbon read for the record the letter written by _____, a copy of which is attached to these meeting minutes.

Kim Jarvis explained to the public the next step for the Board.

The public hearing was closed at 8:50 p.m. The Board will vote and write a decision on June 20th at 9 p.m.

48 Island Road – ANR – Roger and Eileen Hardy – Scott Polver

John Morin – EB Warren Group

John Guerin – at the meeting to support the Hardy's

The lots all have 150 feet of frontage and each lot is either an acre or more and the applicant is planning on using a common driveway.

The Board pointed out the current poor condition of Island Road.

Roger Hardy stated that the DPW reported that the road will be finished soon. It was also noted that the well he currently has gives 28 gallons per minute.

Andrew St. John asked if they would be interested in putting a Conservation Easement on the lots. John Guerin mentioned that there may be covenants so there will only be one property on each lot. They have talked to the Trustees of the Reservation and the Greenbelt and no one wanted to purchase the property.

Rob Fitzgibbon reviewed the requirements of the ANR. Bill Holton brought up the impact on the road. The applicants all brought up the fact that there is more building going on past the proposed building.

Andrew St. John stated that he had a problem with the adequate access. He suggested that there be something in writing from the DPW. Amy brought up the fact that she had a difficult time getting the DPW to give her a definite answer regarding a Belcher Street.

Amy Reilly asked how wide the road is currently. Roger Hardy stated it was sixteen feet wide.

John Guerin stated that he believed adequate access is regarding the access into the lots. Kim Jarvis said she actually believed this was the case based on her experience.

John Guerin read for the Board M.G.L. Chapter 41: Section 81P.

It was decided that the Board would walk the street to see the access. John Guerin stated that if he had MGL he would get copies to the Board Secretary and she would forward the information to the Board members.

The ANR application will be reviewed again on June 20, 2007 @ 7 p.m.

Tom Ellsworth – John Wise Avenue

Informal discussion regarding Residential/Agricultural Zoning. There is already a committee partially formed who want to begin working on this article for the Town Warrant and Town Meeting.

Roger Hardy addressed the Board and answered the question of why the article was not passed was because there had not been an impact study and an impact study has to be made for the entire town. He referred to it as snob zoning and he discussed Chapter 61A and commercial buildings.

15 Rear Story Street – Ray Green - Informal Discussion

Mr. Green talked to the Board to ask if could convert his property to a two family. He has two sewer betterments on the property. The Board suggested that Mr. Green apply for Special Permit Application.

132 Main Street – Draft decision & potential vote

The Board was left at Town Hall a letter regarding the Chapter 91 Application made by the applicant. The Board reviewed the letter from the engineering company.

It was decided and agreed upon by both the Applicant and the Board that the date the information was presented would be as of June 6, 2007. The Board signed receipt and the engineer will fax the Board a copy of said receipt.

The Con. Com. will be reviewing the NOI for this property on June 19th.

Paul Goodwin told the applicant that building permit applications should be completed and then the Town Administrator and Paul Goodwin will discuss the situation.

Vote for Chair and Clerk. It was decided that the board would refrain from voting

Regular Business

Mail

Payroll

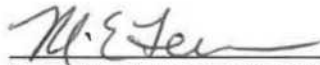
Kim Jarvis sat down with Jim Foley (member of the Board of Selectmen in Ipswich) regarding 40B.

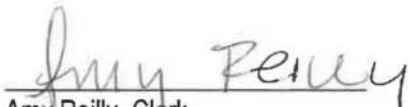
KJ:

Meeting Adjourned 10:52 p.m.

Meeting adjourned at 7:35 p.m. Next meeting is scheduled for May 16, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
June 20, 2007

Meeting called to order at 7:07 p.m. by Chair, Rob Fitzgibbon and was held at the T.O.H.P. Burnham Library.

Attendees: Amy Reilly (AR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Andrew St. John (ASTJ), Scottie Robinson (SR)
Absent: Michael Cataldo (MC), Bill Holton (BH)
Building Inspector: Bill Sanborn (SR)
Secretary: Mary-Ellen L. Feener (MF)

48 Island Road – ANR

The Board reviewed the letters from the Police Department, the Fire Department and the DPW. The Board also reviewed the plans.

ASTJ: I move that we approve the ANR for 48 Island Road.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Building Inspector's Report

Map 9 – Lot 5 – Subdivision Lot 5 - Mac Dowell Construction

BS: Application is for a building permit to construct a four bedroom, two car garage and they will exceed a footprint of 2,500 square feet.

The Board discussed the fact that due to the date of approval of the subdivision that site plan review was not relevant for the construction of these properties.

SR: I make a motion to approve the building permit application for the construction of one residence on Map 9 – Lot 5 – House 1, by Mac Dowell Construction finding that it meets the Town of Essex Bylaws.

ASTJ: I second.

All in favor?

Motion passed unanimously.

BS: Application is for a building permit to construct a four bedroom, two-car garage which will exceed a footprint of 2,500 square feet.

AR: I make a motion to approve the building permit application for the construction of a one residence property – Map 9 – Lot 5 – House 2, by Mac Dowell Construction finding that it meets the requirements of the Town of Essex Bylaws.

KJ: I second.

All in favor?

Motion passed unanimously.

Andrew St. John brought up the point of building permit fees and stated his opinion was that the fee should be raised.

The Board Chair asked the Building Inspector for feedback regarding the application for 132 Main Street. The Building Inspector did suggest that the applicant consider fire sprinkler systems.

Kim Jarvis talked to the Board regarding 40B and the information she received from the Ipswich Board of Selectmen and said she would review the information and at some future date she would update the Board.

Jamie Richardson, Island Road addressed the Board and inquired about the processes of site plan review and ANR.

1 John Wise Avenue – Michael Coleman

Informal Discussion

MC: I would like to change the use of the building from residential to commercial. I think the application is pretty straightforward.

It was decided that the applicant would need to represent the application to the Town Clerk or the Assistant Town Clerk to have it date stamped and then the Board Secretary would begin the process of the advertisements. The secretary brought up the point that it is the end of the financial year and the advertisements could bring us over budget. The Board stated that the secretary should just go ahead and advertise.

132 Main Street – Vote and write Decision

Scottie Robinson reviewed the meeting minutes of the public hearing, notes regarding the application and asked questions in order that she is informed to vote.

SR: I vote not to approve the application by Atlantic River LLC to for a special permit application because the plans submitted do not 6-6.9 under special permit buildings does not meet the dimensional requirements in 6-6.12.4 a,b,c,d,e,f,g,h,i and further in my mind it does not meet the principal areas of 6-6.12.

ASTJ: I vote to reject the application of Atlantic River LLC for 132 Main Street for a special permit application based on the fact that it does not meet the dimensional requirements in 6-6.9 a.b.c. and also it does not meet the requirements that there be more 6-6. I do not have a problem with the convenience and safety and I don't feel there would be any more traffic brought forth with this development and keeping with the community and neighborhood I do not feel it would cause any further determent to the community.

KJ: I Kim Jarvis vote not to approve the application of Atlantic River LLC. I do not believe vehicular traffic would be a problem because basically it is in a business area of Essex and I do not believe it would cause any problems with the character of the neighborhood.

AR: Amy Reilly, I vote to reject the application of Atlantic River LLC based on 6-6/9. As far as everything else I think it is a good idea but I would like to voice my concern of access due to a storm.

RF: I vote to approve 6-6.12 I feel this proposal would not have

Couple more points I wanted to point out and I do see the . During the public hearing we had a lot of discussion regarding blocked views and I want to point out that there is nothing in our bylaws regarding.

8 Lufkin Street – Vote and Decision

KJ: I Kim Jarvis of the Essex Planning Board after reviewing the application of a special permit application Theresa Whitman, Mark Whitman and Jane Walsh for a property located at 8 Lufkin Street. I vote that we approve this application recognizing that there is a non-conformity of the side set back which is not greater than the existing set back which is no more detrimental than the existing setback.

ASTJ: I Andrew St. John, approve the special permit application for Theresa Whitman, Mark Whitman and Jane Walsh of 8 Lufkin Street finding that it meets the Town of Essex Bylaws, with three observations. First that it has the necessary approvals. Second, the applicant when applies for a building permit will ask to be able to leave the existing house until the new one and we ask that the building inspector issues a temporary occupancy permit until the new one is built. Third, the issue of the run off from the driveway has been noted and the applicant has will address any run off concerns.

RF: I Rob Fitzgibbon vote to approve the special permit application of Theresa Whitman, Mark Whitman and Jane Walsh, 8 Lufkin Point Road finding that it meets the Town of Essex Bylaws and for the same points as mentioned by Kim Jarvis and Andrew St. John.

SR: I would approve the application for a special permit application for the new construction for the reason as mentioned by Kim Jarvis.

AR: I Amy Reilly, approve the special permit application for Theresa Whitman, Mark Whitman and Jane Walsh of 8 Lufkin Street for the demolition of the existing dwelling and for the construction of a new building and for the same reasons as mentioned by Andrew St. John.

Application approved unanimously.

The Board signed the Mylar plans for 17 Lufkin Street and 5 Scotts Way.

AR: Motion to adjourn the meeting at 10:59 p.m.

RF: I second the motion.

All in favor?

Aye.

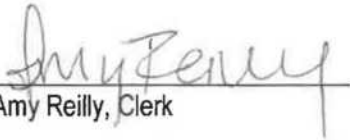
Motion passed unanimously.

Next meeting is scheduled for July 11, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
July 11, 2007

Meeting called to order at 7:06 p.m. by Chair, Rob Fitzgibbon and was held at the T.O.H.P. Burnham Library.

Attendees: Amy Reilly (AR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ)

Absent: Michael Cataldo (MC), Scottie Robinson (SR)

Building Inspector: Bill Sanborn (SR)

Secretary: Mary-Ellen L. Feener (MF)

1 John Wise Avenue – Site Plan Review – Public Hearing

The public hearing was opened at 7:12 p.m. by Chair, Rob Fitzgibbon.

The Board discussed the application. The Chair asked if there were any comments from the public.

Kevin McLaughlin, 2 Main Street inquired about what is the new change of use of 1 John Wise Avenue. He stated he had no concerns regarding that change of use.

KJ: I move to close the public hearing.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

KJ: I move that we accept the application for Michael and Concetta Coleman of 20 Herrick Drive, Ipswich Ma to change the use of the building located at 1 John Wise Avenue finding that it meets all of the Town of Essex Bylaws.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

Building Inspector's Report

The Building Inspector asked the Board for input regarding a possible applicant for 8 Scott's Way and it is 3 acres. The assessor's tax map/land use code stated that it was office use. Timothy S. Hopkins is the potential applicant. The Board stated that they did not believe a site plan review was needed for a change of use from a day care to a manufacturing business. The Building Inspector asked what the new use of the property would be and the Board stated that it would be a commercial use and a site plan review would not be required.

15R Story Street

Raymond Greene, owner, present (RG)

The Chair opened the public hearing at 8:02 p.m. The Board reviewed the application and the plan. The application is for a special permit for a change of use from a single family dwelling to a two family dwelling. There were no citizens present at the meeting.

KJ: I Kim Jarvis approve of the special permit application for a change of use for the property located at 15 Rear Story Street owned by Ray Greene to change from a single family dwelling to a two family dwelling.

Andrew St. John: I, Andrew St. John approve of the special permit application of Raymond Greene of 15 Rear Story Street for a change of use from a single family to a two family dwelling finding that it meets the Town of Essex Bylaws.

Rob Fitzgibbon: I vote in favor for the special permit application of Raymond Greene of 15 Rear Story Street for a change of use from a single family to a two family dwelling finding that it meets the Town of Essex Bylaws.

Amy Reilly: I vote in favor for the special permit application of Raymond Greene of 15 Rear Story Street for a change of use from a single family to a two family dwelling finding that it meets the Town of Essex Bylaws.

Bill Holton: I Bill Holton vote to approve the special permit application of Ray Greene of 15 Rear Story Street for a change of use from a single family to a two family dwelling finding that it meets the Town of Essex Bylaws.

Motion passed unanimously.

Conservation Commission

The Conservation Commission and the Planning Board met for an informal discussion regarding how the boards interact. One suggestion was that for Building Permit Applications there are two plans that are stamped by every board. For any subdivision application it was discussed that both Boards work together from start to finish. Both Boards discussed the liaison situation. The secretaries can take an agenda after a meeting and bullet the items the day after the meeting.

18 Eastern Avenue – Informal Discussion – Application

The Board determined that the applicants would need to have a public hearing for site plan review for a change of use from a church to a single family. The Board reviewed the application. The public hearing is set for August 1, 2007 at 8:30 p.m. The plot plan was presented with the application. Bill Holton will be the lead Board member.

Meeting adjourned at 10 p.m. Next meeting is scheduled for July 25, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by: 
Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk


Public Meeting
Town of Essex Planning Board
August 15, 2007

Present: Amy Reilly, Scottie Robinson, Bill Holton

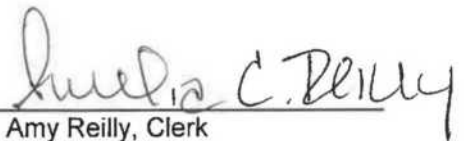
No meeting was held or called to order, as there were only three (3) members present, thus, no quorum.

However, those present voted to continue the Public Hearing regarding Peter Van Wyck's application of a Preliminary Plan Subdivision Plan, TBA Essex Park Drive Estates, to September 5, 2007 at 8 o'clock, at the T.O.H.P. Burnham Library. Likewise, those present were unanimous in their approval of a motion to continue the Public Hearing on the matter Jack Schylling's request for permission to temporarily remove a stonewall on his property at 72 Belcher Street, a scenic way, until September 5, 2007 at 8:45 p.m. at the T.O.H.P. Burnham Library.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
August 1, 2007

Meeting called to order at 7:00 p.m. by Susan Scott Robinson, as acting chair due to Rob Fitzgibbon's absence and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Amy Reilly (AR), Michael Cataldo (MC), Andrew St. John (ASTJ)

Absentees: Kim Jarivs (KJ), Rob Fitzgibbon (RF)

Secretary: Mary-Ellen L. Feener

Building Inspector's Report

There was no Building Inspector's Report.

Essex DPW

Bill Holton has been in contact with Paul Goodwin and they will schedule a time that is convenient to both of them to discuss the maintenance logs required by the Planning Board and discuss who will oversee these maintenance logs. It had been a job done by Paul Goodwin's predecessor as the Superintendent, Damon Bouchie.

72 Belcher Street

The Board reviewed the application for the special permit application to complete work on a scenic drive and accepted said application. Public Hearing date was set for August 15th.

18 Eastern Avenue

SR: I move to accept the withdrawal of the special permit application for a change of use made by Roland and Denise DeFillippi to convert the property at 18 Eastern Avenue to a single-family property.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Kim Jarvis (KJ) arrived at 7:45 p.m.

18 Eastern Avenue

The Board decided that the potential applicant, Alexander Westerhoff would need to submit a special permit application for a change of use from the current use to a business use.

Essex Park Drive

The Board reviewed the traffic study and each member had received their own copy.

Horsley and Whitten

The Board discussed what topics they would like for the workshop. Andrew St. John suggested parking in the downtown area, the shortcomings of the bylaws and options for improving the bylaws. Mike Cataldo suggested a definition for mixed use.

Rob Fitzgibbon (RF) arrived at 9:00 p.m.

Planning Board Chair and Clerk

Amy Reilly agreed to continue on as Clerk for the Planning Board.

Rob Fitzgibbon stated that he did not intend to continue on as Chair.

ASTJ: I nominate Scottie Robinson for the position of Chair until the next annual meeting in 2008.

AR: I second the motion.

RF: All in favor?

Aye.

Motion passed unanimously.

MC: I nominate Amy Reilly for the position of Clerk and Bill Holton as Co-Clerk.

ASTJ: I second the nomination.

RF: All in favor?

Aye.

Motion passed unanimously.

AR: Motion to adjourn the meeting at 9:20 p.m.

MC: I second the motion.

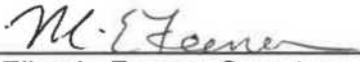
All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for September 5, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting

Town of Essex Planning Board

September 5, 2007

Meeting called to order at 7:00 p.m. by Scottie Robinson, Chair and he explained to the public that this was to be an informative meeting.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Amy Reilly (AR), Michael Cataldo (MC)

Absentees: Kim Jarivs (KJ), Andrew St. John (ASTJ), Rob Fitzgibbon (RF)

Secretary: Mary-Ellen L. Feener

Building Inspector's Report

19 Lufkin Street – Brian and Marilyn Keating

BS: Application is for a garage and a family room addition. Application has the approval of the B.O.H., Con. Com., and the Fire Department. The lot is 30, 416 square feet. The overhang will go into the set back and the owner will redesign the soffit so it does not hang into the set back. The footprint is not within the set back. Essex does not have any bylaw that discusses overhangs.

Scottie inquired about the set back of the driveway which is 29 feet.

AR: I make a motion to accept the application for an addition on an existing building for Brian and Marilyn Keating and it has the approvals of the B.O.H., Con. Com. and the Fire Department.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

94 John Wise Avenue - Peter Kellerman

BH: This is to install solar panels. This is just a review so Board Members may see what is happening.

SR: Are they going to be flat on the slope or will they be higher.

The Board had no further comments.

The Board reviewed the plans.

5 Orchard Road – Dexter Doane

BH: Application is for the addition of a breezeway to both sides of the dwelling. He wants to connect the barn and the garage to the house. I think this could be a 6-4.2 finding. The issue I would raise that now the barn is now a part of the house would that change the use because the barn is right on the boundary.

MC: There is no change of use proposed for the barn or the garage. It has the approval of Con. Com., DPW and the Fire Department.

BH: No, he just wants to connect them. It is becoming part of the dwelling unit.

SR: I would agree with a 6-4.2 finding.

MC: I make a motion that we accept the application of Dexter Doanne of 5 Orchard Road.

Finding that under 6-4.2 finding that it is not more detrimental than the current use.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

45 Grove Street – Alison Taylor

BH: Application is for to demolish the existing single family and rebuild the house in a different location on lot 59. They will use the existing water, gas and sewer and a wood-burning stove.

The Board did not agree that a 6-4.2 finding was what applied based on the plans provided and the Board Members had questions and requested that the applicant attend the September 19th meeting to discuss their intentions with the property.

BH: If they don't want to live in the house but tear it down do they have to come in.

MC: I think if it is just a matter of siting the new house then they can go ahead with the project.

SR: As long as it meets all of the requirements.

149 Eastern Avenue – Mark Gallagher

The Board determined that the building permit application did not need approval of the Planning Board. Amy Reilly asked about the foundation due to the fact an abutter who questioned her about the placement of the foundation had approached her. Bill Sanborn will go to the site and look at the foundation.

72 Belcher Street – Jack Schylling

BS: Application is to construct a new 24 x 60, 1,440 square foot garage. The application has been approved by the B.O.H., Con. Com., DPW and the Fire Department/911.

MC: What is on the second floor of the garage?

BH: It is very low and there isn't much he could do with the space other than storage.

SR: What is the size of the driveway?

BH: I believe Paul Goodwin said it was all set.

Scottie Robinson referred to 6-5.14 for the overview of driveways.

AR: I would like to make a motion to approve the application of Jack Schylling of 72 Belcher Street to construct a new 24 x 60, 1,440 square foot garage. Application has been approved by the B.O.H., Con. Com, DPW and the Fire Department/911.

MC: I second the motion.

All in favor?

Motion passed unanimously.

Scottie talked to the Board about the list for Horsley and Witten and she reviewed the list of what the Board wanted to discuss.

Scottie asked why the neighbors wanted to come into a Board meeting to discuss 133 John Wise Avenue. Michael Cataldo stated that they are looking to put forward a bylaw change of a residential and agricultural zone. It was decided that they would send an electronic copy of the proposal and if there is time they may be invited on the September 19th agenda.

Robert and Deobrah Blanchard of 85 Wood Drive had sent in a letter regarding drainage. At the time it was received on June 18, 2007 it was decided that it was a concern of the DPW. It was decided that Mary-Ellen would contact the citizen.

Essex Park Drive – Peter Van Wyck (PVW) – Preliminary Plan Public Hearing – Orestes 'Russ' Brown, legal counsel for PVW present (RB)

SR: We are opening the public hearing for the Preliminary Plan for the proposed subdivision of Essex Park Drive at 8:05 p.m.

RB: We are looking for road length waivers and that has really been the focus on the entire process.

SR: Rather than you taking our temperature I would rather we summarize this two yearlong public hearing.

RB: Do you want me to summarize?

SR: If you want to.

RB: We started with this plan (dated November 15, 2006), then there was one on March 2006. Finally, there was this on December 6, 2006; noted on stamp by engineer December 5, 2006.

SR: Which says thirty residential units on twenty lots.

The Board determined that the plan they were reviewing is the final plan submitted.

BH: What you are looking for is a waiver on Salamander Hollow and Lizard Lane? The other thing we need to talk about is the Conservation Restriction.

SR: Let's talk about it now.

RB: It has languished at the DEP for a long time. Now, the DEP has requested that it goes on a DEP form due to the easement. It may not make any difference. I haven't even talked to this with Peter to date.

SR: That would be really good if you had that in hand so we could say we can move ahead freely.

RB: The town is done with it, now it is just the DEP. The kink is that they (DEP) does not want to read the legal wording, they have their own forms.

BH: Can we talk about the waiver?

RB: There are a few important things to talk about here. The waiver and the number of lots. More than the lot configuration which can change a little bit, we are more concerned with the number of houses.

SR: What compelling reasons are you giving us for approving the number of houses?

RB: The most compelling reason is that this will not be a through way from Apple Street. I guess I should remind everyone that the Popelman and Paige's response to the fact that Peter has the right to do the through road. We did fight over the use of the road and we felt that town counsel agreed with us that we could use Turtleback Road. Basically, because Peter retained ownership of the fee in the road up to the right past his house.

SR: So, why do you think is compelling? Just because it doesn't go somewhere else? The 1,200-foot bylaw is for safety.

RB: It becomes a different ball of wax if the Planning Board gives Peter no alternative other than a through road.

SR: What else?

MC: I think we have received just about everything.

SR: (to PVW) do you have anything else to add?

MC: I think closing it is fine.

SR: We are under the gun here with the timeline because we have done multiple extensions. Would you be willing to allow us a sixty-day extension?

It was decided that the secretary would email Russ Brown the extension letter which will go to November 3, 2007.

MC: I make a motion to close the public hearing.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Essex Park Drive Board Discussion

Scottie asked for a Board Member volunteer to review and organize the Essex Park Drive files. Mike Cataldo and Bill Holton volunteered to review it once through this month bring together a summary and then someone else may review. Scottie reminded them that if there is something in a Preliminary Plan that you don't like it must be brought up during the Preliminary Plan process. Bill stated that the applicant could make changes before the Definitive Plan.

72 Belcher Street – Jack Schylling

SR: I am opening the public hearing for Jack Schylling of 72 Belcher Street to make a temporary opening to bring in the materials to install a new septic system. My property used to be an old farm and it also used to be a piggery. My intention is to put the wall back. I would like to make sure the wall is close to the original look.

BH: How long do you think this would take?

JS: I would believe two months.

AR: How long of a section will you remove?

JS: About twenty feet.

AR: What is your frontage?

JS: I believe it is over 300 feet.

SR: When you say that you would like to put it back in the original condition are you referring to the twenty feet or the rest of the wall.

JS: I am here for the twenty feet. I would like to some day look like an authentic stonewall. I am here specifically here for the twenty-foot opening.

SR: How high and how wide.

JS: I would propose approximately two feet high and a few feet wide.

MC: You had requested a building permit this evening to build a new garage. Is this twenty-foot opening for a new driveway?

JS: No. This will be put back in the originally state.

SR: That is the problem I have, the comment that it will be improved. To me that means change it some how.

MC: He talks about removing blasting stone. I don't feel that it is a deviation.

SR: I make a motion to approve his request to remove twenty feet of a stone wall to install a septic system and to restore the wall to its original condition.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

18 Eastern Avenue – AW (AW) and Thomas Lang (TL) – Public Hearing – Orestes 'Russ' Brown, legal counsel representing applicants

SR: I would like to open the public hearing for AW and Thomas Lang for a change of use to residential and commercial at 18 Eastern Avenue.

RB: The first floor is about 1,800 square feet. It is a non-conforming building because it does not meet the parking requirements of the church so it is a non-conforming use and it is a non-conforming structure due to the size of the property on the lot. We are started with the Planning Board because you have the addition to the Site Plan Review public hearing.

SR: No.

BH: Yes, it is the same.

RB: For our purposes we would ask that we proceed as a special permit. Also, we are asking for the alteration of an existing non-conforming use which will not be more detrimental than the existing use.

RB: There is a specific bylaw regarding churches.

SR: If there is one, o.k. I was on the Planning Board when the Congregational Church went through their big expansion because no restrictions applied.

AW: We are not going to alter the front of the church.

SR: I don't see it as a pre-existing non-conforming use. Houses of worship do not fall under the Town of Essex Bylaw regulations of churches. There was nothing for the church to conform to in 1809 when the zoning bylaws came into affect in 1970's. You are proposing one thing and I see another.

RB: There is a specific bylaw regarding churches.

SR: If there is one, o.k. I was on the Planning Board when the Congregational Church went through their big expansion because no restrictions applied.

RB: We are referring to 6.5.8.f which states one parking space for each 100 square feet of assembly space for churches and 6-5.9 Parking lots, when a required off-street parking space is in the form of a parking lot or other open air parking space, it shall not be located within five feet of any lot line or, if located within a front yard, within thirty feet of the street line. Any such parking shall be located not more than 200 feet from the building to which it is assigned. We are also looking for a special permit for Site Plan Review.

RB: The argument would be is that it isn't more substantially detrimental than what is already in the neighborhood.

MC: Do you suggest to park in the front of the building?

AW: We would never have more than three in the front and we could park tandem along the side.

RB: We don't meet the parking requirement per the Bylaws. The question as to whether we need more than this Planning Board's approval, I don't know. The Bylaw says the Planning Board may alter a non-conforming use. We may need to go get variances for the parking.

Amy Reilly asked exactly where the parking was to be placed.

AW: Any overflow of the parishioners parked on the side street.

The Board reviewed the plan.

SR: I have a couple of comments from neighbors that I would like to read for the record. The first letter was from Robert Woodbury 19 Eastern Avenue and Priscilla J. Doucette of 22 Eastern Avenue.

Priscilla Doucette of 22 Eastern Avenue was present for the meeting. She pointed out the telephone pole is between her property and a little stretch to the church. (She identified her property as the one to the right on the assessor's map.)

Susan Morrow, 12 Eastern Avenue: I have no objection to a business use and a one family apartment. I also have a concern because the church and 12 Eastern Avenue share a water line so I will need an easement for access and I will also need an easement for the few buildings located on the lot line of the church. I don't have any problems with the parking.

TL: Just for the record I know that the church trustees are currently working on this now.

Susan Morrow: It was something that the pastor at the time and my father who was a Selectman at the time. When the sewer line went in there were separate shut offs put in.

AW: Can I explain the parking situation again.

SR: Yes, please.

AW: I don't think it is a very good idea to put any parking back here which abuts wetlands.

TL: We now want to be part of this town and we have been looking for space for our antique shop. This is still remaining a public space and we want people to still experience the history of the building and I hope we will be able to make this happen. We have John Cauflin's property now and we typically do not have more than three customers at a time.

SR: Are you planning on moving your business or are you planning on expanding your business.

Bruce Fortier (BF), Southern Avenue: Did the Board members receive copies of my letter or did it go into the file?

SR: We did just receive it and we have yet to have time to send a written response.

BF: I would like to have my letter admitted to the meeting minutes.

SR: Oh I am sorry, I didn't do that.

BF: One thing I would like to point out is that it is illegal to back out onto a State Highway. The main thing I emphasize in my letter is my points about Change of use.

SR: Bruce if you want to read the letter for the record you can; you seem to be jumping around a bit.

BF: No, I want to save time here. The present church is only non-conforming in the matter of parking and I would have to agree that this makes the building a non-conforming building. State Laws says that new use must use the current bylaw requirements and for a lot that exists prior to the adoption of the Bylaws (which was actually 1954; though the changes between 1954 and 1972 were minimal. It certainly appears that to change the building to a residential use and under state law they can do it because under that law they can do those things. As soon as you get into the idea of a business, you will need to get a variance for all the requirements it does not meet. Since there are only four members present and five are required, you can't do anything at this time until another Board member is brought up to speed on this issue.

Bruce also brought up the point that for a commercial use the property would need to have handicap access. He also suggested that the applicant asks the Board to withdraw the application without prejudice so the applicant may go to the appeals Board and then perhaps reschedule a public hearing.

Priscilla Doucette brought up the point that the section of Eastern Avenue is not considered State Highway. Susan Morrow brought up the point that other business use Routes 133 and Routes 22 for parking for their businesses. She also brought up the point that other churches used these highways as parking.

SR: We understand that there are a lot of businesses in town that have lack of parking. Amy, you brought up the idea of site visit. It was decided that a site visit would be done on September 15, 2007 at 9 a.m.

BH: Bruce, you suggested that the applicant goes before the Board of Appeals for variances. What makes you think they will need to go to the Board of Appeals and then come back to the Planning Board.

RB: I prefer that we go to the Planning Board first and then go to the Board of Appeals.

SR: If we did a site plan review for this and then we said if this, this and this are addressed in a certain way and then they went to the Board of Appeals and received the variances or not.

BH: Unless they issue a hundred percent of the variances they would need to come back to you and passing the buck by an elected body to an appointed body does not seem to be the right way to do this.

The applicants and the Board agreed that a site visit would occur on September 15th at 9 a.m. and the public hearing will be continued until September 19th at 9 p.m.

Informal Discussion – Lufkin Marina - Chip Curtis

Mr. Curtis was not ready to discuss his plans with the Board at this time and respectfully asked to wait to reschedule.

AR: Motion to adjourn the meeting at 10 p.m.

MC: I second the motion.

All in favor?

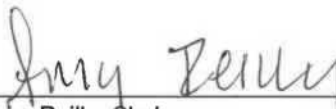
Aye.

Motion passed unanimously.

Next meeting is scheduled for September 19, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
September 19, 2007

Meeting called to order at 7:06 p.m. by Chair, Susan Scott Robinson and held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Rob Fitzgibbon (RF), Bill Holton (BH), Andrew St. John (ASTJ), Michael Cataldo (MC)

Absent: Amy Reilly (AR), Kim Jarvis (KJ)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Story Street

Scottie Robinson brought forward the question to the Board brought to her by Paul Goodwin, Superintendent of the Department of Public Works regarding a home owner who resides on Story Street that cut down two trees on a scenic way. The Board agreed that Paul Goodwin should refer to state public shade tree law. The board voted to recommend that the tree cutter be fined to the maximum allowable and if the law allows for it that the owner replace the trees on the scenic road. The Chair will talk to Paul Goodwin tomorrow.

AJ: I make a motion that we recommend that Paul Goodwin fine citizen for cutting down two trees along a scenic drive the maximum allowable fine and that if the law allows the determination, the citizen be also responsible for replacing the cut trees.

BH: I second the motion

All in favor?

Aye.

Motion passed unanimously.

Building Inspector's Report

The Building Inspector did not have any building permit applications to present at the meeting.

149 Eastern Avenue – Mark Gallagher

The Building Inspector did inspect the property located at 149 Eastern Avenue, Mark Gallagher, the owner has not poured the foundation.

15 Grove Street – Alison Taylor

The Building Inspector issued the building permit for the applicant to demolish the existing single-family property and to rebuild the house on a different location on the lot. There had been some question from the Board regarding the outbuildings located on the property. The applicant had spoken to members of the Board and they were told that as long as the intent was to demolish the first building once the work on the new building was complete there would not be an issue and this was what was told to the Building Inspector. The Board agreed that the Building Inspector was correct in the issuance of the permit.

Duck Blind

Andrew St. John brought in photos of the duck blind that was built within the past year. The applicant did have an informal discussion with the Board and the building permit was brought before the Board and they approved the permit application. The Building Inspector produced the permit application. The Board voiced concern with uses and will keep the Building Inspector apprised.

Commission Statement

The Board reviewed the draft of a commission statement provided by Kim Jarvis. Andrew St. John volunteered to review and edit and present a draft specific to the Essex Planning Board.

The Selectmen

Brendhan Zubricki approached Scottie asking if the Planning Board members would like to participate in a conversation with the Selectmen regarding a proposal for Bylaw changes and funding to hire someone to review the bylaws. To date, Scottie and Rob will attend the meeting on October 15th. Scottie will contact the Selectmen secretary to inquire as to what time and the Planning Board secretary will post a notice.

Rob Fitzgibbon volunteered to complete a questionnaire given to the Board by the Town Administrator.

Michael Cataldo and Bill Holton will review the Essex Park Drive information and present a summary to the Board at the meeting on October 17th.

John Wise Committee

Mike Cataldo gave the Board the background on the meetings with the John Wise Committee both he and Bill Holton attended. A proposed bylaw was presented to the Board. The proposal is attached and part of these meeting minutes. The proposal was to delete 6-6.1 and insert a new 6-6.1 Overlay District and to also delete section 6-6.2 and insert a new section. The committee consists of home owners who reside on the north end of

Essex including Tom Ellsworth, Peter Kellerman and others, as well as April Bowling a member of the Open Space Committee, Bob Brophy a member of the Conservation Commission and Maria Burnham. Tom Ellsworth spoke to the Board representing the committee. Tom Ellsworth asked the Board to present the proposed bylaw change at the November 5, 2007 Town meeting.

Andrew St. John said that there were many ways to present something at a special town meeting.

Bruce Fortier spoke without identifying himself and stated that one hundred signatures were needed for the citizens to bring forward a bylaw change. Bill Holton said the Selectmen were not aware of this proposed bylaw change.

Tom Ellsworth stated that there were benefits to present a bylaw change at a special town meeting. Scottie inquired as how citizens in the neighborhood are reacting. Tom Ellsworth stated that he could not give a percentage of those who were for and those who may be against this bylaw change.

Rob Fitzgibbon asked why did an earlier proposal for an Overlay District fail at the 1992 Town Meeting and why did it fail? Mr. Ellsworth stated that it failed because of the Planning Board at that time that did not support the bylaw at the Town meeting. Rob also brought forward the question as to how would the committee feel if a very large barn was erected and was much larger than any other existing structure in the neighborhood. The committee stated that they understood that very large barns might be erected. Rob also brought forward the question of 'snob zoning' and questioned how the committee would campaign to citizens that live in town and who perhaps would not agree with the bylaw change.

Andrew St. John brought forward a grammatical edit and he also suggested that there be a large number of citizens in the neighborhood be on board with this bylaw change and to also educate the citizens of the town as to what this would mean to the town and some analysis as to what this would mean to other aspects of town governments and tax issues. Andrew stated that he could not help but feel that the town meeting a month from now would be a tight schedule. Bruce Fortier, who was not recognized by the Chair, suggested that this is a zone, not an overlay district since an overlay district goes over a zone.

Board of Appeals Informal Discussion

Dick Carter, Meg Nelson, Ed Perkins, Mike Davis present for the Board of Appeals.

Andrew St. John brought forward the question of the order of applications to each board. Meg Nelson said that Gloucester actually has something in the zoning ordinance. Mike Davis said that they (the Board of Appeals) always worked on a denial of the Building Inspector or of the Planning Board. Scottie brought forward 18 Eastern Avenue and the current application as an example where it was appropriate to go to a Board of Appeals for a variance before submitting an application to the Planning Board. Meg inquired why the Board doesn't grant a permit subject to a variance. Bruce Fortier brought forward the point of the twenty-one day appeal period could not be met if the Planning Board was to approve an application subject to a variance from the Board of Appeals.

Bruce Fortier, Southern Avenue: Extensions or alterations of uses, but changes of current uses must meet the current bylaws. He also said that the word 'alteration' in the bylaw has been inaccurately interpreted as 'change' of use.

Mike Cataldo brought forward the idea of letting the Board know as soon as possible about Board of Appeals meetings. The Planning Board secretary will talk to the Board of Appeals secretary and suggest that notices are emailed as soon as they are drafted.

Bill Holton inquired why it appears the Board of Appeals decisions are at times vague. He also brought forward the question as to how Mr. Pratt had bypassed the Planning Board regarding a wind turbine application and he presented an application to the Board of Appeals prior to the Planning Board. Ed Perkins, Chair of the Board of Appeals said that he too wondered why the citizen did not present an application to the Planning Board first and then he did find out that the process could be done this way. The Board of Appeals stated that perhaps the Planning Board should talk to the Building Inspector regarding process.

The Boards discussed process and how it would be beneficial that communication be a bit stronger.

Ed Perkins said that Town Counsel brought up the fact that something brought to the Board of Appeals can be more expensive for the town than if it goes to the Planning Board first. The Board of Appeals does have access to legal counsel prior to each meeting.

The Planning Board secretary asked if the Board of Appeals members would like agendas emailed to them and said that she could ask Gillian to email. The next meeting for the Board of Appeals will be October 10th.

It was suggested by Ed Perkins that the Planning Board think about a new police station, which is desperately needed.

Meeting Schedule

The Board reviewed the new meeting schedule.

ASTJ: Motion to approve the meeting schedule as amended.

SR: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

MACP – Metro Future Meeting

The Board reviewed the pamphlet sent to the Board regarding a Metro-Future meeting.

18 Eastern Avenue – Continuation of Public Hearing

David Woods, legal counsel Brown & Brown, representing the applicant (DW)

Thomas Lang, potential purchaser/owner (TL)

The public hearing was opened at 9:00 p.m. by the Board Chair, Scottie Robinson. Three of the Board Members did do a site visit of the property on Saturday, September 15th. She stated that during the site visit it was discussed that the applicant may want to go to the Board of Appeals for variances. David Woods requested that the public hearing be continued for a minimum of sixty days so that the applicants may obtain

Bruce Fortier, Southern Avenue stated that the burden is on the applicant and that the application should be withdrawn. If the application chooses to have a no vote or to withdraw without prejudice. He was not in favor of the continuation of a public hearing(s).

Scottie Robinson brought forward that the citizens attending the last public hearing session were in favor of the application. Andrew St. John stated that he too favored a continuation.

MC: I make a motion to continue the public hearing until December 19th at 8 p.m.

BH: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

The Public Hearing will be continued until December 19, 2007 at 8 p.m. Applicant's counsel will agree to the date in writing and the Board Secretary will post a notice.

Southern Avenue Informal Discussion

William Politz, Apple Associates – Informal Discussion Southern Avenue Property belonging to the Henderson estate - Diedre and Peter Henderson. Map 2-Lot 26-A and Map 3-Lot ____ (unknown). The property is located to the left of the property owned by the Pitman family. The proposal is that upon the rear lot three dwellings be built on the five-acre lot. The applicant would be requesting a waiver for the road width. The Board stated that they have done that in the past. However, if the road became a full subdivision road with the potential for other lots on the first lot then the 44 feet for the road width would need to be adhered too. The Board also stated that the ownership of the front lot (referred to Lot 26-A) be determined and that the applicant confirm that an easement agreement from the Coolidge Trust has been granted.

The Board discussed the proposed bylaw presented to the Board earlier during the meeting. One decision was that any type of zoning bylaws would not be ready for November 2007, but perhaps it could be something presented February 2008. The Board also discussed the overlay district concept that means that the whole town does not need to be districted.

Scottie Robinson brought up the general list of tasks currently before the Board. It was suggested by the Chair that Andrew, Kim and Scottie meet to discuss the overlays district. It was also decided that Rob would contact the John Wise Committee.

MC: Motion to adjourn the meeting.

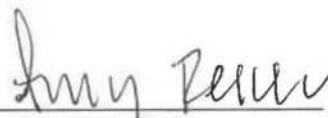
ASTJ: I second the motion.

Meeting adjourned at 10:10 p.m.

Next meeting is scheduled for October 3, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting

Town of Essex Planning Board

October 3, 2007

Meeting called to order at 7:05 p.m. by Scottie Robinson, Chair and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Amy Reilly (AR), Kim Jarivs (KJ), Andrew St. John (ASTJ), Rob Fitzgibbon (RF)

Absentees: Michael Cataldo (MC), Bill Holton (BH), Secretary: Mary-Ellen L. Feener (MF)

Building Inspector: William Sanborn (BS)

Building Inspector's Report

There were no building applications presented by the Building Inspector.

The Board and the Chair discussed the property located at 60 John Wise Avenue owned by the Pallazola Brothers. The Building Inspector stated that they had needed to seal the floor drains on the outside wall and they did. They paved the area delineated as gravel on the plan which was approved by the Planning Board. They appeared to have encroached upon the buffer zone. They need to amend their permit and they are currently using more than the 12 (twelve) parking spaces allowed by the permit.

It was agreed the Con. Com. Would be asked to submit their findings, as it is believed they reviewed the property recently, when the Pallazola Brothers requested permission to store boats on the property, and intend to ask the same of the Planning Board.

Informal Discussion – Bruce Fortier

Bruce Fortier was asked to discuss with the board his by-law concerning "more than one principle structure" on a lot.

Bruce described the original intent of the by-law as to allow farms to put up additional residences without subdividing properties. Now, he stated, it is a way for developers to bypass subdivision regulations. His proposed by-law (which is attached to the meeting minutes)

- Closes loopholes with time limits, so assumes it will be for familial uses;
- Keeps driveways out of the neighbors' faces;
- Slows down growth in neighborhoods.

The following edits and changes were made during discussion of the board with Mr. Fortier:

Par. 1: last sentence of par. 1, delete the word "chapter", and insert "chapters 6.6-2 and 6.6-3" so that it reads "...allotted to each structure, and that yard and lot coverage requirements of chapters 6.6-2 and 6.6-3 be met."

Par. 2: Delete last part of par., so all that is left is:

Each building must have access either jointly or separately by ends of a driveway from the front lot line which is entirely within the lot. Any driveway must be a minimum of 8 feet wide and shall not be within 10 feet of a side or rear lot line, nor pass within 20 feet of a residential structure which it does not serve.

Informal Discussion – John Wise Committee

John Wise Co. did not appear before the board. Neither were MC nor BH present. Discussion was tabled until further information is available.

60 John Wise Avenue Board Discussion

Bob Griffin, engineer, appeared at the meeting and was recognized by the Board, although not on the agenda.

He showed an "as built" plan and suggested there were several improvements made to the property that should be pointed out on the "As-built", including pavement of the gravel lot finish, and change of the parking area layout. He said the Building Inspector had suggested the Board must review the improvements before he can issue a final Certificate of Occupancy.

Board members pointed out that these were not simple "improvements", rather, violations of the special permit issued in Dec. of 2005. Additionally, it was pointed out that the "as built" shows:

- The storage bins have been moved from the rear of the building, where they would have been invisible from the road, they are now quite prominently at the side of the lot;
- There is a large pile of gravel/dirt at the rear of the property, also prominently visible from the road;
- There are more than 12 allowed vehicles parked;
- These are not in the area designated on the special permit as the parking area;
- Because of reconfiguration undertaken the screening trees planted will not screen much;

- The permeable surface allowed by the permit is now paved and is not consistent with the gravel lot surface on the permit plan.

Mr. Griffin maintained these differences were minimal, consistent with a landscaping operation, and vastly improved the property. He asked what should be done to comply with the permit.

It was suggested that the Board needed to make a **site visit** and one was scheduled for **Saturday, October 20 at 9am**. Board members also notified Mr. Griffin that it is quite possible the paving would need to be removed, bins relocated, dirt pile removed and parking arrangement reviewed and re-sited on the lot.

Regular Business

- The Board discussed the draft Wind Turbine Bylaw proposal
- The Board discussed the upcoming meeting with the Selectmen. The Selectmen obtained \$25,000 to hire a consultant for the zoning bylaw.
- Rob Fitzgibbon will contact Horsley & Witten regarding services to be contracted with them.
- Commission statement for Essex public hearing use was revisited and Andrew will follow up.
- There was discussion of several requests made by the Board Clerk, Mary-Ellen Feener.**
 - The Planning Board unanimously agreed to put in motion her request for a raise in her pay rate to the maximum allowable for her grade. Scottie will follow-up with the paperwork.
 - ME's proposed change of schedule was approved, to be Monday, 12:30 – 4:30, Wednesday 5-7 pm, and Thursday 12 – 3pm office hours, with attendance at PB meetings on Wednesdays 7-10 or thereabouts twice a month.
 - Her request to be paid weekly, which would require only one signature on a weekly time sheet, was denied.
 - Scottie will discuss these results with ME and ask that she notify Town Hall personnel of her change of hours, and post it on the web site.

AR: Motion to adjourn the meeting at 9:30 p.m.

MC: I second the motion.

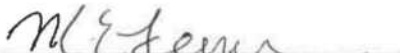
All in favor?


Aye.

Motion passed unanimously.

Next meeting is scheduled for October 17, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting

Town of Essex Planning Board

Meeting Minutes

October 17, 2007

Meeting called to order at 7:00 p.m. by Scottie Robinson, Chair and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Amy Reilly (AR), Michael Cataldo (MC), Kim Jarivs (KJ), Andrew St. John (ASTJ), Rob Fitzgibbon (RF)

Building Inspector: William Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

19 Red Gate Road

Mark Joly, Son in law of current owner will be building present (MJ)

Robert Breen, owner, not present

BS: I believe this application should be for a 6-4.2 finding due to the fact it does not meet the frontage requirement, the lot size requirement or the impervious coverage. The applicant would like to demolish the existing dwelling and garage and rebuild a new single-family dwelling. It has the approval of the B.O.H., Water/Wastewater, Con. Com. and the Fire Department 911. It is actually two separate permits. One is to demolish and one to construct a new dwelling.

SR: Are we to interpret that this is a right of way to Red Gate Road?

BS: I don't know that much of it.

MJ: That is Red Gate Road.

BH: Are there two separate lots here?

MJ: They have been combined and it is one lot now.

BS: They are almost cutting the impervious in half.

SR: So, more than 70% will be open space. What is the square footage of the covered surface of the new plan?

KJ: 2,710 impervious.

MJ: We are taking out the entire pavement.

Scottie Robinson read 6-13-3.b.7 and discussed it with the applicants. 'Rendering impervious more than 2,500 square feet or fifteen percent of lot area (whichever is greater) will require a plan for recharging storm water runoff such that it will not degrade ground water quality.'

BH: Does it have a footprint less than 2,500 square feet?

BS: Yes.

SR: I think it is a 6-4.3 finding.

AR: I would like to make a motion to approve the application to demolish the existing house and garage at 19 Red Gate Road.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

AR: I would like to make a motion to approve the application to construct a new single family dwelling at 19 Red Gate Road. It has approval of the B.O.H., Water/Wastewater, Con. Com. and the Fire Department 911, finding it meets all of the requirements of the Town of Essex Bylaws.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

76 Island Road

Paul & Andrea Schant

BS: I am asking the Board if this application requires a Site Plan Review. The applicant is to remodel a kitchen and enclose the porch by an addition and attach it to a garage.

KJ: The tax map has it as a multi-family dwelling.

BS: The contractor told me that they are converting it to a single family.

ASTJ: What about this; we have two principal dwellings on one lot and the proposed use is as a one family. Is this changing the use? I personally believe that is silly and it is still residential, does it require it a site plan review?

MF: Under 6-3.12, 'A detached residential building containing two dwelling units, designed for occupancy by not more than two families.'

MC: I think residential is residential.

ASTJ: They are changing the intensity and lessening the intensity.

SR: What is the size of the lot?

The Application has the approval of the Board of Health, the Con. Com. and the Fire Department 911.

Rob Fitzgibbon read from previous notes from a discussion with legal counsel, Kopelman & Paige regarding what requires a site plan review and their advice was to be consistent.

KJ: My question would be regarding the footprint. With the connection to a garage it makes the footprint larger than 2,500 square feet.

RF: It isn't for new construction.

ASTJ: I am going to go on record to say that I am going to approve this application and I would like to go on the record to say that I would like to see Him to be given plans that show the before and after.

ASTJ: I make a motion to approve the application of Paul. & Andrea Schant to enclose a porch and add it to a garage bump out finding that it meets with the Town of Essex bylaws and has the necessary approvals.

AR: I second.

All in favor?

Aye.

Motion approved unanimously.

30 County Road

Kathy Newman and George Mullin

BS: Application is to convert a two bedroom into a three bedroom and to renovate kitchen, living room, mud/laundry room and an office. It is a one-story addition. The addition is 20 feet to the top of the roof. It has the approval of the DPW, Con. Com. and the Fire Department 911.

The board

RF: I would like to make a motion to approve the application to convert a two bedroom to a three bedroom finding that it has the necessary approvals and it meets the requirements of the Bylaws of the Town of Essex.

BH: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

Lowland Farm - Lot 12 - Map 9

Andrew McDowell, Contractor is the applicant, not present

BS: This is for the new construction of two dwellings which are marked on this plan as buildings 2 and 3. It has the approval of the B.O.H., the Con. Com. the DPW and the Fire Department 911.

SR: Where are they?

JS: They are all the way down the end.

MC: On Browning's side of the road?

SR: Yes it is.

BH: On the right hand side going down.

Bob Brophy a member of the Conservation Commission was in attendance of the meeting. The Board asked him if he would mind looking at the plan to see if it was the correct plan. Bob said that the Con. Com. stamped a copy. The Board and the Building Inspector stated that they do not see plans with stamps from Con. Com. Bob stated that perhaps the stamped copies are the plans kept on file by the Con. Com. Michael Cataldo pointed out that the plan was dated September 1, 2006. The Planning Board secretary will talk to the Con. Com. Secretary and she will also bring the approved plans for the subdivision to the next meeting.

Scottie Robinson suggested that the Board review the original approved plan.

John Wise Committee

The Board and a committee of Essex Citizens met to discuss the proposed bylaw change to present at town meeting. Kim Jarvis brought forward the point that though this bylaw may change the fact that commercial properties can not go up but that there could be a lot of residential subdivisions be built on the road and asked what about a scenic way. Rob Fitzgibbon brought the concept of spot zoning and questioned if a scenic protection. The Board agreed to ask the Selectmen for permission to have Kopelman & Paige review the proposed bylaws.

Essex Park Drive Preliminary Subdivision Review Issues

Orestes 'Russ' Brown, legal counsel for Peter Van Wyck

Peter Van Wyck, applicant

Michael Cataldo read from the list that he and Bill Holton prepared to present to the Planning Board. What Mike read was a list of concerns and questions. The Board determined that the plan that was presented in November 2006 was the final plan and the one that is discussed. There is no secondary access proposed; the application is asking for waivers. The applicant is going to use public water supply. The Board stated that the plan was submitted for a septic plan development. Russ Brown stated the 10-Acre Conservation Restriction was with the DEP and that it may need to go back before the Planning Board. Russ Brown discussed the easement that goes up Turtleback Road for the public and goes right up the Tennessee Gas Pipe Line. It was confirmed that the 1,200 feet was to be measured from Western Avenue. Another concern was the Con. Com.'s suggestion that Mary Rimmer's report be read by the Planning Board. Scottie suggested that a list be generated of concerns and issues to part of the decision for a Definitive Plan.

Russ Brown will send the secretary a continuation of the letter for an extension until December 19th. The Board members next Thursday, October will hold a meeting at 7:30 p.m.

Rob Fitzgibbon needed to go home due to the fact he wasn't feeling well. He will give the Board his notes from the Preliminary Plan. Kim Jarvis allowed Mike Cataldo to borrow her notes for his review.

Southern Avenue – Henderson Estate

Paul Alunni, Apple Associates

The Board stated that they would need to see the information that proves ownership of each lots and that proof to pass over the Coolidge Trust must be presented. It was also pointed out that the Assessor's Tax map 3 – Lot labeled owner unknown.

Meeting Minutes

August 1 approved – change Kim and Rob from being absent – AR approved MC second

August 15 meeting minutes change suggested a new version of August 15th - no need to approve

September 19th Meeting as amended MC – ASTJ Second

Planning Board Secretary

MC: I make a motion that Mary-Ellen Feener, Planning Board Secretary receives her paycheck on a weekly basis and the Board will still review and sign it at regular meetings.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

The Board reviewed the Wind Turbine Bylaw proposal and it discussed at the meeting on November 7, 2007. Jud Lane will be invited to the next meeting on November 7th. It was discussed that the couple who presented a letter.

The Board discussed the meeting on October 29th with the Selectmen. The Selectmen obtained \$25,000 to hire a consultant for the zoning bylaw.

Andrew St. John finished the commission statement and the Board members each had a copy a copy will be sent to Rob Fitzgibbon.

Kim Jarvis has the software for land use maps and a new lap and she will be working on status.

Meeting adjourned at 10:20 p.m.

AR: Motion to adjourn the meeting at 10 p.m.

MC: I second the motion.

All in favor?

Aye.

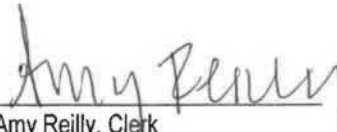
Motion passed unanimously.

Next meeting is scheduled for October 25, 2007 at a location to be determined at 7 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting

Town of Essex Planning Board

October 25, 2007

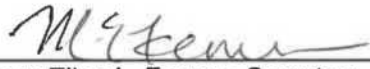
Meeting called to order at 7:05 p.m. by Scottie Robinson, Chair at the Senior Center.

Attendees: Scottie Robinson (SR), Amy Reilly (AR), Kim Jarivs (KJ), Andrew St. John (ASTJ), Rob Fitzgibbon (RF)
Michael Cataldo (MC), Bill Holton (BH)

Absentees: Secretary: Mary-Ellen L. Feener (MF)

There wasn't a Building Inspector's Report. The meeting was held to discuss and review a draft decision for the Preliminary Plan for the TBA Estates located at Essex Park Drive. The Meeting was adjourned at 9:05 p.m. and all other business will be reviewed and discussed at the next meeting on November 7, 2007 during the public meeting at the T.O.H.P. Burnham Library.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
November 7, 2007

Meeting called to order at 7:35 p.m. by Chair, Susan Scott Robinson and was held at the B.O.H. Burnham Library.

Attendees: Scottie Robinson (SR), Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Absent: Absentees: Michael Cataldo (MC), Amy Reilly (AR), Andrew St. John (ASTJ)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

Lowland Farms

The Board had reviewed the application for the Map 9, Lot 12 – House One & House Three at the October 17th, 2007. House Two is not up to date, nor is there a permit application. The Board asked about three driveways on one lot. The Building Inspector stated that the curb cuts were approved by the DPW. The Board confirmed that the owner is exempt from the site plan review bylaw regarding a footprint of over 2,500 square feet due to the approval date of the subdivision. The Building Inspector did talk to members of the Conservation Commission (Stephen Girsh) and received a stamped approved plan that was acceptable to the Building Inspector.

KJ: I make a motion to accept the building permit application for the new construction of a new building referred to as House number one; a single-family, finding that it meets the zoning bylaws of the town of Essex. It has the approval of the B.O.H., Con. Com. DPW and the Fire Department 911.

SR: I second.

All in favor?

Aye.

Motion passed unanimously.

RF: I would like to make a motion to accept a building permit application for a residence, a one family use, House number three, which has the approval of the necessary boards and departments finding that it meets the zoning bylaws of the town of Essex.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

60 John Wise Avenue – Pallazola Brothers

The Building Inspector told the Board that a Building Permit Application was on file but no Building Permit on file or Occupancy Permit was issued and that he has talked to them numerous occasions that they need to file the necessary paperwork. The Chair said that she would be forwarding information she had received from Town Counsel, Kopelman & Paige regarding this property. It was questioned whether the owners had ever filed the Special Permit application with the Essex South Registry of Deeds. The Board discussed the fact that the Special Permit was issued by the Board on December 16, 2005 and the Town Clerk stamped the decision after the required twenty-day period on February 6, 2007.

48 Island Road

The Board discussed the endorsed ANR plan approved by the Board on June 20, 2007. This plan was not filed at the Registry of Deeds. The applicant had been a buyer who chose to not follow through on a purchase. The owner, Roger Hardy and John Guerin were before the Board to discuss the fact that the owner would like to change the lot lines on a new ANR. The Board discussed the Town of Essex Bylaw 6-3.27 b. The Board would like to file the current approved ANR and then apply for a new ANR. A fee will be required by the applicant. The Building Inspector will write a letter to Neves-Morin, the engineering company, regarding the lot lines.

160 John Wise Avenue

The chair explained to the Building Inspector that the owner of the property, Skip Crocker does not need to go through a site plan review due to the dates of his building permit application which was approved by the Board.

Lanes Road

Jud Lane, David Lane – owners, present

The Board approved a Subdivision plan on October 3, 1990. The Planning Board endorsed an ANR on January 1, 2003. The Board stated that an amendment to the subdivision for a road change should be done by using a definitive plan application, process and fees. The second step ANR. The application will tentatively be presented on December 5th at 7:45 p.m.

48 Island Road – Roger Hardy, owner, John Guerin

John Guerin requested that he be put on the next agenda.

60 John Wise Avenue – Palazolla Brothers

The Planning Board received a letter from the attorney representing the Palazolla Brothers, requesting that the Planning Board give him a letter stating that the special permit was not necessary under the town's bylaws, and rescind the special permit. Scottie had talked to Brendhan for approval and she has talked to town counsel from Kopelman & Paige, John Goldenrosen. Town Counsel has requested copies of the files to review. One of the questions was the original use of the property. Attorney Beatrice states that the former owners used the property for commercial purposes and the agricultural use is a tax designation. Bill Holton stated that it was a change of use. It was originally a hatchery building and now it is a landscaping building.

Southern Avenue

Scottie informed the Board that due to the fact that the Town is the administrator of the Coolidge Trust, that Brendhan Zubricki contacted Kopelman & Paige and they are reviewing the documents given to the Planning Board during the two previous informal discussions.

177 John Wise Avenue

Sean Curtis and Aaron Shank had talked to the Chair regarding this property and had requested an informal discussion with the Board and she had asked them to come to tonight's meeting. They did not attend the meeting. The Secretary will contact them as soon as possible.

John Wise Avenue

An email was sent to the Planning Board from a concerned citizen and it was read for the record. 'Hi, I live down the street from a home that was recently sold (George Stavros house) to a couple who are running a landscape business out of their home. I spoke with one of your members and he said that they were to have a few trucks on their property. There are at least 6 trucks near the house and a little further down the road on the way to Ipswich are these tankers, one says Essex Septic. It is an eyesore. And now we have the new folks who bought George Stavros house. The vistas on 133 are an asset that Essex can ill afford to lose. It is a scenic highway but not for long if we continue down this path of allowing businesses to mar the scenery. I am not anti-development but every community should have zoning so that this can continue to happen. What has happened to Route 22 is a shame. I would hate to see the same thing happen to 133. Once it is gone we'll never get it back.' Sue Baker, 91 John Wise Avenue, Essex MA

- The Secretary will send the Chair the Building Inspector's email address and the Chair will contact him regarding the trucks at the Story property.

TBA Essex Park Drive – Preliminary Plan Application

The Secretary will contact the Board Clerk, Amy Reilly and let her know that Kim Jarvis's notes regarding the TBA Essex Park Drive Estates are available for her review.

Wind Turbine Bylaw Proposal

The Board discussed the draft wind turbine bylaw. Citizens attending the meeting were John Guerin, Gil Guerin, Jane Adams and Jamie Richardson.

Points discussed included, but were not limited to:

- The role of the Building Inspector
- The reviewing of the noise decibel; which is done by the state
- The height of the residential wind turbines
- John Guerin offered to bring articles that he has on file regarding wind turbines
- Gil Guerin questioned the wetland section 4.d) "All wetlands, water bodies and areas designated under Section 6-10.2 Wetlands District Delineation of this bylaw. Bill Holton brought forward that he thought it might be necessary

because the wind turbine could fall into a wetlands or the equipment building would be near a wetland. Gil Guerin brought forth the agreement because perhaps this addresses the base being built in wetlands.

- L.7 regarding lighting was discussed and it was suggested that there be a more general term be used other than the FAA.
- Commercial use and residential use of wind turbines were discussed.
- Smaller wind turbines which can be mounted to a building potentially exempt?
- One citizen pointed out the larger wind turbines with multiple poles and smaller turbines could be addressed.
- All the Board members will review the proposal.
- The Citizens attending were also encouraged to give their feedback.

Meeting Minutes

The Board Members will take home the draft minutes and review them for the next meeting.

TBA Essex Park Drive Preliminary Plan Decision Discussion

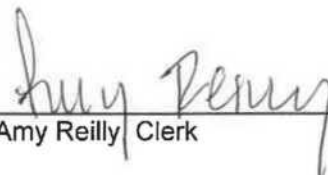
The Board discussed the fact that was not five consistent members during the course of the public hearing. The Chair stated that as discussed a public hearing for a Preliminary Plan wasn't necessary. The Board agreed that they would stay to the standards required by both the state and the Town of Essex Subdivision Rules and Regulations. Scottie offered an edit to the bottom of page three. The Board agreed the plan they were reviewing and deciding upon was the one stamped by engineer on December 5, 2006. Board members will send their edits to Amy Reilly, Clerk and the board secretary. Kim Jarvis reviewed her lot-by-lot narrative with the Board and the members agreed with her conclusions.

Meeting adjourned at 10:38 p.m. Next meeting is scheduled for November 14, 2007 at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly Clerk

Public Meeting Minutes
Town of Essex Planning Board
November 14, 2007

Meeting called to order at 7:35 p.m. by Acting Chair, Rob Fitzgibbon. The meeting was held in the lobby of Town Hall and later at the T.O.P.H. Burnham Library.

Attendees: Rob Fitzgibbon (RF), Kim Jarvis (KJ), Bill Holton (BH), Andrew St. John (ASTJ), Amy Reilly (AR)
Absentees: Michael Cataldo (MC), Scottie Robinson (SR)
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

Quincy & Natalie Bent – 21 Lebaron Road

BS: This application is for an addition of an entry porch to extend living area. It has the approvals of the Con. Com., DPW for sewer. It also has the side yard set backs and necessary frontage. It is a single-story building.

The Board reviewed the application.

AR: Motion to approve the application of Quincy and Natalie Bent of 21 Lebaron Road for an addition to the single-story home which has the approval of Con. Com. and DPW/Wastewater, finding it follows the necessary bylaws of the Town of Essex.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

48 Island Road – Roger Hardy; owner, Attorney John Guerin

The Board reviewed the new ANR plan and the application. The Board asked if anyone from the public had any comments. No one commented.

RF: I make a motion to approve the ANR plan submitted by Roger Hardy finding that it meets the Bylaws of the Town of Essex.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

The plan and application were signed.

6 Dodge Street – Joe Whitehouse – Informal Discussion

Joe Whitehouse would like to keep the residence on the lot as a rental property and use the other building on the lot for the commercial use of steel fabrication. The Board discussed the fact that the property currently has a commercial use designation. The Board reviewed the Town of Essex Bylaw 6-4.3 and said it would require a building permit application to be presented at a Planning Board meeting by the Building Inspector. The Board also cautioned the applicant that it is a primarily residential area and that there were residences in the area. Joe Whitehouse assured the Planning Board that there would not be any loud noises from his business.

Meeting Minutes

The Board reviewed the meeting minutes of October 3rd.

RF: I make a motion to approve the meeting minutes of October 3, 2007 as amended.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

The Board reviewed the meeting minutes of October 17th

AR: I make a motion to approve the meeting minutes of October 17, 2007 as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

The Board reviewed the meeting minutes of October 25th.

RF: I make a motion to approve the meeting minutes of October 25, 2007 as amended.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

TBA Estates Essex Park Drive

Four Board members are committed to attending a closed agenda meeting on October 28, 2007 at the library to work on the decision; Rob, Amy, Bill and Scottie. In the meantime Kim will email Board members her lot-by-lot description, Rob will email his notes and Mary-Ellen will finish the draft meeting minutes of November 7, 2007 and forward them to the Board members.

Off of Pond Road (no street number) – Bill Allen, owner; not present, Attorney John Guerin; present

Attorney John Guerin asked the Board if he could show them an assessor's map and requested that the Board's give him an opinion regarding a lot of land owned by Essex citizen Bill Allen. The Board agreed and reviewed. Verbally they collective agreed that it could be potentially difficult to build on this lot because it did not have street frontage and that there were other lots in front of the lot/between the lot and the street. The Board would not respond in writing until the owner made an application.

AR: Motion to Adjourn the Meeting.

ASTJ: I second the motion.

All in favor?

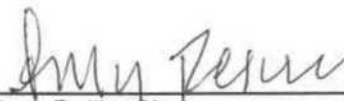
Aye.

Motion passed unanimously.

Meeting adjourned at 9:45 p.m. The next meeting will be held at the First National Bank of Ipswich on November 28, 2007 at 7 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
November 28, 2007

Scottie Robinson, Chair, called the meeting to order at 7:15 and the meeting was held First National Bank of Ipswich, 8-10 Martin Street, Essex.

Attendees: Scottie Robinson (SR), Amy Reilly (AR), Kim Drake (KD), Rob Fitzgibbon (RF), Bill Holton (BH), Andrew St. John (ASTJ), Michael Cataldo (MC)

Absentees: Mary-Ellen Feener, Secretary

There was no Building Inspector's Report.

The meeting was held to discuss and review a draft decision for the Preliminary Plan for the TBA Estates located at Essex Park Drive.

Board Member votes and comments regarding TBA Estates Preliminary Plan Application and Decision

Rob Fitzgibbon made a motion to vote to approve or disapprove the application. Mike Cataldo seconded the motion. The votes were 6 to 1 to deny the application as proposed on the engineered plans and related documents.

Rob Fitzgibbon – Voted to disapprove the TBA Estates Preliminary Subdivision Plan. "The applicant has not provided adequate justification for his request that the Planning Board waive the standard requirements for the subdivision road length. As currently configured, the preliminary plan appears problematic and not well suited to the topography of the parcel."

Kimberly Jarvis – Voted to approve the TBA Estate Preliminary Subdivision Plan with certain conditions: "Would like to see Speckled Lane moved entirely out of the buffer zone, as well as Lizard Lane and Salamander Way also. Would like to see lot 7 deleted and lot 13 is unbuildable."

William Holton – Voted to disapprove the TBA Estate Preliminary Subdivision Plan as submitted. "The applicant's plan to waive the 1,200 foot dead end street clause in section 7.02 paragraph 2i of the Essex Subdivision Rules and Regulations and allow the length to be 2,235 feet should be denied. The additional 1,035 extension is not justified. The arrangement and location of the proposed streets and driveways and the proposed use of the lots to be served shows little regard for public convenience and safety. I would consider a waiver on the 1,200 foot limitation if the proposed streets were laid out on a loop or tear drop arrangement rather than the dead end design submitted to us."

Michael Cataldo – Voted to deny the TBA Estates Preliminary Subdivision Plan. "The waiver for the length of the road is not justified and because there are too many houses on the subdivision."

Amelia Reilly – Voted to deny the TBA Estate Preliminary Subdivision Plan as submitted. "Too many lots in or near the buffer zones and many of the lots are high in grade and the waiver should not be allowed for the extension of the roads."

Andrew St. John – Voted to deny the TBA Estate Preliminary Subdivision Plan. "Because the length of the dead end road does not meet the requirements of the Subdivision Rules and Regulations. There has been no justification provided for waiving the requirements of the regulations and the subdivision could be redesigned with fewer lots that would comply with the regulations."

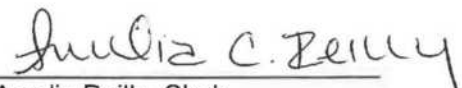
Scottie Robinson – Voted to deny the TBA Estates Preliminary Subdivision Plan. "The request for road length waiver was never justified except in terms of the developer's preferences. Also, the proposed layout of roads and homes are often inside of the buffer zone and do not take into account the health of the Essex Watershed."

The meeting was adjourned at 9:15 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Amelia Reilly, Clerk

Public Meeting
Town of Essex Planning Board
December 5, 2007

Meeting called to order at 7:04 p.m. by Scottie Robinson, Chair at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Amy Reilly (AR), Michael Cataldo (MC), Andrew St. John (ASTJ), Kim Drake (KD),
Rob Fitzgibbon (RF)
Secretary: Mary-Ellen L. Feener (MF)
Building Inspector: William Sanborn (BS)

Building Inspector's Report

10 Centennial Grove – William Gorman Map 31 Lot 2A

BS: This is for citing a building of William Gorman who is purchasing 10 Centennial Grove to build a 24 x 40 garage. The application has the approval of the Con. Com. DPW Wastewater and the Fire Department 911.

The Board reviewed the application.

MC: I make a motion that we approve the application of William Gorman who is purchasing 10 Centennial Grove to build a 24 x 40 garage finding it meets the requirements of the Town of Essex Bylaws and it has the approval of the Con. Com., DPW and the Fire Department.

BH: I second the motion.

All in favor?

Aye.

Rob Fitzgibbon refrained from voting due to his late arrival to the meeting.

Motion passed.

158 John Wise Avenue – Anderson (Andy) Storey - Map 22 Lot 6 C & Map 17, Lot 13

The Board discussed this property with the Building Inspector. It was decided that a Board member would contact the owner regarding the concern of the trucks being stored at the site.

60 John Wise Avenue – Palazolla Brothers

The Board reviewed recent correspondence from town counsel Kopelman and Paige. The Building Inspector said that Town Council referenced what appears to be an incorrect version of the Town of Essex Bylaw 6.6.12 Site Plan Review. The Building Inspector reminded the Board that a Building Permit application was on file but no Building Permit or Occupancy Permit was issued and that he has talked to the owners on numerous occasions regarding the fact that they need to file the necessary paperwork. The Board discussed the Bylaws 6-6.9 and 6-6.12; regarding the specific criteria for Special Permits and the fact that the heading of 6-6.12 is titled Site Plan Review. Special Permit.

Lanes Road (formerly 53-57 John Wise Avenue - Curlew Cove Realty Trust, Judson A. Lane, Trustee

Definitive Plan Application of an existing Subdivision

Bill Holton volunteered to be the Board member in charge of the application.

The Board reviewed the application and the plans.

Ten copies of the plans were given to the Board.

The Board determined that a check for \$1,000 was required.

The applicant reviewed the requested waivers. The first was so that the applicant did not need to provide drainage calculations due to the fact that they will not be doing any changes to the road and that all the utilities are in and the second one is a waiver request from providing a specialized engineering or environmental analyses to be performed. They are also asking a waivers at the terminus of bituminous concrete apron and start of gravel roadway, a waiver is requested to allow roadway width of 14 feet in lieu of 20 feet and that the radii at the intersection of John Wise Avenue is a required 30 feet. A waiver is requested to meet Massachusetts Highway Standard of 25 feet radii in lieu of 30 feet. Michael Cataldo suggested

that the waivers needed to be written the plans. Kim Drake pointed out a typographical error on sheet 2, it should read 'combined'. The Board required Lot 8B states that the registered and recorded land is part of the same lot. The Public Hearing will be set on January 2, 2008 at 8 p.m.

Island Road – Jamie Richardson Informal Discussion

SR: Jamie Richardson asked to speak to the Board because he felt that the ANR process is not being followed properly. The Board stated an Approval Not Required does not require notifying the abutters. Kim Drake said that an ANR isn't an approval process it is a determination. Jamie Richardson pointed out that MGL states that if a determination is required then it isn't an ANR. The Board discussed MGL with Jamie and said that though it is confusing, MGL clearly does not state a public hearing nor notifying abutters are necessary. Scottie Robinson explained that there is a committee trying to change the current MGL regarding ANR. Jessica Smith Hardy Road brought forward the fact that she had been told by the person she purchased her property from was that if the tide is high and her house was on fire the fire department could not reach her property. The Board discussed with the citizens present that there is a concern regarding the condition of some of the roads in the town of Essex. The Board and the citizens also talked briefly about the growth of the Town of Essex and the current Bylaws.

It was stated that each Board member should have a copy of MGL 81T and it should be printed and added to policy and procedure and followed from this date on by the Board.

Meeting Time

KD: I make a motion to change the time to start the public meetings back to 7:30 p.m.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

TBA Estates Essex Park Drive – Preliminary Plan Application

The Board reviewed the final draft of the decision for the Preliminary Plan of TBA Estates on Essex Park Drive and suggested edits to Amy Reilly, Clerk and who will make the changes.

Review of Bylaw Changes Proposed by B. Fortier

The Board reviewed, discussed and edited the proposed bylaw changes which were proposed by Bruce Fortier, Southern Avenue.

Horsley & Witten

Scottie told the Board that Nick Cracknell and Ellie Baker will be visiting the Planning Board at the next meeting to discuss what the Board would like to have addressed and she discussed that she talked to Nick regarding potential ideas for the workshop that the Board discussed at a prior meeting.

Zoning Bylaw Review

The Secretary will send copies of the proposals to the Board members. One proposal was from Kopelman & Paige. Andrew St. John mentioned that he was under the assumption that lawyers should not be brought into a discussion about planning until it was ready to go to town meetings. Mike Cataldo refrained from the discussion because he has a personal relationship with Kopelman of Kopelman & Paige, PC. Scottie was told that Mark Lebowski also submitted a proposal. Rob Fitzgibbon knows someone who is working with him on the Wenham proposal. It was also suggested that the Board asks who they want to ask for proposals.

DCR Bylaw

Kim Drake and Mike Cataldo volunteered to address the letter sent by the Department of Conservation and Recreation.

Proposed Wind Turbine Bylaw Draft

Bill Holton and Amy Reilly are currently working on the proposed bylaw. Bill has had input from citizens and he will be making edits. At some point a draft will be given to the other Board members for their comments. The timeline for the process will be that prior to the end of January 2008 Bill and Amy will have sent the proposal to Board members and the Board members returned it to them and they were able to complete suggested edits for review at a meeting.

MGL 40A – Section 9

Regarding having alternates for Special Permit meetings. Rob Fitzgibbon will follow through with this bylaw proposal.

Regular Business

Meeting Minutes

Meeting Minutes November 7 & November 14th

BH :I make a motion to approve the meeting minutes of November 7th as amended.

ASTJ : I second the motion.

All in favor?

Aye.

Motion passed unanimously

MC : I make a motion to approve the meeting minutes of November 14th as amended.

KD : I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Payroll

Meeting Schedule

KD: Motion to approve the meeting schedule from January 2, 2008 – March 19, 2008.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

AR: Motion to adjourn the meeting at 10 p.m.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for December 19th, 2007 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by: Mary-ellen L. Feener
Mary-Ellen L. Feener, Secretary

Amy Reilly
Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
December 19, 2007

Meeting called to order at 7:36 p.m. by Chair, Susan Scott Robinson and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Andrew St. John (ASTJ), Michael Cataldo (MC), Amy Reilly (AR), Kim Drake (KD)
Absent: Rob Fitzgibbon (RF), Building Inspector: Bill Sanborn (BS), *Bill Holts (BH)*
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

The Building Inspector did not have any building permit applications to present at the meeting and did not attend.

2 Andrews Street - John & Margo Kusulas

The owner of this property called the secretary during office hours prior to the meeting and asked what she should do in order to modify a special permit decision. The Board reviewed the decision filed by the Planning Board with the Town Clerk in January 2004. Andrew St. John questioned the barn and asked if they had applied for a building permit within the past year. Mike Cataldo suggested that the Building Inspector be asked about the building permit application/file. Andrew St. John volunteered to call the owner and if he determines it is necessary to invite her to a meeting for an informal discussion he would do so and also, if he felt it necessary he would contact the Building Inspector.

18 Eastern Avenue – Alex Westerhoff and Thomas Lang

Thomas Lang (TL), Alexander Westerhoff (AW) and Orestes 'Russ' Brown (RB), legal counsel; present

SR: I am calling to order the continuation of the public hearing for the special permit application of Thomas Lang and Alexander Westerhoff on December 19, 2007 at 8 p.m.

The Board reviewed the Board of Appeals decision regarding this property that had recently been rendered by the BOA. The Board reviewed each of bylaws referenced for which the applicants were given variances and each of the variances the applicants were denied.

SR: What we have before us from Mr. Westerhoff and Mr. Lang is a application for a special permit for a change of use from the church use to mixed use meaning commercial and residential. They were denied (by the BOA) the residential use, so I am not going to go there.

ASTJ: Is there a need for us to do anything given the fact that they can do commercial by right.

SR: Yes, I don't think we need to issue a special permit but I don't want to be the one to send these guys away. I think we should vote and say yes we approve it. It's the change of use.

RB: I would rather err on the side of caution and take this as a special permit application.

SR: We have had it pointed out to us that a site plan review would not be required because you have variance from the Board of Appeals (referencing Town of Essex Bylaw 6-7.2).

RB: We obtained variances for the dimensional stuff. We didn't ask for a variance for the change of use. I think even the Board of Appeals felt that we had to come back here for the change of use.

ASTJ: From the church use to the commercial use? What you were denied on was the residential use.

SR: Yes. A change of use could also be done by a building permit but for some reason we have that on a special permit basis. I think we should just vote on the application that we have.

The Board reviewed the application.

AR: Would they need to re-apply?

ASTJ: No. When we vote though we will need to separate out the commercial and residential use.

Scottie Robinson stated that a site visit was completed by the Board in September 2007 and that the Board members were aware of the property, had reviewed the Board of Appeals decision and the current application before the Board. She asked the Board members if they thought there was anything else to discuss and no one spoke. Scottie then asked if anyone from the public would like to comment and no one spoke.

ASTJ: I make a motion to close the public hearing.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

ASTJ: I make a motion to approve the application by Alexander Westerhoff and Thomas Lang of 3 Colburn Road, Manchester for a special permit for a change of use for the property located at 18 Eastern Avenue from church use to commercial use having reviewed the Board of Appeals decision which granted dimensional and parking variances but we

are not approving, nor voting on the request for a change of use to a residential use which the Board of Appeals denied. We, the Planning Board are voting only on the commercial use and parking.

MC: I second.

All in favor?

Aye.

Motion passed unanimously.

Scottie reviewed the filing and appeal process with the applicants.

132 Main Street - Joe Walker

Joe Walker is an Essex citizen and architect who is representing the potential buyers of the motel located at 132 Main Street and he requested to speak to the Board about the proposed ideas for the property. He and the Board discussed that the property may potentially be five units on the existing footprint of the current building and two units in the building located on Main Street. The Board discussed that there currently there isn't any existing downtown zoning. Andrew St. John brought forth the fact that there are three issues; use, dimension and density. He commented that there may be citizens in town who may want to see the property remain commercial. He further the dimensional needs would require a variance from the BOA.

Horsley & Witten – Nick Cracknell & Ellie Baker

The Board and Nick Cracknell and Ellie Baker discussed the Town of Essex bylaws. It was decided that Horsley & Witten would focus on enhancing site plan review and definitions. Kim Drake will develop a list of the definitions that the Board could approach and discuss.

John Wise Committee – Informal Discussion

Tom Ellsworth and Peter Kellerman reviewed with the Board the changes that Mr. Ellsworth had already made upon the suggestion of Kopelman and Paige, legal counsel for the Town of Essex.

MC: Motion to adjourn the meeting.

ASTJ: I second the motion.

All in favor.

Motion passed unanimously.

Meeting adjourned at 9:45 p.m.

Next meeting is scheduled for January 2, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
January 2, 2008 Meeting Minutes

Meeting called to order at 7:34 p.m. by Scottie Robinson, Chair at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Michael Cataldo (MC), Andrew St. John (ASTJ), Kim Drake (KD), Rob Fitzgibbon (RF)
Absent: Amy Reilly
Secretary: Mary-Ellen L. Feener (MF)
Building Inspector: William Sanborn (BS)

Building Inspector's Report

The Building Inspector did not have any applications to present to the Board. The Board members did bring forward two topics for discussion with the Building Inspector.

2 Andrews Street – Margo Kusulas

Ms. Kusulas stated intent to erect a building somewhat different from that which was named in the special permit of January 2004.

The Board discussed the Special Permit application. Andrew St. John read the decision allowed which was written on January 7, 2004. The Building Inspector said that he did review plans that showed parking and the site, but he could not recollect the final outcome. The Building Inspector brought down the file from his office. Margo Kusulas was given a building permit on February 21, 2007 to build an accessory building; a barn. The building permit application has expired. The Building Inspector or the Assistant Building Inspector will make an attempt to visit the property to check on the status of the construction.

Excerpt from draft copy of the February 21, 2007 Meeting minutes (in the files of the secretary's lap top computer):

BS: This is an application for a 56 x 36 barn to be built and it will be 19 feet high. The barn will be used to house horses. Application has the approval of the B.O.H., the Conservation Commission and the Fire Department.

The Board discussed the use of the barn and questioned parking and what the building would be used for; personal keeping of horses or for the boarding of other horses and the impact of the extra traffic to the area and they asked if the applicant could present a site plan and or further elaborate on the use of the barn. The Board discussed the fact that the applicant is not a commercial use or an agricultural use.

SR: Motion to vote to accept the building permit of Margo Kusulas for the construction of a twelve-stall barn on 2 Andrew Street.

RF: I second the motion.

All in favor?

Aye.

Motion passed.

Martin Street – John Guerin

The Building Inspector has talked to the owner and said that work had to be done.

Town Warrant

Scottie reviewed the time line for what needs to be accomplished. On January 16, 2008 the notices for publication should be completed. Bruce Fortier's bylaw proposals for changes, the John Wise Committee suggestion for the adoption of a bylaw for an overlay district, two suggestions by the Selectmen regarding public hearings, the Wind Turbine bylaw proposal and the water district FEMA suggestions. Kim and Michael will bring information to the next meeting regarding the FEMA Flood Plain District suggestions.

Board of Selectmen Meeting

The Selectmen have requested that some of the Board members attend their next meeting to discuss several items of common interest. Bill Holton and Scottie Robinson will be attending the meeting on January 7, 2008. In case there are more than four Planning Board members attending this meeting the Planning Board secretary will post a notice at Town Hall tomorrow.

Lane Road – Curlew Cove Realty Trust, Judson A. Lane, Trustee

SR: I would like to call to order the public hearing for a Definitive Subdivision plan Lane's Road. It is January 2, 2008 at 8 p.m.

Charlie Weir (CW), Meridian Associates, Jud Lane (JL), David Lane (DL)

Scottie Robinson read the Planning Board mission statement prior to the beginning of the hearing.

Jud Lane presented the plans to the Board. It was explained that the conservation easement will be attached to the property in question, and several lot lines and the road may be moved slightly to enable owners/residents to use the property more safely and efficiently.

John Cushing, 113 Martin Street: So essentially you are not adding any new houses, is that correct?

JL: Yes, correct.

MC: The other lot you are creating will be marked not buildable.

SR: Jud that will be part of the Conservation Restriction? It can still be used for parking?

JL: Correct.

JL: We are not creating any new buildable lots. Everything is existing. What we did do is split this lot in two.

MC: The other lot you are creating is on the street.

JL: Correct. There is a small lot and it is not a buildable lot because it does not meet the requirements of the Planning Board.

SR: Jud that lot looks to me that it has lines on it. Does that mean it will be part of the restriction also?

JL: Yes, that will be in the restriction.

SR: So as long as you define it as not a buildable lot is it o.k. to use it for parking.

JL: Yes, that is correct and actually in the Conservation Restriction there is verbiage as to what exactly we can use each piece of the land for.

SR: And what is the lot to the right of that one?

JL: This is a registered lot. Perhaps my father can describe this one better.

DL: This has been in existence for quite a while. At one time all of the property was a probate-registered lot.

SR: But that is also not new?

DL: Yes.

JL: For people who don't know, our property goes out here and borders Sodaman's Creek and there is a lot of marshland here and wetlands and Lane's pit and a gravel road that runs all around it.

The Board discussed the gravel pit that had been in existence since the Civil War and also used to assist with building Route 128.

ASTJ: And the connection to the river; when was that made?

DL: 1953.

JL: The history of that is that this is actually a riparian property. We have riparian property rights. It is the only one in Massachusetts. It gives us exclusive rights to the area and the pond, but it is connected to the river through a canal that my grandfather got a permit to build.

ASTJ: I have always wanted to kayak up that river to your pond.

JL: You can do it, but when the tide changes you have to watch out because you can get trapped in there. Ozzie takes the beginners in there.

John Cushing: You have a water supply line that extends from John Wise Avenue through the property to a point?

- * David Lane showed the citizen. It was shown that along the edge of the Lane property there is an easement by the town. John Cushing stated that he wouldn't have to wrestle with the Conservation Restriction to obtain an easement for water supply to his family's property near by.
- 'L: We have a hydrant right on the corner by our house.
- DL: The Conservation Restriction allows for the continuation of any utilities or maintenance of those utilities.
- SR: Is the new front part of the road going to be gravel as well?
- JL: Yes, except for the required paved portion needed for the State (of Massachusetts) because it is on Route 133. The board reviewed the waivers. Scottie Robinson read them aloud for the public.
- SR: As you well know Jud, parts of the requirements about the road are the number of residences and businesses on the road. Are the existing house lots large enough that you could put another residence on them?
- DL: Yes, this lot could have one. Possibly two additional buildings.
- MC: Couldn't we put a condition that they would have to come back to the Planning Board?
- SR: Yes.
- BH: I would like to point out that when the Richardson subdivision on Rocky Hill Road was that we allowed ten houses on a fourteen-foot road.
- CW: This is an existing roadway and what is being assessed is what is being paved and what is being graveled and ask is there an increase of permeable surface. We are moving the roadway over and there is a slope.
- JL: We are moving the road over, not up and there is a slope.
- DL: And there is a culvert there now which will stay.
- ASTJ: I feel that this is about a lot of minor changes; I don't have any further questions.
- John Cushing: How big is the overall parcel you started with?
- DL: Eighty-Two.
- John Cushing: You are donating over sixty acres that is very generous.
- SR: What about the lot at the street, who will own that?
- DL: We will.
- SR: Is it a private road?
- DL: Yes.
- Scottie stated that a decision will be written and the applicants notified as soon as it is filed with the Town Clerk. The Board reviewed the requested waivers. The Board reviewed the Bylaws and the Subdivision Rules and Regulations and specifically reviewed the number of houses that can be in a subdivision with a road that is a fourteen-foot roadway. It was determined that per the Subdivision Rules and Regulations that 1-10 dwelling units can be on a road that is 20 feet wide. Michael Cataldo suggested that if there are any changes made to the subdivision that it must come before the Planning Board. The Board of Health was the only department who commented on the application. The waiver regarding the 25 feet radii in lieu of 30 feet was not a concern of the Board Members.
- RF: Should we say what we want to have fixed?
- SR: No. Usually we just tell them what we want to have done.
- ASTJ: And if it isn't done, we don't sign it.
- ASTJ: I move that we approve the application for a Definitive Subdivision for Lane's Road as amended with the addition of the waivers two from section six and two from section seven as annotated.
- MC: I vote to approve the application finding that it meets the Town of Essex Bylaws and Subdivision Rules and Regulations and the waivers requested are not detrimental and I approve of the waivers.
- KD: I Kim Jarvis, vote to approve the application for a Definitive Subdivision for Lane's Road and the requested waivers.
- BH: I vote approve the application I vote to approve the application finding that it meets the Town of Essex Bylaws and Subdivision Rules and Regulations and the waivers requested.
- SR: I vote in favor of the passing of the Subdivision finding it is in conformity of the Town of Essex bylaw and the Subdivision Rules and Regulations and the waivers are appropriate finding that it does not increase the use of the property and that it actually allows for more conservation purposes.
- RF: It is my understanding that the waivers are appropriate for better access to the sixty-nine acres.
- ASTJ: I vote to approve the application and the waivers for the application for a definitive subdivision.
- Application approved with a unanimous vote.

• **TBA Essex Park Drive – Peter Van Wyck (PVW), Orestes ‘Russ’ Brown (RB)**

Informal conversation – no application before the Board

RB: Peter wanted to come here to keep the process stream lined and the issue here that we really didn't discuss was a road that would make a loop. Would this kind of a loop qualify for the answer to a through street? Russ Brown referred to the letter sent by Kopelman and Paige in 2005 which stated that 'your (The Town of Essex Bylaws) Regulations do not define 'dead end-street'. The term is commonly understood to apply to a street that is open at one end and closed at another. "[A] street that ends in a cul-de-sac is a dead-end street." Federline v. Planning Board of Beverly 33 Mass. App. Ct. 65, 66 n.2 (1992)

Andrew St. John brought forth the wetland topic that was discussed by the Board.

RB: That is an important issue. When I read the vote there seemed to be a lot of different issues. Grade is an issue. Wetlands are certainly and it seemed that there was a lot of concern that we were passing driveways through wetland areas.

MC: The exercise we went through was when we tried to site a house on a given lot. It didn't seem to work on many of the lots.

BH: The two issues are the road and the wetlands. I believe that I said and the minutes will show that a loop is a more viable road.

ASTJ: The OSRD process takes the traditional process and turns it around. It says site your houses first where they are environmentally feasible and then once you have done that see how many houses you are getting out of that; not look at just how many houses you can get out based on your economics and then look at the road.

RF: I would love to work with a developer who would like to do an OSRD and I would gladly work with someone willing to do an OSRD.

PVW: The perc sites have been identified and two or three of the perc sites are in that upland area and I need them. It is true the house sites are important, but it is also important to look at what percs. What we have here is rocky and there are a few areas which are percable. I personally feel that if you look at Essex in total, the most important thing we who live in Essex is to consider the land around the river and the second consideration is that there already are open spaces we know of; Bothways Farm and Southern Avenue. The 85 acres is not in the Watershed District, it does not go into the aquifers for the lake. It is actually an area that only the hippies who want to smoke pot go to visit. It just seems that there are more important areas in town that we should focus on.

RB: Does the majority of the Board feel that an Open Space Residential Design is the way to go?

SR: I would say an OSRD approach is better, but informally a cul-de-sac has its drawbacks as well.

ASTJ: There are two things about the OSRD process that we can be incorporating in our thinking now. The first thing is to think about where you are going to place the houses now. It actually allows a greater density.

BH: Peter, you should know that as far as we were seeing it was as a cluster development and then the rest is open space.

RB: You are saying a cluster development with condominium and a lot of open space.

ASTJ: You just said the magic word, condominium.

SR: I would wonder if we shouldn't go to K&P and ask if the cul-de-sac design is a dead end or not. Scottie brought forward the question is this cul-de-sac or a loop road.

RB: I think we are going off here a bit since Peter wanted to ask you about a through road with a gate.

ASTJ: The problem is you would have to plow it all year round.

RB: You can do that.

ASTJ: If you are looking for informal feedback, this (referencing the diagram with the loop road concept on the table) is what I would like to see.

RF: I would too.

BH & MC shook their heads in agreement.

Kim Drake pointed out that the parcel is in the Watershed Protection District.

PVW: I think we have an indication of where we are going. I get a sense of an interest in a loop.

ASTJ: And a cluster development.

RB: Cluster is number one.

MC: Yes.

* **Wind Turbine**

Bill Holton presented a version of the proposed Wind Turbine Bylaw additions and changes. Andrew St. John will offer suggestions to Bill Holton and then by the next meeting to have the bylaw changes.

Regular Business

Meeting Minutes

Meeting Minutes December 5th and December 19th

BH: I make a motion to approve the meeting minutes of December 5th as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously

MC: I make a motion to approve the meeting minutes of December 19th as amended.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Payroll

Annual Budget

Mary-Ellen and Scottie will meet at Town Hall this Friday, January 4 at 1 p.m. to discuss the budget.

Bruce Fortier Correspondence

The Board reviewed the letter written by Mr. Fortier and Scottie stated that whoever from the Board attends the meeting on January 7, 2008 should have read the letter.

John Wise Committee – Overlay District

Michael Cataldo said that in theory he believed in it, but that as it goes along he is feeling that it is more restrictive. Scottie commented that basically it allows for everything but not a commercial use. Kim stated that she believes she would support it, she also points out that the proposal shows all the holes. As someone who has worked with a lot of developers it appears that it looks as if it will be many residential subdivisions. She pointed out why couldn't someone buy Hardy's Hatchery and put up a two hundred-residence subdivision. Rob Fitzgibbon brought forward the idea of a view or scenic restriction bylaw proposal and he said that he knows that not all the neighbors and abutters have been asked to be involved. Scottie said she agreed with both Kim and Rob and also referred to the Guiding Change in Essex booklet that she had copied for the meeting this evening. Bill Holton agreed it isn't a perfect bylaw, but he is for it. Michel Cataldo asked could we go to the Selectmen and say we support this proposal but will allow the North End Committee to present it as a citizens initiative warrant article.


18 Eastern Avenue

Scottie Robinson called Russ Brown, the legal counsel for the applicants, Alexander Westerhoff and Thomas Lang discussed there may be concern regarding the number of board members present at the first public hearing segment for a super majority vote on the special permit application. There were four members at the first meeting, not the required five members.

- MC: Motion to adjourn the meeting at 10:15 p.m.
 - ASTJ: I second the motion.
 - All in favor?
 - Aye.
 - Motion passed unanimously.
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Next meeting is scheduled for January 16, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by: 
Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
January 16, 2008 Meeting Minutes

Meeting called to order at 7:34 p.m. by Scottie Robinson, Chair at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Michael Cataldo (MC), Andrew St. John (ASTJ), Amy Reilly (AR), Rob Fitzgibbon (RF)
Absent: Kim Drake
Secretary: Mary-Ellen L. Feener (MF)
Building Inspector: William Sanborn (BS)

Building Inspector's Report

The Building Inspector did not have any applications to present to the Board. The Building Inspector did stay for the board discussion regarding the properties located at 2 Andrews Street and 160 John Wise Avenue.

2 Andrews Street – Margo Kusulas

Scottie Robinson requested that the owner give the board the copy of the Special Permit Decision that she had and Scottie read it for the record. The special permit was written in 2004 and recorded at the Essex South Registry of Deeds on November 21, 2007. Margo stated that she had spoken to a representative from the Registry of Deeds and she said that they said that it was fine. The Board reviewed 40A Section 9 which states zoning ordinances 'Zoning ordinances or by-laws shall provide that a special permit granted under this section lapse within a specified period of time, not more than two years, which shall not include such time required to pursue or await the determination of an appeal referred to in section seventeen from the grant thereof, if a substantial use thereof has not sooner commenced except for good cause or, in the case of permit for construction, if construction has not begun by such date except for good cause.' The Board stated that Margo Kusulas would need to submit a new application for a special permit. The applicant was also told that a new, updated plan of the property and for the new construction must be presented with the application along with the older, approved plan.

160 John Wise Avenue – Palazolla Brothers

Scottie updated the Planning Board of the last meeting of the Selectmen. The Selectmen urged the Building Inspector to follow through with the terms of the Special Permit-Site Plan Review which was filed with the Town Clerk on December 16, 2005. The Building Inspector did state that to follow through with a cease and desist can be a costly matter and the Selectmen stated that they would approve such measures. Scottie read to the Board members what she sent in a memo (in file) to the Building Inspector regarding infractions of the conditions of the special permit. The memo stated the following items were concerns:

1. Approved gravel drive and parking area has been paved and made an impervious surface, 2. The pavement overreaches the area approved by the Planning board as a gravel lot, and encroaches upon an area determined by Conservation Commission as a buffer, 3. Approved location of storage bins immediately behind the building has been ignored and bins moved to the northeastern edge of the pavement, along the right side of the property, as viewed from John Wise Avenue. This puts them at a high point on the property, and clearly visible. 4. Twelve parking spaces are shown on the approved plan, along the left or southern edge of the approved gravel lot. In fact, there were vehicles and equipment parked throughout the approved area and also at the rear of the building, where storage bin location was approved. During the site visit, there were 6 trucks parked there, behind the building. Subsequent to the visit, more than 12 parked vehicles have been observed. The Special Permit approval clearly states, "5. Creation of the additional on-site parking spaces above the proposed twelve (12) will require Planning Board review." 5. There was a gravel pit, not approved, under excavation, 6. Visiting Planning board members were told a compost heap is also planned. It is to be located at the rear of the lot, beyond the paved area, within the 100-foot buffer zone. Conservation Commission comment should be checked out, 7. The site visit demonstrated the

inadequate nature of the screening in place, although owners pointed out that screening along the eastern (front) and northern (right side) of the lot that were not originally required have been planted. Screening is inadequate along the southern (right side) edge of the property, because of changes in the storage bins location and the number and location of vehicles routinely parked. This, while technically not a violation of the Special Permit, it should be addressed if/when a review of the property's compliance is performed, 8. Along the same line, No. 10 of the Special Permit issued by the Planning board states, "The clearing of existing trees and vegetation should be minimized. A buffer along neighboring residential properties will be required to minimize the impact of commercial operations. The Planning board retains the right to require additional screening on John Wise Avenue. As per Essex Site Plan Review Bylaw 6-6.12.4g."

Site Plan Review/Special Permit Process

The Building Inspector and the Board discussed the need to separate the two terms within the bylaws and the steps that may happen in the future.

12 Scott's Way – Board Discussion

The owner of the property would like to add three additional antennas to the property. Mike Cataldo brought asked when Stuart Pratt added antennas didn't he have to apply for a special permit? Andrew St. John said no, they just needed bring in photos and plans. The Board reviewed the decision for 12 Scott's Way and it was agreed upon that the 2003 decision stated that they would need to apply for an amendment to a special permit. The Building Inspector requested that something was presented to him in writing regarding their decision. The secretary will contact the person who inquired of the process.

Money allocated for Bylaw Review

Scottie updated the Board that the Selectmen at the last meeting stated that they are considering using the money set aside for bylaw review to instead hire a part-time planner. Scottie and the other Board members attending the Selectmen's meeting were surprised at this news.

Lane's Road Review of Decision – Curlew Cove Realty Trust, Judson A. Lane, Trustee

The Board members reviewed the decision and made comments and edits. Bill Holton will make the edits and email it to the Planning Board secretary and she will add the section with the votes of the Board members from the meeting minutes and print on Planning Board letterhead for signatures and filing with the Town Clerk. The Board secretary will contact Jud Lane with the certain criteria the Board requested regarding the registered land be identified, that the unbuildable lot be identified, the waivers are written on the plan and that the typographical error on page two is changed to read 'combined' as per the December 5, 2007 meeting when the application presented the application to the Board prior to the public hearing.

Town Warrant

The Board once again reviewed the time line for what needs to be accomplished. It was decided that the Board would need to have another meeting next week. The Board secretary will inquire with the librarian if the library is available on January 24th, Thursday at 7:30 p.m. and she will post a notice with the Clerk as soon as she finds out if the library is available. Rob volunteered to go over the checklist for notices and work with the Board secretary. Rob will also email the notices for the town warrant which were published last year.

M.G.L. Chapter 40A, Section 9 and Chapter 39, Section 23 D added to Town of Essex Bylaws

Rob Fitzgibbon did not complete this proposed bylaw as he volunteered at the January 2nd meeting.

Wind Turbine

Andrew St. John did not review the Wind Turbine proposed bylaw as he volunteered to do at the January 2nd meeting. Bill Holton discussed the fact that he has had a lot of public comment regarding the kilowatt requirement that was deleted at the last meeting. It was suggested that the Board review this proposed bylaw and bring back suggestions at the next meeting. The Board discussed what would be an appropriate limit for kilowatts. It was discussed that there would not be a kilowatt limit for the residential.

The Board members read a letter written to the Planning Board by Jane Adams. 'To Essex Planning Board Members: As all of you are aware, I am very concerned with the proposed Wind Turbine Article. What started out as a realistic proposal in October has been gradually whittled away. It appears now that there is no limit on the height or output of a future wind turbine. There also is no limit on the number of turbines that can be placed on a parcel of land. The John Wise Area Overlay Article is linked to the planning board wind turbine article by exempting wind turbines from commercial use. Most of the area to the ocean side of Route 133 has a significant stream of steady wind at the 100-foot range of height. Fifteen Tree Hill also has a good source for steady wind. Both of these areas would make good wind farms. It does not make sense to establish a Scenic byway on one hand and then allow unregulated use of both residential and large commercial wind turbines on the other. I urge the planning board to revisit the wind turbine bylaw, and reinstate a height limit, potential output cap and proximity to other turbines. Your thoughtfulness on this matter will be greatly appreciated. Sincerely, Jane Adams.'

DCR Proposed Bylaw

Kim Drake did send the information with Michael Cataldo and Michael did not have information to present to the Board at this time.

Edits to Current Bylaws as suggested by Bruce Fortier

Scottie Robinson presented these proposed bylaws to the Board. The Board members will review these prior to the next meeting. The Board secretary will scan and email this final version to Kim Drake for her review.

Horsley & Witten

Scottie Robinson read the written proposal for the \$4,000 that has already been allocated for the Planning board to use.

MC: Motion to authorize Scottie to sign and approve the proposal.

AR: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

The Board members also each took a copy of the proposal of the Bylaw review from Horsely & Witten.

Regular Business

Meeting Minutes

Meeting Minutes November 28, 2007 and January 2, 2008

BH: I make a motion to approve the meeting minutes of November 28, 2007 as amended.

ASTJ : I second the motion.

All in favor?

Aye.

Motion passed unanimously

MC : I make a motion to approve the meeting minutes of January 2nd as amended.

AR : I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Invoice for Eagle Tribune Publishing - Notices

Changes to Appendix B

The secretary has asked for the assistance from the Board to review forms for Appendix B to be used for applications; including a revised abutters list form with changes as requested by the Assessor's Department, an updated Exhibit I, Application for a Special Permit and a revised Exhibit II which was completed due to the fact the Board recently agreed that the applicant will be responsible for the payment and the publishing of a notice for an application in the local newspaper and this form will serve as a template for the Board to use when the Board receives an application. Rob Fitzgibbon will review and proof read and let Mary-ellen know of any necessary changes.

MC: Motion to adjourn the meeting at 10:08 p.m.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for January 23rd, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:

M. E. Feener
Mary-ellen L. Feener, Secretary

Amy Reilly
Amy Reilly, Clerk

Public Meeting

Town of Essex Planning Board
January 23, 2008

The Meeting was held at the T.O.H.P. Burnham Library and called to order at 7:32 p.m. by
Scottie Robinson, Chair.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Michael Cataldo (MC), Andrew St.
John (ASTJ), Amy Reilly (AR), Rob Fitzgibbon (RF), Kim Drake (KD)
Secretary: Mary-Ellen L. Feener (MF)

Citizens attending: John Guerin and Jane Adams

The Board met to review, edit and finalize the proposed articles for the warrant for the
Town Meeting. Each of the proposed articles was reviewed and a draft notice for
publication was completed.

MC: Motion to adjourn.

ASTJ: I second the motion.

All in favor?

Motion approved unanimously.

Meeting adjourned at 10:20 p.m.

Next meeting is scheduled for February 6, 2008 at the T.O.H.P. Burnham Library at
7:30 p.m.

Presented by: M. E. Feener
Mary-Ellen L. Feener, Secretary

Amy Reilly
Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
February 6, 2008 Meeting Minutes

Meeting called to order at 7:34 p.m. by Scottie Robinson, Chair at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Michael Cataldo (MC), Amy Reilly (AR), Rob Fitzgibbon (RF), Kim Drake (KD)

Absent: Andrew St. John (ASTJ), Building Inspector: William Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

30 Belcher Street, Map 13, Lot 2 – David Cutter. The Board reviewed the application by David Cutter for a wind turbine to generate an electric power which would be one-hundred and twenty feet from tip to blade. The Board discussed the fact that the notice for the public hearing to present the articles for the warrant has been published and the Board actually found the notice in the newspaper which was published on February 5, 2008. The Board decided to discuss the application at the meeting at a later time during the meeting.

Lanes Road – Informal Discussion

Judson and David Lane asked to speak to the Board regarding the decision which was written by the Board following the public hearing for a Definitive Subdivision Plan on January 2, 2008. The Lanes were questioning the part of the decision which stated that the applicants would have to go before the Board if they were to build more than ten dwellings. Scottie Robinson stated that a subdivision plan can be amended. The Board stated it wasn't their intent to stop the applicant from further dividing the lots and said that perhaps they used the wrong terminology. Rob Fitzgibbon brought forward the point that the vote did not state any amendments were adopted to the motion as spoken. The Board reviewed the meeting minutes and many of the Board members did say, as amended. The Board agreed that they would delete the offending sentence from the decision and re-submit it to the Town Clerk. The decision has not been recorded with the Registry of Deeds. Bill Holton will make the changes and give it to the Board secretary.

Jud Lane did reference the Subdivision Rules and Regulation 3.02. The Board stated that the Zoning Bylaws have more weight than the Subdivision Rules and Regulations.

The Board and the Lanes reviewed the changes that they had requested be made on the plan. The waivers need to be typed on the plan and the typographical error on the second page should be corrected for the Board to sign the Mylar plan.

MC: Motion to modify a decision that we submitted to the Town Clerk for a definitive subdivision plan to strike the waiver number three (3) 'Relief from 7.02.4.a2 – allow roadway width of 14 feet in lieu of 16 feet at terminus of concrete apron'; and to delete the sentence, 'Any increase in the number of residences (4), presently on the subdivision will require a request for modification of the approved subdivision plan by the

planning board.'

RF: I second the motion.

All in favor?

Aye.

Motion approved.

Amy Reilly was not present at the public hearing for Lanes Road when the vote was taken and she abstained from voting this evening.

The Board reviewed M.G.L. 41 Section 81W regarding amending a decision. The Board secretary will give the Town Clerk a copy of the M.G.L. with the revised approval document.

Three Proposals for Bylaw Review

Scottie updated the Board about a conversation she had with Brendhan Zubricki, Town Administrator today. She said she misunderstood what was told to her regarding the funds that the Board thought would be allotted to Board for Bylaw Review. She also said that this fund was what the Selectmen were suggesting to be used to hire a Planner. Scottie said that the funds potentially could be allotted for the 2009 budget.

The Board secretary will print the email that Kim sent to the Board's general email address regarding a bill that is going before the Massachusetts's legislature regarding funds available for small towns.

The Board discussed what they would rather have a consultant agency or a planner. The Board agreed that they would rather hire a planner. Rob Fitzgibbon volunteered to write a letter to the Selectmen discussing the Boards decision and vote. The letter will also request time for the Planning Board to meet with the Selectmen.

KD: I move that we formally request the \$25,000 which potentially may be available in fiscal year 2009 to hire a planner to assist the town in town matters.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Strategy for Warrant Article public hearings and town meeting

Kim Jarvis will chair the public hearing on February 27th and the public meeting on March 5th.

The Board discussed in what sequence the articles will be presented.

- Mike Cataldo agreed to present the Flood Plain District article first.
- It was agreed that the article to incorporate MGL into the Bylaws would be presented first. Rob Fitzgibbon will present that article.
- The last article presented will be Wind Turbines presented by Bill Holton and Amy Reilly. For the record, Scottie requested that someone at the meeting to please bring up the question about striking the limiting kilowatt requirement as it has no bearing on visual impact to the community. The Board agreed that a Board member would bring up the question.
- Incorporating other terms and conditions concerning Zoning into the Bylaws will be presented by Rob Fitzgibbon third in sequence and Mike Cataldo will present the Flood Plain article second.

The Board also discussed procedure for when a citizen asks to speak; the secretary will place a tape recorder at the end of a table and when a citizen asks to speak they will come to the end of a table and comment.

Horsely Witten Group

- They have requested to come in to talk to the Board at the next meetings on February 20th and March 19th at 8:10 p.m. Each Board member will think about what definitions they would like to either change or add.
- Amy Reilly will email a list of definitions to Horsley Witten next week.
- Scottie will contact Nick Cracknell of Horsley Witten and let him know that Amy will be sending the definitions.

30 Belcher Street - Continuation of Conversation regarding the application to erect a Wind Turbine

The Board agreed the applicant could proceed by right to apply for a building permit, or if he wants to presume that the proposed bylaws will be passed then he could apply for a special permit as outlined in the proposed warrant article which public hearing notice appeared in the Tuesday, February 5th Gloucester Daily Times.

Regular Business

- Invoice for Postage Machine
- Mail
- Payroll
- Review of Meeting Minutes was postponed to the next public meeting
- Scottie discussed with the Board what fellow Board members thought should be written in this year's annual report of the Planning Board.

12 Scott's Way – Sprint Wireless Broadband Company LLC

The Board reviewed the application to modify a special permit which was given and date stamped by the town clerk on Tuesday, February 5, 2008. The Board reviewed the M.G.L. regarding public hearing applications. The Board has 65 days to set a public hearing date and 90 days to write the decision. Amy Reilly will be the lead Board member for this application. The Board completed the public hearing notice for publication. The secretary will check with the school as to which dates would be available for a public meeting and send the final notice to the applicant with the dates for them to place with the newspaper. The applicant will also be sending in an additional check for \$150.00 for the balance of the fee.

MC: Motion to adjourn the meeting at 10:08 p.m.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for February 20, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:

M. E. Feener
Mary-Ellen L. Feener, Secretary

Amy Reilly
Amy Reilly, Clerk

Meeting Minutes - Public Meeting

Town of Essex Planning Board

February 20, 2008

Meeting called to order at 7: p.m. by Scottie Robinson, Chair at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Bill Holton (BH), Amy Reilly (AR), Kim Drake (KD),
Absentees: Andrew St. John, Rob Fitzgibbon, Michael Cataldo, Bill Sanborn; Building Inspector
Secretary: Mary-Ellen L. Feener

Building Inspector's Report

There were no building permit applications to present to the Planning Board. Bill Sanborn was not at Town Hall for office hours this evening. Bill Holton acting as an assistant Building Inspector did work during the regular business hours of 5 – 7 p.m. for the Building Inspector.

Horsley and Witten – Nick Cracknell

A draft 18 of the OSRD was reviewed. He discussed 6-14.11 Section 1 items a – e, **Increases in Permissible Density**. The Board and Nick discussed the possibility of making the OSRD mandatory and the Board responded that a mandatory OSRD would be a concern at a town meeting. Also discussed was the 5-acre +/- information in 6-14.02 and it was suggested that it be removed. Also noted was 6-14.06 Section 2, **Procedures**, 'Site Plan review would be shall follow the rules and regulations as set forth by Section 6-6.12 of the Zoning Bylaw and Roadway Design and Construction Standards of the Rules and Regulations Relative to Subdivision Control.' Section 6-14.07, **Yield Plan** is an addition to the OSRD. Each Board member will be emailed a copy of the draft OSRD with font n different colors which will show which will show the changes/suggestions.

M.G.L. 40R was discussed and the Board secretary will send copies via the Internet to each of the Board members (the information was found by doing a search on the Massachusetts/mass.gov web site.)

The Board discussed **Site Plan Review** which is either approved or approved with conditions. Then the applicant goes to apply for a building permit. If the applicant does not like the decision of the Board then they will have to appeal to a court. Performance guarantees or bonds may be required for a Site Plan Review. Nick has a model for a new Site Plan Review bylaw which he will share with the Board.

Definitions – the items on the tentative list submitted by the Planning Board to Nick were: multi-family, mixed use, building height, lot front-year-rear-side, industrial/commercial class A & B and family. The board discussed Mixed Use and the fact that there may a few different interpretations of mixed use and should there be one definition or more than one which would capture more than one. Nick also suggested illustrations for height and he does have one that the Board could use. Regarding Height it was discussed perhaps using the average grade of all four sides of the dwelling.

Each Board member should review all that is sent to them and give comments to the Chair, Scottie. Emailed comments may be sent to the general Planning Board email address due to the fact Scottie will be on vacation for the next two weeks and the secretary will make sure Scottie is sent the omments via regular mail.

Regular Business

Meeting Minutes

BH: I make a motion to approve the meeting minutes of January 16, 2008 as amended.

SR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

AR: I make a motion to approve the meeting minutes of January 23, 2008 as amended.

KD: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

KD: I make a motion to approve the meeting minutes of February 6, 2008 as amended.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Payroll

AR: Motion to adjourn the meeting at 10 p.m.

KD: I second the motion.

All in favor?

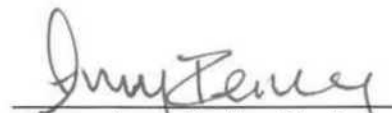
Aye.

Motion passed unanimously.

Next meeting is scheduled for February 27, 2008 at the Essex Elementary School at 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
February 27, 2008

Meeting called to order at 7:37 p.m. by Kimberly Drake, Acting Chair and was held at the Essex Elementary School, 12 Story Street, Essex.

Attendees: Bill Holton, Amy Reilly, Kim Drake, Andrew St. John, Rob Fitzgibbon, Michael Cataldo

Absent: Scottie Robinson

Secretary: Mary-Ellen L. Feener

At the time the meeting was opened fifteen citizens were attending the meeting.

Kim Drake: It is now 7:37 and I am Kim Drake. I am going to Chair this meeting of the Essex Planning Board. The purpose of this meeting is to have a public hearing to discuss the proposed Articles of the Warrant for the Town Meeting. One thing I would like to make clear is that that we are not going to discuss the proposed agricultural/residential district on John Wise Avenue, that is scheduled for next the meeting on Wednesday, March 5th. If anyone here is planning on discussing that I just want to let you know it will not be discussed tonight.

Kim Drake addressed the citizens present at the meeting regarding how each article the Board would be presented and that the Board would then request that if a citizen would like to address the Board. If a citizen would like to speak about a proposed article they should come up to where the second tape recorder is located and state their name and address. It was also requested that the citizen stay on the subject on hand and to keep their comments down to fifteen minutes will be granted per person. If time allows and everyone wanting to speak has had an opportunity then someone who has already spoken may speak again.

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MGL Chapter 39, Section 23D

Rob Fitzgibbon addressed the citizens regarding the proposed article regarding MGL Chapter 39, Section 23D regarding adjudicatory hearings; attendance by municipal board, committee and commission members; voting and disqualification. In 2006 the Massachusetts Legislature adopted this law. In September 2006, Town Counsel, Kopelman and Paige sent a memo to the Planning Board which Rob paraphrased, 'Essentially if the town votes to adopt this measure (MGL Chapter 29, Section 23D) it either needs to be adopted for all boards or a specific board, you have to do one flavor or the other. Secondly, it can only be used when a Board member is disqualified due to that Board members absence. If they were sick for that one public hearing then it would apply. Third, it can only be used for one missed session; if they miss two sessions they are out. Or it is only available if there is an audio or written transcript.'

Kim Drake asked if there were any Board discussion. No members spoke. The topic was then open to public discussion.

John Guerin, Belcher Street asked the Board if there was a hearing and there was only one meeting for that hearing would the Board member be able to vote or is the proposed only to a public hearing that happened over the time span of multiple meetings. The Board stated that they would research that question and find out the answer.

Mark Lynch, 16R County Road and Board of Selectmen addressed the public and stated that it was going to go to Town Meeting for all the Boards and that it was the Selectmen's interpretation that it would be for hearings that were held on a single meeting.

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Replacing the existing Town of Essex Bylaw 6-12 Flood Plain District in its entirety

Michael Cataldo addressed the public regarding the proposed article for the warrant regarding replacing the existing Town of Essex Bylaw 6-12 Flood Plain District in its entirety. The initiative was started when the Town of Essex received a letter from the Department of Conservation and Resources about the existing bylaw regarding the floodplain and asked that the Town update the bylaw. The Board reviewed what other towns have as current

bylaws regarding floodplains and reviewed the Town of Essex current bylaw regarding floodplains and updated the bylaw. The first section is almost entirely still what is the current existing Bylaw 6-12.1 regarding the floodplain district. The Board added a second section which talks about development in the district and the standards. The State also requested that we add a section regarding notification when there is intent to do alterations within the flood district. The Board also included a section regarding for review and approval based on wording supplied to the Board by the State. Michael stated that adopting these changes would allow the Town to continue to receive the benefits of the Federal Flood Insurance.

Kim Drake asked if there were any Board discussion.

Rob Fitzgibbon: Michael could you tell the public by adopting this what is the benefit?

Michael Cataldo: The benefit of this is that the residences in the Flood Plain will still be able to receive flood insurance if they are damage due to flood, as long as they are built to code as per building codes.

Rob Fitzgibbon: The verbiage is based on what the State has given us?

Michael Cataldo: Yes, the verbiage is what the State provided and for the final section we tried to incorporate what the surrounding towns had and what they were currently using along with what the State recommended.

Andrew St. John: Is there a map indicating where the Flood Plain District is located?

Michael Cataldo: There is a map (picks up the map on the table). One of the things the State asked us to do is that the map referenced in our Bylaw was from July 17, 1986 they asked us to include information that those maps had been revised on July 23, 1998 and July 2, 1992 and so we added that verbiage.

Kim Drake: This came to us through the Town. The DCR had a discussion and a drive through with the Building Inspector making it clear to him that these items really needed to be discussed due to this program and that we had to upgrade what we had in our bylaws. It then went to the Board of Selectmen who then provided it to us as something we should be considering. We didn't just grab this out of the air and thought, 'hey, this is a good idea', this was put forth to us as something we should seriously consider which was put forth by the town. One thing that it does state in there is that we have to make available to anyone who comes to Town Hall is that the Flood Maps and the Insurance Study are available. We have had those available in our records and they are posted on the second floor.

The discussion was then open to public discussion.

John Guerin, Belcher Street: Just a couple of things, I have done some work up on the beach in Newbury and rebuilding houses up there. This sometimes falls in the face of rebuilding efforts. For instance if someone wants to do alterations to a certain degree to their home by adding on or changing it in anyway, this now requires that not only requires them to either raise their basement or actually remove the basement. They may be required to go on stilts and get rid of your basements so there isn't anything to wash away or they (DEP) has a big problem with materials from a down house running for instance into another house. We have the Causeway and we have Conomo Point. We have a lot of places that are within the flood area. Any structures on the Causeway would require this approval.

Michael Cataldo: And they do now.

John Guerin: But also the driveways; if they go under water on occasional flooding. The end of Apple Street has been under water, the Causeway has been under water, Conomo Point Road has been under water, Island Road has been under water. There are a lot of places here that would now require this that don't necessarily require this without this (referring to proposed bylaw change). Before we jump right on this saying it is a great idea and you think it is a great idea, I just think then go for it; and it will take some review. I just want to make sure that people understand this would affect them either adversely or more restrictively in some cases.

Kim Drake: As you mentioned for reconstruction or new construction is could be more restrictive, but for something existing it is under different regulations.

Ed Perkins: When I was on the Con. Com. which was several years ago and if it hasn't changed since it was adopted if it is anything less than elevation ten and if it is more than fifty percent of the assessed value on a reconstruction or an addition then you have to fully conform. That may have changed because it has been four or five years since I dealt with this, but that is how it was.

Kim Drake: When you were on the Conservation Commission were you ever approached with this?

Ed Perkins: Well, the town had never really adopted it but we in our Order of Conditions we tried to make people conformed.

Kim Drake: One thing that should be noted is that it does refer to the wetlands bylaw and the requirements by other boards, the Order of Conditions, the building codes and as Mike had said the wording came right from DCR and is similar to what other adjacent communities currently have in place.

Ed Perkins: The time we got involved in it which really enlightened us was when the Ship Ahoy burned we tried to get them to do what the Chinese people (restaurant owners) did do and we were not able to do that because they weren't doing fifty percent of the assessed value was; so they were able to rebuild it as it was.

Ed Neal, 15 Western Avenue: I have some concern with some of the broad language on page 3, in particular section E (he read the section for the public) and he suggested that it should state per the building code. He also stated G that is pretty broad and he asked who would define what is offensive or detrimental. In section H where it requires that a professional registered engineer shall stamp the plans and certify that no increase in flood levels due to the hundred-year flood. Obviously, whatever the displacement of the building is, unless it is on stilts, is going to raise that level to some degree. It may be microscopic but if I was a registered engineer I would not be stamping anything that says we would not be affecting that, depending on the size of the building obviously, but that would not be a true statement and any encroachments would not interfere with the flood plain; I don't have a problem with that but there is some broad language that should be cleaned up.

Kim Drake: Regarding the Hundred Year flood, DEP usually requires that compensatory storage be replaced whenever someone builds within the hundred-year plain.

Ed Neal: That is when you are going to build a house.

Kim Drake: That is what you consider a build. Putting crush stone could be considered. Once again, this is outside of the Planning Board jurisdiction, this is more of a Conservation issue, but something as general as putting down crushed stone could be a build.

Kim Drake noted that the items on page three were not introduced by DCR but the Board members found them in the bylaws of other Massachusetts cities and towns but that the rest of the language was given by DCR.

Kim Drake asked if there were any other questions or comments regarding flood plains. No one commented.

Kim Drake reviewed the comments sent to the Board by Town Counsel, Kopelman and Paige.

'Article 16: Floodplain District: The proposed text, which would replace the current provisions from the Floodplain District, is based on "model" zoning bylaw provisions furnished by the Department of Conservation and Recreation that are, as I understand, recommended by the National Flood Insurance Program. Several of these provisions are, in my opinion, inappropriate for inclusion in a zoning bylaw, whether because they exceed the scope of permissible zoning regulations in this state or because they refer to the requirements of other statutes and regulations that are enforced by other agencies or levels of government. Further, some of the proposed provisions would be inconsistent with other provisions of the current Town Zoning By-Laws. My recommendation would be to make a minimal revision to the current Section 6-12 by updating the reference to the FIRM maps so as to make the reference current, but to make no other changes at this time, pending clarification from DCR as to why these revisions are necessary to ensure the Town's eligibility for the National Flood Insurance Program. If you decide to proceed with Article 16 in its current form, I have the following comments on it: Section 6-12.1: The second sentence in the current Section 6-12 should be retained, to make clear that uses allowed in the underlying zoning districts continue to be allowed, subject to the additional regulations should be deleted as these requirements are enforced separately and not through local zoning bylaws. Section 6-12.2: In subsection (a), the article adds an additional sentence to the current provisions. It is unclear what this adds to the provisions in the rest of subsection (a): does this require an applicant to generate base flood elevation data? As "subdivision proposals" would be considered by the Planning Board under its subdivision regulations and not by the Building Inspector under the Zoning By-Law until permits are sought for construction, it is unclear how this provision would be carried out. Subsection (c) imposes a provision that would seem best enforced through the Wetlands Protection Act: how will the building inspector determine whether (1) whether sand dunes are present, (2) whether they will be altered, and (3) whether the alteration will "increase potential flood damage"? Subsection (e) refers to the regulation of subdivisions, which is the subject matter of the Subdivision Control Law and the Planning Board's Rules and Regulations, not the Zoning By-Laws, in my opinion. Section 6-12.3: The terms "riverine situation" and "watercourse alteration" are not defined. Further this provision refers to the "submission of the application to the

Planning Board” without indication what the “application” is for. If this provision is to be included at all, it probably should be within the provision elsewhere in the By-Law for site plan review. I note, further, that the Wetlands Protection Act would regulate the activities referred to here. Section 6-12.4: Given that this section does not refer to any special permit requirement, the only “permit” needed is a building permit from the Building Inspector. His input should be requested as to how readily enforceable these provision are, within the review process for building permits.’

Articles 21 A, B, C, D

Kim Drake: The next items are some general fixes, language clarifications that type of thing that we have looked through in order to clarify some areas of the bylaw because there are some sections that can be ambiguous. Rob Fitzgibbon will be the Board member presented these articles.

Rob Fitzgibbon: This is the administrative potpourri section of the meeting tonight. The first article is about more than one principal structure on a lot. The proposal lists the existing verbiage on the top of this page and the recommended wording is on the bottom. I will tell you what are line of thinking is; the background is that the genesis of this proposal came from a member of the public and a loop hole that you guys should close it. Back in 1969, 1970, the zoning regulations only allowed one principal structure on a lot, or at least that is what we have been told. The law forced owners to subdivide their property when they for example, wanted to build a cottage for their son or grandson. This statute 6-6.5 was originally adopted in 1972 and it was modified in 1977 and 1983. It addressed the situation that when you have a large piece of property and you want to build a home for your kids. The idea is that you can put more than one principal structure on a lot. However, since then developers have recognized that this is a significant loophole in our Bylaws and it allowed them to skirt the Subdivision Rules and Regulations. So, what this proposed bylaw does is potentially close the loop. It does it by essentially five things. One, it sets a minimum size of the original lot, which is 70,000 square feet. Second, it sets what could be called an ‘age criteria’ from when the first structure was built (to the time of the building of the second structure), which is five years. There was a structure on the lot for five years and then it has been five years and you could build a second one. Then it gets very specific about the requirements and into detail about the third structure. Then what it does is state it has to have proof on paper as to where the other residences are located and where the access is. This closes the loophole.

Kim Drake: I would like to mention that we received review of all of these things from town counsel and that they did make a comment on this article.

Kim Drake read the comments from Town Counsel, Kopelman and Paige

‘This change to Section 6-5.5 would seem to have the effect of allowing multiple structures on a lot only when the structures are residential. I.e. the current provision allows multiple structures on a lot, regardless of the type of use, whereas the revision refers only to residential structures. Is this change intended? As written, the new provision allows the second and third residential structure on a lot be constructed at five-year increments, and would pertain to lots that are currently undeveloped, as well as those on which a structure is currently located, in my opinion. I.e. one structure could be built in 2008, a second structure in 2013 and a third in 2018 (provided of course, that the other stated requirements are met.) Is that what is intended by the proposed provision? I caution the Town that zoning bylaw provisions are dependent of the existence of a structure at a particular point in time have sometimes been disapproved by the Office of the Attorney General as being inconsistent with the so-called “uniformity” requirement of G.L.40 A Section 4 (which requires that zoning provisions “shall be uniform within the [zoning] district for each class or kind of structures or uses permitted”.’

Ashley Osborne, 2 Prospect Street: I am just curious. My first thought is the five-year limitation. I am not sure why five years when buildings have been up for a hundred years and my second thought is does this include, when you are talking residential, when you are talking about the second structure or the third structure, does that include barns, garages or storage sheds to go along with the residential.

Andrew St. John: Taking your first question first; the five year limitation is to specifically to make sure that this provision of the bylaw is applied to those cases in which it was intended to be applied. Those being residents of town, who have been residents of town for a while; who wish to use their land to increase the possibility that they may have affordable housing for their children and others. There is no way we can control who owns various pieces of property. For instance, if an individual under the provisions of this wanted to build a second house on their

property of adequate size and then sell that house to disinterested third party, if you will, we can't stop that. What we can do is to slow down a trend which we have seen that is of a developer not subdividing the land but of building three units on one piece of land. The second question regarding the structure, it is interesting because it does say residential and it does not address accessory structures. We have traditionally defined those as buildings with a kitchen and a bathroom.

Ashley Osborne: If someone is building three homes on their lot, does that mean they can't build a garage.

Michael Cataldo: If you read the wording in the bylaw it is specifically talking about residential property. So, accessory buildings; garages; whatever are not included because we are specifically calling residential use and only once refer to them as structures.

Rob Fitzgibbon: Those accessory buildings and accessory use are in our definitions in Bylaws 6-3, 6-3.3 and 6-3.4.

Peter Van Wyck, 11 Turtleback Road: I have a couple of things that we all know is fact. Essex is in area about 15 square miles and we all know that of that fifteen square miles three quarters of it is either under water or wetlands which can not be developed. We are only talking about a relatively small portion of the Town of Essex which really can support being developed. Now, if you look at the one-quarter area, the main factor is where you can perc. Now, I probably know more about perc areas more than anyone in Essex. You find these areas isolated; little pockets here, there, and here; not many. It is true that I have made use of this more than one property per lot. In this area there was definitely a limitation of what you can do and what you can't do and that is definitely about where the percs were. Now when this Board, when before this article came out I wish I had the opportunity to speak to the Board before you looked at this article. If I were where you are, I might have said, 'well, what about two houses instead of three houses.' That is probably what I would have done. It would have allowed the few perc area. The DEP would actually prefer shared septic and there is a purpose of a shared septic system and it is one we should make use of. The purpose of a shared septic system is obviously that you want to build more than one house. Now obviously I am running counter to what this Board feels should be done. I have always believed that there have been areas in Essex that we should make a lot of effort preserve. One area is the river; it is so pristine and if anyone has been up to New Hampshire you can see how horribly an area can be cramped up. We have a jewel here and another area we should considered environmentally are the areas on John Wise Avenue or the areas going up to Bothways Farms. These open areas are part of our visual image. I have never worked in an area that would hurt our visual image. I tended to deal with areas that are wooded and are actually the only area in Essex that we can develop in a meaningful way. My question is do you want to you is, what do you want to do? Do you want to save Essex, do you want to piecemeal it; I think that is the wrong approach. I think you should prioritize where the important area is. That small lot of land that is woodlands is some of the area that I have. That land is now being used by the Essex Conservation, and by druggies and hippies smoking pot out there. We have to realize that when you do these things out there; you have to a corollary factor that might affect what might be done.

Kim Drake: I think you are broadening the discussion here a bit beyond what we are discussing here right now in broader terms and we do have...

Peter Van Wyck: I think I said what I wanted to say. I think it is a mistake what you are doing and I am suggesting if you put some thought to it you might reduce to two houses instead of three.

Kim Drake: Thank you. We will take your comments under consideration. Any other comments?

Jim Leweki, 35 Belcher Street: Is there any intent or desire in this to limit the number of properties built to be a rental?

Michael Cataldo: As Andrew said it was not our intent to restrict the ownership of the houses. Whether it is rental property, or you sell it to your cousin or somebody else. It is more about the process of the building of the houses.

Jim Leweki: So, if I want to build three houses strictly to rent, then I can?

Michael Cataldo: Yes.

Andrew St. John: We are tweaking the existing bylaw. For example, the properties could be condominium. What we are doing is taking an existing piece of the bylaw. (Tape could not be heard for a few minutes due to the tape not recording properly). Possibilities for increased area or increased density, which I believe the previous speaker, was alluding to. What we are doing is trying to tweak the existing bylaw so that it responds more to the fashion of what the original was intended and more to what we have understood the desires of the majority of the townspeople are.

Rob Fitzgibbon: The articles that are being presented tonight are not written in stone. The reason we are having the public hearing tonight is because we want to get your feedback and then we will edit the articles accordingly

and revise them and get them approved by K&P and the Selectmen and then present them at the Town Meeting. This is a very important part of the process and nothing is written in stone; we can say five years, fifty years, 2.5 years; whatever. The other thing I want to mention is that regarding this proposed article it is still using the existing land use regulations. It does not get into subdivision stuff, Open Space Residential Design... One of the reasons this issue has come up is that you are increasing traffic or density. One of the things I think that has happened is that citizens who are concerned about the rapid growth in Essex and this have approached the Board is closing the loophole. The original intent was to be able to build a family compound.

Gil B. Guerin, Belcher Street (soon to be Island Road): Has this become a problem? In the six years I was on the Board it did not appear to be a problem.

Rob Fitzgibbon: We have found that it has become a way for developers to build three dwellings on a lot.

Ed Neal, Western Avenue: I would urge the Board to hold off on this for a while. This not only would affect me personally. This would have an affect on me and my property rights. That withstanding. There has been a lot of talk about the community and the community preservation. There are a lot of people who come to Essex to stay here. The character of Essex is that the majority of our house lots are non-conforming. My belief is that reason the stringent requirements were put in is because the time they were acted on the town was also trying to deal with the septic issue. By adopting forty thousand square foot lots on a subdivision road they were trying to ensure that the town would be adequate facilities possible to serve the septic needs. The rest of the community is that there are small lots, close together and this is not a small tweaking of the bylaw. This is a change of philosophy. For the older existing lots you are making it more difficult for someone to take advantage of this for his child. The driveway and access requirements that are not in any of the other residential things seem to be off. I see common driveways being approved by the Planning board that are right on the property line. I know of driveways right now that are on the property line but would be acceptable in the other ways. The change of permissible use to residence only would mean that when the Republicans take over the State of Massachusetts and Mike (Cataldo) is out of a job he will not be able to build his consulting office on his property because it would be considered a business. The change of permissible use to residence.

Per the suggestion of Ed Neal the Board agreed that they would discuss the fact that in the proposed article the wording which could potentially be excluding other uses.

Dick Carter, Apple Street: You need a 150-foot (frontage) for a single family for the next lot. If you look at your math; on both Chapters 6-6.2 and 6-6.3 the frontage is part of them, right?

Andrew St. John: Lot frontage is not part of those two sections.

Dick Carter, Apple Street: How many new buildings were built last year (in Essex)?

Bill Holton: I don't know, but we would find out in the Building Inspector's Annual Report. If you are asking how many could be built for example, one of the previous speakers came to us with a plan for thirty houses on ten lots.

Dick Carter, Apple Street: According to the Town Report there were about twelve new houses last year.

Rob Fitzgibbon: The first thing I would like to point out is that it is my understanding that the intent of the second paragraph was to regulate driveways on a property line. We have had complaints about that.

John Guerin, Martin Street: I look at this when you try to enforce it, some definition issues. When does the use start?

Michael Cataldo: When the occupancy permit is given.

John Guerin: Is that a permanent certificate or a temporary?

Michael Cataldo: Theoretically when someone completes the house they are given a permanent one, right Dick?

John Guerin: I know that some people who have had a temporary one for a long time because they didn't put the deck on. So I would clarify that.

The Board agreed to review this suggestion.

John Guerin also suggested that the driveway requirements be for new construction. He also pointed out that the eight feet contradicts what exists in the bylaws as a twelve-foot requirement. Bylaw 6-5.14B.

Peter Van Wyck, Il Turtleback Road: Yes, I was the one with the plans for the thirty houses. I would like to point out that it is on ninety acres and that you should put things back into perspective and four or five of the lots

would have had more than one house on it and overall it is a very low density area. There is limited perc areas. I would like to leave off with I would suggest two houses not three.

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Rob Fitzgibbon reviewed the bylaw regarding Chapter 6-3.38 Definitions: Structure.

**Rob Fitzgibbon:** This is pretty cut and dry. What we are trying to do is bring our bylaw into more compliance with the building code. Rob Fitzgibbon read the proposed bylaw change for the public.

*Kim Drake asked if there were comments from the Board. No comments.*

*Kim Drake asked if there were any comments from the public. No comments.*

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Rob Fitzgibbon reviewed and presented the proposed article regarding Bylaw 6-8.3.a Board of Appeals.

Kim Drake asked if there were comments from the Board. No comments.

Ed Perkins, Board of Selectmen: I have the State General Law Chapter 40 A, Section 8 on this and I am waiting for a written response from our attorney. The reason this should have the Planning board in this section is because if a person applies for a site plan review or a special permit process and they are denied at the Planning Board level is the issue may never go to the Building Inspector and then to the Board of Appeals. What they would have to do if they are denied is to apply directly to the Superior Court and that is very expensive and that is why the State General Law has the words Planning Committee in there. I think it should be kept in there (the bylaws). Hopefully, before town meeting I will have something in writing from the Attorney General.

The Board stated that they would take it under advisement.

Edward Neil, Western Avenue: I don't want to argue the legal points. Historically, the Board of Appeals is appointed by the Selectmen and in many cases these people have had a lot of experience with the boards in town and the purpose of having these people appointed by the Selectmen is that the people who have the final answer on questions regarding property rights that the people who have the final word have the most experience. If ten years ago a permit was given under site plan review, then if a similar application comes before the board this year then the Planning Board and unless the town changed the zoning bylaw the same permit should be given and the Planning Board should approve it. If it is not, then that applicants constitutional rights have been violated. That is where the Board of Appeals comes in. Their knowledge, experience and knowledge of the town would help protect people's constitutional rights. I have done some research on this recently, the reason the Town Counsel says that this is legal is because the Building Inspector is the person you would appeal to. What I am suggestion is what is the approach for an applicant. The first thing you would do is go to the Building Inspector. The Building Inspector brings this to the Planning board and then today the language says the Planning Board is to approve that site plan. If the Planning Board can say no then without the review of the Board of Appeals that applicant is going to think he was turned down and he has to go to court and that's not really the legal case. The legal case is you guys say no and then he goes to the Building Inspector and then he would have to deny it and then he goes to the Appeals Board. I object to this change philosophically because what I see happening is basically this is to lead people to believe that they don't have access to the Appeals Board and they should and they do. That's the problem I have with this and it appears that there has been some dispute between you folks and the Appeals Board making some decisions and now there is some animosity. What I am suggesting to you is that you cannot do this legally and unaware applicants may be loosing their rights. Let's go find out what the real rules and the real laws are and I can tell you for a fact that when I was on the Selectmen prior, Chairman of the Board and Dick Carter was the Building Inspector, people would come to me regularly and say, "Look at what this guy is doing, I can't believe this was issued and this and that comment"... and I would ask him, "Dick what did you do?" and he would say, "Eddie, let's look at the bylaws and the building code and he would show me that he had exactly followed the rules and at that point and time the bylaw was not in place that said that the Building Inspector had to bring site plans in front of the Planning Board and that was a creation of all the people who turned up and didn't read the bylaw book and

were mad at Dick for issuing a permit that were perfectly legal. So, we put in place the situation that the people had to bring their site plans to the Planning Board, even though, perfectly legally if the guy has the right to build it then the Building Inspector has the right to issue the permit without the guy ever having to come before the Planning Board but the Town Meeting went along and said, 'o.k. you have to now go in front of the Planning Board.'

Kim Drake: O.k. I guess the one thing I would like to mention is that none of these came about is because the Planning Board had a 'beef' with other boards. It really is that as we go through our day-to-day jobs here we find that some things are interpreted differently at different times so we are really just trying to clarify things here. By bringing these things to our attention it gives us another avenue to look at what we are trying to accomplish and decide if this is the means that we want do it or how we want to do it. We are really not doing this to undo something, just trying to clarify ambiguities. Any other comments from the public?

Mark Lynch, 16R County Road: I would just like to make one comment. I do propose to have any handle on these bylaws and the zoning bylaw drives me crazy but one thing that has become clear is that the Building Inspector is the Enforcement Agent and so I am not sure how I feel about this proposed bylaw, but one thing is that the Building Inspector needs to be the Enforcement Officer and if it is appealed and then it would be to the appropriate body.

Rob Fitzgibbon: One thing I would like to point out is what concerns me is that there seems to be some kind of unwritten temporal or age requirement to belong to the Board of Appeals...

Kim Drake: Mr. Fitzgibbon you are getting off the subject. We have a lot of things to cover so let's not get off of our subject. Anybody else?

No Comments.

Kim Drake: Let's discuss our next item.

Section C

Rob Fitzgibbon presented the proposed bylaw article Section C, 'By deleting the word "approved" and instead inserting the word "reviewed" in Chapter 6-7.2 a. Building Permit. Required.'

Rob Fitzgibbon: The reason for that is because in Chapter 6; not every application brought forward by that requires the planning Board approval therefore the bylaw should not say approval. Basically the current language places an unnecessary burden on the applicant, the Inspector and the Board and by changing that word to reviewed I think it would be easier for everyone concerned.

Kim Drake: Any comments from the Board?

No response.

Kim Drake: Any comments or questions from the public relative to this?

Ed Neal, Western Avenue: My only comment is that if the Building Inspector has the authority to issue the permit then it shouldn't even say that the Planning Board even reviewed them.

Kim Drake: The Planning Board in the bylaw reviews the siting of buildings. We are not trying to change the bylaw as it now functions. We don't necessarily approve them but we do review them. We don't review an application for a wood stove but if something is attached to the land then we would review it. We are just a check. There is a checklist the Building Inspector has with an application. It is checked when the Board of Health looks at an application, when the Conservation (Commission) looks at it and when we look at it. We just want to make sure that it is clear to people that it there is not an approval aspect of our review.

Bill Holton: We are no different than any of the other Boards; we have a review on an application.

Kim Drake: We are not intending on changing the process nor are we suggesting that we change any of the steps that already occur. What we are saying is that we actually don't approve anything in this case. The bylaw states we approve it but we really don't. We are not asking the Building Inspector to do anything differently than what he already does. If there is a plan we should review then we will review it. If he feels there is something that we don't have any jurisdiction over than he will not bring it to us and that same thing will occur in the future.

Ed Neal, Western Avenue: And then you sign off on it?

Andrew St. John: He's got a stamp that shows when it goes to the other Boards.

Kim Drake: The only time we do act on those particular applications is when there is a non-conforming use or lot and in that case we do have an action we take. This is a matter of semantics.

Ed Neal, Western Avenue brought forward the point that the wording would state site plan review and to make sure it was not confused with the Site Plan Review Bylaw.

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Section D

Rob Fitzgibbon presented Section D, 'by deleting severability clauses of Site Plan Review. Special Permits. 6-6.12.5 Severability and Water Resource Protection District, 6-13.3d. Servability.

Rob Fitzgibbon: This talks about basically we have the above paragraph and our intent here is that we have the same language in two places and in an effort to reduce redundancy we want to add a section to 6-2; in essence to add a 6-2.a.

Kim Drake asked if there were any Board discussion. No members spoke.

Kim Drake made a comment regarding the spelling of severability.

The topic was then open to public discussion. No comments from the citizens.

Kim Drake read the comments from Town Counsel, Kopelman and Paige:

"(A) I recommended changing the word "Activities" to "Structures". The change proposed by this part of Article 21 would seem to have the effect of exempting certain small structures, such as tool sheds or storage buildings, from the setback requirements that pertain to "accessory structures". Is that what is intended by this change? (B) As I have previously commented in discussions with the Town Administrator, this change conforms to the text of G.L. c 40A Section 8. I have no comments on subsections (C) and (D) of this article."

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Wind Turbine Article for the Warrant

Bill Holton: Everyone, stand up, stretch. This is Wind Turbine Two. Many of you here were at the Town Meeting last year and if you were you were witness to what I would classify as for the Planning Board, not a good night. We attempted to address wind turbines at that time and it was a cobbled together, ill conceived and it was a poorly executed task. We have been spending on a new version a number of hours put in by the Board; Amy, Andrew, myself and from Jane (Adams) and John (Guerin); (citizens). The wording that you see here comes from a number of different sources. The first thing we did was ask, 'what are other towns doing?' The answer was, 'not much'. Out of Lynn, Ipswich, Gloucester and Rockport, only Rockport has a pretty good wind turbine bylaw. If you were to look at the other towns of Essex County for Wind Turbine Bylaws, it is pretty slim pickings. So we decided the best way to address it was to go to the State and we also go information from the Massachusetts Technology Cooperative, the Massachusetts Executive Office of Energy and Environmental Affairs, the University of Massachusetts Renewable Energy Research Lab and I think most importantly we obtain information from the Cape Cod Commission which took into account the immense growth in the installation of wind turbines in that area; Provincetown, Easton, Brewster, Orleans, Falmouth; all the towns which make up the Cape Cod Commission. If you have been following it you know what is going on down there. So, that is kind of a thumbnail sketch of how we arrived here. There are supplemental bylaws to go along with the main wind turbine bylaw. There is a separate one for height, definitions and the other thing I would like to point out is since this has come out on print; some things need to be redefined and one of them is noise. I have spent countless hours on this noise issue and this is just one study regarding noise (holding documents in hand). The Federal limit is 50 DBA and that is pretty loud. (50 decibels is equivalent to standing next to a window area conditioner.) The State has set a limit and they said that the suggestion would be 10 decibels above ambient. We show 50 (DBA) in here (in proposed article). Everyone we talked to about the wind turbines said that noise might be one of the biggest factors to deal with in regards to wind turbine. So with that I will open it up to questions.

Kim Drake asked if there were any Board discussion.

Rob Fitzgibbon: I don't have any questions, but observations. What I wanted to point out to everyone is that in Section 6.3 we have in our definition section is that we are adding new verbiage. (Rob reviewed each new

definition.) This is one aspect of the proposal you should pay attention to. Another thing I wanted to point out is that as my colleague Mr. Holton pointed out is that a lot of the other cities and towns do not have robust wind turbine bylaws. I particularly wanted to point out is the with the WECS is that we allow the units that are mounted to a building are allowed by right. Which is actually kind of interesting and exciting and this was prompted in part from comments by the public. There are parts that can be done by right and some which need to be done by special permit. Bill or Amy, perhaps you would like to talk a little more about that?

Bill Holton: If I had one on my house and it could emit 50 decibels I would take it down. The sound figures again are going to have to be addressed. The sound figure for the house-mounted units is too high and has to be changed. The only other thing I can say about this is the companies we have been in touch with may be able to start with a 1 kilowatt and then go with a 7, 8, or 9 (kilowatt) and the vertical aspect is that they don't rotate with two blades; it is more a cylindrical operation.

Andrew St. John: Bill can you clarify a few things in terms of the numbering. The first one... (Andrew proceeded to review the numbering system.) Thank you. The only other question is, are there or should there be, what happens for a WEC System that is over 60KW or at the bottom end is there any consideration in size of the house mounted units.

Bill Holton: The best way to answer that Andrew is that the way it is written under (L) which states 'installation of wind energy conversion systems with a maximum nameplate capacity of 60KW or less, except units which are house or building mounted, but including temporary wind monitoring towers, shall be permitted subject to the following requirements, and such other conditions as the special permit granting authority may impose.' I go back and forth on this 60 KW. If you have a 60KW unit it is not as cost effective. 60KW would not be economical because it would take 50 years to pay it off even with money from the state. I propose is drop that. There are grants and money from the state that can assist to pay for these systems. The state wants to encourage use of wind turbines. We are limited to 150 feet. There is going to be one on Belcher Street is 100KW. I would like to drop the 60.

Rob Fitzgibbon: A question discussed by the Board has been is that if someone has a wind turbine and they can put energy back into the grid is that a commercial use, is that a good thing, or should you just allow them to have energy to power their homes. So Bill, what exactly is 50 decibels like; is it like a Who concert?

Andrew St. John: Can you make a 50-decibel noise?

Bill Holton: I can, but I am not going to. I have some information about that...

Kim Drake: While you look for that I will share the information given to us by Town counsel. There comments were pretty straightforward.

Article 18

Section 6-9.9 (1) (5): It was suggested that "to the closest neighboring inhabited dwelling" be replaced with "at the nearest lot line". Section 6-9.9(n): This section is internally inconsistent. It refers to house mounted systems being allowed by right but then refers to the following requirements. Under Chapter 40A and the Zoning Bylaws, which would be applicable if the use requires a special permit. If the units are allowed by right, then the requirements listed in subsections (a) through (e) would be enforceable by the Building Inspector.

Article 19

It was recommended inserting the word "zoning" before "by-laws" in the first line of the article. The term "Wind Facility" is defined in the proposed Section 6-3.46, but is not used in the provisions contained in Article 18. It was suggested that "Wind Facility" is changed to "Wind Energy System" so that Section 6-3.46 defines a term that is included in the definition of WECS in Section 6-3.47.

There were no comments from Town Counsel regarding Article 20.

Bill Holton: 50 decibels are similar to standing next to a window air conditioning system. That is loud. If I had a neighbor who had a window air conditioning unit and I had to listen to that all night I would not be happy.

Kim Drake: It would depend on how close to your lot line they are, right?

Bill Holton: If it is a non-conforming lot than you are subjecting your neighbor to a loud noise. I am suggesting 10-18 decibels above ambient. If the wind is blowing at 30 miles per hour you are not going to hear it but on a quieter wind day you will.

Andrew St. John: Is there a definition of ambiance?

Bill Holton: Yes, a whisper. These do make noise. It is a broadband sound that made up of a combination of sounds waves known as broadband that can be described as a 'pong' or a squishing sound. I would like to lower the decibel and stay at 150 feet from the ground to the tip of the blade and then let the technology work. If an applicant wants to deal with a big unit then that is a different story. We are going to see these but I would like to see these up because whenever I see one spinning I will think of how we are not paying money to Saudi Arabia.

Rob Fitzgibbon: Last year the Planning Board erred because the offered something a little too simple. The public wanted something more robust. I was wondering could you clarify of what is the intent of this proposed bylaw and what is the benefit of the proposed bylaw?

Bill Holton: The purpose is to encourage clean energy in Essex by means of a guideline that doesn't really prohibit anyone from doing this and we need a guideline. The benefits are also the money saved by the citizens for alternate energy. The town of Hull has two WEC units and the turbines themselves are 210 dynamiter and they have a third one going up. I can see these powering the water treatment plants. There are many towns proposing to use WEC Systems.

Kim Drake: The reason we are proposing this right now is primarily because citizens interested in constructing a wind tower have approached us and we did not have a mechanism to review it. The closest we could come to is the cell phone tower bylaw and in one instance the Building Inspector looked at the applicant and then looked at the bylaw and said to us, you really don't have any jurisdiction. (To the Board) Have we discussed all of our comments? Before we open this to the public I want to remind you all that it is now twenty minutes past nine and that the school really likes us to be out of here before ten. So, please be mindful of your comments and let everyone have a chance to speak. Also, please limit your discussion to the topic at hand. If we have to we can continue this topic to the next meeting which is a public hearing.

Gil E. Guerin, 16 Belcher Street: Why did you put in here specifically as to why you prohibit guide lattice type towers? The reason I ask that is because to a homeowner looking to install a wind tower that is the least expensive kind. The monopole is a massive structure that the average homeowner may not be able to afford. If you are thinking of what a monopole looks like I would ask have you seen a telephone pole lately?

Bill Holton: I agree with you the guy lattice type towers are going to be less money. There are two problems with them; there are three reasons one is the birds; the birds like guide lattice type towers and they perch on them. The other is noise; the wind blowing through the latticework and the last is the aesthetics. The homeowner situation is that all the research I have done is that for the homeowner the guide or the lattice types are the way to go. The consensus was that the aesthetics of them was not good.

Gil E. Guerin, 16 Belcher Street: The cost would be enough difference and I just looked at an example of it that currently an owner could put up a guide lattice type tower under \$10,000 and it can make your electric bill zero, but it would require a lattice type of a guide wire.

Bill Holton: You are not taking in the grant money or the tax incentives.

Kim Drake: Why don't we just presume the Board will discuss that and go onto the next one?

Ed Perkins, Story Street: First of all I think you all should be commended on the work you have done. In regards to the lattice types of wind turbines, there is a wind turbine on Route 127 in Magnolia, you have to look for it since it is hidden in the trees, but I really don't think it seems to create any problems with any noise or anything.

Andrew St. John: There is another one by Dolliver's Point.

Kim Drake: Thank you.

Gil B. Guerin, Belecher Street: I looked into a carbon monopole, 100 feet and it was fifty thousand dollars just for the pole.

Maria Burnham, Southern Avenue: Is this the time to address Wind Farms. It says there shall not be more than one energy tower per lot. Does this mean if you subdivided your lot and made all one-acre lots can you have one per acre? What you are saying is that you don't mind on a big lot if there is one or fifty wind turbines. This is going to allow wind farms in the water and on the marsh. Either on the lake or on the river.

Andrew St. John: As it happens neither of the bodies of water are owned by individuals.

Kim Drake: The salt marsh is.

Andrew St. John: But those are regulated by a host of regulations. We are not going to have any wind farms on the marsh.

Kim Drake: That is true.

Maria Burnham: But there will still be large wind farms.

Andrew St. John: As a theoretical possibility, yes.

Maria Burnham: Is there a possibility of increasing the size of the lot requirement.

Kim Drake said the Board could have more conversation regarding the size of the area. The Board noticed that an edit under sections L and M needed to be changed due to the fact they were not in agreement.

Jim Lewiciki Belcher Street brought forward that there are other electronic devices could be affected, all electronic equipment, wireless equipment, security systems and he asked if the WEC systems would affect these? He also asked if the information about lighting in section L6 is there an FAA requirement?

Amy Reilly: Yes there is if it 200 feet. And they require keeping the light on the top.

Jim Lewiciki: If it is less than two hundred feet then no lights required?

Amy Reilly: Yes.

Jane Adams, Belcher Street: I have been one of the people who have been following this for a long time. One thing I did re-read today is the Rockport Bylaw states the majority of the turbine is to be used for that home. One of the things that bother me about changing the kilowatt usage from 60 to nothing is that we need to ask are we now providing a loophole? Is this now our loophole and is it going to be a way out for all of those who want to put up wind farms. I do not want to see a lot of these structures in Essex. I am probably the only one in Essex that thinks that but I think we should go easy and see how it works. Thank you.

Ed Perkins, Story Street: I personally think it should stay open because as the federal grants go is that they are based on one and half times kilowatt.

Ed Neal, 15 Western Avenue: If you want to allow the house-mounted units as a matter of right. I would like to suggest that you create a paragraph as what you would like to see as a matter of right for the house mounted ones and then rather than including that section in the permit section, adding, it would be to assign each section of the bylaw. Then the house mounted ones would not be a concern. Then if someone wants to add a lattice style you can just add it there.

Bill Holton: Do we want to encourage wind farms?

ED Neal: If there was someone with a big field and no one would see it or could hear it with no increase in ambient noise then why not allow it?

Kim Drake: I think the intent was when we proposed these bylaws is not to discourage or encourage but to allow us to have a means to address it.

John Guerin, Martin Street: I have some things also to fix this to make it easier. I believe the Town of Essex should be exempt for any of this and I think you should allow for waivers to be granted by the Board. The higher you go the better wind you get. I would like to see it at 199 feet quite frankly. It is extremely expensive to put these things up and I would like to see things that encourage people to point them up. I am pro these things, but I would like you to be able to get a handle on them. The noise is regulated by the Board of Health and also and I don't agree that it should be the lot line. The state already has requirements. An example of a situation could arise is where there are issues with the noise; should they measure it at the lot line or should they measure it at the house? If you are talking about downtown then the houses are very close together. On Belcher Street it is a different situation. Letter C, number 6, I would say an abutter's dwelling. It is inconsistent. So, you need to say an abutter's dwelling rather than a dwelling. I would also say per acre rather than per lot. The color I don't think is going to be an issue.

Kim Drake: At this time we need to vacate the school. However, it does seem that there are more citizens who would like to share their comments.

It was decided to give citizens the opportunity to write and deliver their comments via email, regular mail or to deliver them to town hall to either the Town Clerk or the Planning Board Secretary prior to the next meeting and at the beginning of the next meeting the Board would allow ten minutes to discuss and review any of the comments with the public.

Michael Cataldo: Motion to continue the public hearing to March 5th.

Andrew St. John: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Andrew St. John: Motion to close the public meeting.

Rob Fitzgibbon: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for March 5, 2008 at the Essex Elementary School at 7:30 p.m.

Presented by:


Mary-ellen L. Feener, Secretary

 (Clerk)
Amy Reilly, Clerk

Public Meeting

Town of Essex Planning Board

March 5, 2008

Meeting called to order at 7:35 p.m. by Kimberly Drake, Acting Chair and was held at the Essex Elementary School, 12 Story Street, Essex.

Attendees: Bill Holton, Amy Reilly, Kim Drake, Andrew St. John, Rob Fitzgibbon, Michael Cataldo

Absent: Scottie Robinson

Secretary: Mary-Ellen L. Feener

At the time the meeting was opened seventeen citizens were attending the meeting.

Kim Drake: I would like to call to order the March 5th meeting of the Essex Planning Board. Planning Board we have a packet of information and I suggest we take a moment to look through this since there is some correspondence relative to the public hearing we had last week which we agreed to hold open to the very beginning of this meeting before we start on with the new open the public hearing for tonight. (Board members had been given copies of letters sent to the Planning Board prior to the meeting.) We have a letter from James Lewieki and another letter from Jane Adams and Maria Burnham regarding the wind turbine.

Bruce Fortier: In order to consider this information you have to make it available to the public.

Kim Drake: We are first going to discuss it as a Board and then we will discuss it with the public. We haven't begun that part of the public hearing.

Wind Turbines

Kim Drake read the email submitted by James Lewieki for the record:

To the Essex Planning Board. Thanks for a productive meeting on Wednesday February 27th regarding the wind turbine bylaw. Because of the limited time available at that meeting, I want to follow-up with a few comments for everyone on the Board. Regarding Section L.5, Noise and Electromagnetic Interference I thin this section falls far short of the robust and comprehensive quality that it should have in order to prevent future disputes and withstand even the short-term test of time in this rapidly evolving area of technology implementation. Few will object to the benefits and need to harness wind energy, so the impact on fellow citizens and their properties is largely derived from sensory impact. Questions that I ask myself about a neighbors wind turbine are: Can I see it? Can I hear it? Can I feel it? If the answer is "no" to these fundamental questions, then few citizens will complain. But if the answer is "yes" to any of these (and we know there will be lots of yeses) then the bylaw will have need to have considered very specific and actual impacts, i.e. things derived from sensory impact that will be argued back and forth such as does the neighbors wind farm impact negatively on my quality of life, is there a health/safety issue, will it impact my current or my future property value, does it affect my ability to rightly develop or sell my property as I would have had if there was no nearby wind turbine, does it affect my ability to carry on utilizing my currently acceptable technology such as garage doors, cordless phones, wireless networks, home security systems. Is there an impact on it to my rightful ability to enjoy the natural beauty of my land; hiking, bird watching, picnicking, hunting etc. My comments above are meant to be somewhat argumentative but the fact is that argumentation should be a mandatory activity in the process of developing the bylaw and I feel strongly that the questions I raised are very real and highly probable over the life of the bylaw. Additionally, the section of the bylaw as drafted puts the burden of proof on electromagnetic interference on the abutter after the turbine is constructed. I feel this is backwards and puts the abutter at a disadvantage. Instead a mandatory part of the process should be testing proof with certification by the manufacturer and backed up by the homeowner/installer that no interference will incur, follow by mandatory testing and certification. Finally, regarding I support the lowest possible noise limit as measured at the property line, not just from the nearest abutter's dwelling. Essex is largely a natural and beautiful area which is why people come here and stay here. Wind Turbines are man-made structures and in many ways the presence of a 150 or 200-foot wind turbine on the marsh is not anymore aesthetically more pleasing than a high rise apartment building. For some folks the presence of wind turbines on the Essex River Basin would literally destroy the character of the town. Now I don't have any good answers regarding aesthetics but I provide these particular thoughts as both context and as specific issues to help the Board determine the root causes of people's arguments either for or against turbines. My thanks to the Board for working diligently and thoughtfully on this bylaw. I recognize this is bylaw is complicated mixture of emotions and information.

Andrew St. John read the second letter received by the Planning Board regarding Wind Turbines from Jane Adams, Belcher Street and Maria Burnham, Southern Avenue.

Dear Members of the Essex Planning Board: Since Essex has no land use districts it is critical to protect a residence from an abutter's commercial wind tower. Turbine height, placement, physical appearance and noise should not negatively impact the residential character of a neighborhood or damage scenic views. Part "L": We feel strongly that some sort of maximum limit must be incorporated into the nameplate capacity. Why should we allow commercial interests to infringe upon the rights of residents in their homes? With all the inevitable additional improvements in development of turbines and their ability to better utilize available wind speeds, a nameplate capacity of 60 to 100 kw

seems to be sufficient to produce enough extra energy to sell without it becoming a commercial business. The definition of WEC 6-6-3.47 should contain a maximum kw capacity. Only freestanding monopole towers should be allowed. A monopole tower of 150 feet will more than meet the power needs of several homes and/or businesses. The 150-foot monopole should not be changed. 1.25 times the height requirement for setbacks would allow only 188-foot setback from a 150 tower. This is a very important item to protect the town from possible lawsuits from results of a falling tower leaving only a very small margin for additional falling parts. The 1.25 times tower height should remain for obvious reasons. Not more than one WEC should be installed per one lot. A lot should be defined as it is in the proposed Manchester WEC bylaw as 'any conforming parcel in a single ownership as of the date of the date of publication of the hearing.' There should not be any wind farm on the Great Marsh. To protect our marshes there should be the addition of there should not be any wind turbines on land subject to tidal flow. Common wind farm should be defined as an area with a cluster of two or more wind turbines used to produce energy. Thank you for your consideration. And there are also six bullets summarizing what I just read. If anyone needs me to read them please raise your hand and let me know

Kim Drake asked if any of the Board members have any comments.

Andrew St. John pointed out that there was a time constraint as to the discussion about the articles for the warrant due to the fact that the articles need to be submitted to the Town Administrator by Monday, March 10, 2008.

There were no further comments from the Board.

Bruce Fortier, Southern Avenue: I just wanted to point out that it appears there will be significant changes then what is in the proposed bylaw and if you are going to do that there really should be a public hearing before the town meeting; not necessarily before you put it on the warrant.

Kim Drake asked if any person attending the meeting had any comments. There were no further comments.

Andrew St. John: I move to close the public hearing for Wind Turbines.

Rob Fitzgibbon: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

John Wise Overlay District

Kim Drake opened the public hearing for John Wise Overlay District at 7:50 p.m. and explained that the citizen's committee provided the handouts provided.

Bill Holton introduced the proposed bylaw to the Board and the people attending the meeting.

Kim Drake opened the conversation to the Board. There were no comments at this time.

Kim Drake: There are members of the Citizens Committee here and what we would like to do is moderate a discussion between the Citizens Committee and the public. Due to the fact it is a citizens initiative there cannot be any changes.

Mark Lynch, Board of Selectmen: It is our understanding that changes cannot be made on the floor of Town Meeting.

Elaine Hardy Wyatt, John Wise Avenue: I think out of courtesy the committee could have asked me to one of their meetings.

George Starvos, John Wise Avenue: How many people came up and complained about the North End being developed? The sewer ends and Joe Duval's house, the water ends at the White Elephant. We sold Mr. Kellerman his house and there is an agricultural restriction.

Bill Holton: This is to protect the scenic view of Route 133.

George Starvos: It can't be built.

Bill Holton: We are trying to limit the commercial use of the area.

George Starvos: It seems as if you are trying to limit people's ability to do what they want on their land.

Michael Cataldo: We have also had many public meetings about this area and ten or so people came to each of these meetings.

Andrew St. John: We have had three or four change of use requests for business uses on John Wise Avenue. Some under the bylaw we have been able to review, some we have not.

Mary Hickey, Belcher Street: I chose to live here in Essex because Essex is Essex. Essex is unique. It is a beautiful town. I also want to say that this board, you have had public meetings. You have never invited the Chamber to a meeting about this so shame on you.

Bruce Fortier interrupted and was asked to sit down.

Mary Hickey continued: The town has gotten together a long-term planning committee. I find this is somewhat secular. I beg of you to let the committee do what they want to do. Five, six, seven years ago an overlay district was proposed. I also wonder about conflict of interest; Mr.

Cataldo who was on the Essex County Greenbelt. (Michael Cataldo stated he was not.) Let this committee have public hearings and then as a whole we can decide what is best for this town. Right now I feel that you are attacking the North End. If you are an owner on the North End and you own sixty acres then put it in Conservation. Let everyone in this town decide. People work hard for their money; I don't see any crazy development on the North End. You can have two homes.

Leslie Burns, 52 Grove Street: I just want to address the issue she said as picking on certain people; when the Open space Plan was brought forward John Wise Avenue was stated as being an area.

Rebecca Dawson, co-chair of the Open Space Committee: The Open Space committee supports the bylaw as it is written. The reason we had that goal was that there was a survey we sent town wide and the citizens responded. There were two town wide opportunities for citizens to speak up That 133 corridor got the second most votes, second only to the Essex woods. We have been getting a sense of what is needed.

A letter was read for the public submitted by John J. Donovan, Jr., To Whom It May Concern: My name is John Donovan, Jr. and I own property in Essex including a home on Wood Drive and a farm on Eastern Avenue. I want to express my support for the proposed bylaw. Although my properties are not directly affected by the bylaw I believe that all land owners in Essex will benefit from this bylaw. The major asset of Essex is its natural beauty. If we do not take proactive steps to protect his asset it will be lost and all property owners will suffer. In addition to residential and agricultural property, I own numerous commercial properties on the North Shore and operate a number of businesses out of these properties. I am very sympathetic to the needs of commercial operations and the benefits these businesses provide to the local community in the form of services and important tax revenue. In addition I am a strong supporter of landowners rights. This bylaw is not inconsistent with these things. There is a place for agricultural, residential, and commercial use in Essex, but clearly basic planning can be done so that these uses take place in a complementary way. It is in everyone's interest to establish basic zoning districts, such as the proposed overlay district. Without zoning districts or overlay districts, there I a high level of uncertainty regarding the future use of neighboring property and this uncertainty dramatically reduces investment, stifles property values, and ultimately lowers the entire tax base of a town. I urge everyone to vote in favor of this very important bylaw. Best Regards.

Roger Hardy, Island Road: I have asked for an impact study. Is it required or not required by law? If the Attorney General says it is, who will pay for it?

Bill Holton: It is our understanding by Town Counsel that an impact study is required if it is requested.

Frank Hardy, Island Road: Everyone here is talking about Open Space. I have a problem when you say the town has no protection. If they want to put the money forth the town has the right of first refusal. If they want the land then let them put a bid in for it. Or they can buy the development rights. The other thing is I run a livestock farm; it's chickens. I don't let them run around. The other thing is that I have a farm selling goods. At some time if I sell goods I may have to put up a store.

Linda Osburne, 2 Prospect Street: Residential Agricultural District. It bothers me that you are not considering commercial part. How can we say sorry North End you are no longer a business. This all started way back when my mother sold her land. This committee jumped on her back and that's when it all began. The part about the tourism... I don't remember in the twenty years I have lived here, I never heard a citizen say I come here for the Route 133 corridor; they come for the antiques, the restaurants. Why isn't the entire town zoned? I asked this question about ten years ago and I was told it would take too long. We have to ask them to zone the entire town. By separating an area you are dividing us up. The Planning board you are a good bunch of people and if you put this through you are setting up precedence for this town and you are going to have it so divided. You are going to have people against people. Stop this nonsense. I don't believe all of the North End is on there anyways.

Julie Scoffield, 61 John Wise Avenue: I didn't grow up here and I didn't always live here. I actually grew up in Michigan.

Bruce Fortier: This business of electing one body and then having this ad hoc committee can be disruptive. The idea of zoning the whole town is impossible. We are three hundred years too late. We also have a right to make reasonable restrictions on 5 acres or more. It was mentioned that the idea of three houses on one lot. It was a farmer, Paul Miller on Milk Street, he would have had to subdivide his property just to let his daughter live in Essex.

Jim Starvos: Can I say something? 61A does not necessarily mean lower taxes.

Martha Hoar, Belcher Street: I was chairman of the Open Space Committee. We worked very hard to get everyone in town to give us their input. What they loved was how the town looked. I think it is very sad how it is personalized one person against another. How fragile it is. We have seen parts of town go down fast. It is a beginning step. It gives us a chance for us to say we care about Essex to keep the town the way we love it and keep it this way for our children and our grandchildren.

John MacDonald, 91 John wise Avenue: I have to echo Ms. Schofield's comments. When I first came here, I was just driving through and thought it was a very beautiful part of Massachusetts. It reminded me a lot of where I grew up in Ontario. Perhaps not being a life long resident, being only here for 10 years and not going to town meetings and I am not a citizen because I am still a Canadian citizen. I didn't even want to come here. I think many of you have personal issues and what people think and why people are picking on families. I am looking at it as an outsider and I feel it is a unique and fragile area.

John Guerin, Belcher Street: I have domiciled myself in this town for forty-six years. I don't want to see a mall go up there either. I have fundamental issues with this bylaw change. Value can be diminished in many different ways. The town voted in the Community Preservation Act and my feeling is if you are going to take someone's value away you should pay for it. If anyone who is in this zone who does not want to be part of it then they should be paid. I think the Board should ask for an impact study, even if they are only supporting this they should take

responsibility. I also wonder why Belcher Street is included. This seems to be half hazardly done. I think it is tantamount to a taking and I think the town is open themselves up.

Karen Moulton, 133 John Wise Avenue: I live in George Stavros's old house. For the record I don't know if I am for or against this. I guess I thought this was because of me, not to sound conceited and you thought it was because of you and you thought it was because of you. I have two kids and one was born in Essex. I am happy to know that you guys love it and you guys love it, but I think we are all here to make sure Essex stays beautiful and it is preserved. I don't have a lot of time like everyone else here and I don't know how much time to give and I am willing to work to help the Board to make everyone happy.

Martha Hoar: There has just been a landmark case that devaluation of land does not apply to this.

Mary Hickey: In addition to farming includes riding stables, the sale of food etc. One of the problems is that this is fine with agriculture.

Roger Hardy: On Island Road I am assessed a 2 million and I can't get a loan.

Kim Drake asked if there were any more comments from the public and she asked if there were any comments from the Board.

Rob Fitzgibbon: This issue of the North End has gotten press coverage over the past year. I do think the citizen's committee could have spread have the word a bit better and I do think that all the citizens should have been notified better. I also want to applaud Peter Kellerman and his involvement with the Long Term Planning Committee and this committee. There is not definition of agricultural use and to me it's kind of icky and it can open you up. I think the question of use has been opened up but not development. If this isn't the right solution then maybe there are other ways to protect the scenic views.

Bill Holton: I said in my opening remarks that the Planning Board was one hundred percent behind this and it appears I was wrong.

Michael Cataldo: One other thing about Bill's comment is that we wrestled a lot with this as to how to add the agricultural use. I have been on the Planning Board over the last twelve years on and off now. What I have seen over the past year regarding John Wise Avenue is that a lot has been happening.

Andrew St. John: I would like to close this public hearing at 9:18.

Rob Fitzgibbon: I second the motion.

All in favor?

Aye.

Motion Passed unanimously.

The board reviewed and discussed the articles for the warrant.

Regular Business

Andrew St. John: Motion to close the public meeting at 10 p.m.

Michael Cataldo: I second the motion.

All in favor?

Aye.

Motion Passed unanimously.

Next meeting is scheduled for ~~March 14th~~ at the T.O.H.P. Burnham Library at 7 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

did not have a concern regarding the potential special permit needed for the multiple dwellings. The Board would consider the waiver for the road length. The Board also asked that the lots on Turtleback Road or the Conservation Restriction not be on the plan or the application when it is submitted. The Board asked that the Perkins Lot no longer be referred to as the Perkins Lot since it now belongs to Peter Van Wyck. The Board asked that the applicant send any plans to the Board.

Regular Business

Invoices

Meeting Schedule

AR: Motion to approve the Planning Board meeting schedule as amended.
ASTJ: I second the motion.
All in favor?
Aye.
Motion passed unanimously.

Meeting Minutes

AR: I move to vote the meeting minutes of February 20, 2008 as presented.
KD: I second the motion.
All in favor?
Motion passed unanimously.

Preliminary Plans

The Board agreed that a Preliminary Plan does not require a list of the abutters nor does it follow the same steps as a special permit.

John Wise Committee

The Board discussed the meeting regarding the John Wise Committee Overlay District held by the Selectmen on April 5th at the Elementary School.

Board Seats

The Board discussed that there may be two empty seats on the Board and that the secretary has been told that one citizen filed nomination papers.

Articles for the Warrant – Town Meeting

The Board Members agreed that the Board should discuss the Town Meeting.


April 2nd Meeting

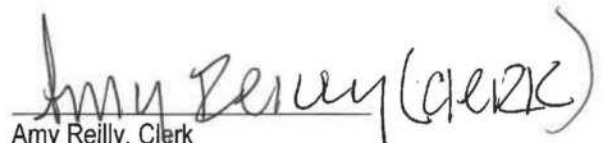
The next agenda will include a Board discussion of the proposed draft bylaw for Site Plan Review and the Board writing any questions or comments for Nick Cracknel of Horsley and Witten who met this evening with the Board, as well as the Public Hearing for 12 Scott's Way.

KD: Motion to adjourn the meeting at 11:00 p.m.
AR: I second the motion.
All in favor?
Aye.
Motion passed unanimously.

The next meeting is scheduled for April 2, 2008 at the Essex Elementary School at 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
March 19, 2008

Meeting called to order at 7:28 p.m. by Chair, Scottie Robinson and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Kim Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ), Michael Cataldo (MC), Rob Fitzgibbon arrived at 8:10 p.m. (RF)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There were no building permit applications to present to the Board.

60 John Wise Avenue – Palazolla Brothers (owners not present)

The Board and the Building Inspector discussed the notice posted by the Board of Appeals. A copy of which was not given to the Planning Board. The Board drafted a letter which will be sent to the Board of Appeals. A copy of Kopelman and Paige correspondence regarding the Site Plan Review and a copy of the decision by the Planning Board will also be sent. Andrew St. John will write the letter.

Mary-Ellen will send the Board members the proposed articles for the Town Warrant which were approved at Town Meeting in 2007 for their three ring binders.

Nick Cracknell – Horsley & Witten – Technical Consultant

The Board and Nick discussed and reviewed the proposed Site Plan Review. The Board offered edits and comments. Nick stated that in most towns the applicant would ask to speak to a Planning Board informally first, then go to the ZBA for any variances required and then go to the Planning Board.

The Planning Board asked Nick if he had a flow chart as to how applications properly flow through departments /boards. He stated that he did have an old flow chart that he could share with the Board.

Nick requested that the Board spend a few minutes at the end of the meeting and review the Site Plan Review information and write and final comments and make sure that they are forwarded to Nick via email.

Lowland Farm – Lot 4 – ANR

Peter Van Wyck (owner) Orestes 'Russ' Brown legal counsel for PVW – present

The Board reviewed the plan submitted and the application. The Board also reviewed the previous decisions and correspondence regarding the subdivision and the prior approved plans. The applicant paid the correct fee and the applications and the Mylar Plan was signed following the vote to approve.

ASTJ: I make a motion to approve the ANR for Lot 4, Lowland Farms.

KD: I second the motion.

All in favor?

Motion approved unanimously.

Essex Park Drive Preliminary Informal Discussion

The Board reviewed the proposed plan which has eleven lots. Lot 11 would be the lot deemed unbuildable. Lot 2 would have multiple dwelling units; six 4 unit buildings. Russ Brown stated that the applicant is also planning on building nine single-family homes on nine lots. The concept is for a 33-unit proposal. Instead the application proposes to use half of the developable land. The intent of the applicant is to add the 'Perkins Lot' (referenced on the plan as Lot 16) to Turtleback Road to existing lots. The extension from Western Avenue would need a waiver because it is approximately 1,500 feet. (Subdivision Rules and Regulations allows for 1,200-foot roads.) There are two wetland crossings. The Board asked if the applicant is considering selling the multiple units as condominium units or renting them to tenants. The Board asked about the driveway/road between Lot 9 and 10. Peter Van Wyck told the Board it is an easement for utilities. The Board stated that typically an easement is not drawn within a lot. Peter Van Wyck stated it could be an easement or 'it could be a road'. The Board stated that they would like to have Lot 11 deemed not buildable. The Board stated that they

Bruce Fortier, Southern Avenue requested to address the Board and he initiated a discussion with the Board based upon the incomplete notes he received from the Planning Board secretary of the meeting minutes of the September 20, 2006 and wanted to discuss his insights from when he was involved in the writing of the original bylaws as well of the history of the subdivisions built by Mr. Peter Van Wyck. He pointed out to the Board that he has had more bylaws changes to be adopted by the town than anyone else in town.

Public Hearing – Essex Park Drive – Orestes Brown (RB) present representing Peter Van Wyck

RF: I would like to open the continuation of the public hearing for Essex Park Drive.

RB: I would like to point out that I have made attempts to contact Kopelman & Paige and I do not have a clear idea of whom I should be contacting.

RF: John Goldenrosen has taken a leave of absence.

It was decided that Rob Fitzgibbon will contact Kopelman and Paige to inquire with who should Russ Brown contact regarding the Conservation Restriction.

RB: Scottie Robinson had sent me some cases regarding lot configuration because there was a series of cases that were discussed. However, that was for an ANR not a subdivision. We are here for a subdivision. I did do some reconfiguration.

KJ: You can subdivide a property. A subdivision is simply the creation of lots.

RB: A creation of lots, I would agree with you.

KJ: A subdivision road must meet the requirements.

RB: For purposes of this discussion, I think you were asking if three houses can go on each lot.

I think Peter was saying here is my twelve hundred foot lot and here is the number of houses we can build as a matter of right and here is a through road and here is the number of houses we can build as a matter of right. Remind me again, when we finished with Turtleback Road and the road was finished then the next step was the traffic study, is that right?

MC: I think it doesn't matter if it is done now or done latter. It is going to have to be done.

RB: O.k. the next question is what Scottie Robinson was referring to as the bottle necking of the lots. I have here a new plan for you to review.

Plans were handed out to the Board members.

RB: What it has done now is change lots one and two so they don't have that bottleneck problem and now most of the lots have adequate uplands.

The Board reviewed and discussed the plan.

KJ: An advantage for the through road is that the people who comment about the issue at the beginning of Turtleback Road on Apple Street and who don't like that incline, may have another way to enter Turtleback may be positive.

RB: What would make Peter happy is to be allowed to have thirty lots. I am not asking anyone to make up there minds right now. However, what I would like to know if people aren't kicking and screaming we can go to the next step of the Definitive Plan Application.

AR: Is this still a viable option?

KJ: Is that right Russ?

RB: Yes.

The Board reviewed the plan submitted.

RB: This looks like twenty-nine lots.

KJ: I think the last time we did a count we said twenty-eight or thirty three, I don't remember.

A traffic study would give us more information.

RB: What about the 1,200-foot waiver?

MC: I think that many of the Board do not want to waive the limit. We will have to poll the members and vote.

RF: The police department wants sidewalks and lights which changes the character.

KJ: A lot of the discussion I heard was when Mass Highway was here and it seems that the police are listening to what they suggested.

RF: If we have street lights in there but in our decision state that we would like to have the low wattage lights would the police be pleased?

KJ: You can ask them what would be acceptable.

RB: What about sidewalks, do they have to be on both sides? Can you ask the police?

RF: Russ did you get a chance to look into the threshold of the septic?

RB: The thing I need to come away with here is regarding the waiver. Is there a trade off that they would be willing to do for a waiver?

The Board discussed the closing the Public Hearing.

RB: Let me talk to the engineers and Peter before you close the meeting.

MC: That seems fair.

RF: Motion to continue the Public Hearing for Essex Park Drive until October 18th, 2006 at 8:30 p.m.

KJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

36 Story Street – Bucklin – Orestes ‘Russ’ Brown

RB: I am Orestes Brown and I am representing Joan Bucklin. The As-Built plan did not show the drive way completed and installed to the end of the road. It was originally installed to go to the end of the road.

The Board reviewed photos.

RB: The As-Built plan is incorrect. The driveway tapers there. Clearly it goes all the way down here. In the last year the last ten feet of the drive has been allowed to grow grass over it. The question to the Board is, why did Larry Graham let that go and why did our engineer submit that plan. Normally, these plans show the dedication and the actual drive all the way.

RF: The Building Inspector did say the part of the road was there.

RB: I don't know how engineers interpret the road on an As-Built such as this.

MC: Where is your ANR plan?

Russ produced the plan for the Board.

RB: What I had originally wanted to do was to subdivide Joan's lot. Can I resubmit the plan.

MC: Are there any deed restrictions on this parcel to stop having this done.

RB: None. There is nothing restricting the further subdivision.

The Board reviewed the original plans.

The Board accepted the ANR application for Russ Brown.

RF: Motion to nomination of Amy Reilly as Co-Clerk.

MC: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Public Meeting
Town of Essex Planning Board
April 2, 2008

Meeting called to order at 7:32 p.m. by Chair, Scottie Robinson and was held at the Essex Elementary School.

Attendees: Scottie Robinson (SR), Kim Jarvis (KJ), Andrew St. John (ASTJ) arrived at 7:45 p.m. , Michael Cataldo (MC), Rob Fitzgibbon (RF)

Absent: Bill Holton

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

The Building Inspector was not present. The applications were left with the Board Secretary to bring to the meeting.

9 Shepard Memorial Drive - Nate and Christine Woodman – Nate Woodman present

The application of Nate and Christine Woodman, 9 Shepard Memorial Drive to add two one story additions; one 4 x 16, the other 6 x 12 for a bathroom and an entryway. The application has the approval of Wastewater, Conservation Commission and the Fire Department 911. The lot is 26, 257 square feet. The reason the application is before the Board is for a 6-4.2 finding due to the front yard setback.

MC: Motion to accept the application of Nate and Christine Woodman, 9 Shepard Memorial Drive to add two one story additions; one 4 x16, the other 6x12 for a bathroom and an entryway for a 6-4.2 finding due to what we assume is before us due to the front yard setback which appears to be less than eight feet.

RF: I second the motion.

SR: Any Board discussion.

There was none.

All in favor?

Aye.

Motion approved.

Andrew St. John abstained from voting due to his late arrival to the meeting.

The Board discussed the recent Board of Appeals meeting regarding the property located at 60 John Wise, owned by the Pallazola Brothers.

Regular Business

- Invoice for Eagle-Tribune
- Payroll
- Discussion regarding open seat on the Board

12 Story Street - Sprint Wireless Broadband Company LLC

SR: I am calling to order the public hearing at 8:00 p.m. on the application by Sprint Wireless Broadband Company LLC for the property located at 12 Scott's Way for an Amendment to a Special Permit under Essex Zoning Bylaw 6-6.9E Special Permits.

Representing the applicant was Ann Lobel (AL) Attorney for Prince, Lobel, Glovsky & Type, LLP and she introduced herself to the Board and explained the purpose of the application.

The Board reviewed the plans.

The Chair asked the Board Secretary about the notification of the abutters. The secretary replied that she had mailed the notices and that even a few of the South Hamilton addresses came back to the Town Hall and the secretary clarified with the Clerk of the Assessor's office the exact addresses of those which were returned and they were resent to those abutters. There was one citizen attending the meeting, John Guerin, and he did not have any comment.

SR: Originally in 2002 and 2003 when the first public hearing was held it was a very long, drawn out process and there were a lot of citizens attending the meetings. A lot of the files are documentation of our process.

ASTJ: There were some Hamilton residences that attended at the time and they voiced a lot of concerns. The Board reviewed the past decision and files.

ASTJ: I move that we close the hearing.

MC: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

KJ: I would like to move that we vote to approve the amendment of a decision for the cellular tower located at 12 Scott's Way finding that it is consistent with the original installation and it is no more intrusive than the existing equipment.

MC: I second the motion.

AR: I vote in favor because it is no more detrimental than the existing structure.

ASTJ: I Andrew St. John, vote in favor to amend the special permit because it is no more detrimental than the existing use of the structure.

KJ: I Kim Drake, I vote in favor because it is no more detrimental than the existing structure.

MC: I too vote in favor, finding that it meets the Town of Essex bylaws.

RF: I Rob Fitzgibbon of 15 Tree Hill Road, vote to approve to amend the Special Permit.

SR: This is Scottie Robinson and I vote in favor of the Special Permit Amendment, for 12 Scott's Way.

Amy Reilly will write the decision.

Scottie Robinson requested that before it gets filed with the Town Clerk we as a Board have the opportunity to review it at the next meeting.

Regular Business

The Board reviewed the meeting minutes of March 19, 2008.

ASTJ: I make a motion to approve the meeting minutes of March 19, 2008 as amended.

MC: I second.

All in favor?

Aye.

Motion passed unanimously.

23, 25, 27 Centennial Grove Road – Keith Symmes - ANR

Don Grenough, Attorney (Ipswich, MA) legal counsel representing the Symmes introduced himself to the Board. Keith Symmes discussed with the Board the history of the application.

Don Grenough explained that the plans have four lots and one is not a buildable lot. Many times the Planning Board will deem that the other lot is not a buildable lot. What I had addressed to Town Counsel is that you do not need a full-blown covenant that deems the lot not buildable.

The Board reviewed the history of the property and the three lots as well.

ASTJ: What we are talking about is that this is all one piece now and what we are talking about is making one, two, three, four lots here.

Don Grenough: What we would like to do is take your suggestions back and change the plans per what you are requesting.

MC: What is showing here is a paper road or are you planning on moving the road?

KJ: There are wetlands here too?

Keith Symmes: That is high ground and it was before the Conservation Commission when we built the three original houses.

SR: Who owns all of these lots?

Keith Symmes: I own all of them.

Don Grenough:

The Road is currently held in current ownership.

KJ: If you happen to have information regarding the wetlands I would like to review the documentation.

MC: Lot 25 when we were there in the beginning, we wondered if it was 150 foot.

KJ: Yes.

MC: My other question is that the road drops off to a twelve-foot right of way.

SR: I am concerned that there is no turn around and there are safety regulations.

KJ: There is a pass through to a separate property.

Keith Symmes: Fire trucks and police trucks have been through this area.

KJ: What would stop the other property from putting up a fence?

Keith Symmes: I have an easement to connect to Ice House Lane.

The Board stated that if the ANR application was presented to the Board at a later date then they would request that four additional items be added to a plan:

- The easement is referenced on the plan.
- The road is up to par for three single-family properties.
- An informal reference that the plan shows an approximate line for the wetlands.
- On the plan it is stated that 27 A is not a buildable lot.

The Board stated they couldn't act on this ANR until the easement is recorded. The applicants officially withdrew the application.

60 John Wise Avenue – Informal Discussion

Tom Pallazola, Joe Pallazola (owners) and Attorney Thomas Beatrice representing the Pallazola Brothers

Tom Beatrice and the Board discussed what the process would be if the applicants wanted to amend the Special Permit/Site Plan Review Decision and the Site Plan Review process. Kim Jarvis suggested that if this application came before the Board then the Building Inspector be notified.

Scottie Robinson stated that the Board would like to wait until the Board of Appeals filed their decision with the Town Clerk. Andrew St. John stated that to a certain extent he agreed. The Board stated that they did want to act on hearsay that they wanted to wait for the documentation from the Board of Appeals.

The Board stated they couldn't act on the Application until the decision from the Board of Appeals is filed. The Applicant officially withdrew the application without prejudice and the attorney will send a formal letter to the Board and at the meeting wrote an informal letter for the records of the Board.

Michael Cataldo read the letter for the Board.

Board Discussion.

ASTJ: I don't care for the word 'vacate'.

RF: I agree.

MC: All he is doing is withdrawing his application.

The Board and the Attorney representing the Pallazola Brothers all agreed

MC: I make a motion to accept the letter to withdraw the application without prejudice.

RF: I second.

All in favor?

Aye.

Motion passed unanimously.

Horsley & Witten – Review by Board of draft Site Plan Review

The Board discussed and made edits to the draft Site Plan Review bylaw proposal.

KJ: Motion to adjourn the meeting at 10:00 p.m.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for April 16, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
April 16, 2008

Meeting called to order at 7:33 p.m. by Chair, Scottie Robinson and was held at the T.O.H.P. Burnham Library.

Attendees: Amy Reilly (AR), Kim Drake (KD), Bill Holton (BH), Michael Cataldo (MC), Scottie Robinson (SR), Andrew St. John (ASTJ)

Absentee: Rob Fitzgibbon

Building Inspector: Bill Sanborn (SR)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

2 Pineridge Road – Patrick Sanford

Application is to build a 36 x 36 four-stall barn with an unfinished loft. Map 5; Lot 1 G. It has the approval of the BOH, Con. Com. and Fire Department 911. The lot is 2.8488 acres.

MC: I make a motion that we accept the application of Patrick Sanford of 2 Pineridge Road to build a 36 x 36 four stall barn; Map 5; Lot 1G finding it has the approval of the BOH, Con. Com. and it meets all the Town of Essex Bylaws.

AR: I second.

All in favor?

Aye.

Motion passed unanimously.

57 Eastern Avenue

Kim Drake inquired about the foundation at the house that abuts the property on Eastern Avenue where the Walker Creek antiques shop is operated. A citizen had approached her inquiring if the foundation on the lot was for the property-vacant property owned by Brian Feener located on the lot he owns.

The Building Inspector stated that it was a foundation for a garage that was approved by the Board and the owner of the property, Robert Hamlen, submitted the application. The Board did discuss lot coverage for a one or two dwelling unit which was agreed that it should be 45 percent.

Essex Park Drive

KD: There is silt fence as you are driving down the drive of Essex Park Drive, do you know if that is part of the clean up or is it something that Peter Van Wyck is doing?

AR: It has been there a long time.

BH: I believe it is part of the clean up.

(When referencing the 'clean up' the Board was referring to the EPA clean up project for the property located on Essex Park Drive. Peter Van Wyck is not the owner of the property referenced.)

5 & 9 Southern Avenue

The Board discussed the letter from Michael March regarding the property belonging to Bill Allen. The Building Inspector stated that he told Michael March that as the Building Inspector could not do anything unless the Fire Department contacted him directly stating that the property owned by Bill Allen due to the fact that Mr. March letter stated that Bill Allen's property was a fire hazard. If the property were a health concern then it would be a different town department concern.

60 John Wise

The Chair, Scottie Robinson asked the Building Inspector what were his impressions of the Board of Appeals decision regarding 60 John Wise Avenue. The Building Inspector brought up the subject of business use and how many businesses uses a property. The Building Inspector told the Board that he did receive an incomplete Building Permit application from the owners of 60 John Wise Avenue which he will be returning to the applicant.

Horsley & Witten

Nick Cracknell will attend the May 7, 2008 meeting. The Chair asked that he be given a lot of time on the agenda in order to allow time for Nick and the Board to discuss the drafts of the OSRD and Site Plan Review.

12 Scott's Way

The Board reviewed the draft application written by Amy Reilly and made comments, edits and suggestions.

Southern Avenue (Deirdre Henderson owner, Kyle Gayle, applicant)

The Board reviewed the Preliminary Subdivision Plan Application submitted by Kyle Gayle. The owner of the property is Deirdre Henderson. The Board agreed to the fact that the application was not satisfactory or complete. There was a letter from the Essex Assessor stating that an abutter's list for this property could not be completed. Also there was no proof of ownership of the lot which was referred to on the plans that accompanied the application. The lot in question was labeled as 'Map 3, Lot?' with no reference to the actual lot number or the ownership of the lot. Once that is done then the applicant may submit a new application and plans to the Town Clerk and the Board would review the application at a regularly scheduled meeting. The Board Secretary will contact the applicant and the Engineering company working with the applicant.

Correspondence/Regular Business

The Board discussed the letter submitted by Essex citizen Bruce Fortier regarding an amendment to the article for the warrant regarding more than one structure on a lot. The Board discussed the proposed changes.

Town Meeting Warrant Articles

SR: My agenda differs from this one (referring to the meeting agenda completed by the Board Secretary). What I would like to talk about next is the Town Meeting Warrant articles and the Town Meeting.

Bill Holton will present the Wind Turbine Articles. Andrew St. John suggested that it is stated 'the next three proposed articles are about the construction of wind turbines'. Articles 20, 21, 22. Andrew St. John will be the alternate member in case of illness or an emergency. Scottie Robinson suggested that there be visual aids.

Michael Cataldo will present the Flood Plain District. Article 23. Kim Drake is the alternate member in case of illness or an emergency.

Scottie stopped the conversation to address a person sitting in the room, Attorney Thomas Beatrice.

60 John Wise Avenue

Scottie Robinson addressed the attorney for the Palazolla Brothers, Thomas Beatrice who was at the meeting. She said that the Building Inspector told the Board that the building permit application his clients submitted was incomplete. She also stated that the Planning Board did not have a formal application before them for a Special Permit -Site Plan Review.

Bill Holton mentioned that Meg Nelson of the Essex Board of Appeals asked him if the Essex PlanningBoard would be able to complete the process in 60 days and he had said that he did not think it would be a problem.

Town Meeting Warrant Articles Discussion Resumed

Rob Fitzgibbon will present Article 24 regarding three structures on one lot. Andrew St. John will be the alternate presenter.

Kim Drake will present article 25. Andrew St. John will be the alternate presenter.

Scottie will oversee Articles 26, 27, 28 and she will make a determination at the Town Meeting if the articles should be presented or withdrawn.

Kim Drake will present article 29 and Rob Fitzgibbon will be the alternate presenter.

The Board discussed the John Wise Overlay district Article 30. Rob Fitzgibbon stated that he would not support this article due to the fact that he feels a comprehensive plan would be more acceptable. Kim Drake stated that she would not publicly oppose the article but that she felt the article was not necessarily the right means to address the concern which the article is trying to address. Andrew St. John stated that he did not think a Comprehensive Zoning Proposal would not have a chance of being passed. Andrew also noted that the Long Term Planning Committee was asked for an opinion and/or if they would support the article and the Long Term Planning Committee stated that they were according to Andrew, 'were not equipped to have an opinion.' Scottie stated she was glad to see a citizen's initiative and she wished more people would take the time to do more articles like this one.' Personally she is in favor of it because it will allow the vistas to go up to the top of the hill. Kim Drake stated that 4,000 square foot lots would not protect the vistas. Amy Reilly stated she was for it because she is all for protecting the area, it is not snob zoning and who is to say, what you think Peter Kellerman would do if Wal-Mart presented him with \$30 million. Mike Cataldo mentioned self-storage units because the land didn't perc or boat storage. Mike stated that he was more afraid of what would the alternate would be. The Board agreed that they would say a majority of Board members are in favor of this article.

Mary-Ellen will make sure that Amy Reilly has the folder for the Town Meeting that contains all the information the Board may need at the Town Meeting.

Lots 1, 2, 3, - 50 John Wise Avenue – Lorraine Hardy-Wyatt – Preliminary Plan Application

The Board reviewed the submitted application and plans.

The Board reviewed the criteria for a Preliminary Subdivision Plan Application.

Kim Drake mentioned that there were waiver requests. Kim also mentioned that she was not comfortable with the contour waiver.

The Board did discuss the current article on the Town Warrant regarding Article 30, Residential-Agricultural district. It was noted that Lot 3 is missing the frontage dimension on the plans and should be written on the plan.

An ANR was not feasible due to the lack of frontage on John Wise Avenue.

The proposed road name is Hickory Nut Road.

The Board will review the Preliminary Subdivision Plan Application on May 21, 2008.

60 John Wise Avenue

SR: At the next meeting we will review the application we received from 60 John Wise Avenue, Palazolla Brother's this afternoon.

MF: How much time would you like to give to Nick Cracknell, Horsley & Witten?

SR: At least an hour and a half, two hours.

The Secretary will add Review the application of 60 John Wise Avenue to the agenda on the May 7, 2008 meeting.

Regular Business

Mail

Invoices

Correspondence

- April 28, 2008 there will be a roll out of the Metro-Future Plan.
- Two Open Seats on the Board – Amy thought she might know of two people that would be interested in the open seat.
- Web Site discussion. The Board Secretary showed the Board Members the actual size of the empty space on the web page.
- Regarding Preliminary Subdivision Plan Applications and determining when does the date of submission start is when the actual application is date stamped by the Town Clerk. It was decided and agreed upon that this practice is what is currently in the bylaws and what is standard practice in the majority of city and towns.

ASTJ: Motion to adjourn the meeting at 10:15 p.m.

AR: I second the motion.

All in favor?
Aye.
Motion passed unanimously.

Presented by: M. E. Feener
Mary-ellen L. Feener, Secretary

A. Reilly
Amy Reilly, Clerk

**Town of Essex Planning Board
May 7, 2008**

- 7:30 Building Inspector's Report
or, Planning Board Regular Business
- 7:50 Review of Preliminary Plan Application – Southern Avenue
- 8:00 60 John Wise – Attorney Thomas Beatrice – Review of Site Plan Review Application
Lots 1A, 2 and 3 – Hardy's Farm Road - Review of Preliminary Plan Application for a Subdivision
Island Road – 50 John Wise Avenue – Review of Preliminary Plan Application
- 9:45 Regular Business & Updates
Meeting Minutes
Invoices
Correspondence
Payroll
Horsley & Witten Discussion

Meeting to Adjourn

Next regular Planning Board Meeting is May 21, 2008 at T.O.H.P. Burnham Library

May 21, 2008

Essex Planning Board
Town Hall
Essex, MA 01929

Re: Preliminary Subdivision Plan... Hickory Nut Road,
Owner: Lorraine L. Hardy-Wyatt Trust, 50 John Wise Ave., Essex

Dear Chairman Robinson,

This letter shall serve as notice that the Owner hereby formally withdraws the above-mentioned Preliminary Subdivision Plan, without prejudice.

Thank you.

Sincerely,

Lorraine L. Hardy Wyatt
Lorraine L. Hardy Wyatt
Authorized Agent for Owner
Lorraine L. Hardy-Wyatt Trust

Planning Board, Town of Essex

AGENDA

May 21, 2008

Meeting to be held at the T.O.H.P. Burnham Library, Martin Street, Essex

- 7:30 Building Inspector's Report
or, Planning Board Regular Business
- 8:00 Horsley Witten – Nick Cracknell – Review of OSRD, Site Plan-Spec Permit, Definitions

Regular Business & Updates

- Election of Chair
- Meeting Minutes of March 19th
- Invoices
- Correspondence
- Payroll

Next regular Planning Board Meeting is June 4th, 2008 at T.O.H.P. Burnham Library

Public Meeting
Town of Essex Planning Board
May 21, 2008

The Planning Board Meeting called to order at 7:34 p.m. by Chair, Susan Scott Robinson and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD), Bill Holton (BH), Jason Heath (JH), Andrew St. John (ASTJ)

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There were no building permit applications nor did the Board have any questions for the Building Inspector.

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Regular Business

- The Selectmen are hosting a Land Use Forum on Thursday June 12th, 7 p.m. – 9 p.m. at the Essex Elementary School.
 - Payroll
 - Invoices
 - Phone List Draft
 - Correspondence

 - Workshops
 - Permitting Best Practices – June 3rd 7- 9 p.m. Ipswich Town Hall. Susan Jones Moses, Essex County Forum Smart Growth Circuit Rider – the workshop is free however, advance registration is required. Contact Susan: 978-340-0407.
 - Metro Future Strategy Session: Achieving Our Goals – Omni Parker House, event begins at 8 a.m. complimentary breakfast at 7:30 a.m. To pre-register, <http://www.metrofuture.com/meetins.asap>
 - Coastal and Estuarine Land Conservation funding – Applications are due by July 2nd – [www/comm-pass.com/](http://www.comm-pass.com/) and search for document number: ENV 08 CZM 03.
- //////////

Review of OSRD, Site Plan-Special Permits, Definitions

Horsley Witten Group – Nick Cracknell, Senior Land Use Planner

The Board and Nick discussed the general theory and reasoning as to why having a separate Site Plan Review section within the zoning bylaw is important. Then the Board discussed the May 21, 2008 draft of Site Plan Review step by step.

The Board and Nick questioned if the bylaws address the concepts of lot coverage and impervious surfaces and questioned in which sections of the bylaws are either of the terms referenced.

It was suggested by Nick that the Board should consider using the word 'Should' regarding guidelines because they are standards. He also stated that in non-guidelines areas it is permissible to use the word 'Shall'.

Nick and the Board also discussed the Priority Development Fund with the HCD.

50 John Wise Avenue

The Board reviewed the letter sent to the Board dated May 21, 2008. " Re: Preliminary Subdivision Plan...Hickory Nut Road; Owner: Lorraine L. Hardy-Wyatt Trust, 50 John Wise Ave., Essex. Dear Chairman Robinson, This letter shall service as notice that the Owner hereby formally withdraws the above mentioned Prelimianry Subdivision Plan, without prejudice. Thank you. Sincerely, Lorraine Hardy Wyatt, Authorized Agent for Owner of the Loraaine L. Hardy-Wyatt Trust."

KJ: I move to accept the withdrawal of the Preliminary Subdivision Plan Application of 50 John Wise Avenue, owned by the Lorraine L. Hardy-Wyatt Trust without prejudice.

ASTJ: So move.

All in favor?

Aye.

Motion approved unanimously.

Planning Board Chairperson

The Board discussed that it had decided and agreed upon a year ago that on an annual basis following the Town Meeting a new Chairperson would be approved.

ASTJ: I would like to nominate Ms. Kimberly Drake for the position of Planning Board Chair. I would also like to add to our discussion a very sincere vote of thanks of approval for Scottie's great year of work.

Kim Drake: I would accept the nomination with the condition that my work.

Scottie will act as the second.

All in favor?

Aye.

Motion passed unanimously.

ASTJ: Motion to approve the meeting minutes of March 19, 2008 as amended.

KJ I second the motion.

All in favor?

Aye.

Motion passed unanimously.

KJ: Motion to adjourn the meeting.

BH: I second the motion.

All in favor.

Aye.

Motion passed unanimously and the meeting was adjourned at 10:10 p.m.

Next meeting is scheduled for June 4th, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
June 4, 2008

The Planning Board meeting called to order at 7:36 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Kim Drake (KD), Bill Holton (BH), Scottie Robinson (SR), Andrew St. John (ASTJ), Juergen Dietrichson (JD), Jason Heath (JH)
Absent: Amy Reilly (AR)
Building Inspector: Bill Sanborn (SR)
Secretary: Mary-Ellen L. Feener (MF)

Building Inspectors Report

3 Lakeshore Drive – Daniel Rice

BS: The application is for a 10 x 32.5 wood deck with stair leading from the grade to the deck and from the deck to the second floor. Assessor's Map 4, Lot 34.

SR: I make a motion that we accept the application of Daniel Rice for the construction of a 10 x 32 wood deck with stairs, finding that it meets the Town of Essex Bylaws as a 6-4.2 finding with that the new construction would not be more detrimental than the current non-conformity of the existing shed. The application has the approval of the Con. Com. and the Board of Health.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

18R County Road – Lisa R. La Pointe

BS: This is just for your review. The applicant wants to remove a broken down above ground pool and build a 16.5 x 23 master bedroom addition off the right rear of the existing house. It has the approval of the Board of Health, Con. Com. and the Fire Department-911.

KD: Is the property on sewer or septic?

BS: Septic and it has the approval of the Board of Health.

SR: Are they adding a bathroom?

BS: Not that I am aware of.

Kim Drake asked the Board Members if there were any comment and if they accepted the application. There were no comments from the Board Members.

60 John Wise Avenue – Pallazola Brothers

Pallazola Brothers Landscape Construction, LLC, owners of property, present – Attorney Thomas Beatrice representing the applicants present

Bill Sanborn presented the building permit application given to him recently by the applicant. He stated that he would not issue the permit due to the additional items on the new application. The new application requested the following changes of use: Landscape Construction office Business and materials/nursery storage, warehousing, office space, vehicle storage; Retail sales of landscape materials, supplies and products; boat storage facility; office and building space rental. The Building Inspector said that he believed that the decision by the Board of Appeals stated that the occupancy should be for the original change of use requested on the first site plan review application completed by the applicants which were for a Landscape construction office and vehicle storage. The Building Inspector explained to the applicants and their attorney that he would issue the permit for the original items that were

approved by the Planning Board. The Building Inspector asked the attorney for the applicants to remove the new additional uses and then he would be able to issue a building permit and the attorney refused.

149 Eastern Avenue – Owner Mark Gallagher (not present)

Kim Drake read a letter for the record sent to the Planning Board by a citizen, Ed Ackerly.

‘Hi Mary-Ellen, Thank you for your time on the phone today. This email is to let the planning board know that Mark Gallagher’s project at 147 Eastern Avenue is in full build. Steel work began last week. I was under the impression that screening (arborvitaes) was to be planted to provide the neighbors with some isolation from the new construction. Nothing has been planted. The construction of this is a nuisance to my family. We have a straight view to the new building going in, and the noise is unbearable during the day (1 year old trying to nap). I also wanted to see if there was any documentation on the routing of Mr. Gallagher’s power service. I was unaware that there was going to be any work done between my lot (131 Eastern) and my neighbor’s lot (Felicia Selig). This is where Mr. Gallagher has placed a utility pole on the street and intends to run his utilities. By looking at town maps, it appears that he owns 1 foot or less of frontage on Eastern Avenue between mine and Felicia’s property. Can this be done? Regards, Ed Ackerly.’

Bill Sanborn stated that Mark Gallagher was acting accordingly and that if there will screening it would be done after all construction has been completed and that Mark Gallagher was following what is required for his approved Building Permit.

BS: I did have a letter from Don Frickland regarding this property for a continuation of the Building permit days and since he is not in violation of the Building Permit Application a continuation will be granted.

30 Belcher Street - Wind Turbine – David Cutter (owner, not present)

A citizen, Rob Fitzgibbon contacted Scottie Robinson asking about the permit for the construction of a wind turbine. Bill Holton reported that while he was working as the Assistant Building Inspector, David Cutter visited the Building Inspector’s office. He and David Cutter discussed the proposed article for the warrant. David Cutter did not feel that any of the proposals would affect what he was planning on constructing (height, size etc.) of the wind turbine and he was aware that if he did not follow the proposed wind turbine bylaws that if they were passed at town meeting he could potentially need to go before the Planning Board. Bill Holton documented the information with the Building Inspector’s office.

Planning Board Clerk

Juergen Dietrichson was nominated as the Planning Board Clerk.

SR: I make a motion to approve Juergen Dietrichson as the Planning Board Clerk.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

60 John Wise Avenue – Pallazola Brothers LLC

The public hearing was not opened due to the fact that the notices were not published correctly and the Board Secretary will resend all notices and post all notices. The applicant will publish notices again in a local newspaper as required by Mass General Law and the Board agreed that public hearing would be held on July 2nd at 8 p.m.

Nick Cracknell – Horsley – Witten

Andrew St. John volunteered to collate the information and suggestions of the Board Members regarding the Site Plan Review, OSRD and the Definitions. Nick is scheduled to meet with the Planning Board on July 2nd.

The Board agreed that Kim Drake would contact Town Administrator, Brendhan Zubricki regarding contacting Nick Cracknell, Senior Land Use Planner, Horsley Witten Group, to discuss grants, state funds and any potential funds available to assist with a planning consultant. Scottie Robinson agreed to act as a liaison between Nick and Brendhan.

Kim brought forward the fact that Nick Cracknell should not charge the Planning Board for any discussions with Brendhan.

The Board also decided that they would ask Nick to prepare a proposal that the Planning Board would be able to review at the next regularly scheduled Planning Board Meeting on June 18th.

Selectmen

The Board was updated with the news that Ray Randall is the new Chair of the Selectmen.

The Planning Board discussed that the Selectmen have asked to speak to the Planning Board prior to the public meeting regarding the issues of zoning. The Planning Board will meet with the Selectmen on July 14th.

The Board discussed a future public meeting asking for public input regarding zoning and having an open forum.

ANR - Belcher Street & 40, 46 Choate Street – Assessor’s Map 16: Lots 17A, 17B – Gil Guerin (present)

The Board reviewed the plans and the application. The Board asked that the Town of Essex Assessor’s map and lot numbers be identified. The Board endorsed and accepted the ANR and signed the Mylar.

Board Member Vacations & Agendas

June 18th-Kim absent; Scottie will be Acting Chair

July 2nd- 8 p.m. 60 John Wise Avenue Public Hearing- 9 p.m. Nick Cracknell

July 16th – Bill Holton & Jason Heath will not attend

August 6th – Andrew St. John & Jason Heath will not attend

Southern Avenue

The Board reviewed information provided by a citizen regarding decisions by Essex boards and officials in the past regarding the property currently owned by Deirdre Henderson and of which Kyle Gayle has indicated that he plans on purchasing and submitting a Preliminary Subdivision Plan Application. The Board reviewed the information and determined that the information will be filed in the Planning Board files for a future reference.

35 Water Street – Tom DeMeo

Mary-Ellen was approached by a citizen, Tom DeMeo, this evening prior to the beginning of the meeting and asked for the Board’s input regarding proposed new construction project at the property located at 35 Water Street that he recently purchased. He requested input from the Board regarding his plans of taking down the current structure and then building a new pre-fabricated home on the site. He wanted to have input regarding the siting of the new building on the non-conforming lot. He had provided a plan that showed the current structure. The Board discussed the fact that the current structure is located over the side-yard lot line and that if the applicant sited the new home further away from the lot line it would be beneficial. The Board also discussed the set backs required due to the nearby body of water. The consensus was that the Board could not formally state a decision as to what would be the best step for

the owner to take other than perhaps having a new structure placed further from the side-yard lot line until a formal plan showing the proposed new construction was provided. The Board agreed that Kim Drake would contact the owner.

46-62 Island Road - Preliminary Plan Application

Kim Drake read for the record the letter given to the Board dated June 3, 2008. "Dear Essex Planning Board Members, This letter shall serve as notice that the Owner(s) of the above mentioned property hereby formally withdraw the Preliminary Subdivision Plan affecting said property, without prejudice." Signed by Roger Hardy, Eileen Hardy, and Elizabeth Guerin.

SR: I move to accept the withdrawal of the Preliminary Subdivision Plan Application of 46-62 Island Road, owned by Roger Hardy, Eileen Hardy and Elizabeth Guerin, without prejudice.

ASTJ: So move.

All in favor?

Aye.

Motion approved unanimously.

Correspondence from Manchester-Essex Conservation Trust

Kim Drake read for the board the letter sent by Helen Bethell, Executive Director. A copy of said letter is attached to the meeting minutes. The Board decided that Scottie would contact Helen and explain that a surveyed plan would be required to determine frontage.

Essex Park Drive - TBA Estates - Peter Van Wyck (owner, not present)

The Board reviewed the application and plan. The Board determined that the application was incomplete due to the fact that the application form stated that the owner was applying for a twenty-lot subdivision but the submitted plans showed eleven lots. It was decided that the Board Secretary would contact the applicant's attorney, Orestes Brown and send a letter to the applicant stating the reasoning of the Board as to why the application was incomplete.

SR: Motion to adjourn the meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Meeting Adjourned at 10:32 p.m.

Regular Business

Payroll

Invoice

Next meeting is scheduled for June 18, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-ellen L. Feener, Secretary


Amy Reilly, Clerk

Public Meeting
Town of Essex Planning Board
June 18, 2008

Meeting called to order at 7:13 p.m. by Acting Chair, Scottie Robinson and was held at the T.O.H.P. Burnham Library.

Attendees: Bill Holton (BH), Andrew St. John (ASTJ), Scottie Robinson (SR) Acting Chair, Juergen Dietrichson (JD), Jason Heath (JH)
Absent: Amy Reilly, Kim Jarvis
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

249 John Wise Avenue – Amy Ahearn

BS: The permit application is to do work to the outside of the property with new windows, down spouts and siding and inside demolition and a complete rehab. The application has the approval of the Board of Health and the Conservation Commission.

SR: Is the parking changing?

BS: The parking is not on the lot.

It was then determined that a parking plan was available and the board examined it. The Board and the Building Inspector discussed if a Building Permit was acceptable for the use and the work stated on the application. The Board agreed that the application was sufficient for the work requested and that if the Building Inspector needed to issue a permit that it was the Building Inspector's jurisdiction to issue an application. The Board stated that they are concerned about the safety and the fact applicant would like to use parking spaces that aren't on the property. The Board was also concerned if the applicant was considering having a drive-through service and picnic tables and the speed of the traffic on Route 133. The Board also suggested that the applicant visit with the Board to discuss her plans and asked the Building Inspector to convey this request.

The Board asked about JR's Restaurant and the ice cream service windows. The Building Inspector stated that the Board of Health required him to use three parking spaces in order to have the service windows. The Planning Board reviewed the zoning bylaws and it was agreed that the owner had enough parking spaces for the restaurant square footage.

TBA Estates off of Essex Park Drive – Peter Van Wyck (owner, not present)

Scottie Robinson explained to the Board that the attorney for the applicant, Orestes Brown had insisted that the Board review the application and the plans and that the fact that the number of lots on the application form did not coincide with the number of lots on the plan was a scrivener's error. The application reviewed by the Board at the June 4, 2008. Form B stated 20 lots on 82 acres. The waiver requesting the road length of 1,600 feet is clearly stated on page 1 of the plan. Scottie stated that since it was forty-four days from the time of application then the Board had to review the application this evening and a decision would need to be written and signed this evening so that it would be sent to the applicant, certified mail, within the required forty-five days per Mass General Law.

The Board Secretary confirmed that the applicant did pay the required application fee.

The Board reviewed and discussed the application and the submitted plans.

SR: The first thing to consider if we approved this subdivision is the waiver for the length of the road.

JH: Has anyone else ever had a waiver for an extension?

SR: In my recollection the answer is no we have not.

BH: We did make an exception for Rocky Hill Road, but we limited the number of buildable lots to ten. It is expiring however next year.

SR: Anyway, that is one of the hurdles for this plan. On lot two he is showing six, four unit structures and that requires a Special Permit and whatever we do we have to make sure we state that this is a separate process.

JD: Length of road is for safety.

SR: I have been stuck on a cul-de-sac and it isn't fun.

JH: I live on Wood Drive and it is not fun.

The Board noted that the area is located within the Water Resource Protection District and as such, any plans must clearly identify this fact per the Town of Essex Bylaws.

The purpose of having a Lot 11 identified on the plan as an unbuildable lot may be a means of connecting the proposed TBA Estates Subdivision to the existing subdivision located at Turtleback Road off of Apple Street.

The Applicant did not submit any reason as to why a waiver for the length of the road should be granted.

The Board stated that the Applicant is required to apply for a Special Permit for the indicated 24 units on Lot 2. No such application was received.

Andrew St. John: I move that we vote on the Preliminary Subdivision Plan dated April 21, 2008 which was received by the Town Clerk on May 5, 2005.

Juergen Dietrichson: I second the motion.

All in favor?

Aye.

Motion approved unanimously.

Andrew St. John: I vote to deny the application because the road is longer than the bylaw allows and no compelling reason for a waiver was presented. Also, because there is a lot, Lot 11 which was created and that lot is clearly intended to be a connecting road with Turtleback Road extension and that is a condition that has been specifically rejected by this Planning Board and other Town Boards.

Bill Holton: I vote no because the length of the road and I do not believe a waiver is appropriate in this case. Secondly, Lot 11 which is classified as not a buildable lot is obviously a method by which the applicant clearly wants to connect to Turtleback Road which we have denied and discussed in the past.

Scottie Robinson: I am voting to deny the Preliminary Subdivision Plan of TBA Estates for the same reasons as Andrew and Bill and I am also concerned about Lot 11 which I originally thought was going to connect to the Conservation Restriction of Lot 8. The Conservation Restriction does not have any access for the public. My third complaint with the plan is I do not see any reason to approve Lot 11 which is not a buildable lot when there is no apparent use for it. Finally, the plans shows 24 units on lot 2 and that is an inappropriate application of the plan. The 24 units would have to be presented by a special permit application.

Juergen Dietrichson: I Juergen Dietrichson, vote to deny the application before us because the road length does not meet the bylaw and there is no reason to allow a waiver and I see no purpose to allow Lot 11 other than to allow access to Turtleback Road and no grounds merit to allow that lot.

Jason Heath: I Jason Heath will also vote to deny the plan due to the road not conforming to the bylaws and no reasonable request to allow the length of the road. I would also add that I see no reasonable use for Lot 11 as a non-conforming buildable lot.

The decision will be sent to the applicant tomorrow by certified mail and copies given to the necessary Essex Boards, officials and added to the Planning Board files.

Regular Business

- Mail
- The Board discussed different ideas and topics that they would like to discuss with the Selectmen at the meeting of both boards to be held on July 14th:

Draft Agenda for the July 14, 2008 Meeting with the Selectmen

- Grant proposal
- Hire planning consultant
- Determine necessary zoning issues to address
- Write/rewrite associated subsections
- Explain how the above is a lead-in to a future public meeting, and discuss the framework by which that meeting can be made most effective

Draft of the Proposed Zoning Items to Address

- Town wide Zoning
- Parking
- OSRD
- Mixed Use
- Definitions
- Site Plan Review

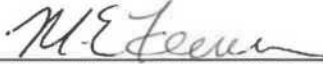
- The Board discussed the draft agenda for the next regularly scheduled Planning Board meeting on July 2nd.


- 7:30 Building Inspector's Report
- 7:50 Amy Ahearn – John Wise – 978-621-7703 – Informal Discussion
- 8:00 60 John Wise Ave – Pallazola Brothers – Public Hearing to amend a Special Permit
- 9:15 Discuss nature of future zoning in Essex, (i.e. districted, master with overlay, restructure existing) further
- Review of Site Plan Review subsection

JH: I make a motion to adjourn the meeting.
BH: I second.
All in favor?
Aye.
Motion approved unanimously.

Meeting adjourned at 10:50 p.m. The next meeting is scheduled for July 2, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-ellen L. Feener, Secretary


Juergen Dietrichson, Clerk

Public Meeting
Town of Essex Planning Board
July 2, 2008

Meeting called to order at 7:37 p.m. by Chair, Kimberly Drake and was held at the B.O.H. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD), Jason Heath (JH) – Andrew St. John (ASTJ) arrived at 7:55 p.m.

Absent: Bill Holton, Amy Reilly

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-ellen L. Feener (MF)

Building Inspector's Report

64 Eastern Avenue - 64 Eastern Avenue Trust

BS: This is for a new timber framed barn for farm. It has the approval from Con. Com. and the DPW.

KD: This is for the siting of the barn?

BS: Yes.

SR: I move that we approve the application for the building of the barn Map 14, Lot 8, 64 Eastern Avenue.

JD: I second the motion.

All in favor?

Motion passed unanimously.

//////////

249 John Wise Avenue – Amy Ahearn (AA)

SR: We saw a drawing of parking of just about six spaces and there were several parking spaces on the side of the property and we were not sure as to where is the grass, where is the road.

AA: On John Wise Avenue now there is a 100-foot frontage. The area at the front is paved. We are going to clean off all the debris on the site and we are not going to pave anymore.

SR: Amy, what was the drawing we saw last weekend?

AA: I am not sure.

The Board and Amy Ahearn discussed her plans for parking and accessing the lot.

Scottie Robinson stated that the State (of Massachusetts) does not allow parking on a road within 10 feet of a state highway.

SR: Obviously a lot of people do or otherwise there would be a lot of people in Essex out of business, but it is the law and that is a 50-mile rather than a 25 or a 35-mile per hour stretch of road. So, you need to figure something out that keeps your parking on your property and doesn't have anything to do with people driving strangely off of Route 133. We don't have enforcement powers but we do have a responsibility to ask what are you doing with your parking.

AA: My concern is that the service windows are across the front and people with small children being that close to the road and having people going 50 and banging a left off the highway into the parking lot concerns me. I am pretty much thinking of making this an exit only so people would have to come down Old Essex and through that way. Regarding overflow, there is Old Essex and it is hardly used so my thought would be that I am busy enough so people use Old Essex Road for overflow.

SR: What is across the road?

AA: It is mostly marshland.

Kim Drake asked if it was a change of use.

BS: It is not a change of use because it is a business to a business. One of the questions I think is right now can you turn off of Route 133 and into your parking lot?

AA: Yes.

Bill Sanborn suggested that Amy Ahearn speak to Mass Highway to make sure they are o.k. with the exiting from the property.

Amy Ahearn discussed her design plans for the exterior with the Board.

SR: The other thing I am concerned about is if people are pulling in and parking is that you make a parking pattern that people understand.

AA: Yes, we are planning on doing that.

KD: It appears that based on a rough scale and my understanding of parking guidelines there is enough room to park on both sides of the building within the paved area.

SR: Where will the people get their ice cream?

AA: People will be walking up to the porch at the front of the building.

60 John Wise Avenue – Pallazola Brothers LLC – Public Hearing to Amend a Special Permit/Site Plan Review

Kim Drake read the commission statement for the meeting and then reviewed the notices which were published correctly in the local newspaper, the Gloucester Daily Times on June 12 and June 19, 2008. Kim also talked to the citizens present about proper conduct during a public hearing.

KD: I would like to formally open the public hearing at 8:08 p.m.

Thomas Beatrice: I am Thomas Beatrice of 286 Humphrey Street, Swampscott. I represent the Pallazola Brothers who are here today. Also with me is Robert Griffin of Griffin Engineering. Very briefly as a way of introduction we are here finally to request that the existing special permit that was previously issued be amended or modified to comply with the appropriate zoning bylaw which would be the site plan review. On my application I set out the paragraphs of what I believe were appropriate for site plan as well as any omissions to or reference to a special permit. On that same vein I would request that the Board rescind the Special Permit that is on record at the Registry just for the purposes of recording since site plan review there are no requirement that it needs to be recorded. Very briefly we also decided to, at the same time, present a new plan to the Board with a request for a couple of things. Basically there is a landscape construction business going on their now, the building is basically used as an office what we are proposing to add to that is a retail business to sell flowers and shrubbery. The use of the building would be exactly the same; it would be used as an office. Now bear in mind that the landscape business is seasonal so during the off-season we would like to use it as boat storage with the building as an office as well. I would suggest, that one; the plan we will present tonight is within compliance of the dimensional requirements of the bylaws and parking requirements of the bylaws. Certainly we request that the Board consider reasonable measures to mitigate any potential impact in the project as is required by law. So that is the basis of our application and if I may I will turn it over to Mr. Griffin.

Robert Griffin Engineering Group LLC presented the new plans to the Board. Bill Sanborn asked the engineering company to tell the differences between the plan submitted and the new plan which he did.

SR: I think the new plan is helpful and the changes were stated on the submitted application (*form*).

KD: Any other major comments from the Board?

No comments.

KD: O.k. we will open it up to the public. First, anyone in favor of the project is allowed to speak. (*No comment*). Second, we will open the floor to anyone in disfavor or would like to speak.

Peter Kellerman, 94 John Wise Avenue: I am an abutter to the Pallazola Brother's property. I have a few comments and concerns. First I would just like to emphasize of the importance that I feel about the Site Plan Review process in this case. Since you don't have zoning in a case like this you have commercial properties juxtaposed to residential and agricultural and also wetlands. In 6-6.12 (*Town of Essex Bylaw*) it does specifically say that the Site Plan Review process and the site-specific concerns need to be discussed. I would have liked to see these new plans before today. The Site Plan Review process considered those and then required modifications to eliminate or minimize potential problems. Among those concerns are to ensure that the aesthetics of the proposed development are keeping with the community and neighborhood character so as to avoid substantial detriment to the community and the neighborhood. And then these concerns are further spelled out in 6-6-12.4 and one of those is the drainage control and it states that the applicant shall prove that it meets the minimum standards for Stormwater Management as specified in the Stormwater Management Handbook. Now Mr. Griffin stated that it is all consistent with all that but I would have to see some numbers on there (*referring to the plan*) as part of what the hydraulic conductivity of some of those materials are and where is it in relativity to the buffer zone and I haven't really had a chance to look at it. There are a lot of details to verify in fact, this states specifically that it is the engineer's and the applicant's responsibility to prove that it does comply with Stormwater management and that is very much my concern because of the wetlands are on my property. The other main impact I am concerned I have, other than the wetlands, is how this will affect the neighborhood. We all know that this is a scenic byway of John Wise Avenue and this is a lot that is in view as you are leaving town, you see it for a about a quarter of mile and it is also in view of my farm and the visual impact of having shrink-wrapped boats does in fact make a difference. Wise Marine actually has a lot of full-grown trees in front of it and the boats are not in full view from the highway. It is

not blocked from me. I feel that this may be in full view from the highway. I would like to see sight lines to see as to how it would be mitigated and how it would not end up as an eye sore for the scenic byway. The other thing regarding boat storage is how are the boats going to be stored and how many boats? They Pallazolas are not professional boat people like the other people are and there is a lot of technical stuff that is involved in getting boats prepared and that is a very major concern. If there was some type of leakage that could not only affect the wetlands on my farm but the Soginesse Creek and that goes right down there down to the marsh. What if a boat fell over, or I don't know what type of catastrophe a large boat could have, it could spill of hundreds of gallons of fuel. The probability of a catastrophe goes up with the number of boats. One of those catastrophes could cause a major catastrophe in our wetlands. So that is a major concern. The number of boats and how they are going to be handled.

Thomas Ellsworth, Belcher Street: When the Pallazola Brothers were in the process of negotiating to purchase the land a Site Plan Review submitted and for better or worse it seems that its development was to be limited to commercial and so on and the first Site Plan was approved and everyone in the area accepted it. Now here we are a couple of years later we are here again and the Pallazolas are saying well that was nice and it was a couple of years ago but I really need more income so I need both and I need more income so I need retail one of the concerns is at what point is this going to stop. What if we end up having a McDonald's there? Where we have no zoning so to speak we really rely on the Planning Board to control site plan approval as to what happens in an area so it is not adversely impacted. We do not want to adversely impact this highly agricultural area.

David Lane, Trustee of Curlew Realty Trust: Has this gone before the Con. Com. yet?

Thomas Beatrice: We do have some work that we want to have done within the buffer zone. For boat storage.

KD: Given the fact that there is a lot of work that is going to happen within the 100-foot buffer I think it would be prudent not to make a decision until we discuss this plan with the Con. Com.

SR: Has it been on their agenda?

Thomas Beatrice: No, not yet.

Leslie Burns, 52 Grove Street: As a member of the Open Space Committee and a survey sent out to the citizens of the town in 2005 the area of the biggest concern to preserve was the 133 John Wise corridor.

ASTJ: While I haven't had a chance to review the new submitted plan. I have a couple of initial comments. I do have a concern that the plan we are seeing now is very different than the first one submitted with the application; there is a second driveway and a detention area. My concern is do we have the final version of the plan and what is to prevent a change in the next go-around. It is very disconcerting to have these changes.

Bill Sanborn asked about the overlapping between seasons for boat storage and the retail of horticultural products; is there a plan for that. My other question is that they have 90,000 square feet and per the bylaws they can have three uses and they have asked for four uses. Finally my last comment was the one that was just brought up regarding the Con. Com.

Kim Drake asked if any of the Board Members had any comments.

ASTJ: While I haven't had a chance to review the drawing in detail, and like Scottie I want that opportunity, I do have a couple of initial comments. I do have a concern that the plan we are seeing now is different than the plan that was with the application. The fact that there is a second driveway into the property and there is a detention area that I am seeing for the first time. These are major aspects of any site and as delicate an area as this, I guess my concern do we have the final version of the plan and what is to prevent a change in the next go around. It is very disconcerting to have these changes for this go around. It is a process observation.

BS: Can I raise some questions?

KD: Yes.

BS: Did you see this, overlapping between seasons? Boats don't typically go in until April, May, June, probably closer to June. Plant Season come out in May, April. People usually come out at the beginning of the season. How are they going to handle the overlap during the seasons? The same thing goes for Labor Day and the fall season. The next question is that they have 93,000 square feet for a business, which means by the Bylaws they could have three uses on the property and they are looking for four and the last one was already asked regarding if the Conservation Commission had reviewed the plans.

Kim Drake read a letter submitted by Board member Bill Holton. (Attached to the Meeting Minutes)

D: The things when I look at the plan and just have questions about are the same things as my fellow Board Members. This is a completely new plan and it is a bit disconcerting because we haven't had any chance to review it before this. Also on the new plan it refers to a proposed berm to surround the new work but it says nothing about what that

proposed berm is made of and the grading plan doesn't appear to show anything but dashed lines, there is no height, depth or width to this or material identified. I am concerned with the second driveway which as it states on the plan it does need highway approval but I would also be very concerned about the slope. It appears to be a ten percent slope going into the building which is steep anyway and it would be directing vehicles right to the building and I would be concerned that could be dangerous. Our Site Plan Review process does say that a driveway should have the approval of the Department of Public Works and I don't know how they would feel about the driveway but I would want their input from them. Con. Com. is a big issue in my mind especially since you indicated an 18-inch fill which is entirely within the wetlands and I would imagine that the Conservation Commission would have to say something about that. Specifically because there are so many impacts to the wetland buffer area I would suggest that the Board does not take any action until we know that we have input from the other Boards in town.

Kim Drake also requested that the other Boards and Departments have an opportunity to review the newly submitted plans. The applicant or the engineer will bring more copies of the plans to Town Hall.

Leslie Moore, John Wise Lane: In hearing the statement that you read from your other Board member who isn't here that seems to be the first order of business to find out what has gone on since the first application. As a member of the public it is rather startling that those things are true. It seems that to talk about a second proposal is a little out of order.

Maria Burnham, Southern Avenue: It seems to me that this is a huge operation totally not keeping with the location and the neighborhood and it seems to me to be a detriment to the neighborhood with all of those things going on at once; different times of year, all those people running in and out, that's a huge operation and I think you need to consider that.

Thomas Beatrice asked to be able to address the comments regarding traffic and he said that the screening that is there now is adequate because of the bylaws.

Thomas Beatrice: First of all, just to address that last comment. I disagree with you. I think that the seasonal nature of the businesses and the actual nature of the businesses, they will certainly be traffic but I don't think it will be a huge impact of traffic. Boat storage is the same you aren't going to generate much traffic. The landscaping business does not generate much traffic now. All these gentlemen are trying to do is to utilize the property; their own property. Just to address Mr. Kellerman's comment, the screening we believe we proposed which is actually there now is adequate as set by the Bylaw with respect to the aesthetics of the neighborhood. When you are talking about seeing boats or how they look from the street I think our proposal will show it will look great from the street with the screening we have with a picket fence we propose and their will be flowers out front. With respect to the neighborhood I totally disagree with you Mr. Kellerman. I came down 133, and there are boats visible ten feet from the street, bath tubs and manure as high as a barn visible from the street. I don't know how you can hold the Pallazololas to a higher standard as anyone else who has a business on the street. So, I understand the concern. We share it. Which is why we made the proposals we made. With respect to concerns about the storage of the boats our intent is not to do any of the maintenance on site. Boats come on site and they are already winterized, the fuel tanks will be checked, the batteries disconnected and I think that is as high a standard as anyone else who has a place for boat storage. Some of the other comments, particularly the Building Inspectors comments; we recognize there was an overlap of the seasons which is why we made a great effort to separate the businesses when they do overlap in the spring and the fall which the plan reflects. Which is why we suggested to have a second driveway. We keep them separate to address that very concern and I think we have done it. With respect to the letter read for Mr. Holton with respect to the previous permit that was issued, Town Counsel issued a letter back in November that basically took the position that the previous permit was issued incorrect. (A copy of the letter dated November 30, 2007 from Town Counsel, Kopelman and Paige is in the public file.)

Thomas Beatrice: (reading from page 2 of the letter from Town Counsel dated November 30, 2007). "Although the application was for "Site Plan Review," the Decision is entitled a "Special Permit". While Section 6-6.12 and other provisions of the Bylaws, that Section 6-6.12 requires only Site Plan Review, not the heightened degree of discretionary decision making that is involved in the issuance of a Special Permit." The decision that was issued was the Special Permit and it was totally inappropriate under the bylaws. We are here not only to correct that mistake but also to put all our cards on the table for the proposed uses of the property. I don't think there is any dispute that the former Special Permit was erroneous. The next thing I would like to mention, and I am sure Mr. Griffin would like to address it, is about Stormwater management and we recognize our obligation and we have met them and we are prepared to meet them. The only thing I would like to get across at this time is that we understand that the abutters and for the Board that it is seems like a lot to take in but you have to take into consideration the Pallazola Brothers own the land and they have the right to use it how they want to use it under the laws of the town. That's all we are trying to do. We filed this latest plan in the good faith, not to ambush the Board or to put anyone at a disadvantage. We know it is going to take more than a few meetings before you make a decision on this. It isn't something we just threw on the table and say there it is, that is

ludicrous. The fact of the matter is we have spent weeks trying to come up with a plan and sought out a building permit. I had conversations with the Building Inspector. We came up with a plan that we thought was safe, we thought was aesthetic and it was a balance. I would be thrilled to address the Board's concern that this was the final plan or that this plan wasn't going to be modified. The thing is that there may be some modifications; not by us but by the request of the Board. There was a lot of hard work, a lot of discussion that went into this plan. We are here on good faith. We want to fix the problem that exists regarding the Special Permit that is out there right now. We also would like to have the Board and the public to review what we are proposing and not to jump to any conclusions and take a good look at it and consider the fact that it is all seasonal. The landscaping and the retail are businesses that go together in other communities and other businesses it is a natural business to undertake. There is landscaping and construction going on there right now. The boat storage basically is seasonal in the winter.

Kim Drake asked if there were any more Board comments.

ASTJ: I think it is worthwhile addressing the history because until there is some resolution, not only with the history of it but with the current legal state of affairs I think it would be timely for us to seriously consider the merits in this particular situation and there is clearly disagreement between the Pallazolas and the Town on the nature of legality of the previous Special Permit/Site Plan Review. I have a serious concern that it took them two years to bring it up and they essentially ignored that previous decision. Mr. Beatrice is indicating to vacate it - (addressing Attorney Beatrice) don't look so critical Mr. Beatrice you know exactly what I am saying. Let me finish. I am not responding just to your statement I am responding to the situation we have, as I understand it. The Site Plan Review was required to be filed and it was not filed and a Building Permit would be required to be taken out and it was not taken out and finally two years later we have an opinion from Town Counsel which not everyone agrees with that decision was not appropriate. I think there will have to be some back and forth before we agree; the Board needs to satisfy ourselves that it was not appropriate. We are not there yet. Until we find that, until we agree on that I think we have some merits on this particular situation, but this is the first time you have asked us to vacate the Special Permit/Site Plan Review.

Thomas Beatrice: That's not true, I totally disagree with that statement. I put a request on the table over a month ago on an informational basis. We went to the Zoning Board of Appeals. If you want to rehash the past that's your prerogative but I think we have a right to file for an amendment to an existing permit or an existing decision. If you want to rehash the past we are happy to do it but I don't think that will serve any purpose. The issue is whether the existing Special Permit as it exists now, was it appropriate? I think it is very clear that it isn't, you may disagree with me. The Board can certainly vote that it's fine. Then we can go on from there. Town Counsel is in agreement on the issue. I think it is crystal clear. So that particular issue is part of the amendment we are seeking.

BS: The comment I would like right off the bat is what we are dealing with a legal issue and in order to get some guidance on the issue. I don't believe the letter from Town Counsel actually resolves anything I think it actually clouds things a lot more and I think in order to resolve the issue and get some guidance. The bottom line is that we have a Bylaw that reads one way and the Board does not have the authority to go against that Bylaw which to the best of my knowledge was approved by the Attorney General. I think the best thing we can do is to sit down and discuss this; not do letters, but sit down and find out exactly what their opinions are. The problem we have is that someone asked town counsel a question and then we had a response from that question so they don't really get the object of what we are trying to ask. I have had that problem with them before. I have talked to Town Counsel after they have written letters and then they change their opinion after we have talked. Is this legal, is this not legal? I suggest that someone talk to town counsel and make sure town counsel has a clear idea as to what has gone on and get a bottom line for this and resolve this once and for all.

KD: I tend to agree with Bill. There were timing, interpretation and other fundamental issues we need to be clear on and understand them and take a direction on before we do anything else towards making a decision.

Ed Perkins, 66 Story Street: I am the Chairman of the Board of Appeals. This is a good start and this is what exactly the Zoning Board of Appeals asked to happen. They were great coming to us but we could not act on the original. You have to remember that most of the stuff they are doing there, maybe all of the stuff they are doing, I have not see the new plan so I can say for sure but most it is legal per our bylaws as they are written now. The curb cut would require state approval. The original site plan review probably was out of line because they met the requirements necessary for what they are doing on that property at that time at least the proposal we saw that was brought to the Board of Appeals. I think that the Planning Board should take this under serious consideration. I think maybe in the future the Planning Board should list their concerns and add what requires a special permit in Essex as it is writing now. This is something you people should take into consideration and I am glad you they are here now and working on it.

SR: I just want to say that I am also concerned like Bill Holton and other members that there has been some confusion about the process. I think it needs to be resolved and I don't want to comment on that; it might have to come first. My concern is really going over the application we have before us tonight that has very definitive uses, places mentioned... I would just like to have the opportunity to go through it and the Bylaws require in terms of parking spaces, screening, I

really want to get to the nitty-gritty of what are the business uses you propose and do they or do they not confirm to the Bylaws. It is convoluted due to the history of the Building Permit, you put the bin somewhere else, it is confusing. I would like to do that in what ever many minutes we have left tonight. We don't have your perception of how the plans work. I want to look at the plans now and look at the Bylaw requirements.

Thomas Elsworth, Belcher Street: Mr. Beatrice in his second the existence of numerous issues on John Wise Avenue, boats that aren't buffered at all, bathtubs, piles of dirt etc., these situations exists and I am assuming that they are legal under past Bylaws. We did pass the new Bylaw last spring with the intent, hopefully, that it will not happen anymore. Now if this Bylaw does not do that then shame on the Planning Board. The whole intent of it is to prevent what is happening on John Wise Avenue.

Thomas Beatrice: The only reason made those comments about the street is not to disparage anyone, but only to address the specific criteria under the Bylaw. Which is keeping with the neighborhood. As you can see by the plan there is a great emphasis to keep everything back off the street.

KD: Anyone who hasn't spoken wish to speak. (No comment).

Peter Kellerman: something confused me a little bit and I would like to clarify something Mr. Perkins said about boat storage is an allowed use. There were two changes to the process. In 2007 things that require Site Plan Review for any building or any change of site, even if it doesn't involve a building. What is available on the web site as the unofficial Bylaws does not show these changes but the changes are there and perhaps useful if you can do that 6-6-12.2 as to what those requirements are.

Thomas Beatrice: I don't think the issue right now is if the project requires a change of use. The issue is should it have been subject to a Special Permit?

Peter Kellerman: Boat storage does require Site Plan Review, no question.

KD: Any other questions or comments? (No Comments). O.k. I think given the discussions we have had I think it is apparent that we need to continue this and get comments from the other Boards and Commissions that have not commented on this. Do we have copies of the plans that we received tonight?

The public hearing will be continued to August 6, 2008 at 8 p.m.

It was decided that Griffin Engineering would bring the required number of plans to the Town Hall on the next business day.

Board Discussion Regarding the Nature of Future Zoning in Essex

Andrew St. John began a discussion regarding the future of zoning in Essex. The Board discussed ideas for future Zoning Bylaw Articles which could potentially be proposed as Articles for the Warrant at a Town Meeting. Topics included, but were not limited to Overlay Districts and reviewing the proposed Site Plan Review Bylaw.

Regular Business

Meeting Minutes

SR: I make a motion to approve the meeting minutes of February 27, 2008 as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

JH: I make a motion to approve the meeting minutes of May 20, 2008, as amended.

SR: I second.

All in favor?

Aye.

Motion passed unanimously.

ASTJ: I make a motion to approve the meeting minutes of June 4th and June 18th, 2008 as amended.

SR: I second.

All in favor?

Aye.
Motion passed unanimously.


Invoices
Correspondence
Payroll

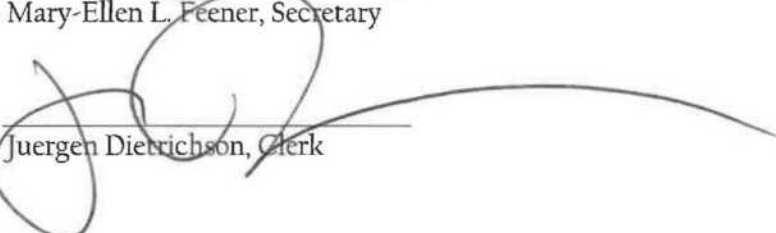
ASTJ: I make a motion to adjourn the meeting.
JD: I second.
All in favor?
Aye.
Motion passed unanimously.

Meeting Adjourned at 10:45 p.m.

Next meeting is scheduled for July 16, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Juergen Dietrichson, Clerk

From: L.W. Holton [mailto:lw.holton@verizon.net]

Sent: Monday, June 30, 2008 9:49 PM

To: Jason Heath; juergen dietrichson; Drake, Kimberly; Amy Reilly; Andrew St.John; Scottie Robinson

Subject: July 2 2008 meeting

Mary Ellen,

I will be unable to attend the above public hearing.

At the public hearing I would like this statement to be read for the record.

In regard to the Pallazola's new SPR application, I believe we need to have a discussion with them about the OLD SPR of Dec. 2005 which carried special conditions. They did not appeal this Dec. 2005 decision. Soon after, they carried out numerous "improvements" to the site without having the original building permit and in disregard for the limitations set forth in the site plan approval. During this discussion we need to see an "as built" site plan. A site plan showing parking, storage, building footprint, drainage, and the changes they made to the original Dec 2005 plan, and a description of the use intended for the proposed rental section of their property. The original site plan approval set a restriction on retail sales... why should we rescind this condition for this new application? Why should we approve boat storage on this site? Adequate screening appears to be non-existent for their current storage, boats will be very visible unless this condition is addressed with full screening.

The Pallazola's have operated their business on this site since Jan. 2006 without filing a certified copy of our decision with the Salem Registry of Deeds. They have operated without a building permit. They performed changes to the site in violation of the Dec 2005 approval. (Paved parking lot, boat storage site- work on the north side of the building, storage bins in different location) There appears to be a total disregard, on their part, for the legal regulations we imposed with this site plan review process and which they agreed to follow.

I fear that any rules or regulations imposed on this new operation will be ignored. The Pallazola's agreed to our original 2005 SPR and we should enforce these regulations through the Building Inspector, and not allow an increase or change of use to multiple businesses on this property in this highly visible and heavily traveled section of town designated as a scenic byway by the state.

William Holton

2 Maple St

Member, Essex Planning Board

planning board

From: "peter madsen" <d30063536-peter.madsen@pop.purehost.com>
To: "planning board" <planningboard@essexma.org>
Sent: Monday, July 14, 2008 2:15 PM
Subject: Soginese Creek Realty Trust

Dear Mary-Ellen and members of the Planning Board,

This letter is to follow up on feedback from a discussion at your last meeting. A question was raised about the status of the road which gives us frontage.

Today, I gave you a drawing showing how some of the land of 42 Spring Street (Stratton, formerly Tomiaolo) was divided off to parties named Irwin and Hall - Lots 23 and 24 of LC Plan 30642E. When that occurred in 1995, the Way was used to support an ANR finding.

In addition, I am providing a marked copy of a drawing from July 10, 1967, showing Land Court Plan 31254A (the entirety of the land we acquired), This drawing was handmarked to show the creation of lot 4 thereof, which is then shown in detail on a drawing of Sept. 6, 1968, Land Court Plan 31254B. That lot (now known as 52 Spring Street, Emmons) was also created using the frontage from the Way in question.

Please let me know if you need anything further.

Many thanks.

Peter Madsen

Public Meeting
Town of Essex Planning Board
July 16, 2008

Meeting called to order at 7:39 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Andrew St. John (ASTJ), Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD)
Absent: Amy Reilly, Bill Holton, Jason Heath
Building Inspector: Bill Sanborn
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There was no Building Inspector's Report due to the fact he was on vacation.

60 John Wise Avenue – Palazolla Brothers LLC (not present) – Board Discussion
Site Plan Review-Special Permit Application Board Discussion

The Board reviewed the comments from the Board of Health, the Fire Department and the new plans that were submitted at the July 2, 2008 public meeting by the applicants.

Conservation Restriction – Turtleback Road

Orestes 'Russ' Brown, Attorney representing Peter Van Wyck, Peter Van Wyck (owner, not present)

Russ informed the Board that all parties involved approved the Conservation Restriction. Russ will give the Board Secretary a copy of the Conservation Restriction once it was recorded with the Registry of Deeds. The Board said that once they had a copy then the Board would sign the form to release Lot 41 to a buildable lot.

TBA Estates off of Essex Park Drive – Peter Van Wyck – Informal Discussion

Orestes 'Russ' Brown, Attorney representing Peter Van Wyck, Peter Van Wyck (owner, not present)

Russ discussed a new plan with the Board. The applicant is looking to build 29 residences. The plan followed an Open Space Residential Design (OSRD). Russ asked that the Board vote to reconsider/rescind the previous denied vote on the recent Preliminary Plan application. Andrew St. John discussed the plan did not follow the true form of an OSRD; each lot should be one conforming lot and the rest of the land open space. Kim Drake said that if the Planning Board became deeper into this conversation, it would be important that the Planning Board talks to the Conservation Commission since they would oversee the Conservation Restriction. Russ asked if the application for the Special Permit and the application for the Subdivision happen simultaneously. The Board discussed the question. The Board agreed that there is the potential to have them done at the same time.

Russ said he would send a plan reflecting the alterations suggested by the Board and a letter asking the Board to rescind or allow an amendment to a Preliminary Plan. The Board asked why the Board would want to rescind the first Preliminary Plan. Russ answered that the applicant does not want to give up the ability to build three houses on one lot due to the date of first Preliminary Plan application occurred prior to the Annual Town Meeting when a new bylaw regarding three houses on a lot.

Spring Street – Soginse Creek Realty Trust – Peter Madsen (not present)

An email was sent to the Planning Board, dated July 14, 2008: 'Dear Mary-Ellen and members of the Planning Board, This letter is to follow up on feedback from a discussion at your last meeting. A question was raised about the status of the road which gives us frontage. Today, I give you a drawing showing how some of the land of 42 Spring Street (Stratton, formerly Tomialo) was divided off to parties named Irwin and Hall – Lots 23 and 24 of LC Plan 30642E. When that occurred in 1995, the Way was used to support an ANR finding. In addition, I am providing a marked copy of a drawing from July 10, 1967, showing Land Court Plan 31254A (the entirety of the land we acquired). This drawing was handmarked to show the creation of lot 4 thereof, which is then shown in detail on a drawing of Sept. 6, 1968, Land Court Plan 31254B. That lot (now known as 52 Spring Street, Emmons) was also created using the frontage from the Way in question. Please let me know if you anything further. Many thanks. Peter Madsen.'

The Board asked Mary-Ellen to ask Peter Madsen if he could attend the next regularly schedule public Board meeting for an informal discussion. The Board also discussed that a private way and a public way where the same. Kim read from the ANR Handbook and Andrew read from the publication written by the Putnam Conservation Institute for The Trustees of the Reservation regarding ANRS and Ancient Ways.

Regular Business

- Mail
- Payroll
- The Board discussed the meeting with Selectmen on July 14, 2008 discussing Planner. The Board decided that they would draft a job description for a planner and discuss at the next public meeting.

JD: I make a motion to adjourn the meeting.

ASTJ: I second the motion.

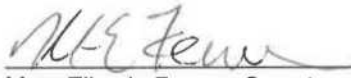
All in favor?

Aye.

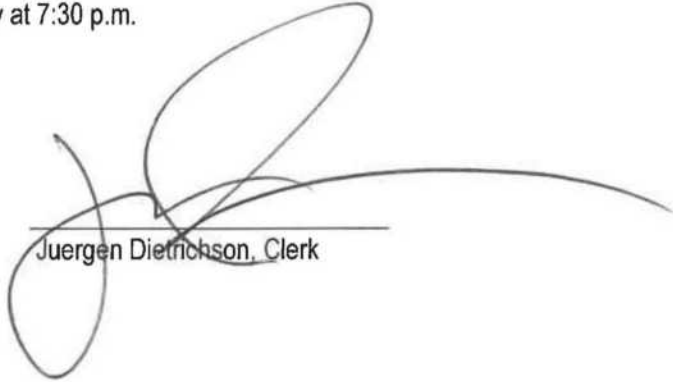
Motion passed unanimously. Meeting adjourned at 10:30 p.m.

Next meeting is scheduled for August 6, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

**Public Meeting
Town of Essex Planning Board
August 6, 2008**

The Public Meeting called to order at 7:48 p.m. by Chair, Kimberly Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD), Andrew St. John (ASTJ)

Absent: Bill Holton, Amy Reilly, Jason Heath

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

The Building Inspector did not have any Building Permit Applications which were necessary to present to the Board.

The Building Inspector and the Board did talk about the correspondence that the Building Inspector had recently sent to the owner of the property located at 42 Spring Street, a copy of which was also sent to the Planning Board.

The letter was regarding a cease and desist order for operating a business in a garage without the proper approvals. The Building Inspector stated that the owners did visit his office and the Building Inspector stated that it appeared that the owner understood the fact that the proper approvals needed to be obtained and until such time the business could not continue in the garage.

The Board agreed that if the owner did contact the Board Secretary that she should invite the owner to a scheduled public meeting for an informal discussion. A copy of the letter sent by the Building Inspector was filed under the street address.

Board Review – Regular Business - Correspondence written by Town Treasurer and Preliminary Plan Application for a property located at Southern Avenue – Assessor Map 2, Lot 26A & Map 2 Lot "A"

The Board reviewed the correspondence received from the Town Treasurer, Virginia Boutchie regarding Kyle Gayle who is the applicant for the Preliminary Subdivision Plan for the property currently owned by Deidre Henderson/the Estate of Peter Henderson located on Southern Avenue, part of which states, 'on May 7, 2001 the Town of Essex adopted M.G.L. Ch. 40 section 57, allowing Town license granting authorities to deny applications for, or revoke or suspend licenses and permits for non payment of taxes ... please note Kyle Gale is the subsequent owner of the following parcels and permits should be denied until all taxes, fees and liens have been paid in full.'

The Board unanimously agreed that the application which was recently date stamped on July 20, 2008 by the Town Clerk and presented to the Planning Board should not be officially accepted until this matter has been rectified. A copy of the letter sent by the Town Treasurer may be found in the public records/file.

The Board decided that the Board Chair and the Secretary would compose a letter to be sent to Kyle Gale and his engineering company as soon as possible letting the applicant know of the Board's decision.

Meeting Schedule

The Board reviewed the proposed meeting schedule for the rest of 2008 and agreed that the schedule was fine. The meeting schedule will be posted at Town Hall, in the Planning Board office area and on the Town Planning Board web site.

60 John Wise Avenue – Palazolla Brothers LLC – Continuation of a Public Hearing for the Request to amend a Special Permit

Attorney Thomas Beatrice representing the owners; present and the owners of Palazolla Bros. LLC; present

Chair Kim Drake opened the continuation of a Public Hearing for the Request to Amend a Special Permit at 8:01 p.m.

Kim Drake read the Commission Statement to the public.

Kim Drake read the comments of the Essex Conservation Commission and the Essex Board of Health.

The Board discussed Board Member Scottie Robinson's conversation with the DPW Assistant Superintendent, Michael Galli and the conversation the Chair, Kim Drake had with the DPW Superintendent, Paul Goodwin. (Written comments will be filed in the public records which are kept at the Planning Board office and may be viewed during regular Town Hall Business hours).

Attorney Tom Beatrice asked that all reference to Special Permit be rescinded and that all reference and conditions of a Special Permit be no longer pertinent.

Kim Drake responded that there had been correspondence written by Kopelman and Paige dated November 30, 2007. This letter stated that the Board should treat the application as a Special Permit application. (The letter from Town Counsel is located in the Planning Board public file under the street address).

Charlie Story, 143 John Wise Avenue read for the record the letter written and signed by him and other citizens of Essex. (Letter is in the public file).

David Lane, Lane's Road questioned who would be and who would pay for the responsible party which would oversee the management as suggested in the report from DeRosa Environmental Consulting, Inc.

(DeRosa Environmental Consulting Inc. 46 North Main Street, Ipswich MA 01938 – 978-356-5408). On page 3 of the report which will be kept in the public file, DeRosa Environmental Consulting Inc. stated their Considerations and Recommendations which included numerous items to be done and a few of the items would need supervision and who would pay for the work done. A copy of the report will be in the public records/file.

Attorney Thomas Beatrice stated for the record that the aerial photo in the report completed by DeRosa Environmental Consulting Inc. was taken a few months prior to the report being written and that the owners had made more requested changes which were not visible in the photo.

He also stated that there was an approved Title V certificate on file with the Board of Health since the applicant purchased the property in 2005.

Kim Drake questioned Attorney Thomas Beatrice about the application and a few of the requests on the application. Attorney Beatrice stated that when the application was originally written his intent was to cover all and anything with regards to his clients, the Town Zoning Bylaws and M.G.L.

Kim Drake read for the public the requests on the application. (Application is attached to meeting minutes).

Bill Sanborn said that some of the items required to be done on the 2005 Special Permit Decision filed by the applicant at the Essex South Registry of Deeds have been recently completed by the owner.

Bill Sanborn asked about the document given to the Planning Board by the Conservation Commission and the reference to cuttings and he asked if they said where the cuttings happened. Kim Drake read the section from the report submitted by DeRosa Environmental Consulting Inc. for the public which said that no soil has been disturbed by cuttings.

The Building Inspector, Bill Sanborn stated on the record that neither a Building Permit nor a Occupancy Permit were issued.

Andrew St. John asked Attorney Thomas Beatrice why his client did not complete or submit a Building Permit Application as requested by the Board of Appeals with their recent decision.

Attorney Beatrice responded that he had tried to submit an application three times and that each time it was returned to him.

He further stated that if there were an issue with a Building Permit then he would gladly discuss it with Town Counsel though he did not feel it was 'a battle worth getting into'.

Andrew St. John asked Thomas Beatrice to explain why the owners had not in the three years they have owned the property applied for a Building Permit or obtained an occupancy permit. Attorney Beatrice said he could not respond.

There were no further comments from the Board or the Public. Chair Kim Drake closed the Public Hearing at 8:42 p.m.

The Board reviewed the time-line within which they had to write, review and file a decision. The Board agreed that officially they have until November 3, 2008 to file the decision.

Conservation Restriction – Lot 41

The Board began discussing the correspondence given to the Town Clerk for the Planning Board when Attorney Thomas Beatrice interrupted the discussion.

60 John Wise Avenue – Pallazola Brothers

Attorney Thomas Beatrice asked the Board about procedure and if the application was under Site Plan Review or Special Permit because they had intended to amend the plan based on the comments presented by the Conservation Commission. The Board said that they could not open the hearing again. Thomas Beatrice said for the record that he objects to the closing of

the public hearing on a strictly procedural issue since the public hearing was not voted on to be closed. The Board said that they would take it under advisement. Thomas Beatrice said that his clients want to present a plan that would ultimately be accepted by the Conservation Commission. Andrew St. John said that all comments would be considered.

ASTJ: I move that we close the Continuation for a Public Hearing for the Request to amend a Special Permit for 60 John Wise Avenue – Pallazola Brothers LLC.

JD: I second.

All in favor?

Scottie Robinson declined to vote on closing the hearing.

The majority agreed.

Regular Business

Payroll approved and signed by Board

Proposed Site Plan Review Bylaw – Andrew St. John had not compiled the comments from the other Board members. It will be determined at a later date when the Board will be ready to reopen the discussion regarding the proposed Site Plan Review Bylaw.

Soginose Creek – Peter Madsen, owner; present – Informal Discussion

Attorney Mark Glovsky and Peter Madsen talked on behalf of the owners involved in the request to subdivide four lots located on Spring Street (many owners were present).

Andrew St. John said that as far as he could see there was no detrimental situation regarding what they are asking to do. Mark Glovsky said he would be able to write a memo. Scottie said that what they need is clarity regarding that this is a road, it has been accepted by the town and to give the Board information that is clear and concise. Scottie said she would be comfortable that the way was accepted by the town, not a driveway; basically some current documentation which refers the proposed location for the frontage of the lots was referred to as a road. The other Board Members agreed with Scottie.

Meeting Minutes of April 16th and July 16th

The Planning Board reviewed the meeting minutes.

ASTJ: I make a motion to approve the meeting minutes of April 16th as amended.

JD: I second.

All in favor?

Aye.

Motion passed unanimously.

SR: I make a motion to approve the meeting minutes of July 16th as amended.

ASJT: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

TBA Essex Park Drive Informal Discussion

Orestes 'Russ' Brown (RB) representing owner Peter Van Wyck; Peter Van Wyck not present

The applicant presented two different proposed plans. He also requested that the Board rescind the original decision of the Planning Board to deny the Preliminary Subdivision Plan decision on June 18, 2008.

The Board and Russ Brown discussed and reviewed the two different proposed plans. The Board stated that they preferred the plan with the cluster development at the front and a 1,200-foot road.

Lot 41 – Turtleback Road – Conservation Restriction continuation

The Board reviewed the signed Conservation Restriction. The Board signed the release paperwork for Lot 41 on Turtleback Road. One of the requirements of the subdivision plan and the Conservation Restriction was that one lot was deemed unbuildable until the Conservation Restriction was approved and filed.

JD: Motion to adjourn the meeting at 10:28 p.m.

SR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for August 20, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Public Meeting
Town of Essex Planning Board
August 20, 2008

Meeting called to order at 7:48 p.m. by Chair, Kimberly Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD), Jason Heath (JH), Bill Holton (BH)
Absent: Andrew St. John, Amy Reilly
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

The Building Inspector did not have any permit applications to present to the Board. The Building Inspector asked if any Board member had any questions. Scottie Robinson asked about the residence owned by Campbell on Turtleback Road which has a dumpster in the driveway. The Building Inspector stated that he does not have any involvement with property owners using dumpsters.

60 John Wise Avenue – Palazolla Brothers LLC, (owners; not present)

The Board decided to write a letter to Palazolla Brothers that would state that the Special Permit process was completed and the Planning Board would continue working with the owners with a Site Plan Review.

Board Discussion – Town Planner Job Description

The Board reviewed the proposed Town Planner job description submitted by Nick Cracknell, Senior Land Use Planner, Horsley Witten Group.

Scottie Robinson will make the suggested edits and Andrew St. John will review the edits.

Site Plan Review Bylaw

The Board discussed the Site Plan Review Bylaw which may be a warrant article for Town Meeting.

JD: Motion to adjourn the meeting.

SR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

The meeting was adjourned at 10:33 p.m. The next meeting is scheduled on September 3, 2008 to be held at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Public Meeting
Town of Essex Planning Board
September 3, 2008

The meeting was called to order at 7:39 p.m. by Chair, Kim Drake and it was held at the T.O.H.P. Burnham Library.

Attendees: Andrew St. John (ASTJ), Scottie Robinson (SR), Kim Drake (KD), Bill Holton (BH), Jason Heath (JH)

Absentees: Amy Reilly, Juergen Dietrichson

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There wasn't an official Building Inspector's Report due to the fact there were not any Building Permit Applications that needed to be presented to the Planning Board.

Regular Business

KD: We now go onto Regular Business and as Regular Business I would like to move that we go into Executive Session because we have potential pending litigation to discuss.

SR: I move that we go into Executive Session to discuss potentially pending litigation.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

KD: In order for us to go into Executive Session we have to have a roll call vote, so, I, Kim Drake move that we enter an Executive Session.

ASTJ: I, Andrew St. John move that we enter an Executive Session.

JH: I, Jason Heath move that we enter an Executive Session.

BH: I, Bill Holton move that we enter an Executive Session.

SR: I Scottie Robinson move that we enter an Executive Session.

Bill Sanborn, the Town of Essex Building Inspector, was in attendance for the Executive Session. Minutes for the Executive Session will be kept separately.

Public Meeting Continued

60 John Wise – Palazolla Brother's LLC; not present

KD: So we should discuss the letter and see if we agree on the wording on it and then discuss a Decision and if we agree on that then have someone draft a decision. I can make the edits to this thing (the letter drafted by the Planning Board at a previous meeting) since I have it electronically.

ASTJ: Let's talk about the decision first.

SR: Can I talk to you about this? (SR was pointing to the agenda and referring to the citizens who seemed to arrive to the meeting for the Overlay District Discussion since they had attended prior meetings for the same topic.)

SR: If we are going to do this now (60 John Wise Decision and Letter) and we are not going to get an opportunity (to discuss a potential Overlay Districts Bylaw Proposal) could we talk to the citizens at the meeting who are here to talk about an overlay district and let them know.

SR: (addressing Essex Citizen, Tom Ellsworth) I don't think we are going to get to this tonight.

Tom Ellsworth: We have people coming. Dave Davis is coming from Cambridge.

ASTJ: We don't have the map.

KD: I don't think we are going to get to the Overlay District.

Tom Ellsworth: Obviously with May coming.

ASTJ: We can try. One of the problems is that we don't have the map.

Tom Ellsworth: What map?

SR: The one that we received from you with the yellow marks on it. That isn't the biggest issue. We had something come up and we had an Executive Session and now it is twenty of nine and we still have a lot to do and we have time constraints we are working against.

60 John Wise – continued

ASTJ: I think we need to formulate, (*pause*) articulate a decision. Once we have done that then we can deal with the letter. The letter is obviously... (*ASTJ stopped talking once KD started*)

KD: Do you think the letter and the decision should go hand in hand?

ASTJ: Oh yeah.

KD: So this evening we should discuss intermingling both?

ASTJ: I am with you entirely. Do the decision and then the decision gets incorporated in the letter.

SR: How about we, in terms of the decision, how about we try to frame something (to Kim Drake) we have it almost.

KD: Do we have the previous decision? We can follow the wording from that one.

The Board discussed and wrote the Decision for the Application to Amend a Special Permit/Site Plan Review for the property located at 60 John Wise Avenue, Palazolla Brothers LLC.

Kim Drake read the draft decision for record: 'The Essex Planning Board acting as the Special Permit Granting Authority does not approve the application for Amendment to the Special Permit dated December 16, 2005 for property located at 60 John Wise Avenue, Essex, Massachusetts submitted by Pallazola Brothers Landscape Construction, LLC, 11 Loading Place Road, Manchester, Massachusetts. Our finding is that the original Special Permit stands. Items identified in the Amendment Application dated March 27, 2008 will be considered under the Site Plan Review process. Certified copies of this decision will be available from the Essex Town Clerk at the Essex Town Hall and from the Essex Planning Board within 10 days of the date of this decision. Appeals shall be made pursuant to Section 17 of Chapter 40A MGL and shall be filed within twenty (20) days after the date of filing this decision with the Essex Town Clerk.' Then a signature block and I will date it.

ASTJ: I move to accept that wording for the denial decision for the application of Pallazola Brothers LLC, 60 John Wise Avenue to Amend a Special Permit Application.

SR: I second the motion.

Any discussion?

All in favor?

Motion passed.

Bill Holton abstained from voting because he was not present for the required number of meetings during the public hearing process for the application to amend the special permit application for 60 John Wise Avenue, Palazolla Brothers LLC.

KD: I will write this up and then I will send it to Brendhan for his review.

SR: He doesn't need to review it.

ASTJ: No.

SR: He doesn't review our decisions.

KD: He should be aware of the outcome of the decision.

KD: O.k. Anyways, I am going to write this up and send it to Mary-Ellen who can print it up on letterhead and then Juergen and I will sign it.

Roll Call Vote

ASTJ: I vote to deny the application to amend a special permit on the basis that the special permit should stand.

JH: I, Jason Heath, also vote to deny the application to amend a special permit application.

SR: I vote to deny the special permit amendment application as it appears that the items listed appear to be more appropriately considered under site plan review process and I uphold the original special permit which was issued.

KD: I, Kim Drake vote to deny the amendment to a special permit to 60 John Wise Avenue. I also find the items that are identified by the application should be considered under the site plan review process and the original special permit stands.

Bill Holton abstained from voting because he was not present for the required number of meetings during the public hearing process for the application to amend the special permit application for 60 John Wise Avenue, Palazolla Brothers LLC.

KD: Should we also send a letter?

SR: They will not get the decision until after the appeal period so I believe we should.

ASTJ: I agree.

The Board reviewed and drafted the letter to be sent to Attorney Thomas Beatrice who is representing the applicants.

KD: How about this: 'Dear Mr. Beatrice, At it's meeting of September 3rd, 2008, the Planning Board voted that the application for an amendment to the Special Permit issued on December 16, 2005 was denied. We will continue to review the project further under the Site Plan Review Process.'

KD: And then the rest of it the same as before?

SR & ASTJ: Yes.

Kim Drake will complete the edits suggested by the Board.

Notices for the public hearing were published on June 12, 2008 and June 19, 2008 in the Gloucester Daily Times.

The notice stated: 'Notice is hereby given that the Essex Planning Board will hold a Public Hearing on Wednesday, July 2, 2008, at 8:00 p.m. at the T.O.H.P. Burnham Library, 30 Martin Street, Essex, MA. The applicants are Pallazolla Brothers Landscape Construction, LLC, of 11 Loading Place Road, Manchester, MA to Amend A Special Permit under the Town of Essex Bylaw 6-6.12 Site Plan Review/Special Permit. Said property is located at 60 John Wise Avenue, Essex, MA. Plans can be reviewed at the Town Clerk's office at the Essex Town Hall during regular business hours.' Amelia Reilly, Clerk.

The public hearing was opened on July 2, 2008. The Board and the applicants agreed that the public hearing could be continued to August 6, 2008 agreed it upon. It was then closed on August 6, 2008.

Regular Business

Town Planner - Job Description

Scottie Robinson incorporated the comments that the Board had discussed at the previous meeting on August 20, 2008. The Board discussed a few more edits that will be completed by

the Board Secretary. The Board Secretary will then email a copy to Scottie Robinson for her approval.

BH: Is this (*referring to his copy of the draft Town Planner Job Description*) going out now?

ASTJ, KD, SR (*simultaneously*): No, no...

ASTJ: This is the first of many, many steps.

KD: If we agree on the wording then it will go to the Selectmen (Essex) for their review and discussion because they are the ones having the discussion with Manchester and they have to find money for it and everything else. But because they approached us and asked if we were interested in having a Planning Support we are taking the first step.

A citizen in the audience (*who did not identify himself*) asked if there was a copy he would be able to review.

SR: We would prefer not to because it is so iffy. If you want to look over this one you can but it is not going anywhere (*outside of the present meeting being held at the T.O.H.P. Burnham Library*).

Meeting Minutes

SR: Motion to approve the meeting minutes of August 6, 2008 as amended.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Site Plan Review Bylaw to be potentially presented at a Town Meeting

KD: Andrew is still working on incorporating all of our comments to the draft Site Plan Review. If you haven't sent your comments to Andrew, please do so.

JH: (*Addressing ASTJ*) I actually read that and made comments.

ASTJ: Can you email them to me?

JH: No, I did them the old fashion way. I can call you next week.

ASTJ: I will be busy next week.

JH: I will call you the week after.

ASTJ: O.k.

Overlay District Proposal Board Discussion

KD: That being said, it is now 10 o'clock. We had on here (*referring to the agenda*) 9:30 Overlay District Proposal and our original intent was for us to pull out the map and we will not have it available for discussion.

ASTJ: There were specific mark ups on it.

KD: I know everyone doesn't want to stay here until midnight but we should probably discuss this. Subject.

Citizens present: Tom Ellsworth, Charlie Storey, Peter Kellerman, David Davis and Maria Burnham.

The Board discussed the potential of the Board presenting a proposed Overlay District Bylaw at either the next upcoming Special Town Meeting or the Annual Town Meeting in the spring of 2009. The Board discussed the rationale for the overlay is addressing "viewsheds" along Route 133 towards Ipswich, on were identified in the Town's Open Space Plan which was completed in 2008 and in other documents based on citizen input into important scenic and economic development concerns of the town. Board Members generally accepted the proposal being a Warrant Article at a future Town Meeting and the Board said that they would sponsor such an article being placed on the town meeting warrant.

The Board did allow for comments and discussion from the citizens in the audience.

BH: Motion to adjourn the meeting at 10:38 p.m.

JH: I second the motion.

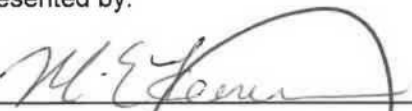
All in favor?

Aye.


Motion passed unanimously.

Next meeting is scheduled for September 17, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Town of Essex Planning Board
September 17, 2008
T.O.H.P. Burnham Library
Meeting Agenda

- 7:30 Building Inspector's Report or Regular Business
- 8:00 Informal Discussion TBD Essex Park Drive Subdivision Plan
- 8:30 Overlay District Proposal

Regular Business & Updates

- Correspondence
- Payroll
- Meeting Minutes
- Site Plan Review – Board Discussion
- 60 John Wise Avenue – Special Permit/Site Plan Review
Board Discussion
- Updates from the Chair
- Job Description – Planner – Board Discussion

Meeting to Adjourn

Next regular Planning Board Meeting is October 1st, 2008 at T.O.H.P.
Burnham Library

October 1, 2008

Due to a lack of a quorum there was not a Planning Board meeting on October 1, 2008.

The Chair and the Board Secretary stayed at the library until 8:30 p.m. so that people would be notified. A notice was posted to the library entrance for any citizen who arrived later than 8:30 p.m.

There were two applications for the Board to review – one was scheduled for 8 p.m. and the other was scheduled at 8:15 p.m.

ANR Application – 76 Eastern Avenue, Andrew J. Corbett, Jr., owner

The attorney representing the applicant, Mark Glovsky arrived at the meeting at 8 p.m. and was informed of the situation.

Board Review of Preliminary Plan Subdivision Application

Southern Avenue, Kyle Gale Applicant; Deirdre Henderson, owner

The applicant for the first agenda item at 8 p.m. did not attend the meeting.

On October 2, 2008 the Board Secretary informed Kyle Gale that there was not a meeting due to a lack of quorum.

Due to the fact that the review of a Preliminary Plan Application does not need to be done during a Planning Board meeting, the Planning Board Chair was able to review this application.

The Chair determined that the application should be returned to the applicant due to the fact that the plans illustrated three dwellings on one lot which since the Town Meeting of May 2008 are not allowed in Chapter VI of the Zoning Bylaws. Kyle Gale was informed of the fact on October 2, 2008.



Mary-Ellen Feener, Planning Board Secretary

Public Meeting
Town of Essex Planning Board
October 15, 2008

Meeting called to order at 7:37 p.m. by Chair, Kimberly Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD), Andrew St. John (ASTJ), Bill Holton (BH), Jason Heath (JH)
Absent: Amy Reilly
Building Inspector: Bill Sanborn (BS)
Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

12 Grove Street – Ray Hawley Map 38 – Lot 64

BS: The existing structure is a barn. This application is for the demolition and rebuilding the existing building. It has the approval of BOH, DPW, Con. Com. and Fire Department 911.

The Planning Board reviewed the application and the plans and then discussed if they need to vote, approve or review the application.

JD: I make a motion to approve the application of Ray Hawley of 12 Grove Street to demolish the existing building and to rebuild the existing structure finding it meets the requirements of the Town of Essex Bylaws.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

2 Scot's Way – Holden Essex LLC

BS: This application is to construct a 30 X 45 Garage Building and a 24 x 30 Canopy area including installation of utilities. This has the approval of the BOH, DPW, Con. Com. and the Fire Department/911.

The Board reviewed the submitted plans.

ASTJ: I move that we approve the siting of the building finding it meets the requirements of the Town of Essex Bylaws.

JH: I second.

All in favor?

Aye.

Motion passed unanimously.

23 Belcher Street – James and Pamela Witham – Map 13 Lot 9

BS: Application is to demo the existing one story 18 x 32 garage/shop and replace with 24 x 40 Post and Beam Barn for an art studio, 1 ½ story. No water, wood stove/gas heat. The application has the approval of the BOH and Con. Com.

JH: I move that we approve the application of James Witham of 23 Belcher Street to demo the existing one story garage/shop and replace with a 24 x 40 post and beam barn finding that it meets the requirements of the Town of Essex Bylaws.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

45 Grove Street – Alison and Joshua Taylor – Map 34 Lot 59

BS: The application is to build a two bay garage with art studio bath with a half bath and a sink and it will be tied into the city sewer and water. It has all the other necessary approvals.

The Board reviewed the plans and questioned the existing and proposed lot coverage. The proposed lot coverage is 7.28 % which is acceptable.

SR: I move that we approve the application of Alison and Joshua Taylor to build a two bay garage with an art studio and a half bath with a sink recognizing the provision the DPW added to the building permit application regarding the driveway and the hookup to the water/sewer and the fact the garage should only be used for art studio, garage purposes.

JH: I second.

All in favor?

Aye.

Motion passed unanimously.

BH: We seem to be under the impression that the Building Inspector is the Enforcement Officer of the Planning Board. I talked to Bill last week and he said he enforces the Zoning. I looked everywhere and there is nothing that states the Building Inspector enforces items for the Planning Board.

BS: It depends on what you are looking at; I believe the Building Inspector administers the zoning by State law and therefore I enforce the zoning. For example, if someone does a subdivision and they put a driveway on the wrong side then I would not be involved.

The Board agreed that the Building Inspector is the Enforcement Officer of the Zoning Bylaws of the Town of Essex.

149 Eastern Avenue – Mark Gallagher; owner not present

Kim Drake brought forward the fact that there was a boat in the front yard that is closer to the street than 20 feet. The Building Inspector stated that he will be visiting the site soon and will investigate the location of items closer to the street than the Bylaws allow.

5 Martin Street – John Guerin; owner, present

John Guerin discussed with the Board what he would like to do with the property he owns at 5 Martin Street. His intent for the building would be to have an office on the first floor and an apartment on the second floor. He asked the Board if under the Bylaw 6-6.12 he would be able to do what he desired. He said this all depended on the Board's interpretation regarding what is required for him to be able to use the property as he would like to use it. The Building Inspector stated he felt that in it's current deteriorating condition the building would not last the winter months.

- Kim Drake said under Bylaw 6-6.12.2 states that Site Plan Review is required.
- Bill Holton questioned this statement and asked if it still shouldn't be a Special Permit application.
- Scottie suggested that Mr. Guerin come in with a building permit application for a demolition and foundation permit at the next meeting so he can start his work as soon as possible. John Guerin said that the problem would be if the Board said he couldn't do what he had already moved forward with his plans.
- The Building Inspector asked the Board if he could go from a single family to a two family. The Board agreed that he could use the property as a two family.
- Andrew St. John said that he could see no problem with him doing what he is requesting.

Essex Park Drive – Peter Van Wyck; owner, not present - Board Discussion

The Board discussed that they limit the length of the cul-de-sac to meet the bylaw or limit the number of houses to allow a length extension by the ADT (Average Daily Trip formula).

The Board agreed that they will not reopen the Preliminary Subdivision plan and he would have to file a new subdivision plan; a Preliminary Plan.

The Board Secretary will contact the attorney representing Peter Van Wyck, Russ Brown.

76 Eastern Avenue – ANR Application - Andrew Corbett Jr., owner; not present – Attorney Mark Glovsky, present

The Board reviewed the plans.

ASTJ: I move that we endorse the ANR for 76 Eastern Avenue owned by Andrew Corbett Jr. for a piece of property finding it meets the requirements of the approval not required.

JH: I second the motion.

All in favor?

Motion passed unanimously.

The Board discussed the fact that one Board member from the Planning Board needs to agree to be on the Community Preservation Committee and the term limit is three years or no when they no longer are on the Board. Scottie Robinson volunteered. Kim Drake will let Brendhan know she volunteered.

Meeting Minutes

The Board reviewed and approved as amended the meeting minutes of September 17, 2008

Regular Business

Invoices

Payroll

JD: Motion to adjourn the meeting at 9:45 p.m.

SR: I second the motion.

All in favor?

Aye.

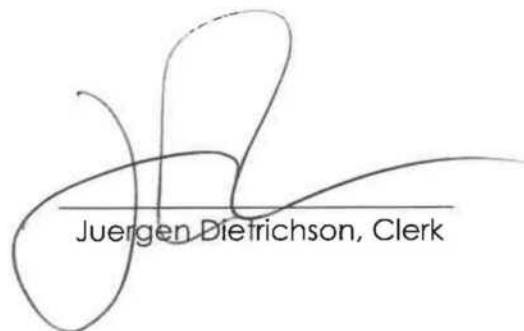
Motion passed unanimously.

Next meeting is scheduled for November 5, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Public Meeting
Town of Essex Planning Board
November 5, 2008

Meeting called to order at 7:36 p.m. by Chair, Kimberly Drake and was held at the B.O.H. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD), Andrew St. John (ASTJ), Bill Holton (BH), Amy Reilly (AR)

Absent: Jason Heath

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

35 Water Street – Thomas Demeo – Map 38 – Parcel 35

BS: Interior and Exterior Renovations with additions. It has the approval of DPW, Con. Com. And Fire Department/911.

SR: Motion to approve the application of Thomas Demeo of 35 Water Street to perform alterations; interior and exterior with the understanding the side of the building which now encroaches the lot line will now be within the lot at 35 Water Street as a 6-4.2 finding due to the fact it is no more detrimental than the existing use.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

109 Eastern Avenue – Windward Grill

Scottie Robinson asked Bill Sanborn if there was an application for the construction of a barn/auction house on the same lot as the Windward Grill Restaurant on Eastern Avenue. The Building Inspector said there was no application before him at this time.

191 Western Avenue – Thomas Weinburg, owner (not present)

Since the New Year there has been some discussion about this property. In a letter of which the Planning Board was given a copy of a letter written by Thomas Weinburg to the Building Inspector, Bill Sanborn dated October 11, 2008, Mr. Weinburg stated that he has done a title V inspection and he is going to apply for a change of use permit. I do not know if he has been to see Bill since the letter. The owner was also given a Cease and Desist Order by the Building Inspector until such time when he resolves his issues with the DPW. Paul Goodwin stated that he did not approve for the building to be used as a residential space but as a commercial space. (Paul and Bill have been sending letters back and forth to each other for a few months now and the Board has had copies of them to review during meetings).

60 John Wise – Pallazola Brothers LLC. Attorney Thomas Beatrice present

Attorney Thomas Beatrice requested to be able to reschedule meeting with the Planning Board to discuss Site Plan Review until December 3, 2008. Kim Drake requested if it was possible to submit plans prior to December 3, 2008.

Community Preservation Committee Nomination

The Board discussed the fact that one Board member from the Planning Board needs to agree and vote to be on the Community Preservation Committee and the term limit is three years or no when they no longer are on the Board. Scottie Robinson volunteered.

ASTJ: I move that we nominate Scottie Robinson as the representative of the Planning Board with the Community Preservation Committee.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

Site Plan Review Bylaw - Board Discussion

Andrew St. John will give the draft Site Plan Review

Overlay District Bylaw - Board Discussion

The Board decided that Scottie Robinson will contact an agricultural and residential overlay. The Board de regarding this bylaw and the topic will be on the nex

Meeting Minutes

The Board reviewed and approved as amended the mo

Southern Avenue Preliminary Plan Application - Ky

The Board decided that the applicant may attend the

Regular Business

Invoices

Payroll

SR: Motion to adjourn the meeting at 10:12 p.m.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for November 19, 2008 a

Presented by:



Mary-ellen L. Feener, Secretary

Site Plan Review Bylaw - Board Discussion

Andrew St. John will give the draft Site Plan Review

Overlay District Bylaw - Board Discussion

The Board decided that Scottie Robinson will contact an agricultural and residential overlay. The Board decided regarding this bylaw and the topic will be on the next

Meeting Minutes

The Board reviewed and approved as amended the meeting

Southern Avenue Preliminary Plan Application - Kyle

The Board decided that the applicant may attend the meeting

Regular Business

Invoices

Payroll

SR: Motion to adjourn the meeting at 10:12 p.m.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for November 19, 2008 at

Presented by:



Mary-Ellen L. Feener, Secretary

Public Meeting
Town of Essex Planning Board
November 19, 2008

Meeting called to order at 8:03 p.m. by Chair, Kimberly Drake and was held at the B.O.H. Burnham Library.

Attendees: Juergen Dietrichson (JD), Kim Drake (KD), Jason Heath (JH) – Andrew St. John (ASTJ), Bill Holton (BH)

Absent: Scottie Robinson, Amy Reilly

Building Inspector: Bill Sanborn (BS)

Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

27 John Wise Avenue – William Phippen – Map 23 – Lot 5

BS: Single family house, three bedrooms, n on-conforming to be demolished and rebuilt on the existing footprint. It has the approval of the Board of Health and Conservation Commission. This is for the siting of the building.

The Board reviewed the Site Plan. Chair, Kim Drake, asked if there were any comments from the Board; there were no comments.

ASTJ: I make a motion that we accepted the application of William Phippen to demolish the building located at 27 John Wise Avenue and rebuild on the existing building finding that it meets the Town of Essex Bylaws.

JH: I second.

All in favor?

Aye.

Motion passed unanimously.

6 Prospect Street - William and Alison O'Brien - Map 36 Lot 60

BS: This is a single family and they would like to build on the existing footprint and expand the kitchen and playroom by a second floor. This is a 6-4.2 finding. It has the approval of the Board of Health, Conservation Commission and the Fire Department 911.

The Board reviewed the plans.

JD: I move that we approve under 6-4.2 on the existing footprint at 6 Prospect Street, the O'Brien's finding that it is no more detrimental than the existing use and it meets the Town of Essex Bylaws.

ASTJ: I second.

All in favor?

Aye.

Motion passed unanimously.

18 Choate Street – Perry & Heidi Ramsdell Map 17 Lot 12

BS: This is for the siting of a building which will be a 'cold storage garage', which is a 24' x 18' shed with no electricity, heat or hot water. It has the approval of the Board of Health, Conservation Commission.

JH: Motion to approve the siting of a shed for the residence of Perry and Heidi Ramsdell of 18 Choate Street finding it meets the Town of Essex Bylaws.

JD: I second.

All in favor?

Motion approved unanimously.

22 Rocky Hill Road – Chris Williams

BS: This is for a home occupation, artist studio. It will be under 2,500 square at 1,700 square feet and it will be for the purpose of a metal sculpture and fabrication. It has the approval of the Board of Health, Conservation Commission and the Fire Department 911.

KD: Will he be storing any hazardous materials.

BS: No.

JH: I make a motion for the siting of the sculpture studio at 22 Rocky Hill Road owned by Chris Williams finding that it meets the Town of Essex Bylaws.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Board Discussion – Proposed Overlay District(s)

The Board discussed topic of proposed overlay district(s).

Southern Avenue Preliminary Plan Review

Apple Associates - Jeffrey Kucukistipanoglus, representing the applicant Kyle Gale reviewed the proposed development to the Board.

Helen Bethel, Manchester Essex Conservation Trust spoke to the Board regarding the first parcel and she stated that the first lot does not belong to the Henderson Family. She stated that the prior deed went to a charitable trust according to the Registry of Deeds.

Kim Drake stated that the Planning Board relies on the Assessor's Tax Maps and that the Tax Maps do say that the first lot belongs to the estate of Peter Henderson.

Andrew St. John suggested that the applicant be required to show proof of ownership of the first lot.

Kim Drake asked about the road crossing the first lot and if the proposed road came through the first lot would that not make it a subdivision.

María Burnham, Southern Avenue said that she was familiar with the Coolidge Trust and the Coolidge Trust states that no trees be harmed and she asked how they were going to do that when they are installing a road.

John Guerin asked about site distance.

Kim Drake did stress to the public attending the meeting and this was not a public hearing.

Helen Bethel said that there was already a driveway on the property and if the Coolidge Trust did allow one pass over the Coolidge Trust and wasn't the applicant asking now to add a second road/pass over the Coolidge Trust.

Andrew St. John asked Kim if ten percent was a very steep road and she answered that it was steep.

Kim Drake read the letter sent by abutter Pat Gardner a copy of the letter will be attached to these meeting minutes. The original will be kept in the file.

The Board Secretary will contact the abutter Pat Gardner and ask when he will be having the property surveyed. The applicant will be required to show proof of ownership of the first lot since it was questioned. As soon as the applicant has the requested information the Board will review the information during a regularly scheduled meeting. The Board would like to hear the information no later than the December 17th meeting.

John Guerin – Informal Discussion – 5 Martin Street

John Guerin stated that after some research he believes that the change of use he is requesting from residential to a mixed use of an office and residential is not subject to a special permit application. He quoted case law to the Board.

Alex Weatherall – Informal Discussion regarding the Riverside Restaurant on Main Street

The Board was asked if a second floor for an apartment to the existing building and the Board responded was told he could build a second story that did not exceed a height of 35 feet. Alex Weatherall is planning on perhaps purchasing the property. The Board explained what would be necessary and that as an applicant he would need to go to the Building Inspector and it would be a 6-4.2 finding under the Town of Essex Bylaws.

Daniel Ottenhymer – Mill River Consulting – Informal Discussion

Daniel is considering a purchase of the single family property 64 John Wise Avenue and is asking for guidance from the Board as to how he could use the property as an office. The front set back would not meet the requirements so the Board suggested that he would need to go through Site Plan Review. The Board suggested that a new site plan be done.

5 Martin Street – John Guerin – Map 37 Lot 6 – Site Plan Review

Andrew St. John stated his concern was the drainage and if the parking was paved it may create a lot of runoff. Juergen asked if the entire area slopes. The Board agreed that they would like to see crush stone in the driveway and if the applicant would like to pave the driveway he would need to come before the Planning Board. The existing curb cut is twelve feet and that will not be changed according to the applicant. The Board discussed the plan further. A decision will be written. The Applicant did pay the necessary fee.

ASTJ: I make a motion that we approve the Site Plan submitted by John Guerin for the property located at 5 Martin Street.

JD: I second.

All in favor.

Aye.

Motion passed unanimously.

Regular Business

Correspondence

Payroll

ASTJ: I make a motion to adjourn the meeting.

JD: I second.

All in favor?

Aye.

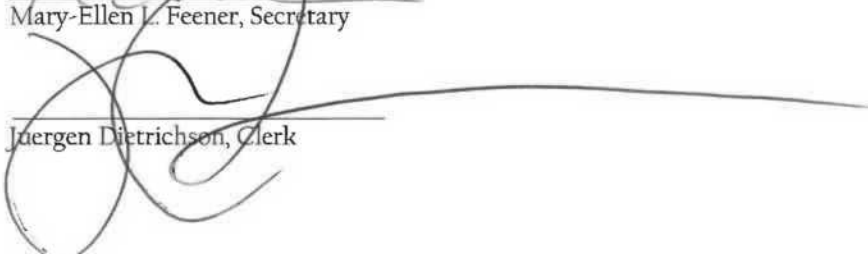
Motion passed unanimously.

Meeting Adjourned at 10:50 p.m.

Next meeting is scheduled for December 3, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Juergen Dietrichson, Clerk

Public Meeting
Town of Essex Planning Board
December 3, 2008

Meeting called to order at 7:37 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Andrew St. John (ASTJ), Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD)
Jason Heath (JH), Bill Holton (BH), Amy Reilly (AR)
Building Inspector: Bill Sanborn (BS) - Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

5 Martin Street – Sequoia Realty Trust – Map 37 Lot 6

BS: The application is to demolish current structure and rebuild with two one bedroom residences and first floor office/retail and basement office/retail storage and mechanicals. The application has the approval of the B.O.H., Conservation Commission, Fire Department 911 and the DPW.

Andrew St. John read the Site Plan Review decision regarding this property for the Board Members. Board members made suggestions and completed editing the letter.

ASTJ: Motion we accepted the application of Sequoia Realty Trust, 5 Martin Street finding it meets the Requirements of the Town of Essex Bylaws. It has gone through Site Plan Review process and has received favorable acceptance by the Board under 6-4.2 finding it is no more detrimental than the existing conditions.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

TBD Essex Park Drive – Orestes 'Russ' Brown

The Board reviewed and approved the acceptance of the application of the Definitive Plan Application. March 3, 2009 will be 90 days. The public hearing is scheduled for January 7, 2009 at 8 p.m.

Meeting Minutes

The Board reviewed and approved the meeting minutes of November 5, 2008 and November 19, 2008 as amended.

Subcommittee for a Town Planner

Bill Holton and Juergen Dietrichson volunteered for the subcommittee.

Regular Business

- Mail
- Payroll

JD: I make a motion to adjourn the meeting.

ASTJ: I second the motion.

All in favor?

Aye.

Motion passed unanimously. Meeting adjourned at 10:30 p.m.

Next meeting is scheduled for December 17, 2008 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Juergen Dietrichson, Clerk

Public Meeting - Town of Essex Planning Board- December 17, 2008

Meeting called to order at 7:39 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Kim Drake (KD), Jason Heath (JH)

Absent: Andrew St. John, Amy Reilly, Bill Holton

Building Inspector: Bill Sanborn (BS), Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

40 Spring Street, Gerard Hayward, Map 14 Lot 1

Owner is requesting approval to build a 20 x 30 garage with attic space and a ten foot connector to existing dwelling. The application has the approval of the Board of Health and the Con. Com. The Board did ask to have the DPW approve the moving of the driveway.

JD: I move that we vote to accept the application for the construction of a 20 x 30 garage at 40 Spring Street owned by Gerard Hayward finding it meets the Town of Essex Bylaws and does have the approval of the Department of Public Works for the moving of the driveway access.

JH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

60 John Wise Avenue – Pallazola Brothers LLC

The Building Inspector shared with the Board the fact that he did approve the current Building Permit application. The Building Inspector stated that he issued the permit based on the Board of Appeals decision and the Bylaws of the Town of Essex. The Cease and Desist was released.

Southern Avenue – Evergreen Homes

The Board Secretary will ask the applicant to submit another letter to the Town Clerk for a continuance to February 18, 2008 to continue the timeline for a decision from the Board until April 18, 2009.

The Subcommittee for Town Planner

The Board discussed their ideas regarding the subcommittee for a potential Town Planner.

Board Discussion – Overlay Discussion with Nick Cracknell, Senior Land Use Planner, Horsley Witten Group

Nick Cracknell presented to the Board his ideas regarding overlay districting. The Board and Nick discussed numerous topics regarding district zoning. The Board Secretary will inquire if there is a venue to hold a public hearing on January 14, 2009 for an article(s) on the warrant.


Regular Business

- Payroll
- The Board approved the meeting schedule for the meeting dates from January 2009 – April 2009.

The Motion to adjourn the meeting was unanimously passed. Meeting adjourned at 9:30 p.m.

Next meeting is scheduled for January 7, 2009 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting
Town of Essex Planning Board
January 7, 2009

Meeting called to order at 7:37 p.m. by Acting Chair, Andrew St. John and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Andrew St. John (ASTJ), Bill Holton (BH), Jason Heath (JH), Amy Reilly (AR) - Absent: Kim Drake
Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There were no permit applications presented to the Board.

Regular Business

Invoices

Payroll

Mail

The meeting minutes of December 3, 2008 and December 17, 2008 were approved as amended by the Board.

The Board asked that on the next and subsequent agendas there be an item under the Regular Business portion of the meeting agendas indicating a discussion regarding items to be proposed articles for a warrant for a future town meeting.

Site Plan Review - 60 John Wise Avenue – Attorney Thomas Beatrice

TBD Essex Park Drive Definitive Plan Application Public Hearing

Peter Van Wyk, owner, present

Orestes 'Rus' Brown, Attorney representing the owner

Brian Buia, Apple Associates Inc. Engineer, representing the owner

Brian Buia, Apple Associates presented the plan to the Board. He discussed the site, the land area; including the vernal pools and wetlands and the plans for the water and sewer/septic. He further discussed the proposed roadway length and the drainage.

Agatha Zawadzka, 16 Turtleback Road stated that she was concerned about maintaining her cul-de-sac road. She asked about the proposed easement. Orestes 'Russ' Brown stated that the applicant is no longer proposing a dirt road or any type of road from Turtleback Road. He did say that there was a proposed utility easement.

James Duda, 116 Western Avenue asked about the field at the beginning of Essex Park Drive. He stated that there is a field where there appears to be a lot of wetlands and there is a drainage system that goes under the home belonging to the Ellwell family and drains to the Alewife Brook. Brian Buia and Russ Brown stated that the wetlands delineations were reviewed by outside consultants the Town of Essex Conservation Commission and the D.E.P. and what is being proposed is adequate. Brian Buia stated that

the road is going over wetlands and that there are similar proposed roads which cross over a wetland as long as what is being proposed is a significant value; monetary, visual and so forth; the owner is typically allowed to go forward.

Myles Cambridge, 15 Turtleback Road asked if the utilities were being run from Turtleback Road or from Western Avenue. Brian Buia stated that the utilities were to come from Western Avenue and that the easement being shown on the plan from Turtleback Road was to access the existing Conservation Restriction and then the applicant is considering donating another six acre parcel to the Town. Myles asked about the drainage swales and used the existing swales on Turtleback as an example. Brian Buia stated that the swales on Turtleback were the older design, what is called a 'hard design' but that the newer, proposed swales to be used on Essex Park Drive were within the guidelines.

Scottie Robinson asked about the easement and what utilities will be going in the easement. Brian Buia stated that there is nothing going in now but that the owner requested the 40 foot easement.

Andrew St. John read the letter from Police Chief Peter Silva. The letter will be available in the Planning Board files for this application and attached to these minutes.

Andrew St. John also read a letter from the Board of Health. The letter will be available in the Planning Board files for this application and attached to these minutes.

Bill Holton asked about Lot 7. Russ stated that the owner is contemplating attached housing on lot 7. A special permit application will be needed.

Andrew St. John said that he would like to have more information about the easement. Brian Buia said that the intention of the fifteen foot easement is to access the Conservation Restriction and the forty foot easement is a different easement.

Acting Chair, Andrew St. John asked the applicant if it was acceptable to continue the public hearing until the meeting on February 4, 2009 at 8 p.m. Attorney Russ Brown will send the Planning Board Secretary a letter agreeing to the continuation.

Town Meeting 2009

The Board discussed the proposed two Warrant Articles regarding an Overlay District and Site Plan Review

JD: Motion to adjourn the meeting at 10:35 p.m.

SR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for January 14, 2009 at the Essex Elementary School at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary

Juergen Dietrichson, Clerk

Public Meeting
Town of Essex Planning Board
January 14, 2009

Meeting called to order at Essex Elementary at 7:35 p.m. by Kim Drake, Chair

Board members present:

Amy Reilly (AR)
Andrew St. John (ASTJ)
Jason Heath (JH)
Juergen Dietrichson (JD)
Kim Drake (KD)

Board members absent:

Bill Holton (BH)
Scottie Robinson (SR)

Secretary: Mary-Ellen L. Feener (MF) absent

Public Hearing for the Proposed Articles of the Warrant for Town Meeting 2009

The Planning Board held a public hearing regarding the proposed articles for the warrant; Article X, which proposes striking the words 'Special Permit' from the title of Bylaw Section 6-6.12 and Article Xx--To incorporate an Overlay District to the Bylaws as Section 6-14.

Chair, Kimberly Drake opened the public hearing and read the Commission Statement to the public.

ASTJ offered a brief synopsis of the proposed bylaw and some of the points and changes made in previous meetings, noting general support in Town for a Scenic Overlay District. ASTJ also noted that work needs to continue on: Determination of what is to be preserved and how to define the boundaries; Determination of which uses to allow or prohibit; Clarification on the language to allow exemptions for special circumstances.

Citizens attending the meeting had the opportunity to give their opinion(s) of the proposed articles. (The Board will take into consideration the comments made during the public hearing.)

John Guerin, Belcher St, noted general agreement with the proposed bylaw, but questioned the need to put the bylaw before the Town at this spring's Town Meeting. He also questioned whether any information had been collected regarding lands already set aside for preservation.

Linda Osborne, Prospect Street, expressed concern over the use of the term “scenic” and felt that the downtown also constituted a scenic view. She also stated that many landowners in the proposed overlay district wished to be exempted from the requirements. LO stated that it was her belief that the proposed bylaw would constitute spot zoning, and be contrary to Mass law.

KD noted that the PB has researched the question of spot zoning, and believes that as proposed the overlay district would be admissible and serve the Town’s interests.

Gil Guerin, Island Road, cautioned that it may be premature to state that there is general agreement in town, since he noted that very few residents in attendance were from parts other than the North End.

Elaine Hardy, John Wise Ave, noted that even though the Town advertised the meetings according to proper procedure, it would be beneficial to advertise more prominently to get the Town’s attention.

Skip Crocker, Southern Ave, questioned how a change of business would be treated within the overlay district.

ASTJ noted that current Essex bylaws do not differentiate among various commercial occupancies, with the exception of a limited number requiring special permit. He also noted that the State Building Code also has additional requirements related to a change in use or occupancy.

Peter Kellerman, John Wise Ave, noted that State Law, Chapter 40A, allows the continuation of a non-conforming use, providing that any change or alteration be reviewed by the PB to assure it was not more detrimental than the existing situation.

KD noted that copies of the specific Chapter 40A text were available to those interested.

John Guerin, Belcher St, noted that the comments received by the consulting planner at the last meeting were helpful and improved the substance of the proposed bylaw, and supports the use of and intent behind the word scenic. JG noted that he finds the evaluation of potential changes to existing non-conforming buildings within the district no different than the existing bylaw section 6-4.2, which the PB often needs to act upon. JG recommended that the proposed bylaw have language noting what uses are allowed as-of-right in addition to residential and agricultural uses, as well as those which should be prohibited whether or not they would fall under the home occupation statutes. JG recommended a review of the Water Resources Protection Act as a model for limiting the uses within the overlay district.

Mark Osborne, Prospect Street, questioned why the Town was not proposing a districting of the entire Town and only discussing this one overlay option.

KD noted that the work of creating districts is far greater than an all-volunteer board can manage at this time. As well, given the nature of passing bylaws by Town Meeting process, it would be overwhelming to the citizens to review and approve all at once, since even a small change can have vast consequences. KD also noted that ,though nothing is definite, the Board of Selectmen are working with the PB to obtain the services of a Town Planner who would be able to contribute to this process, among many others needed by the Town.

Linda Osborne, Prospect Street, noted that she would prefer to see the word “scenic” better integrated within the language of the proposed bylaw, and questioned the substance of the proposed map.

ASTJ noted that the map which was attached with the initial publication of the proposed bylaw is not representative of what would be necessary to carry forward the overlay district, and welcomed input from the Town regarding the drawing of the map.

KD noted that the next meeting will focus on the issue(s) of the map and the PB will supply items and information to assist the Town in its discussion.

ASTJ noted that the PB has already sought the State’s assistance in preparing a map which can be used for the formation of the boundaries.

Gil Guerin, Island Road, noted that he was encouraged by the new developments and discussions related to the issue and urges the Town and PB to focus on drafting a well-conceived bylaw, rather than rushing the process in order to meet the warrant submission deadline. GG recommends that the work on drawing of the boundaries for the district strictly relate to the intended preservation of scenic areas.

Peter Kellerman, John Wise Ave, noted that the boundaries originally were focused around the North End because of the State’s designation of Route 133 as a scenic way and the Open Space Committee’s findings of its survey of residents regarding their most prized areas. PK noted previous challenges when applying the intention to the actual land area, and urged the Town to carefully consider how and what it wished to protect. PK cautioned that he did not believe vegetative screens and berms would always give the intended effect.

ASTJ noted that the boundaries will necessarily be defined by a combination of words and graphics, and the establishment of each is critical.

Skip Crocker, Southern Ave, recommended a change in lot size requirements within the district to help control undesirable developments.

GilGuerin, Island Road, asked that the Town solicit more input form landowners regarding their perception of both benefits and detriments of the proposed regulations.

Charlie Story, John Wise Avenue, noted that a privately commissioned study of the North End surmised that residential use was the highest value to that area and outlined potential negative impacts due to poorly planned commercial development. CS noted he would provide copies to those interested.

ASTJ encouraged the attendees to prepare for the next steps in developing the bylaw, and noted that numerous residents are asking for zoning regulations to be strengthened or added to the bylaws. He also clarified that the Town of Essex currently has a zoning ordinance; it does not have zoning districts. ASTJ noted that well-written bylaws should spell out what is given back in exchange for what is as taken into restriction, and cautioned that many existing statutes probably permit more activities that the Town generally finds desirable. ASTJ asked that since the general push by many residents is for a districting of the entire town, those proposing new legislation should consider the what a districted map might look like.

KD thanked the attendees for their comments and encouraged more participation in future events. KD also requested input regarding other ways the PB may be able to relay information on upcoming ideas to and from the residents.

Susan Baker, John Wise Avenue, recommended updating and making better use of the Town Calendar website, and sign board in front of Town Hall.

Jane Adams recommended more regular updating and posting on the PB webpage.

Skip Crocker, Southern Ave, suggested a posting at the Town Transfer Station and updating the PB message on the voicemail.

Leslie Burns, Grove Street, recommended having a planning expert available, if possible, for future discussions regarding the overlay bylaw.

KD noted a different item to prepare for the warrant is to change the title of article 6-6.12 "Site Plan Review. Special Permits" to be simply "Site Plan Review" in order to limit the amount of confusion the current title has already caused.

John Guerin, Belcher St, noted support for the change and suggested it may bring more clarity to the process of reviewing proposed development in the town.

Skip Crocker, Southern Ave, noted agreement with the suggestion.

ASTJ: Motion to continue the discussion at the next regularly scheduled meeting of the PB.

AR: I second the motion.

All in favor?

Aye.

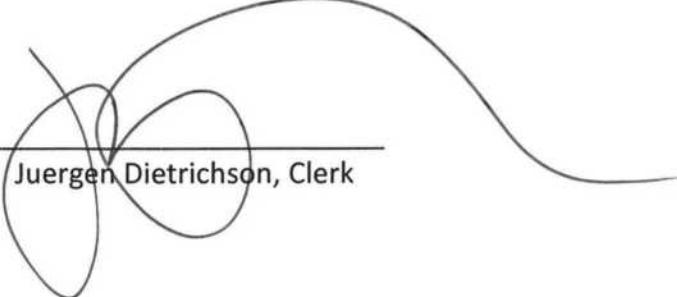
Motion passed unanimously at 8:55 pm.

Next meeting is scheduled for January 21, 2009 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting -Town of Essex Planning Board

January 21, 2009

Meeting called to order at 7:42 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Andrew St. John (ASTJ), Bill Holton (BH), Kim Drake (KD)

Absent: Jason Heath (JH), Amy Reilly (AR)

Building Inspector: Bill Sanborn (BS) - Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There was no permit applications presented to the Board.

Ed Howard, Flying Dragon Antiques

Ed Howard requested time to speak with the Planning Board regarding the hand tub (Essex 2) displayed at the steam muster held at the Shipbuilding Museum. He wanted to inform the Board as to the current status of the hand tub and for the endorsement of the Board.

Ed explained to the Board that 'This project would, at the very least, be in need of money to climatize the building, put it on a foundation, and maintain it. C.P.A. money could possibly be available for some of this in the future. Short-term moving expense would depend more on volunteers and donations.'

Kim Drake explained that if a plan is drawn that the Town of Essex is not exempt from having that plan reviewed by the Planning Board.

Ed also suggested that it would be helpful for the Town of Essex adopt a demolition delay bylaw.

60 John Wise Avenue, Owners Pallazola Brothers LLC, Site Plan Review

Attorney Thomas Beatrice representing the owners

The Planning Board reviewed the Order of Conditions written by the Essex Conservation Commission and the owners presented new site plans to the Planning Board.

The Board decided that at the February 4, 2009 meeting the Board will review all the information and write the Site Plan Review decision.

Attorney Beatrice asked to have put on the record that he would like the Board to know that any conditions put on the property, the owners will be looking very closely at words that refer to use or any conditions of use. He also said that he would like to have what the Planning Board writes that it is close to what was written on the Building Permit.

Lots 4A & Lot 5A, 62 Island Road – ANR

Attorney John Guerin representing the owners

Attorney John Guerin presented the ANR plan to the Board. The Board reviewed the plans. The proper fee was paid. The Board approved the application.

JD: I make a motion that we accept the lot boundaries on this ANR presented by John Guerin for the owners Roger and Eileen Hardy, Lots 4A and Lot 5A on 62 Island Road now Lots 4B and 5B.

ASTJ: I second.

All in favor?

Aye.

Motion approved unanimously.

Overlay District Proposed Bylaw

Kim Drake opened the continuation of the public hearing for the proposed article for the warrant for the Proposed Overlay District Bylaw.

Andrew St. John presented to the Board the map made by the MAPC and the Board discussed and offered comments on the map. The MAPC will make changes and then make a large copy for the next meeting.

John Guerin, 104 Belcher Street commented on the proposed bylaw. He discussed possibility of including the type of building would be allowed; the size of building the size of signs etc.

The Board decided that they would like to use more interactive tools which would allow the public a better opportunity to visualize and discuss this proposed bylaw at the next meeting.

Kim Drake announced that the public hearing will be continued until Wednesday, February 11, 2009 at the Essex Elementary School.

Town Meeting 2009

Bill Holton asked the Members of the Planning Board if they would be willing to present an article for the warrant regarding Change of Use. Mary-Ellen will draft the notice and ask either Andrew St. John or Bill Holton to review and approve the notice prior to publication.

Town Building Committee

Kim asked for one Board member to volunteer for the Town Building Committee. Juergen volunteered with the condition that if the Committee to choose a Town Planner becomes more involved and/or he finds that there are constant schedule conflicts that another Board member will relieve him of his duties for the Town Planner Committee.

ASTJ: I make a motion to approve Juergen Dietrichson for the Town Building Committee.

BH: I second the motion.

All in favor?

Aye.

Motion approved.

Fiscal Year 2010 Budget

The Board reviewed and approved the proposed 2010 budget.

Meeting Minutes

The Board reviewed and approved as amended the meeting minutes of January 14, 2009.

Regular Business

Invoices

Payroll

Mail

BH: Motion to adjourn the meeting at 10:28 p.m.

ASTJ: I second the motion.

All in favor?

Aye.


Motion passed unanimously.

Next meeting is scheduled for February 4, 2009 at the T.O.H.P. Burnham Library.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting
Town of Essex Planning Board
February 4, 2009

The meeting was called to order at 7:36 p.m. by Acting Chair, Andrew St. John and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Andrew St. John (ASTJ), Bill Holton (BH), Scottie Robinson (SR)
Absent: Jason Heath, Amy Reilly, Kim Drake
Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

44 Lufkin Street, Peter Meyer, Map 15 – Lot 16 A

BS: This application is for 10 x 17 addition of a screen porch for the Board to review. It has the approval of the Conservation Commission and the Board of Health.

The Board reviewed the application and the plan and had no comment.

The Board discussed the hiring of an engineer for consultation for the proposed TBD Essex Park Drive Definitive Subdivision Plan Application.

TBD Essex Park Drive Definitive Subdivision Plan Application

Peter Van Wyk, owner, present, Orestes 'Russ' Brown, Attorney representing the owner, Brian Buia, Apple Associates Inc. Engineer, representing the owner

Andrew St. John re-opened the Public Hearing for the TBD Essex Park Drive Definitive Subdivision Plan.

Brian Buia will send copies of the necessary documents and plans to the two engineering companies Meridian and Larry Graham Associates, LLC which were chosen by the Planning Board to review the drainage plans and information and the Hydro Cad Analysis.

The Board agreed with the letter sent by Larry Graham which stated that 'it is not possible to solely review the calculations and report without reviewing the drainage design of the subdivision plan.' Larry Graham further stated that 'Further, as drainage is of primary importance to a responsible subdivision design, it is most appropriate and of benefit to the board for us to review the entire subdivision plan and design.'

The Board did briefly discuss the letter from Larry Graham and decided at this point of the review of an application it would not be prudent to hire an engineer to do a comprehensive review of the proposed subdivision. If the subdivision is approved then the Board will collect the proper funds from the applicant to cover the cost of an engineer and the Board will hire an engineer for a new estimate for reviewing the documentation and to visit the Planning Board during the March 4, 2009 meeting.

Bill Holton asked about the proposed 44-foot easement on the plan. Russ Brown stated that it could be removed from the plan. Peter Van Wyck said he would like to have the easement remain. Brian Buia stated it was always discussed it would be for the benefit of open space on the other side of the gas

easement and he further stated that putting in a road to make only a few lots may not be economically feasible. The Board reiterated their request to have the easement removed from the plan.

Andrew St. John asked how many acres on Lot 7. Brian said 21.12 acres.

Andrew St. John reviewed and paraphrased the response from Paul Goodwin, Superintendent of the Department of Public Works regarding the application and plans which were: "(1) The water main says that it is ductile iron and PVC at different parts of the plan. Which one is it? Either is acceptable. I just want to know which one. Also, the water main installation has to fulfill ALL Water Department Rules and Regulations in regard to installation procedures. It appears by the plan that the underground utilities are close to the proposed water main. We require 10' separation between our mains and other utilities. (2) Plan makes not about annual maintenance done to drainage swails, etc. Who is going to perform and oversee the maintenance of the drainage system? I do not want this proposed development to have an adverse affect on the public way (Essex Park Road.) or the local residents in that area. I would assume the Con. Com. will weigh in on this in regard to the Alewife Brook etc. (3) The increased vehicle traffic coupled with the on stree parking from the commercial property currently on Essex Park Rod. May be an issue Chief Silva and I will need to address/discuss in the future."

In response to one of the comments reviewed by Andrew St. John from Paul Goodwin, Attorney Brown said that it would be a simple matter to have the concerns of the DPW Superintendent regarding the drainage met by having a covenant for the future home owners to be responsible for the drainage.

Andrew St. John continued the public hearing until March 4, 2009 at 8 p.m. The applicant(s) signed the form to continue the public hearing date to March 4, 2009 and the date the decision must be filed with the Town Clerk is May 9, 2009.

The Board secretary will email Attorney Russ Brown the comments of the Town of Essex Boards/Departments/Committees.

Regular Business

- Invoices
- Payroll
- Mail
- The Planning Board will begin to use a new form written by the Board Secretary for the continuances of public hearings and applications which will be signed by an applicant at a meeting. This will end the time spent by the secretary contacting applicants to submit a continuance letter after a meeting has ended.
- The Board reviewed and approved the Meeting Minutes of January 21, 2009 as amended.

60 John Wise Site Plan Review Decision

Attorney Thomas Beatrice present

Andrew said that the representative for Kopelman and Paige, Town Counsel said that a Site Plan Review decision could be written by the Board. This decision should not reference any previous decisions made by the Board.

The Board reviewed the Order of Conditions from the Conservation Commission.

The Board then reviewed the criteria as set in the Bylaws regarding Site Plan Review Zoning Bylaw 6-6.12.4 which the Board reviewed.

a) Traffic

Summer Plan

- The Board discussed the two driveways.
- The applicants had previously stated they had the approval of the state for the driveways.
- Scottie and Bill said they were in favor of a separate driveway for the employees.
- Andrew asked if having two sets of cars on the same road at the same time trying to enter or exit the property and the potential danger. Scottie responded and said that it was not going to be such a busy business and it should not be a concern.
- Bill said that he was concerned about the exiting. The Board asked Tom Beatrice where the retail business is located and the Board discussed the location of the retail business. One driveway would enter into the retail business section and the other driveway would be for the employees and the trucks. The two areas; one for the business/employees and one for the retail business would be separate.

Winter Plan

- The Board reviewed the winter plan and the retail parking and the employee parking would be the same.
- Scottie stated that she would be concerned about public safety and her idea would be to require the applicant to put up a sign between the retail and the other section so that it is clear to the public that each section is separate and the retail side is for the public and that the other section is not a public area.

b) Parking

- Juergen wanted to make sure that it states in the decision that the applicant is aware of the necessity of having handicap parking as per Mass General Laws. Site lines in the new driveways to be required. Thomas Beatrice asked that they be restricted by any future use as per the current bylaws.

Lighting

- Andrew suggested it would not be unreasonable to ask the applicants to only have lighting in the front of the building and that there would be cut off fixtures and that the light would fall on the front of the property. Scottie brought forward the applicants previous concern about the safety of the boats from vandals or theft. Thomas Beatrice suggested cut off fixtures with sensors.
- The Board agreed it was reasonable to request that any lighting light the property and not the adjacent properties and that the lighting be cut off fixtures with sensors turned downward.

Trash Receptacle

- The Board would like to request that if in the future there were any trash receptacles that they be screened from view from the street.

c) Drainage Control

- The Board agreed that this was the Conservation Commissions area of expertise.
- Bill wanted to make sure that the applicants understand that the plan accompanies a decision and that what is written in the decision and a plan must be followed.
- Scottie brought forward the question of lot coverage. The owner can cover 25% of lot with all buildings according to Essex Bylaws.
- The property is a business land use (requirements may be found in bylaws on page 12). Scottie asked if the Board felt that David Lane's concerns about the drainage into Soginesse Creek.

Andrew St. John said that he would not want to go against the decisions of the Conservation Commission and the Board had complete trust in their judgment regarding conservation issues.

- Thomas Beatrice said that the Conservation Commission was very pleased with the plans submitted by the applicant for the drainage on the property.

d) Existing Vegetation

The Board determined that this is not an issue and reviewed what is stated in the bylaws: Minimizing the area over which existing vegetation is to be removed. Where tree removal is required special attention shall be given to planting of replacement trees and undergrowth.

e) Amenities

- Andrew said that he would not like to see huge conifers in the middle of the lot.
- Thomas Beatrice pointed out that the screening which is there is what was asked for by the Board in the past.
- The Board discussed perhaps putting shrubbery or another bush to offset the Evergreens until the Evergreens grown in and then they could be move. The Board discussed their concern about the screening of a compost pile and the storage bins.
- Andrew asked why the Board would require them to screen the compost piles and storage bins since they are part of the character of John Wise Avenue. He is concerned about the row of trees already planted because they are not reflective of the character of John Wise Avenue.
- Attorney Beatrice asked that his clients not be held up to a standard that is not the current standard. Scottie replied that that is not a concern and that the applicants could be held up to standard as deemed appropriate by the Board.

Bill Holton brought forward 6-5.6 and the property owned by Perkins on John Wise Avenue that currently has boat storage. The Board agreed that the owner should be reminded that the boats must be screened.

f) Town Character

The Board decided the property would fit with the character of the town.

g) Screening

This subject was discussed under section e) Andrew did read section (g) for the record. The Board also agreed that they would like to see a tree that is more appropriate for the area.

h) Hazardous Materials

The Con. Com. Order of Conditions did discuss the proper care for the boats and Hazardous Materials. Attorney Beatrice will give the Board Secretary a copy of the agreement regarding the boats that was completed with the Con. Com.

- i) The Board decided they should research which bylaw references gas storage.**

Andrew St. John volunteered to draft the decision which he will bring back to a Board meeting for the Board to review.

BH: Motion to adjourn the meeting at 10:15 p.m.

ASTJ: I second the motion.


All in favor?

Aye.

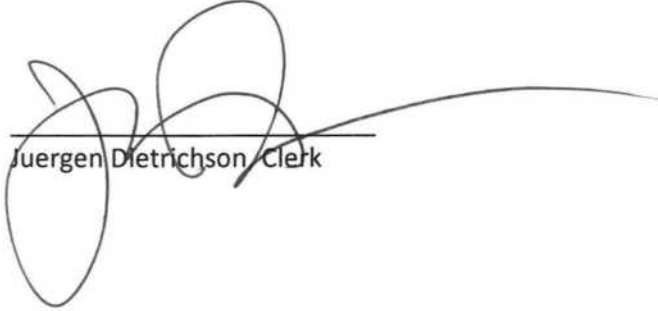
Motion passed unanimously.

Next meeting is scheduled for February 11, 2009 at the Essex Elementary School at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting – Essex Elementary School
Town of Essex Planning Board - February 11, 2009

Present: Andrew St. John (ASTJ), Bill Holton (BH), Amy Reilly (AR), Juergen Dietrichson (JD)
Absent: Jason Heath, Scottie Robinson, Kim Drake
Secretary: Mary-Ellen L. Feener (MF)

Acting Chair Andrew St. John opened the two public hearings for the proposed articles for the warrant for the 2009 Town Meeting at 7:38 p.m.

Andrew read the mission statement to the public regarding how the Chair would run the meeting and how the Board and the public are expected to interact during the public hearings.

Article XXX – The addition of a Definition for Change of Use to Chapter 6, section 3.

To see if the Town of Essex will vote to add to Chapter 6, Section 3, DEFINITIONS, of the Town of Essex Zoning Bylaws a new Section Chapter 6-3.46 to read as follows: CHANGE OF USE. Any use that differs from the current or previous use of a building or land. The term “use” shall be the legal enjoyment of the property that consists in its employment, occupation, exercise or practice.

Bruce Fortier, #? Southern Avenue: The Definition sections of any Bylaws are in alphabetical order. Your proposal should be number 6-10.3.A but what it really should be to two definitions; 'Use' and 'Use-Change' and it should actually 6-3.A.B should be 'Use' and 6-3.A.C should be 'Use, Change'.

ASTJ: Do you have any questions regarding the substance *(of the proposed article)*?

Bruce Fortier: Yes. *(Bruce read the proposed definition)*.

Bruce stated that it doesn't jibe with the Town Bylaws and the state laws *(Massachusetts General Laws)*. He said that there are already definitions for Business Use, Residential Use, and Commercial Use in the existing Town of Essex Bylaws. Bruce then asked if adding a garage to your residence is a change of use.

ASTJ: I don't think so.

Bruce Fortier: What if you add a stable to your property?

No comment from the Board.

Bruce Fortier: I have asked the Board to repeatedly add an Agricultural Use.

Andrew St. John asked Bruce if he could submit what he would suggest as a definition. Bruce said he would not. He said that he was at the meeting for the proposed Overlay District and if it would affect Southern Avenue.

Bill Holton spoke to the public about this proposed bylaw. He stated the reasoning behind this proposed definition was to allow the Board the ability to review the use of a property and to set guidelines for a proposed use. He brought forward the question of what if a citizen who had a neighbor and that neighbor wanted to convert his/her property to a commercial use property who would determine what the use could be and he also used an example of what if one of the restaurants on the causeway becomes an adult book store and there were no guidelines?

Westley Burnham, 22 County Road: The only place where we refer to Change of Use is under Site Plan Review. When Sheldon and I did the first draft of Site Plan Review we made it something to at least address the larger projects that needed more scrutiny. It was never intended to have every addition to follow Site Plan Review.

Westley gave typed copies to the Board what he would propose instead of the Definition of Change of Use.

From Westley Burnham given to the Planning Board at the Public Hearing:

Delete 6-6.12.2 and replace with the following:

6-6.12.2 Projects Requiring site Plan Review

All permits for construction, reconstruction, or relocation of any building with a ground floor footprint of greater than 2500 square feet. Any change of use of any building from an existing use to a different used as defined by section 6-6 LAND USE REGULATIONS of the Town of Essex bylaw.

Recommended adding a new Appendix L: Site Plan Review request and submittal rules:

Submittal requirements need to be defined:

- *Suggest utilizing similar filing requirements as is used in the Subdivision Regulations to maintain reasonable consistency.*
- *Suggest adding a reference to Appendix J Board of Appeals Rules section E-2 for an appeal process following any decision under Site Plan Review.*

Article X – To strike the words ‘Special Permit’ from the title of Bylaw Section 6-6.12

Andrew St. John read the proposed article to the public.

6-6.12 SITE PLAN REVIEW

To see if the Town will vote to amend section 6-6.12 Site Plan Review. Special Permits. By deleting the words Special Permits. To read:

Westley Burnham,22 County Road: I agree with you whole-heartedly. The reason why it was placed there was never to make it a Special Permit. The reason we did it that way was for the special permit process. On the sheet I gave you I suggested that you add an Appendix L that describes the process.

Bruce Fortier,#? Southern Avenue: If you should rewrite that section I would suggest you change the numbers to conform to the rest of the bylaws.

ASTJ: If the numbering system is correct then would you be in favor of this proposal?

Bruce Fortier, Southern Avenue: I am indifferent.

Article Xx -To incorporate a Residential/Agricultural Overlay District to the Bylaws as Section 6-14.

Proposed Res/Aq Overlay District Bylaw

The current proposal is to create an “overlay district,” which would allow only agricultural and residential uses in the designated areas. The overlay district would be defined using a town map (see the map below). The state’s definition of “agricultural use” is quite extensive, and in addition to farming includes such things as riding stables, the sale of grown food products, etc. Residential is defined by existing town bylaws and therefore uses the same regulations as are currently in place including home occupations. The amendment will not “lock down” the zone for future residential development; indeed, the zone will be governed by the same by-laws that apply to the entire town. Existing uses outside these definitions will be grandfathered.

The proposed bylaw amendment:

Article ____: To see if the Town will vote to Amend Chapter 6 the Zoning Bylaws by adding:

6-14 RESIDENTIAL-AGRICULTURAL DISTRICT

6-14.1 PURPOSE.

The purpose of the Residential-Agricultural District is to enable the preservation of the unique scenic open spaces of Essex. Vistas of hayfields, pastures, woods, salt marsh and wetlands help define the rural character of Essex, and enhance the quality of life for all citizens of Essex.

6-14.2 RESIDENTIAL-AGRICULTURAL DISTRICT DELINEATION.

The boundaries of the Residential-Agricultural District are shown on a plan entitled "Residential-Agricultural District", dated _____, filed with the Essex Town Clerk and incorporated herein by reference (the "District Map").

The Residential-Agricultural District shall be considered to be superimposed over any other existing districts, e.g. Wetlands, Flood Plain, Water Resource Protection.

6-14.3 RESIDENTIAL-AGRICULTURAL DISTRICT USES:

Only the following uses are allowed in the Residential-Agricultural

District:

- a. *Residential Land uses, single family, as regulated by Section 6-6.2 of the Zoning Bylaw.*
- b. *Residential Land uses, two family as regulated by Section 6-6.3 of the Zoning Bylaw.*
- c. *Single and two-family dwelling units erected under Section 6-5.5 of the Zoning Bylaw.*
- d. *Agricultural Land uses (as defined by MGL Chapter 128, Section 1A).*
- e. *Land retained predominantly in its natural, scenic, or open condition for purposes of land or water conservation, wildlife habitat, drainage, erosion control, flood control, or passive outdoor recreation.*
- f. *Wind Turbines, as regulated by Section 6-6.9 of the Zoning Bylaw.*

6-14.4 Any nonconforming preexisting use is permitted in accordance with M.G.L. Chapter 40A, Section 6.

(There also was an attached map of the Town of Essex with two circles on it. One circle was around a section of Eastern Avenue the other around a section of Southern Avenue. A section of John Wise Avenue was shaded. There was also an arrow indicating that the map was continued; but it was not continued.)

Andrew St. John explained to the public that there are two choices. The first choice being that the continuation of the public hearing for an Overlay District on John Wise Avenue and the second choice would be that a new public hearing be advertised and held with the other two proposed districts. He stated that there would be enough time to hold a public hearing prior to the deadline for the submission of the proposed articles for the warrant but that the Board would have to make a decision as of end of the meeting.

Andrew explained that a Planner will be hired by the Town and a Planner could be instrumental in proposing changes to the current zoning bylaw.

Linda Osborne, 2 Prospect Street: At the last meeting some good ideas came out that night. She stated that the original reason of bringing this up was to control 'thy neighbor'. She stated that certain families have been attacked. She asked if there would be a lot of building going on right now; and she answered I don't think so. She stated that every district has businesses. She further discussed her opinion regarding the proposed bylaw change. She said who has the right to tell someone what they can do with their property. Route 22 is also a corridor into Essex and she said that you can't just do sections.

Westley Burnham, 22 County Road stated he is a member of the Long Term Planning Committee and the committee has been working on a downtown district. He suggested that the Board wait until the Planner is hired and then look at many different districts with the Planner.

Bruce Fortier, #? Southern Avenue discussed at great length why zoning districts would not work in Essex. He said that this \$20,000 use of a Planner will not be of any good.

John Hickey, 113 Belcher Street: I was just thinking about the last Planning Board meeting. The discussion was about the North End and I do live in the North End. When I saw the article in the newspaper I was actually glad because there were some other people who could bring insights in on this. One of the things I keep thinking about is if it doesn't pass by fourteen votes this time will it keep going until it is passed. My second thought was is that we have elected officials in the town and they haven't given any input. Does the Selectmen feel that this is the next step or does Brendhan Zubricki believe this should be a next step? If I don't pay my taxes, none of the people who are going to change my land will help me to pay taxes? Why isn't the whole town done.

Bruce Fortier interrupted to say that Planning Board consists of the seven elected officials who are in charge of planning.

Andrew St. John explained that the Selectmen have the final approval of what the Planning Board proposes as articles for the warrant for the 2009 Town Meeting.

Peter Kellerman, 94 John Wise Avenue asked if the Board of Selectmen gave a rationale as to why the Selectmen would not support a proposed Overlay District bylaw.

Andrew St. John read the memorandum the Planning Board received from the Selectmen (A. Raymond Randall, Jr., Mark Lynch; Selectmen. Selectmen Jeffrey Jones has recused himself from this discussion). The memorandum was dated February 10, 2009:

Your proposal to create an Agricultural-Residential Overlay District in the north end of Essex is not well-thought in our opinion. Questions regarding the inclusion of Town owned land abutting John Wise Avenue and whether additional overall planning should be conducted prior to reintroducing this concept are likely to cloud and defeat the proposal. In fact, it is our contention that our recent collaborative effort to certain the services of a consulting planner to review overall planning in Essex is an essential precursor to the proposal of individual districts. As such, we will not be placing an article relative to the Agricultural-Residential District (or any other district) on the Annual Town Meeting Warrant.

Further, for your own information, our review of the public hearing advertisement associated with the Agricultural-Residential Overlay District proposal does not support the Planning Board's discussion of similar districts in other areas of Town. The text of the advertisement only concerns the Agricultural-Residential proposal and the accompanying map, although depicting other "circled" areas, does not clearly articulate any other intent beyond that text. As such, both we and Town Counsel deem the discussion of any other district(s) out of the scope of the public hearing you intend to hold on February 11, 2009.

Bill Holton elaborated on the potential new Planner for the Town of Essex and he explained to the citizens how the \$25,000 and the time will be spent by the Planner; 125 hours will be spent with the Planning Board, 40 hours with the Long Term Planning Committee and the Zoning Board of Appeals and 50 hours will be spent by the Planner doing Grant Writing for the Town.

Julie Scoffield, 69 John Wise Avenue stated that despite the efforts of the Boards all meeting once a month it is disappointing that with less than twenty four hours one Board is not supporting another Board. These efforts are not targeting anyone in town and it is not true.

Leslie Burns, 52 Grove Street: There were many of us that were on the Open Space Committee that were looking at this as a way to maintain the open space of this community. When we did a survey of the citizens a few years ago the number one area the citizens wanted preserved was the 133 John Wise corridor and it was the number one priority to maintaining the scenic beauty of Essex. We looked at this as a survey and we have the numbers and what people valued was the natural areas of Essex.

Dawn Burnham, 22 County Road: The land you are talking about is not public land, it is owned by individuals.

Maria Burnham, 30 Southern Avenue did not feel that it was a good idea to take the proposed bylaw/article for the warrant off the table at this point.

Andrew St. John restated the options regarding this proposed article. The Board decided not to move forward with the article at this time. The citizens and the Board also discussed that the proposed article could be submitted as a Citizen's Initiative and then the deadline would not be as soon as it would be if the Planning Board held the public hearing.

JD: Motion to adjourn the meeting at 9:15 p.m.

BH: I second the motion.

All in favor?

Aye.

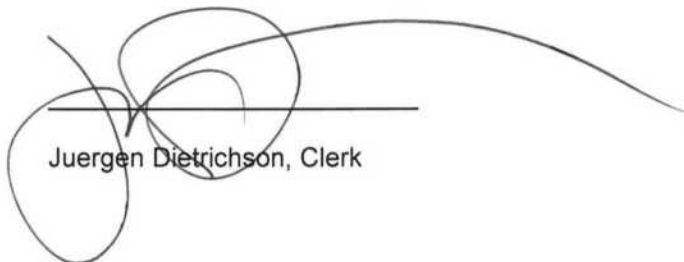
Motion passed unanimously.

Next meeting is scheduled for February 18, 2009 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Draft Meeting Minutes - Public Meeting
Town of Essex Planning Board
February 18, 2009

The meeting was called to order at 7:36 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Kimberly Drake (KD), Bill Holton (BH), Amy Reilly (AR), Scottie Robinson (SR)

Absent: Jason Heath, Andrew St. John

Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

59 Choate Street – Peter Fortune – Map 16, Lot 14B

BS: The applicant is purchasing the property and would like to construct a 56 x 28 new single family dwelling on the lot with an attached garage and a breezeway. This has the approval of Water/Wastewater, from the DPW for a curb cut, the Conservation Commission and the Fire Department 911.

The Board reviewed the plans. The plans illustrated a dwelling that wasn't similar to the proposed dwelling. The Board decided that they would like to see a plan that shows the actual proposed dwelling on the site plan.

2 Andrews Street – Margot Kusulas

The owner is asking for a continuation of her approved Building Permit. The Building Inspector stated that he wanted to make sure that the Planning Board was in favor of such a continuation. The Board agreed that a continuation would be acceptable as long as the plans did not differ from the approved plans that went along with the Building Permit.

The owner would like to build a barn for hay storage which would have a footprint of over 2,500 square feet. The Building Inspector asked the Board if due to the fact that the property has an agricultural use. The Board responded that they would review a site plan review application due to the fact that the Board does have jurisdiction for a structure. The Board reviewed M.G.L. 40A Section 3.

The Building Inspector and the Board reviewed the copy of the notice for the Town of Essex Board of Appeals that the Board of Appeals will hold a public hearing on Wednesday, February 25, 2009 at 7 p.m. at the T.O.H.P. Burnham Library on a petition filed by Henry and Helen Dix for a variance from the dimensional requirements of the Town of Essex By-Laws Section 6-6.2(a)(2) – Frontage-for a subdivision of land at 192 Western Avenue. Scottie Robinson stated that she did review the plan and the application with the Town Clerk and the applicant is short five feet of frontage to divide the one lot into two lots.

Southern Avenue – Kyle Gale Applicant

The application was submitted to the Board on November 4, 2008. The Board reviewed the application and the plan on November 11, 2008. Continuances occurred on 11-19-08, 12-18-08 and to February 18, 2009. Brian Buia, Apple Associates sent an email to the Planning Board asking for a continuance. The Board agreed to a continuation to March 18, 2009 and the Board will have until April 30, 2009 to file recommendations with the Town Clerk.

Excerpt from the 11-19-08 Approved Meeting Minutes: "The applicant will be required to show proof of ownership of the first lot since it was questioned. As soon as the applicant has the requested information the Board will review the information during a regularly scheduled meeting. The Board would like to hear the information no later than the December 17th meeting."

Excerpt from the 12-18-08 Meeting Minutes: "Southern Avenue – Evergreen Homes
The Board Secretary will ask the applicant to submit another letter to the Town Clerk for a continuance to February 18, 2008 to continue the timeline for a decision from the Board until April 18, 2009."

Kim Drake did receive feedback from the Town of Essex Assessor which was that if there is a boundary dispute then it would be between the abutters and the Assessor would not be involved.

Helen Bethel, MECT (Manchester Essex Manchester Trust) and the Board discussed this application. According to Helen Bethel the reason the Conservation Trust is involved is because the Town of Manchester is listed as the successor. Helen said that the property is located on land that has the town well. The MECT and the Town of Manchester have started going forward with the necessary steps to show ownership. Helen asked the Planning Board how the Town of Essex Planning Board could stop the process. The Planning Board said that they believe the only way to stop the process would be under a court order. The Planning Board stated that they would not contact Town Counsel unless they were officially contacted by the Town of Manchester Selectmen or legal representative.

The submitted Preliminary Plan Application showed a plan where the subdivision is given access to the lot where the proposed dwellings would be built over abutter(s) property due to an easement; two of the abutter(s) were present and the Board did state to the public attending the meeting that the Planning Board will make sure that the applicant does have legal access to the lot.

The Planning Board also explained to the public that it was a Preliminary Plan Application. If the proponent went forward with a Definitive Plan Application then applicant would need to follow a public hearing process which part of requires notices sent to abutters and notices published in a local newspaper.

The permit from Mass Highway stated that the hours of operation would be for a set time. The Board will require that a copy of the document from Mass Highway be attached to the Planning Board's decision.

60 John Wise – Site Plan Review

Pallazola Brothers LLC Applicants, not present; Attorney Thomas Beatrice, representing the applicants; present

Prior to his going on vacation, Andrew St. John drafted a decision and sent it to town counsel for review. The Board reviewed all the documentation, the recommendations from Town Counsel, Kopelman & Paige and wrote a second draft of a decision.

Kim Drake will incorporate the Board's edits to the first draft decision and send a second draft to Kopelman and Paige for review. The other Board Members asked if a copy of the draft could be emailed to them prior to the next meeting.

75R Wood Drive

Gillian Palumbo for the Assessor's office asked if the Planning Board if they had any concerns with a plan given to the Assessor's Department. The tax maps show two lots; one where the dwelling is located and one where the barn/garage is located. From the Assessor's list there is no owner shown on one of the lots. In the Planning Board's eyes it is similar to 25R on Southern Avenue which unless someone could show claim to the lot where the barn/garage is located and they want to do something on that lot where the barn/garage was located then they would not be involved.

Regular Business

Payroll

The Board discussed the public hearing which was held on February 11, 2009 for the articles for the warrant and the meeting that was held last evening on February 17, 2009 with the Board of Selectmen. Kim suggested the Planning Board respond in writing to the memorandum sent by the Selectmen to the Planning Board on February 10, 2009. The Board agreed that they would like to write a response for the record.

BH: Motion to adjourn the meeting at 10:15 p.m.

AR: I second the motion.


All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for March 4, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary

Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board – March 4, 2009

The meeting was called to order at 7:36 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Kimberly Drake (KD), Bill Holton (BH), Scottie Robinson (SR) Andrew St. John (ASTJ) Absent: Jason Heath, Amy Reilly
Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

26 Eastern Avenue – Map 38, Lot 20
Christopher & Laurie Ingalls

BS: Application is to build a one story addition 20 x 22 to the existing dwelling. The application has the approval of the Waste Water DPW, Curb Cut DPW, Conservation Commission and the Fire Department 911.

Bruce Fortier, 186 Southern Avenue discussed 6-4.3 and read the bylaw for the Board. He was asked by the Chair not to interrupt.

Bill Holton said it did not meet the setbacks and it fell under 6-4.2 and 6-4.3 due to the fact it was no more non-conforming.

SR: I move that we approve the application of Laurie Ingalls, 26 Eastern Avenue, Map 38, Lot 20 for a 20 x 22, one story addition to an existing dwelling under the Town of Essex Bylaw 6-4.2 since the current addition does not meet the required setbacks and the addition will not make the property more detrimental to the neighborhood since it does not meet the requirements.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

7 County Road –Map 8 Lot 58A
Rick Means

BS: The applicant is looking to erect a two car garage with apartment above and since it is a new building the Planning Board needs to approve the citing of the building on the lot. The existing lot size is 7.9 acres. The application has the approval of the BOH, Wastewater and the Conservation Commission. The DPW approval is contingent upon the building being changed from a four bedroom to a three bedroom. There will be three structures on the lot.

The Board reviewed the site plan and the applicant has 72 feet on a right of way. The Board reviewed the tax maps and there are currently other lots which have frontage on the right of way.

The Board asked the applicant to show a site plan with all three building on the lot. The Board also asked if the applicant could bring in the variance that originally gave the owner permission to use the way for

frontage. The Board reviewed the office files and there was not any information regarding the property or any variances.

59 Choate Street -Map 16 Lot 14B

Peter Fortune

BS: This is one you saw at the last meeting and you asked for more information. The applicant is purchasing the property and would like to construct a 56 x 28 new single family dwelling on the lot with an attached garage and a breezeway. This has the approval of Water/Wastewater, from the DPW for a curb cut, the Conservation Commission and the Fire Department 911.

The Board reviewed the plans and noted there are 4.08 acres. Andrew St. John questioned if the proposed dwelling would increase the non-conformity of the proposed driveway that serves many lots. Scottie said that was not the case because the lot was approved before the restriction on the number of lots on a common drive. Juergen read the Town of Essex Bylaw which stated that the applicant needs to show proof of the easement to the Building Inspector 6-5.1.4.B. The Board requested a plan that shows the actual proposed dwelling on the site plan.

63 Main Street – Map 38, Lot 58

Herman Patrician

BS: Applicant is looking for a 6-4.2 finding for a Change of Use. The building originally had been residential and commercial use and then changed to a two family. The current owner would like it has the approval of Water/Wastewater, the Conservation Commission and the Fire Department 911.

Herman Patrician: Why would someone need to do a site plan review when it is an existing dwelling?

SR: If you are changing the use we would want to know more information about the site.

KJ: The change in a site is covered in the Town of Essex Bylaws. For example, parking would be a concern. It is not as onerous as other applications and it doesn't require a public hearing.

The board pointed out that a Site Plan Review was required for a change of use.

Herman Patrician: Would the requirements for residential parking be less than for commercial. The Board reviewed the bylaws 6-5.8.

The Board described the Site Plan Review process for the applicant, stating that that in this case the review would be limited to satisfying the parking requirement.

In discussion after the applicant left the meeting, the Board agreed that although it was a shared opinion that to have a commercial use on the first floor and a residential use on the second floor would be a desirable use for a building located on the causeway and the Board agreed that there is plenty of public parking located in the Municipal Parking Lot and the property does have private parking available, the Planning Board does not have the authority to grant a variance to the parking requirements as stated in the Town of Essex Bylaws. The Board requested that the secretary contact the applicant and

inform him that if he is not able to satisfy the parking requirements on his own property, he will need a variance from the Town of Essex Board of Appeals.

TBD Essex Park Drive Definitive Subdivision Plan Application

Attorney Orestes 'Russ' Brown, Trustee

On behalf of the Board, Kim Drake expressed condolences to Attorney Brown for the recent death of Peter Van Wyck.

KD: I open the public hearing for the Continuation of a Definitive Subdivision Plan Application for TBD Essex Park Drive at 8:46 p.m.

Russ Brown was given copies of the two proposals from Meridian Associates and Graham Associates. He will ask his engineer to review the two proposals. The applicant agreed to continue the public hearing until May 6th and the filing of a decision with the Town Clerk would be extended to September 1, 2009.

KD: I would like to continue the public hearing until May 6th.

BH: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

63 Main Street – Herman Patrician – Informal Discussion

The informal discussion was already held during the Building Inspector's Report due to the fact the applicant also had a building permit application which was presented by the Building Inspector.

Regular Business

60 John Wise Avenue Site Plan Review Decision

Attorney Thomas Beatrice representing the applicants present

The Board reviewed the draft decision with the suggestions from Legal Counsel Kopelman and Paige, LLC. A final decision was done and the Board voted. Four Board Members approved, one abstained from voting.

ASTJ: I call a motion to vote for the decision for the Site Plan Review application of Pallazola Brothers LLC, 60 John Wise Avenue.

JD: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Roll Call Vote

ASTJ: I Andrew St. John, member of the Planning Board vote to approve the decision as amended on March 4, 2009 as amended finding that it meets the Town of Essex zoning Bylaws.

BH: I Bill Holton, vote to approve the decision as amended on March 4, 2009 finding that it meets the Town of Essex zoning Bylaws.

SR: I vote to approve the draft document as amended on March 4, 2009 for the Site Plan Review Application by Pallazola Brothers LLC.

JD: I Juergen Dietrichson, member of the Planning Board vote to approve the decision for 60 John Wise Avenue as amended on March 4, 2009.

KD: I Kim Drake having not attended all the meetings I will not vote, but I am in agreement of the changes and the decision.

Payroll

Board discussion regarding other committees

- Building Committee Update
- Community Preservation Committee Update
- Long Range Planning Committee Update
- Conomo Point Committee Update

BH: Motion to adjourn the meeting at 10:05 p.m.

ASTJ: I second the motion.


All in favor?

Aye.

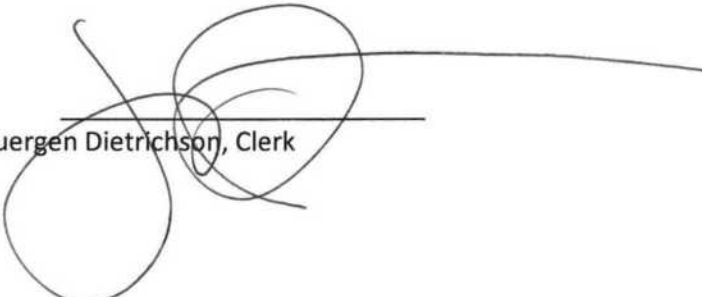
Motion passed unanimously.

Next meeting is scheduled for March 18, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board - March 18, 2009

The meeting was called to order at 7:36 p.m. by Acting Chair, Andrew St. John and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Amy Reilly (AR), Scottie Robinson (SR) Jason Heath (JH) , Andrew St. John (ASTJ) – Absent: Kimberly Drake
Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

59 Choate Street – Peter Fortune – Map 16, Lot 14B

BS: The Board requested that applicant show that the common driveway was in existence and recorded at the Registry of Deeds. This is the documentation which verifies that in 1993 the document was recorded and then updated in 1995. This is for the construction of a new single family dwelling.

SR: I move that the Planning Board approve the Building Permit application for the construction of a new single family home at 59 Choate Street by Peter Fortune, Map 16, Lot 14B. It has the approval of the Water/Wastewater, from the DPW for a curb cut, the Conservation Commission and the Fire Department 911. This is off an approved common driveway approved in 1993 and amended in 1995.

BH: I second.

All in favor?

Aye.

Motion passed unanimously.

7 County Road – Rick Means Map 8 Lot 58A

BS: The Board requested that they be given more information regarding the frontage for this property. It was approved in 1985 as an ANR with frontage on Sagamore Drive. The applicant is looking to erect a two-car garage with apartment above and since it is a new building the Planning Board needs to approve the citing of the building on the lot. The existing lot size is 7.9 acres. The application has the approval of the BOH, Wastewater and the Conservation Commission. The DPW approval is contingent upon the building being changed from a four bedroom to a three bedroom. There will be three structures on the lot.

JD: I make a motion to approve the application of Rick Means of 7 County Road, Map 8, Lot 58A finding that it meets the setbacks and all of the Town of Essex bylaws.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Shephard Memorial Park – Town of Essex

SR: I recommend that the Board approve the no charge fee application from the Town of Essex for an 18 x 16 shed for the storage of field and sport equipment.

JD: I second.

All in favor?

Aye.

Motion passed unanimously.

191 Western Avenue – Anor LLC – Map 5, Lot 54

BS: This application is for a change of use for the second floor portion of an unused portion of machine shop to a one bedroom apartment. It has the approval of the B.O.H., DPW and Fire Department 911.

SR: Is there adequate parking?

BS: Yes, there is one needed for every 500 square feet and the applicant states that he can put 15-16 cars in the parking lot.

BH: It is not a change of use, it is an added use.

ASTJ: Yes.

SR: This application states three bedrooms.

The applicant stated that he was hoping to have three bedrooms approved. Bill Sanborn stated the Since the approval from the DPW , the BOH were for one bedroom the applicant would be limited to one bedroom for an approval.

SR: I make a motion that the Planning Board approve the application of Anor LLC to add a residential use on the second floor as a one bedroom apartment on the 40 x 32 portion of the building. The remaining portion of the building will be used as an industrial use. It has the approval of the B.O.H., DPW and Fire Department 911. It does fit the parking space requirements.

AR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

Preliminary Subdivision Plan Application - Southern Avenue – Kyle Gale Applicant

The application was submitted to the Board on November 4, 2008. The Board reviewed the application and the plan on November 19, 2008. Continuances occurred on 11-19-08, 12-18-08 and February 18, 2009.

Prior to the February 18, 2009 meeting Brian Buia, Apple Associates sent an email to the Planning Board asking for a continuance. The Board agreed to a continuance to March 18, 2009 and Brian Buia signed a continuance form stating that he agreed to the March 18th date for the continuance and that the Board would have until April 30, 2009 to file recommendations with the Town Clerk.

Kyle Gale, Huron Avenue, Cambridge: What we are presenting is to build on this second lot. There is a right of way.

SR: How long is this right of way?

Bill Holton gave an estimate of the length of the road from the plan. It was 970 feet long.

ASTJ: We are not pushing the envelope here.

ASTJ: My question is about the two driveways. If this goes forward you will have to resolve with your neighbors (comment directed to Kyle Gale).

SR: You want to do three single family homes?

Kyle Gale: Yes.

SR: Do they each have adequate frontage?

ASTJ: Each lot has a minimum 150 feet as required.

SR: What are the lots referred as?

ASTJ: Lots 1, 2 and 3.

SR: Who owns this lot?

Kyle Gale: The deed states that it is the Henderson's and they have been paying the taxes.

SR: So you believe they have the use of the right of way?

Kyle Gale: Yes.

ASTJ: And you have the deed to prove this?

Kyle Gale: Yes and it states it in the letter from Kopelman and Paige (Town Counsel).

The Board reviewed the Subdivision Rules and Regulations and the requirements for Preliminary Plans.

SR: If this is a recognized easement it should be labeled as an easement not as a driveway.

BH: Where do we stand with the easement over the Coolidge Trust?

SR: Kopelman and Paige said they do have the right to cross over the land.

ASTJ: I have a question about Map 21, Lot 26 A; does your deed state anything else other than the fact you have the right to cross over this land.

Kyle Gale: No.

ASTJ: So this land (referencing Lot 26A) belongs to whom?

Kyle Gale: The title is murky but the right of way states regardless who owns it. This was a 100 years ago.

SR: Why didn't you go through the middle instead of the over the other driveway to the side. Is it due to the topography?

Kyle Gale: Yes.

SR: My concern is the width of the road and the location.

Martha Gardner, 289 Southern Avenue stated that as far as she knew there was not a written agreement as to the easement. Kyle Gale thought there may be some documentation.

The Board stated that if there is a new plan it should reference any easement or agreement.

Helen Bethel, Manchester Essex Conservation Trust presented a letter to the Planning Board from the attorney for the Manchester Essex Conservation Trust. She also pointed out that the property is located in the Watershed District.

Philip Moran, Attorney representing the applicant: The letter from Kopelman and Paige seems to be clear to me that they are saying it doesn't matter who owns the lot but that Mr. Robardy held the right to use the easement.

'Dear Ms. Drake and Members of the Board: I represent the Manchester-Essex Conversation Trust. On March 2, 2009, the Manchester selectmen authorized their Town Counsel to work with the Trust to pursue the Town's interest in the so-called Fanny Marshall lot in Essex (Assessors Map 2, Lot 26A) as set forth in a 1912 recorded deed to the Salem French Baptist Mission. Joanthan Silverstien, of Kopelman & Paige, and I have had an initial discussion about this matter and are hoping to meet with our clients' representatives as early as next week, in order to establish a plan of action. I respectfully request that the Planning Board allow us time to resolve the issue of Manchester's right in the Fanny Marshall lot prior to accepting a definitive subdivision plan for adjacent land that may severely impact the lot's intended purpose as a park or conservation land. Thank you for your consideration. Sincerely yours, Francis T. Mayo CC: Ms. Helen Bethel, Jonathan Siverstein, Esq.'

The Board discussed the plan and decided that to date the applicant should do the following:

- Applicant has to label correctly the existing way as an easement not a driveway
- Road length should be noted on plan

Scottie asked that we make note that a maintenance agreement be done for the road and that the minutes reflect that each lot will have a separate septic system.

63 Main St.

The Board decided that Andrew St. John will draft a letter which will be sent by the secretary to the applicant.

Regular Business

Payroll

Invoices

Building Committee Update

Community Preservation Committee Update

Long Range Planning Committee Update

Conomo Point Committee Update

Amy Reilly will not be running for the Planning Board.

Selectmen's Meeting on March 23rd. There will be at least three board members attending.

JD: Motion to approve the meeting minutes of March 4, 2009 as amended.

SR: I second the motion.

All in favor?

Aye.

Motion passed unanimously.

BH: Motion to adjourn the meeting at 10:25 p.m.

AR: I second the motion.

All in favor?

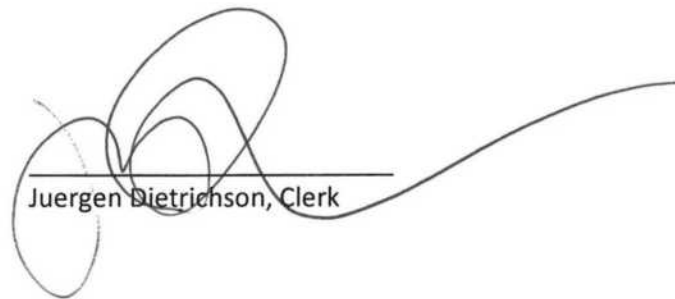
Aye.

Motion passed unanimously.

Next meeting is scheduled for April 1, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board – April 1, 2009

The meeting was called to order at 7:32 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Kimberly Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ)
Absent: Jason Heath, Amy Reilly, Scottie Robinson
Building Inspector: Bill Sanborn (BS) - Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

66 Island Road – Map 23 Lot 17 B – Paul and Barbara Russell

BS: This is for new 2,400 two story single family dwelling construction wood construction on slab. It has the sign-offs from B.O.H., Con. Com. and Fire Department 911. The lot is 145,894 square feet and it has 150 feet for frontage.

Kim Drake read for the Board the Town of Essex Zoning Bylaw 6-5.14.b.3 - Common Driveways:

'Common Driveways - Access driveways may be shared by no more than three lots with approved frontage on a public way. No building permits will be issued unless the following has been complied with: No building permit shall be issued for any lot with access by a common driveway until an easement running with the land in perpetuity providing for maintenance and snow removal is executed by the owner(s) of the lots sharing the driveway, recorded at the Registry of Deeds, and evidence thereof is submitted to the Building Inspector.'

The Board reviewed the plans with the Building Inspector and confirmed the square footprint of the proposed dwelling was less than 2,000 square feet.

JD: I move that the Board approves this application to construct a 2,400 two story single family dwelling subject to the approval of the DPW and subject to the applicant showing that an agreement for maintenance and snow removal has been executed by the owners of the lots sharing the driveway and recorded at the Registry of Deeds.

Motion was seconded and passed unanimously.

Southern Avenue Preliminary Plan Application – Board Discussion

Kyle Gale Applicant, not present

Akshay Patel, 284 Southern Avenue, Lynn Gardner, 280 Southern Avenue, Bruce Fortier, 186 Southern Avenue; abutters/citizens present.

Kim Drake updated the Board of her conference call with the Town Administrator, Brendhan Zubricki, and Town Counsel Kopelman & Paige verified that there is the right to pass over the Coolidge Trust and the second lot as a subdivision road.

Kopelman and Paige stated that it is acceptable that an easement/driveway/subdivision road may be a windy road if the land requires a serpentine road because of grade, topography etc.

Kopelman & Paige cautioned the Board not to act at this time due to the correspondence which was sent to the Town of Essex from the Town of Manchester and that the Town of Manchester may have the right to speak about the driveway, easement.

Kopelman & Paige discussed the Coolidge Trust land and said that potentially the property now owned by the Gardner's at 280 Southern Avenue may have already exercised the right to pass over the Coolidge Trust.

Kopelman and Paige are investigating the documentation at this time and they requested that the Board allow them some more time to complete their research.

The Board did state that the Town of Essex tax map shows the ownership as Deidre Henderson.

Kopelman and Paige agreed that the abutter, Pat Gardner was correct that the Gardners and the Patels have a prescriptive right to access the land and the driveway.

The Board reviewed M.G.L. Chapter 40A Section 6 titled Existing structures, uses, or permits; certain subdivision plans; application of chapter.

Kopelman and Paige also stated that the three houses on the one easement would not be a burden.

Regular Business


Board discussion regarding other committees
Building Committee Update
Community Preservation Committee Update
Long Range Planning Committee Update
Conomo Point Committee Update

Meeting Minutes: The Board unanimously voted to approve the meeting minutes of March 18, 2009 as amended.

JD: Motion to adjourn the meeting at 9:52 p.m.
Motion was seconded and passed unanimously.

Next meeting is scheduled for April 8, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board – April 15, 2009

The meeting was called to order at 7:32 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Kimberly Drake (KD) Jason Heath (JH), Amy Reilly (AR) - Absent: Scottie Robinson, Bill Holton Andrew St. John - Building Inspector: Bill Sanborn (BS) - Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

There wasn't a Building Inspector's Report due to the fact that there were no applications that needed review by the Planning Board.

Informal Discussion - TBD Essex Park Drive – Attorney Orestes "Russ" Brown, Trustee

Russ asked the Board for a continuance for the application due to the fact that the applicant(s) would like to present the plans to the Conservation Commission because the current plan for the subdivision road has the road crossing wetlands.

Russ explained that if the Board did not agree to a continuance then the review by an engineer of the Hydro Cad Analysis and drainage plans which was required by the Board at a previous meeting would need to happen soon due to the allotted time for the application and a decision by the Board.

The Board did agree to a continuance which will officially occur at the next regularly scheduled meeting of the Planning Board on May 6, 2009 due to the fact this was the date publicly announced and posted for the continuance of the public hearing.

Regular Business

- Board Discussion - Town Meeting 2009: The Board decided that Bill Holton should be asked to present the definition of Change of Use at the Town Meeting and Andrew St. John should be asked to present the change to the bylaw regarding Special Permits/Site Plan Review.
- Board Discussion - Conomo Point Committee Update: Kim Drake shared with the Board an update regarding what have been the current discussions of the Conomo Point Committee.
- Board Discussion - Building Committee Update: Juergen presented an update of a recent tour of the Safety Building (Building where the Fire Department and Police Department are located).
- Board Discussion - Town Election - Open Seat(s) Planning Board There are three citizens running for the open seats: Kim Drake is running for re-election, Westly Burnham and Kevin Street are running for one of the open seats.
- Board Discussion - Carolyn Britt, Planning Consultant – April 29th The Board Members who will be able to attend the meeting are Amy Reilly, Bill Holton, Andrew St. John and Scottie Robinson.
- Meeting Schedule The Board reviewed and approved the schedule for meetings from April 29th to the end of August 2009.
- Payroll – Signed.
- Invoices – Signed.
- Meeting Minutes The Board unanimously voted to approve the meeting minutes of April 1, 2009 as amended.

Southern Avenue Preliminary Plan Application – Board Discussion

The Board voted and drafted a decision regarding the application for Evergreen Estates.

JD: Motion to adjourn the meeting at 9:52 p.m.
Motion was seconded and passed unanimously.

Next meeting is scheduled for April 29, 2009 at the T.O.H.P. Burnham Library 7:30 p.m. There will be no regular business conducted at this meeting. The next meeting where regular business will be conducted will be on May 6, 2009.

Presented by:


Mary-Ellen L. Feener, Secretary


Juergen Dietrichson, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board - May 6, 2009

Meeting called to order at 7:39 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Scottie Robinson (SR), Juergen Dietrichson (JD), Andrew St. John (ASTJ), Bill Holton (BH), Jason Heath (JH), Amy Reilly (AR), Kim Drake (KD)

Building Inspector: Bill Sanborn (BS) - Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

280 Southern Avenue -Pat Gardner – Map 3 Lot 21

BS: The application is for a 28 x 40 garage barn for car and boat storage. There will be no plumbing or heat for this 3 stall garage and it will be unfinished inside. The application has the approval of the Con. Com. the BOH and the Fire Department 911.

AR: I make a motion to accept the building permit application for the construction for a 28 x 40 garage/barn for car and boat storage which will not have plumbing or heat and the application has the approval of the Con. Com. the BOH and the Fire Department finding it meets the requirements of the Town of Essex Bylaw.

Motion seconded approved.

The Board and the Building Inspector discussed the process for a Site Plan Review Application, the proper forms to use for an site plan review application and process for an applicant of Site Plan Review in obtaining a Building Permit. It was decided that a new application and form will be made and at the time of a Site Plan Review during a Planning Board meeting will be completed and signed and then the applicant will be able to take a completed form to the Building Inspector. The Planning Board Secretary will work on a new form and checklist for the Board and/or the Chair to review and approve.

TBD Essex Park Drive – Attorney Orestes Brown

The continuation of the Public Hearing for the Definitive Plan TBD Essex Park Drive Subdivision was opened by Chair, Kim Drake at 8:10 p.m.

Orestes "Rus" Brown, Trustee of the Apple Street Trust requested a continuation of the public hearing. The Board agreed and Attorney Brown signed a continuation form. The form dated May 6, 2009 agrees to continue the public hearing until August 5, 2009 and the Planning Board will have until November 6, 2009 to file a decision with the Town Clerk. The Chair requested that the Secretary make note in the meeting minutes that there is the potential concern that three board members will not be able to attend the meeting on August 5, 2009 and if that does occur there may not be a quorum. The Secretary will send a copy to the attorney of the signed form to the applicant.

Amy Reilly made a motion to continue the public hearing at 8:14 p.m. Motion approved unanimously.

72 Belcher Street – Jack Schylling

Chair, Kim Drake opened the public hearing at 8:17 p.m.

Mr. Schylling discussed what he proposes to have done to the stone wall in front of his property. The Board asked questions about the width of the opening he is proposing to have done. Mr. Schylling stated it would be 12-14 feet wide. Scottie Robinson asked about the trees on the property and he stated that he was not sure but at this time he was not planning on removing any trees.

JH: I move to request the opening of a stone wall for 12-14 feet on a scenic way.

Motion seconded, Scottie Robinson did not vote in the affirmative. The public hearing was closed at 8:32 p.m.

Regular Business

- Correspondence
- Payroll
- Meeting Minutes of April 15th, 2009 approved unanimously as amended.
- There were no invoices to be signed.
- Board Discussion Open Seat(s) Planning Board – Town Election
- Board discussion regarding Town Meeting 2009 – The proposed article for the definition of a change of use was not presented at Town Meeting; the Board made a decision not to present the article at the meeting. The proposed article for removing the word special permit from the Site Plan Review Bylaw was presented and the majority of voters approved this bylaw change.
- Board Discussion Regarding the April 29th Meeting with Carolyn Britt, Planner. Andrew St. John gave an update to the Board and reviewed what was discussed at the meeting. It was proposed that the Secretary will make a check list to keep track of the hours.
- Community Preservation Committee - Volunteer for the committee. The Board decided they would wait until the election is over to discuss the new volunteer.
- Building Committee Update was given by J. Dietrichson.
- Conomo Point Committee – The Planning Board were invited to a meeting on May 13, 2009 with the Selectmen and Nick Cracknel of Horsley and Witten to discuss the proposals for Conomo Point.
- Long Range Planning Committee Update was given by Andrew St. John.
- The Board did not propose any new draft items for Town Meeting 2010.
- There were no further updates from the Chair.

The Planning Board Secretary will send the Board members copies of the decision for Southern Avenue, Kyle Gale and contact Carol Britt regarding changing the time of 8:30 on the 20th.

JD: Motion to adjourn the meeting at 9:52 p.m.
Motion was seconded and passed unanimously.

Next meeting is scheduled for May 20, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Jueigen Dietrichson, Clerk

Meeting Minutes - Public Meeting

Joint Meeting of the Town of Essex Planning Board and Board of Selectmen
May 13, 2009

Attendees: Kimberly Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ), Scottie Robinson (SR),
Juergen Dietrichson (JD)


Absent: Amy Reilly, Jason Heath

Attached are the minutes written by the Board Chair, Kim Drake at the meeting on May 13, 2009 at the
T.O.H.P. Burnham Library. The meeting was called to order at 7 p.m.

Bill Holton made a motion to nominate Kim Drake and Andrew St. John as co-chairs and Westley
Burnham the clerk. The remainder of the meeting consisted of discussions between the Board of
Selectmen and citizens regarding zoning.

The meeting was adjourned at 9:55 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary

Juergen Dietrichson, Clerk

CAMP DRESSER & MCKEE CLIENT _____
 PROJECT _____
 DETAIL _____
 PB - Kim Clark
 ANDREW CO-CHAIR JOURNOR 9:55
 WESTUSY - CLERK

JOB NO. Sub center
 DATE CHECKED _____
 CHECKED BY _____

COMPUTED BY Russell Brown
 DATE 7/26/09
 PAGE NO. 7pm Wednesday

May 13, 2009

Conomo / Planning / BOS
 HW

- Much - refined Opt B1 using best layout
- Much - Review Options Presented at Forum
 Times adjusted for cottages
 Next present preliminary Subdivision Plan
 need Only a New York District
 unless Variances (not preferred)
- Advantage to Zoned District rather than Overlay
 - Draft of Potential Zoning District
 proposed by NICK.

SUSAN C
 KID
 GIL
 CHUCK
 JIM
 GORDON
 JEFF JONES
 GEORGE
 KURT

Wesley PA (1)
 Bill H BP
 ROLF
 BURLON
 RAY
 MICK
 NICK
 ANDREW
 SCATTER

Considerations
 VIEWING
 LOOK # ROAD

Much to Show all 3 Plans.

A - Plan meeting current zoning

- CONTAINED BY FRONTAGE
- 15% PUBLIC WAYS ACCEPTED BY TOWN
 10 Structures on 17 lots
 9 BTRIS - TROW

John G. I reconfigure how many lots ^{will} - 1 or 2 but does not meet value of other options - new roads not cost effective
 wetlands also constraint - smaller met value to town

MOON
 ORNMAN
 zoning
 District.

Second (B) then 25 casual & 16 year round

(C) all year round + conservation area / community green space
 Commission to year round mandate ²⁰ million water
 NOT HIGHEST & BEST USE market value

Board Committee choose to move forward w/ continued development of B
 Select Board license voted (B)

George Introduction of Committee?? Protocol
 Much - Phase 3 of Contact - Finalize subdivision

Back to Select Board for vote -
 If more forward, then Planning Board
 If no vote then stop.

May 13
 Conover/PB/BOG (2)

Jim - Is recommended that PB take to town? - No.

Bill - advantage of District over Ordinance?

Wah - New District - Shoredready. - NO 2 step process. Ordinance
 typ special permit process, 2 step.

Ordinance Typ protect Natural Resource

District allows clean state - erasing underlying dimensional
 regulations.

~~AWR~~ AWR Plan for all lots first.

Special Permit - Design related, NOT submission related

Base Model - Include AWR no 40 ft angle lots.
 of meets District dimensional controls all by right

Table 2 - Address footprint change w/out Variance -
 larger footprint, etc. enlarge bldg, setbacks
 of site design standards

Table 2 can be adjusted to meet needs

IF VARIANCE TABLE 2, THEN B.L. Per Variance

- well written standards allow consistent application

Bill - Home Occupation (P.H. in)?

Wide Permitted uses upon p.1 rather than underlying

NOVA DEP FOR SEASONAL COTTAGES

Home Occupation by right or detail different in
 District.

* IF CHARACTER IS IMPORTANT - USE THIS APPROACH

IF WOULD BE, THEN DEP INCORPORATE STANDARDS

- 40 ft yard, Random, Overhead

Run stand
 change in
 growth &
 character
 by dimensional
 controls rather
 than 2 step process
 results in fully
 large structures

- Rolf - density higher, lot's smaller than everywhere else in town. - concern of pitting neighbors against each other May 13 2009 (3)
Conomos/PB/BOS
- John Green - Remembrance - Business Division (the rest of town)
- Rolf - Condition of Kupar Character Home Standards Should preserve and/or enhance property values
- George - What ^{precedent} precedent ad hoc growth of committee then, install guidelines requiring morphing toward guidelines
- Concern 'Seaside phenomenon' Policing, Review, Argument & Long meetings to discuss aesthetics
- ~~example of back bay etc~~
- Mark - Business need some control, perhaps not as strict
- George - What Vehicle to achieve Balance between Committees
- Mark - BOS & PB were been in synch prior to bringing to town Mtg
- John G. - Town Mtg as owner of Integrity
- Suggest deed restrictions as other means.
- Kim - Deed restrictions muddy, difficult & not easy to track & defend
- Nick - Dimensional Controls Easiest Part of Design review. Architecture most difficult to review - examples around the country
- Hybrid - New Version v. Existing
- Sensing concern of PB Administering Special Permit Process.
- Sattie - written so design standards apply only to Table 2 Special Permit dimensions. of stick to TAB 1011, then by right

May 13, 2009 (4)

Nick Tear down & replace exactly the same
12. cinderblock

Corona/16/807

Incentive based Zoning Amendment

Voluntary design process ~~the~~ to speed consent.
volunteer to subject to

Andrew - Process to develop standards possibly based on Buildings
of desirable characteristics that currently exist town there

A group could walk & identify desirable characteristics

Rolf - Standards put in before need 2/3 approval - if too restrictive
may risk of bylaw not passing.

Scatter - ? Anticipating manner of Sale? i.e. 1 entity or 12 owners

Rolf - committee decided about process. lost business.
Not likely sold to one owner (developer)

John G - Each lot has its own merit -

Mark - Committee agrees, must obtain Fair Market Value
no matter who sold to

Andrew - As part of Town mtg process might need Sale
process.

Rolf - Presumption of Town Mtg will put property up for sale

Andrew - Part of Solution is economic - if notice presented &
sales were not presented will be different at town
meeting - Sale particulars should be defined by
Town Mtg

Mark - wouldn't put to Town Mtg w/out defined process

George expects Town Mtg challenge even if findings accepted.

May 13, 2009 (5)
 Conono/PB/DOY

MARK SAID THIS IS THE EASY PART - WE'VE AN AGREEMENT

Sue - Are we going also to PB to fill in?
 - Big NO from Room

Muh - Should develop task force District or Overlay?

Sutter - District Cleaner

Andrew - District - non underlying issues expect this to have big impact on discussions in town.

Suan -

John Gunn - Should London but be opposed?

Muh - Subject has included 25 iron pipe lengths with town & could include like District, but would need restrictions included

Suan - your plan
 15m NOT 30m
 Same used
 No further subd. or

Muh - Seasoned sutter reviewed every 30 years, but redist can run out.

Brendon municipality in advance of side more durable

Muh - none permanent

* Jim W - Case to call level of flow - Now Home *
 Speed.

→ Southern Conomo Point SUBDIVISION PLAN ←

May 13, 09
Corona/104 (6) 309

~~Chad~~

Gil - has problem w/ Subdiv, but opposed to Saw
SUBDIVINE TO CONTINUOUS LEASING
- DEP - LIMITED UNLESS SET UP WATER DISTRICT
CONCERN w/ ASSESSMENT FIGURES NOT METRICHS
RETURN VALUES REQUIRED.

Chad - what about 10,000 GPD?

Mah - what if DEP drops to 10,000 GPD then reduce into well?

Gil - yes, But: Think other choices
what is the max use we can get of Corona?

Charlie - Little Nash DEP issued consent order allowing
retention of homes - all tight tank seasonal
& treatment year round. MAXIMUM CONSISTENT COMPLIANCE
DOP has made concessions since original plan

Mah - Title 5 compliance required

Andrew - of all sold, then Town owns regulation of -
BOS - not necessarily

Mah - Gil or others write question re BOS to talk to DEP

George - Recent Water - New plan, can these things be developed
for applied to either sell or lease?

Nick & Swathie - yes - if passed under anyone

FOR Nick

Q from subcommittee to put forward to Nick -
Select
Planning 50
LPRC

Susan - interesting concept to include someone from Corona to join
subcommittee
involve residents & community re input

Subcommittee

Arnold
Mark
George
Jim
Jim W.
Jim

- subject to open by law

Lin
George
Jim
Mark
Arnold

(7)
May 13, 2009
Conroy/PB/BOS

Rolf - full motion to develop subcommittee of 5
need exp of PB, BOS, & Conroy

Vote - none opposed.

G.C. - Q. want info of where appraisal values come from

Mark - How spreadsheet & can explain to G.C. or anyone else

- relative comparisons, shouldn't be considered money in the
Bank, and different approach than Finance Committee Model

Spreadsheet kept at BOS office

~~not a part of~~

Mark - Establishes floor of value & Ceiling of Market Value
for seller and buyer

has assumptions that may not hold because town is owner

George - do the precedence of when the district has overlaid
similar regulations

Jim W. what is charge of Subcommittee

Review documentation & make recommendation to

How on bylaw to come to Committee by late May
July 31st.

Rolf - ^{to} Resources Committee

Now Chair - nominate Mark Lynch ✓

Next Chair - nominate ~~on~~ Mark ✓
Kurt Pellino

Secretary - nominate Mark to

Rolf Resigning Tomorrow - because Memorandum cannot serve

AP. 10:00 9:50 AM ON ANY COMMITTEE

Meeting Minutes - Public Meeting - Town of Essex Planning Board – May 20, 2009

The meeting was called to order at 7:32 p.m. by Co-Chair, Andrew St. John and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR) Andrew St. John (ASTJ), Jason Heath (JH), Westley Burnham (WB) - Absent: Kimberly Drake

Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

The Building Inspector did not have any building permits to present to the Planning Board for review.

7 Cogswell Court – Letizia Peyla and Roberto Donati

The Board reviewed the Town of Essex Bylaw 6-6.2 Residential Land Uses for a Single Family and found that the application conformed to the requirements. The Board also reviewed the Town of Essex Bylaw 6-6.12.4 which is the criteria for a Site Plan Review Application. The Board found that the application and the proposed plan was in compliance with the Town of Essex Zoning Bylaws and completed the application form with their approval and the Board did note on the approval that the existing house is to be removed within six months of the issuance of the Certificate of Occupancy.

WB: I move we approve the citing of a single family dwelling for Letiza Peyla and Roberto Donati, 7 Cogswell Court finding it meets the requirements of the Town of Essex Zoning Bylaw Section 6-6 and Site Plan Review with the conditions as annotated. The motion was seconded and passed unanimously.

Regular Business

Payroll

Board Discussion - Community Preservation Committee Update

Board Discussion - Conomo Point Committee Update

Board Discussion - Long Range Planning Committee Update

Board Discussion – Building Committee Update

Board Discussion - Carolyn Britt, Planner

BH: Motion to adjourn the meeting at 10:05 p.m.

ASTJ: I second the motion.

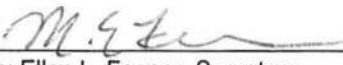
All in favor?

Aye.

Motion passed unanimously.

Next meeting is scheduled for June 3, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Westley Burnham, Clerk

Meeting Minutes – Public Meeting – Town of Essex Planning Board – June 3, 2009

The meeting was called to order at 7:31 p.m. by Co-Chair, Kimberly Drake was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR), Andrew St. John (ASTJ), Jason Heath (JH), Westley Burnham (WB), Kimberly Drake (KD), Bill Holton (BH).

Building Inspector: William Sanborn – Planning Board Secretary: Mary-Ellen Feener

Building Inspector's Report

The Building Inspector did not have any building permits to present to the Planning Board for review.

7 Cogswell Court – Letizia Peyla and Robert Donati

The Board reviewed new plans submitted to the Building Inspector by Letizia Peyla and Roberto Donati. The owners want to move the proposed garage to the other side of the dwelling from what was proposed and approved at the May 20, 2009 Planning Board Meeting. The owners are requesting this change due to the fact the owners found ledge when they began excavating and decided to modify the plans. The Board asked where the driveway would be located. The Board reviewed the June 2, 2009 plans and made notes on the original approval that there were no changes in applicable bylaw. The Board was given a copy of the new plan.

WB: I make a motion that we approve the changes to the plans of June 2, 2009.

The motion was seconded and approved.

109 Eastern Avenue

The Building Inspector told the Board that he has received many calls about a proposed auction house being built on the same lot as the Windward Grill. The Building Inspector does not have an application at this time. The Board agreed that it would not be considered a change of use according to the current Town of Essex Bylaws.

Regular Business

- Meeting Minutes of May 6, 2009 were approved as amended.
- Payroll
- Invoice for Staples
- Correspondence – Board Members were able to read the letter submitted to the Board by Charlie Storey which was enclosed in the meeting packets. Kim Drake stated that Peter Kellerman also wrote a letter to Carolyn Brit, Planner, and Cc'd the letter to her.

Board Discussion – Community Preservation Committee Update

There were no updates

Board Discussion – Conomo Point Committee Update

Kim Drake and Andrew St. John updated the Board as to what topics have been discussed at the most recent CPC Meeting. Andrew and Kim volunteered to be members of a subcommittee assigned to participate in conversations with Nick Cracknel, of Horsley and Witten regarding potential waivers and how to develop a proposed bylaw.

Board Discussion – Long Range Planning Committee Update

Westley said that the committee has not met since the last Planning Board meeting.

Kevin Steen/Jerome French – 41 & 45 Forest Avenue – ANR Application

The Board reviewed the application and the plans submitted.

SR: I make a motion to accept the application of Kevin Steen and Jerome French for an ANR to move a lot line.

Motion was seconded. Andrew St. John recused himself from voting. The plans and the application were signed by the Board.

Regular Business Continued

Board Discussion – Building Committee Update

Juergen gave the Board an update of the current topics discussed at the most recent Building Committee meeting. He stated that the committee decided that they need more information about the existing Town Hall Building and the Committee recommended to the Board of Selectmen that a feasibility study be completed.

Board Discussion – Draft Items for Town Meeting 2010

The Board agreed that the definitions for the zoning bylaws would be proposed articles for the warrant for the Town Meeting in 2010.

Board Discussion – Definitions for the Zoning Bylaws

The Planning Board discussed many different potential definitions to propose for the 2010 town warrant. The primary definitions that were discussed at this meeting were the following:

Juergen Dietrichson:

- Why are bylaws 6-4.2 and 6-4.3 very similar? Westley replied that there was a fine difference between the two bylaws because 6-4.3 clarifies the pre-existing non-conforming use. This was an article proposed by a former Planning Board Member, Bruce Fortier.
- Parking Regulations. The Board agreed that parking regulations are in too many different sections of the bylaw. The bylaw requires 1.5 parking spaces per apartment and 1 parking space for a single family dwelling.
- Signs. Very limited area requirements, height requirements. Also, there are a few contradictions regarding illuminated signs. The Board would like to see a 'sign section'.
- The bylaws for one family and two family dwellings are the same bylaws within Chapter VI of the Zoning Bylaws and it is very similar to the regulations of the building code. Juergen suggested that the one in the bylaws be more similar to the Building Code.

Scottie Robinson:

- The fact there is nothing in the Zoning Bylaws addressing the question how much can be impervious surface on a lot.

Westley Burnham:

- The entire Watershed District Bylaw should be rewritten to the current DEP standards and then have the Board of Health and the Conservation Commission be responsible in enforcing the

regulations are followed and to have this section removed from the Zoning Bylaw and placed in another bylaw section.

- Mixed Use should have a bylaw describing how to address mixed use.

Kimberly Drake:

- The need for a Definition of Lot Measurement for different lots in different sections of town.
- Lot size that addresses downtown Essex.

The Board agreed that there should be a statement at the beginning of the Zoning Bylaw which answers the question of if something is either found or not found in the Zoning Bylaw is it applicable?

Board Discussion – Carolyn Britt, Planner – June 17th – Planning Board Secretary will confirm.

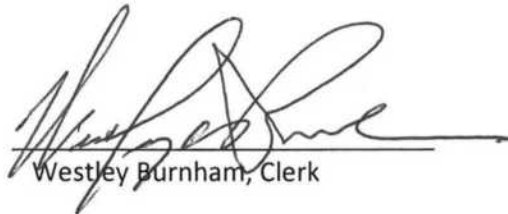
WB: Motion to adjourn the meeting at 9:12 p.m.
Motion was seconded and passed unanimously.

Next meeting is scheduled for June 17, 2009 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:



Mary-Ellen Feener, Secretary



Westley Burnham, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board – June 17, 2009

The meeting was called to order at 7:35 p.m. by Co-Chair, Kimberly Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR) Andrew St. John (ASTJ), Jason Heath (JH), Westley Burnham (WB), Kimberly Drake (KD) Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

Timothy Shanks – 184 Centennial Grove

BS: Mr. Shanks is here tonight asking for a building permit for his property on Centennial Grove and the question for the Board is regarding the frontage of the lot. The frontage on Western Avenue is forty feet. This map only shows he only has frontage on Western Avenue and he has an easement over town property to access this property. Where exactly is his frontage and can he build on the property?

WB: We discussed this subject six years ago for the property which I believe is now the Conference Center located on Conomo Point Road and that was allowed because the property was in existence prior to the zoning laws and the same thing occurred with another house near this one (*184 Centennial Grove*) because we never officially laid out the roads. The potential accesses to these lots were basically cow paths that the Town never laid out. Mr. Shanks was given an easement at the Town Meeting approximately four or five years ago.

SR: Being an abutter to Town property doesn't mean that you have an easement over Town property.

WB: I agree with you but there has been precedence. Other owners have brought forward the subject and it was discussed and researched and even fought by a few and the access was allowed.

Bill Sanborn read the meeting minutes from the first time the applicant was before the Board. The Board reviewed the proposed building plans. The Building Inspector suggested that a few of the Planning Board members do a site visit.

WB: I have been out of this for a while (*being on the Planning Board*), but don't we accept 16 foot gravel roads?

SR: I don't think it is on our list of ways.

BS: Why did the Board of Appeals get involved in this?

Timothy Shanks: They gave a variance.

The Board noted that the approval of the Board of Appeals was in 1977.

KD said that the tax map references the road the Board was thinking could be used as frontage states owned by Lawrence Shanks.

WB said that he believes that what had happened is that the Board approved the frontage on Centennial Avenue.

The Planning Board and the Building Inspector suggested that applicant find the Board of Appeals decision in 1977 because the Board of Appeals may have already approved the frontage to be able to build the lot.

21 Turtleback Road – Lot 40 – Turtleback Road – Stephen and Kristen Bixby

The applicant appeared before the Board for a site plan review due to a footprint which exceeds 2,500 square feet. The Board reviewed the application.

The actual house is 2,800 square feet and there is a substantial farmer's porch which makes the footprint for 3,800 square feet. The Board also reviewed the plans and the setbacks for the dwelling with the porch and it is within the required front, back and side yard setbacks.

KD suggested that there be something for erosion control on the bottom side of the lot by putting up hay bales or silt fences wherever the fresh earth goes downhill. Per Bylaw 6-6.12.4 the Criteria for Site Plan Review (c) 'this includes minimizing soil erosion both the proposed during and after construction.'

KD asked if any of the Board members had any questions or comments regarding this application. No one made a comment or asked a question.

ASTJ: I Move that we approve by Christine Bixby of 21 Turtleback Road finding that it meets the requirements of the Town of Essex Bylaws.

SR abstained from voting due to the fact she resides on Turtleback Road.

The motion was approved by a majority of the Planning Board and seconded.

Board Discussion – Carolyn Britt, Planning Consultant

The Board and Carolyn Brit reviewed the draft revisions of the Zoning Bylaws that the Board and Carolyn have been working on.

Regular Business

The Board reviewed the meeting minutes of May 13, 2009, May 20, 2009 and June 3, 2009. Motion was made to approve the minutes as amended; the motion was seconded and approved unanimously.

Motion was made and approved unanimously to adjourn the meeting at 10:15 p.m.

Motion passed unanimously.

Next meeting is scheduled for July 1, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Wesley Burnham, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board - July 1, 2009

The meeting was called to order at 7:32 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Kimberly Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ), Westley Burnham (WB), Jason Heath (JH), Scottie Robinson - Absent: Juergen Dietrichson, Scottie Robinson - Building Inspector: Bill Sanborn (BS) - Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

186 Western Avenue - 13 Centennial Grove-Timothy Shanks

BS: The copy of the document I just gave you is the variance from the Town of Essex Board of Appeals which was written in 1977. *(The Building Inspector read the decision and he verified it was filed with the Registry of Deeds.)* The Board reviewed the document and agreed that the variance did appear to approve the non-conforming frontage of the lot.

BS: Now he *(Timothy Shanks)* is proposing to build a new house. This house would be a modular home. As we discussed he does have a variance for the frontage requirements and he also has the proper sign-offs from Waste Water, DPW and the 911 Fire Department.

WB: I move that we approve the application as shown on the plan by Apple Associates dated 6-16-2009 finding it has the approval of the proper town departments and meets the zoning bylaw of the Town of Essex.

Motion was seconded and unanimously approved.

51 Lufkin Point Road - Elaine Pura

A Chapter 91 Application was presented to the Board by the Building Inspector requiring the signature of a member of the Planning Board. The Board reviewed the Chapter 91 permit. The Board did not have any concerns regarding signing the application as long as the plan accompanying the application does not differ from any previous approved plan. Westley Burnham, Clerk, signed the application on behalf of the Board.

44 Choate Street – Catherine Stavrakas – Map 16 Lot 17 A & B

BS: The foundation for this property has already been approved. This application is to bring in a modular home. *The Board reviewed the application and the plans.*

JH: I make a motion that we authorize the construction of 44 Choate Street, Catherine Stavrakas for a one and half story salt box dwelling finding it meets the requirements of the zoning bylaws of the Town of Essex and it has the necessary approvals from the Town.

The motion was seconded and unanimously approved.

2 Andrews Street - Margo Kusulas, daughter of the owners, John and Leslie Kusulas – Site Plan Review

The applicant is before the Board this evening to request approval to build a hay storage building with a footprint that will exceed 2,500 square feet which requires a Site Plan Review. The actual footprint will be approximately 7,000 square feet. The proposed barn will be 24 feet tall to the peak. The Trustees of the Reservation did provide a document to the applicant stating that they approved the construction of the barn which she shared with the Board. The Board Secretary photocopied the letter so a copy may be left in the file for the property.

Westley Burnham recommended the applicant contact the Fire Department to discuss fire safety for the barn.

The Board reviewed the letter from the Trustees of the Reservation, the plan submitted, the application, the Town of Essex Bylaw and the requirements of the Site Plan Review Bylaw and the Requirements.

Kim Drake requested that the minutes make note of one of the items in the agreement with the current property owners and the Trustees of the Reservation which was referenced in the letter written by the Trustees of the Reservation to the owners; " Item 3: the owner will not propose or construct any other major agricultural structure on that portion of the property that is visible from Southern Avenue, or within the wetlands buffer area and a 'major agricultural structure is defined as any temporary or permanent structure over 500 square feet in useable area.'"

The Board completed the form for the decision for the Site Plan Review Application. Westley Burnham made a motion to approve the decision as written. The motion was seconded and approved unanimously.

The applicant was given a copy of the decision and the Board Secretary will give the Building Inspector a copy of the plan and the decision.

Board discussion regarding other Committees

- Long Range Planning Committee – Andrew and Westley updated the Board.
- Conomo Point Committee Update – Kim and Andrew updated the Board.

48 Story Street - Tree Removal

Westley Burnham made a motion to approve the removal of a tree by the Department of Public Works per the request of the Superintendent, Paul Goodwin. The tree is located on Story Street (in front of the two dwellings owned by Walter and Effie Andrews, 48 Story Street and Jonathan Andrews, 49 Story Street.) The motion was seconded and approved unanimously.

The Board reviewed the proposed definitions for the proposed bylaws which may be presented at Town Meeting 2010.

Andrew St. John made a motion to adjourn the meeting at 9:39 p.m.; the motion was seconded and approved unanimously.

Next meeting is scheduled for July 15, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:


Mary-ellen L. Feener, Secretary


Westley Burnham, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board – July 15, 2009

The meeting was called to order at 7:35 p.m. by Co-Chair, Andrew St. John and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR) Andrew St. John (ASTJ), Jason Heath (JH), Westley Burnham (WB), Kimberly Drake (KD) - Building Inspector: Bill Sanborn (BS) Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

21 Turtleback Road – Lot 40 – Turtleback Road – Stephen and Kristen Bixby – Map 9, Lot 11M

Bill Sanborn explained that the Board on June 17, 2009 approved the Site Plan Review for a dwelling with a footprint which would exceed 2,500 square feet for the property located at 21 Turtleback Road. The Building Inspector asked the Board to approve the citing of the foundation and the Building Permit Application. The application presented this evening to the Board was approved by the Con. Com., the B.O.H., D.P.W., and the Fire Department/911.

The Building Inspector asked that on the site plan review application forms there is a section for the Board to sign which would confirm that the Board approved the citing of the foundation, the building permit application and the plan. The Board agreed.

SR: I make a motion that the planning board approve the building permit application of Stephen and Kristen Bixby for a single family dwelling with a wraparound porch located at 21 Turtleback Road, Map 9, Lot 11M, finding that it meets the requirements of the Town of Essex Bylaws and that the application has the necessary approvals. The motion was seconded and approved unanimously.

70 Western Avenue – (corner of Western and Walnut Park) – Tim Wonson – Map 36, Lot 85

BS: To construct a new living room and install a new kitchen and bathroom at the back of the house. The addition is a 30 x 21 addition at the rear of the house; one story. It has all of the necessary approvals from Waste Water, Con. Com., curb cut DPW, Fire Department 911

WB: I make a motion that we approve the application of Tim Wonson of 70 Western Avenue finding it meets all the requirements of the Town of Essex.

Motion was made to approve; seconded and approved unanimously.

Regular Business

- Payroll
- A motion was made to approve the Meeting Minutes of May 13, 2009, June 3, 2009 and June 17, 2009 as amended and the motion was and seconded and approved unanimously.
- Invoice and Encumbrance Form
- Board Discussion Regarding the August 19th Meeting with Carolyn Britt, Planner
- Building Committee Update
- Conomo Point Committee – Kim Drake updated the Board.
- Long Range Planning Committee Update – the meeting scheduled for last evening was cancelled.
- The Board discussed Town Meeting 2010.
- Jason Heath will not be present on August 5, 2009
- The Planning Board Secretary will not have hold office hours next Wednesday, July 22, 2009.
- Westley volunteered to make sure that the proposed copy of the zoning bylaws that has been reorganized by Carolyn Brit matches to the existing zoning bylaw.

Motion was made; seconded and approved unanimously to adjourn the meeting at 9:26 p.m.

Next meeting is scheduled for August 5, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary

Westly Burnham, Clerk

August 5, 2009

Due to the fact there was not a quorum a meeting could not be held. The next meeting is scheduled to be held Wednesday, August 19, 2009 at the T.O.H.P. Burnham Library.



Mary-Ellen L. Feener, Secretary

Meeting Minutes –Town of Essex Planning Board – August 19, 2009

The meeting was called to order at 7:32 p.m. by Co-Chair, Kimberly Drake was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR), Westley Burnham (WB), Jason Heath (JH), Kimberly Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ) - Building Inspector: William Sanborn (WB) – Planning Board Secretary: Mary-Ellen Feener (MF)

Building Inspector's Report

John Kusalas – 2 Andrews Street – Map 6, Lot 16

BS: This application is for the construction of a barn. The Planning Board previously approved the Site Plan Review application and plan. The application has the approval of the Board of Health and Conservation Commission.

KD read the Site Plan Review Decision for the Board.

WB: I move we approve the building permit application of John Kusalas of 2 Andrews Court as submitted to the Building Inspector and approved by the Planning Board for Site Plan Review finding it meets the Town of Essex Zoning Bylaws.

Motion was seconded and approved by four of the Board Members. Jason Heath arrived to the meeting at 8:40 p.m. and Andrew St. John arrived at 8:45 p.m and neither of these Board Members voted on this application for 2 Andrews Street due to the fact the other Board Members had already reviewed the application and plan.

4 Story Acres – Chris Heim – Map 35, Lot 12

BS: This is for a 6-4.2 finding. The applicant would like to remove existing roof, frame for new roof with rear shed dormer, new stairs and finish upstairs as a bathroom and an office according to the plans attached.

SR: I move that we approve the building application to remove the existing roof and frame for a new roof with rear shed dormer, new stairs and finish a bath and office though it is currently non-conforming lot this will not increase its non-conformity finding it meets

The motion was seconded and approved unanimously.

31 Martin Street – Sara Richards, Trustee – Map 36, Lot 37

BS: The application is to demolish the existing barn and construct a new building. There will be a new foundation on the existing footprint and the addition of an 8 x 26 porch to the front of the new building and the addition of a one bedroom in-law apartment to the first floor of the new building. The owners will also install pavers on the driveway and the patio.

KD: Without any dimensions of the building how will we be assured that the non-conformity isn't being increased?

The Board questioned if the barn would be used as living space and the fact that if the owners changed the building from an accessory building to a principal building would the non-conformity is increased. The Board could not approve the application at this time due to the fact that more information is required.

143 Main Street – Alfred Brosch – Map 37, Lot 43

BS explained that the current owner of 143 Main Street would like to change the part of the building which is currently used as a shop to an apartment. The owner stated it was previously an apartment before it was a shop.

SR asked what is it currently classification of the dwelling. The owner said it is currently classified as a two family dwelling with a home occupation and that currently there is a wood working shop; accessory building, which is used by the owner. The proposed apartment would be a one bedroom apartment located within the building which currently has another apartment in which the owners reside.

The Board suggested that the owner discuss the conversion with the Board of Health and the Department of Public Works. The owner said he did talk to the Building Inspector and on his advice the owner talked to both of these departments and he was told there weren't any concerns/issues.

The Board asked how many parking spaces there are currently on the property. The bylaws require that there is one per unit and the owner stated he had four parking spaces which would be sufficient.

ASTJ asked how many years was the unit used as a shop and the owner stated he believed it was opened in 1989.

The Board did not have any concerns regarding the owners renovating what was recently used as a shop to an apartment and the consensus was that the owner was not required to do anything further with the Planning Board.

51 Lebaron Road, Abel's Island – Informal Discussion - John Fenton, owner, present and Attorney Phillip Lake

Attorney Phillip Lake was before the Board for an informal discussion. His client is the buyer interested in purchasing one of the currently existing dwellings on Abel's Island. According to Attorney Lake, the owner, John Fenton, took the three existing houses and created a condominium association.

Attorney Phillip Lake and the Board discussed the options for a potential buyer of one of the properties and the existing lot(s) and common land and driveways.

Attorney Lake said the final goal would be to have three lots with three structures and a common driveway. One lot would need to have an easement over another lot.

WB said for zoning purposes there is currently not an official separate lot referenced on the proposed plan shared by Attorney Lake and John Fenton as Lot 9A. Attorney Lake agreed with that there was not a Lot 9A.

KD asked how long have the buildings been on the island. Attorney Phillip Lake said that they may go back to the 1950s or later. WB said that there was a burden of proof on the applicant that the building existed prior to 1954.

SR asked what the total area of the island was and the owner stated it was 5.9 acres.

KD said that if it doesn't meet the timeframe requirements then it would require a subdivision application that would request specific waivers.

Regular Business

Motion was made to approve the Meeting Minutes of July 2nd and July 15th 2009 as amended; motion was seconded and approved unanimously.
Payroll

Board Discussion – Building Committee Update

Jurgen discussed with the Board the topics which were discussed at the most recent Building Committee meeting.

Board Discussion – Conomo Point Committee Update

Kim and Andrew updated the Board as to what topics have been discussed at the most recent CPC meeting and the fact that Nick Cracknel, the Planner working with the CPC will attend the Planning Board meeting on September 2, 2009.

Board Discussion – Long Range Planning Committee Update

Westley stated that the committee has not met since the May 2009.

Board Discussion – Draft Items for Town Meeting 2010

The Board discussed definitions for the zoning bylaws which would be proposed articles for the warrant for the Town Meeting in 2010.

Board Discussion – Conflict of Interest

Kim discussed with the Board the Code of Ethics with the Planning Board.

Board Discussion – Carolyn Britt, Planning Consultant

A tentative date to meet with CB was set for September 19, 2009 which the Planning Board Secretary will confirm.

Essex Park Drive TBA Estates Definitive Plan Application


The public hearing was continued to November 4, 2009.

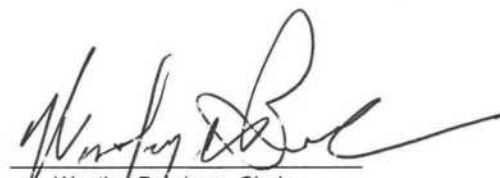
Turtleback Road Board Discussion

KD discussed with the Board the fact that the Conservation Commission believes a potential new road was added to the subdivision. SR stated she had attended the Conservation Commission meeting last evening due to the fact she resides on Turtleback Road and she did speak to the Commission regarding the fact that the Board has not approved a new road which would have access from the existing Turtleback Road.

WB: Motion to adjourn the meeting at 10 p.m. Motion was seconded and passed unanimously.
Next meeting is scheduled for September 2, 2009 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-Ellen Feener, Secretary


Westley Burnham, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board - September 2, 2009

The meeting was called to order at 7:32 p.m. by Co-Chair, Kimberly Drake was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR), Westley Burnham (WB), Kimberly Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ) - Absent: Jason Heath - Building Inspector: William Sanborn (BS) - Planning Board Secretary: Mary-Ellen Feener(MF)

Building Inspector's Report

31 Martin Street - Sara Richards, Trustee - Map 36, Lot 37

BS: The application is to demolish the existing barn and construct a new building on a new foundation on the existing footprint and to add an 8 x 26 porch to front of new building and add a one bedroom in-law apartment to the first floor of the new building and install pavers on the driveway and the patio. At the previous meeting the Board questioned if the barn and the house were connected and the answer is yes, they are connected structures. The barn is not an accessory building. The dwelling is classified by the Assessor as having a current use of a two-family building and has been for quite some time. It will remain a two-family dwelling. This will need a 6-4.2 finding.

The Board reviewed the application and the plans.

ASTJ: The height of the dwelling is not an issue?

BS: No.

WB: I assume the B.O.H. has approved this application?

BS: The application does not need the Board of Health approval but it does have the approval of the DPW/Waste Water, Con. Com. and the Fire Department/911.

A motion was made that the Board accepts the citing of the new proposed addition in place of the existing addition, owner Sara Richards, Trustee, finding it has the necessary approvals from the Town of Essex and it was approved under Zoning Bylaw 6-4.2.

Regular Business

Payroll

Correspondence from Larry Graham regarding what is required by the owner to complete the As-Built for the subdivision located on Lowland Farm Road Subdivision.

Board Discussion - Building Committee Update

Juergen stated that the committee has written a draft proposal with preliminary opinions the Selectmen will have a public meeting on September 14, 2009 and at that time the Chair of the Building Committee will present the proposal to the Selectmen. The draft proposal includes using a municipal building on John Wise Avenue and the existing Town Hall.

Board Discussion - Conomo Point Committee Update

Kim updated the Board as to what topics have been discussed at the most recent CPC Meeting.

Board Discussion - Long Range Planning Committee Update


Westley said that the committee has not met since May 2009. Andrew said that a draft of a proposal is being distributed to committee members.


Board Discussion - Draft Items for Town Meeting 2010

The Board discussed definitions for the zoning bylaws which would be proposed articles for the warrant for the Town Meeting in 2010.

WB: Motion to adjourn the meeting at 9:12 p.m. Motion was seconded and passed unanimously. Next meeting is scheduled for September 2, 2009 at the T.O.H.P. Burnham Library at 7:30 p.m.

Presented by:


Mary-Ellen Feener, Secretary


Westley Burnham, Clerk

Meeting Minutes – Public Meeting – Town of Essex Planning Board – September 16, 2009

The meeting was called to order at 7:32 p.m. by Co-Chair, Kimberly Drake was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR), Westley Burnham (WB), Jason Heath (JH) , Kimberly Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ) - Building Inspector: William Sanborn, absent – Planning Board Secretary: Mary-Ellen Feener

Building Inspector's Report

There were no building permit applications. The Building Inspector Bill Sanborn did not hold office hours this evening prior to the meeting nor was he able to attend the meeting this evening. Bill Holton the Assistant Building Inspector did hold office hours for the Building Department this evening and he received an email from the Town Administrator stating a citizen, Bruce Fortier, was concerned about a fence which was constructed at 108 Martin Street. The Board reviewed the proposed article for the warrant which was approved by the Town at the annual Town Meeting 2008 regarding fences. The Board agreed that a permit should have been obtained and there wasn't any indication that one had been.

Board Discussion – CPA Committee

Kim Drake received an email from a member of the committee asking if the Planning Board could please send a Board Member to their meetings. Scottie Robinson did not receive notification of the meeting. The Board reviewed the schedule and it appears that the meetings are held on the second Wednesday of every month. The Board discussed the idea that perhaps two Board Members could be on the committee. Kim will ask if that would work and Jason and Scottie could alternate attending the meetings as their schedules permit.

Board Discussion – Conomo Point Committee Update

Kim Drake and Andrew St. John updated the Board as to what topics have been discussed at the most recent CPC Meeting.

Board Discussion – Long Range Planning Committee Update

Westley said that the committee has not met since the May 2009 but there has been discussion amongst the committee members about meeting again. Andrew St. John will be resigning from the committee.

Board Discussion – Draft Items for Town Meeting

Westley Burnham reviewed the draft of the restructuring of the Bylaws done by Carolyn Britt, Planning Consultant and compared it to the existing Town of Essex Bylaws and said that there were items and verbiage missing from the new version which should not have been omitted. It was decided that the Board would ask Carolyn why this was done when she arrives to this meeting later in the evening.

Kim Drake reported that Town Counsel said that there is a statute of limitation of six months prior to a town meeting to present articles for a warrant.

Board Discussion – Building Committee Update

Juergen shared with the Board what topics the committee discussed at their last meeting.

Public Hearing – 15 & 16 Tree Hill – MetroPCA Massachusetts LLC

Bill McQuade, representing the applicant MetroPCA Massachusetts LLC

WB: I make a motion to open the public hearing at 8:05 p.m.

The motion was seconded and approved.

Co-Chair, Kim Drake, read the Preamble for Public Hearings to the public.

The application by MetroPCS Massachusetts LLC is for the property located at 15 & 16 Tree Hill Road, owners Elizabeth F. Pratt, Trustee, 15 Tree Hill Real Estate Trust and Elizabeth F. & Stuart W. Pratt, Trustees, Powder House Real Estate Trust, for a Special Permit under Town of Essex Zoning Bylaw 6-6.9E. The applicant has requested to co-locate and install 6 panel antennas at a

centerline of 110' on an existing 150' monopole. The radio equipment will be placed in a 10'x16' leased area within the existing fenced compound.

Peter Kellermen, 94 John Wise Avenue, asked about a Decision of the Planning Board for the installation of the cell tower when it was first constructed many years ago.

The Secretary brought from the office to the library the many files folders for this property and Co-Chair, KD read the prior decision for the Board and the public and the Board realized that the Special Permit was issued. However, there were additional conditions when the Special Permit was issued on August 20, 1997. The Special Permit issued in 1997 allowed the tower construction and initial facilities installation with the stipulation that the Special Permit shall expire on September 30, 2007. The owner of the cell tower did not present an application for a new Special Permit or an application to amend the existing Special Permit since 1997 when the first Special Permit was issued.

The Board discussed how to proceed in light of the reading of the original decision. The Board discussed the fact the Board did not notify the owners in 2007. WB suggested that Town Counsel be contacted and asked their opinion as to how to proceed.

Bill McQuade asked the Board if a continuation is a formality and if they would see fit to approve the application he was representing this evening with the contingency in a Special Permit Decision for MetroPCS Massachusetts LLC that ATT & T Mobility (the current company leasing the cell tower) must also apply for a Special Permit.

The Board discussed if the applicant should include their application with that of ATT & T Mobility. Westley used the analogy that there are many condos on the tower and each application should be separate. Andrew asked if each company that has components on the cell tower need apply for Special Permits.

The Board asked the applicant, Bill McQuade if he would be in favor of continuing the Public Hearing and he agreed.

The Board unanimously voted to continue public hearing will be continued to October 7, 2009 at 8:15 p.m.

158 John Wise Avenue – A. Story – ANR Application

The Applicant did not have the lots on the plan properly identified and the applicant voluntarily withdrew his application.


Board Discussion - Carolyn Britt, Planning Consultant


The Board discussed and reviewed the draft definitions with Carolyn Britt.

JD: Motion to adjourn the meeting at 10:28 p.m.
Motion was seconded and approved unanimously.

The next meeting is scheduled for October 7, 2009.

Presented by:


Mary-Elle Feener, Secretary


Westley Burnham, Clerk

October 7, 2009

Due to the fact there was not a quorum a meeting could not be held. The next meeting is scheduled to be held Wednesday, October 21, 2009 at the T.O.H.P. Burnham Library.


Mary-Ellen L. Feener
Mary-Ellen L. Feener, Secretary

Town of Essex Planning Board - Meeting Agenda

October 21, 2009 – T.O.H.P. Burnham Library

- 7:30 Building Inspector's Report
- 8:00 Special Permit Public Hearing Continuation - 15 & 16 Tree Hill – MetroPCA
Massachusetts LLC or 158 John Wise Avenue – A. Story – ANR Application or Regular Business
- 8:10 158 John Wise Avenue – A. Story – ANR Application or Informal Discussion–Nick Cracknel,
Horsley Witten Group, Board of Selectmen or Regular Business
- 8:20 47 Lebaron Road – J. Fenton – ANR Application or Informal Discussion–Nick Cracknel, Horsley
Witten Group, Board of Selectmen or Regular Business
- 8:40 Informal Discussion–Conomo Point - Nick Cracknel, Horsley Witten Group, Board of
Selectmen or Regular Business
- 9:30 Board Discussion – Draft Definitions Review (version dated September 22, 2009)

Regular Business & Updates

Correspondence
Payroll
Meeting Minutes
Invoices
Updates from the Chair
Draft items for Town Meeting 2010
Meeting Schedule
Building Committee Update
Community Preservation Committee Update
Long Range Planning Committee Update

Meeting to Adjourn

Next regular Planning Board Meeting is November 4, 2009 at the T.O.H.P. Burnham Library

Meeting Minutes – Public Meeting – Town of Essex Planning Board - November 4, 2009

The meeting was called to order at 7:35 p.m. by Co-Chair, Kimberly Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR), Kimberly Drake (KD) Absent: Jason Heath, Westley Burnham – Building Inspector: Bill Sanborn (BS), Board Secretary: Mary-Ellen Feener (MF)

Building Inspector's Report

5 Martin Street, John Guerin representing Sequoia Realty Trust/Christopher Flood, Trustee – Map 37, Lot 6

Attorney John Guerin representing Sequoia Realty Trust, of which he is a trustee, spoke to the Board requesting an extension of time to rebuild the property located at 5 Martin Street pursuant to Town By-Laws 6-4.2, 6-4.3 & 6-7.5. He would like the extension to go at least until the current downtown road project is completed in the future.

BH asked if there was anything that should be done to make the site safe. John Guerin stated there is a fence around the site and the granite has been removed. He also stated that his intent was to have the site to look acceptable.

A citizen (Barry Richards) who was present at the meeting asked if the property was fully insured and John Guerin stated it was fully ensured.

SR stated she was uncomfortable to tie it into the road project because other things may change and she did not want to give it an extension without an end date and she would be more comfortable with extending the permit for a year and then the owner could come back to the Board when the time has expired.

The Building Permit was dated December 2009 and the applicant obtained the Permit from the Building Inspector in January 2009.

The Board asked if the Building Inspector had any issues or concerns and he stated that he did not have any concerns about the extension.

The Board agreed that the applicant would be required to update the Board by December 5, 2012 and the permit would be extended until December 5, 2013.

ASTJ: I make a motion that we allow the extension of Sequoia Realty trust, 5 Martin Street to December 5, 2013, understanding that Mr. Guerin will give us an update no later than December 5, 2012. A letter would be sufficient and it has been noted that the request for the extension is per Mr. Guerin due to circumstances beyond Mr. Guerin's control.

The motion was seconded and approved unanimously.

31 Martin Street, Sara Richards, Trustee – Map 36, Lot 37

The Building Inspector updated the Planning Board on what occurred at a recent Board of Appeals meeting where the B.O.A. revoked the Building Permit issued to the owner of the property located at 31 Martin Street due to what the B.O.A. decided was incorrect procedure as required under Bylaw 6-4.2.b regarding Site Plans which was that all applicants be required to bring in Site Plans.

The Building Inspector suggested that the section of the bylaw that requires site plans for Building Permits be removed from the Bylaws.

The Building Inspector also discussed the answer he found regarding a question he had brought forward at a previous Planning Board meeting regarding the process for an Appeal.

Meg Nelson of the Board of Appeals did bring forward case law that states if a building permit is issued then there are thirty days to appeal and it may be appealed to the appropriate permit granting authority or the Board of Appeals.

The Building Inspector shared the Massachusetts case law with the Planning Board and the Planning Board reviewed the case. Bill Sanborn stated that he was able to discuss the case law with attorneys with whom he is acquainted with and they agreed with the case law presented by Meg Nelson.

ASTJ asked if the applicant obtained a survey and submitted a new building permit application, would the applicant have a difficult time to obtain a Building Permit. Bill Sanborn stated he will revoke the current Building Permit and the applicant will need to reapply and then if the Gerhardt's decided they had grounds to appeal a new application, they could submit an appeal to the Board of Appeals again.

The Board and the Building Inspector discussed the process was not 'user friendly'. If the Gerhardt's had submitted their concerns to the Building Inspector then he could have asked the Richards to rectify the situation.

Barry Richards did inform the Board that Gerhardts are currently attempting to sell their property.

Public Hearing Continuation – Essex Park Drive Definitive Plan Application

Co-Chair, Kimberly Drake re-opened the public hearing for TBD Essex Park Drive Definitive Plan Application at 8:12 p.m. and read the letter sent to the Planning Board by Orestes G. Brown of Metaxas Brown Pidgeon LLP, 'Dear Board Members: This law office represents the Apple Street Nominee Trust (the "Applicant") with respect to the above referenced Application for Approval of a Definitive Subdivision Plan as submitted to this Board on December 3, 2008 (the "Application"). On behalf of the Applicant, we hereby request that public hearing in this matter be continued to February 17, 2010 and hereby assent to an extension of time for the Board to hold a public hearing and take final action in this matter to February 17, 2010.'

The motion was made, seconded and approved unanimously to continue the public hearing to February 17, 2010.

Informal Discussion – Conomo Point – Nick Cracknel, Planning Consultant and representing the Town of Essex Selectmen, Mark Lynch

Mark Lynch shared with the Board the verbal responses from Town Counsel, Kopelman and Paige, to the questions asked by the Board.

Nick Cracknel discussed what he is suggesting to be proposed new Bylaws to Chapter VI; the Zoning Bylaw.

For the record the Board read the comments sent to the Board Office by Westley Burnham to be shared at this meeting:

"I want to go on record as being against the Special Permit clauses built into it. I think the Bylaws should set the minimum standards for the district being created. The exact dimensions should be as binding as the rest of the Town. If they feel the need to control or review rebuilding projects, I suggest they build it into a covenant attached to the deeds for the land to be sold. There will be an association created to deal with the maintenance of the subdivision created until such time as Town Meeting accepts the responsibility for the newly created ways. The covenant could also be adjusted far more easily as the residents decide over time than any bylaw could. The current Conomo Point Association could act as a review board for determining whether the proposed projects affect the neighbors and could determine the siding or affect of views for any housing upgrades or reconstruction. We, as the Planning Board should

avoid that type of subjective enforcement. We should insist on setting the same type of standards as we hold the rest of Town to and if they cannot be met then the process for a variance is already in place and should be used. "

The Board, Nick and Mark discussed what the next steps would be in order for there to be a final outcome for the discussion regarding the land and homes located on Conomo Point. They also discussed what should be done in the short term and the long term and how the Planning Board will be involved.

One question that was discussed in great length was, should a Preliminary Plan Application be made prior to the Town Meeting when the proposed bylaws had not been approved? Andrew St. John stated that he was uncomfortable with reviewing a Preliminary Plan Application prior to the bylaws being approved. Kim stated that she disagreed because she believes the Town would distrust the unknown. It was suggested by Nick that there be input from Town Counsel.

Mark stated that there were two articles on the warrant for the Special Town Meeting. One is to ask for more funding for Nick Cracknel and the other warrant is to get funds to get public input regarding what should happen with the Northern side of Conomo Point.

Regular Business

Community Preservation Update

Scottie stated that Jason will be attending the next meeting.

Payroll and Invoices

The Meeting Minutes, as amended for October 21, 2009 were unanimously approved.

The motion was made; seconded and unanimously approved to adjourn the meeting at 10:15 p.m.

The next meeting is scheduled for November 18, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Westley Burnham, Clerk

Meeting Minutes - Public Meeting - Town of Essex Planning Board – November 18, 2009

The meeting was called to order at 7:32 p.m. by Chair, Kim Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Kimberly Drake (KD), Bill Holton (BH), Andrew St. John (ASTJ), Westley Burnham (WB), Jason Heath (JH), Juergen Dietrichson (JD), Scottie Robinson (SR) -Building Inspector: Bill Sanborn (BS) - Secretary: Mary-Ellen L. Feener (MF)

Building Inspector's Report

105 Southern Avenue, John Kosulas owner

A member of the family of John Kosulas, his daughter Margo, attended the meeting upon the suggestion of the Building Inspector to ask the Board what would be the required procedure according to the Zoning Bylaws if she wanted to convert a barn which is currently used for horses/animals on her family property to a machine shop would the Board considered this conversion to be a 'change of use' which would require a Site Plan Review by the Board?

The Board discussed this question. Westley stated that he considers industrial use would be when raw materials were used and it was a broader spectrum. Westley said that historically the Board has said that the machine shops were a business use and that precedence has been that it is a business use.

Andrew said that the definition of Industrial Land Use is a use that uses manufacturing. Andrew said that there is a difference in his mind fabrication vs. manufacturing.

If it was determined that it was a business use then the owner would not have to remove the horses.

According to the owner it is a 5 +/- acre lot and the square footage of the existing building is 12,000 square feet. Bill Holton said then it would be Industrial Land Use A.

Kim asked if the Board did discuss with Carolyn Britt these definitions. The Board said they had not yet. Kim also brought up the questions as to what is going to change at the property if the building is used as a welding shop. The owner stated that the intensity of use would be similar to the current use as a barn/riding stable. Westley thought that it may be even less intense to have the building used as a welding shop.

Jason brought up the question of an environmental impact of the change from horse barn to machine shop. The Board discussed this question and asked if the Building Inspector would require drainage. Westley said that the DEP did not like floor drains (Department of Environmental Protection).

Andrew asked the other Board Members what they believed would be the difference between an auto repair shop and a machine shop.

The Board conducted a straw poll – Five board members stated that they did not believe it was a change of use based on the current definitions of the Bylaw. One Board Member passed and another Board Member disagreed and thought it was a change of use.

2 Hill Street, Ann White – Map 4, Lot 14

BS: This is for a building addition a 4 x6 one story mud room. The existing building is 25 feet tall. The application was approved by the Board of Health, Water/Wastewater, Conservation Commission and the Fire Department.

The Board reviewed the application.

WB: I make a motion to approve the building of a 4x6 mud room finding it meets all the minimum requirements of the town of Essex building inspector and the town of Essex.

The motion was seconded and unanimously approved.

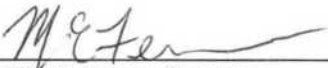
Board Discussion with Carolyn Britt, Planner

- The Board and Carolyn discussed and prioritized the timeline to have items completed for presentation at Town Meeting 2010.
- The Board and Carolyn discussed the option to zoning the entire town.
- Westley said that the Long Term Planning Committee discussed this question and the Long Term Planning Committee decided that it was not an option.
- Carolyn stated that her concern was that focusing on districting would put off making significant change too far down the road. The entire process would be extensive and could it be done incrementally? What if it failed? Her concern is that there are some reasonable and tangible changes that could be made.
- The Watershed Resource District was discussed.
- The proposed definitions for the articles for the warrant for 2010 Town Meeting were discussed.
- Carolyn asked if the Board would like her to make a chart regarding an overlay vs. a district and the Board said that though it was an interesting proposition it was not the priority at this time but that if Carolyn would like to make such a chart the Board would be interested in seeing it.
- It was decided that Carolyn would attend the December 16, 2009 meeting of the Planning Board.

Andrew St. John made a motion to adjourn the meeting at 10:12 p.m. and the motion was seconded and approved unanimously.

Next meeting is scheduled for December 2, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:



Mary-Ellen L. Feener, Secretary



Westley Burnham, Clerk

Meeting Minutes – Public Meeting – Town of Essex Planning Board – December 2, 2009

The meeting was called to order at 7:38 p.m. by Co-Chair, Kimberly Drake and was held at the T.O.H.P. Burnham Library.

Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Scottie Robinson (SR), Kimberly Drake (KD), Jason Heath (JH), Andrew St. John
Absent: Westley Burnham – Building Inspector: Bill Sanborn (BS), Board Secretary: Mary-Ellen Feener (MF)

Building Inspector's Report

31 Martin Street – Sara Richards Trustee – Map 36, Lot 37

Barry and Sara Richards present

BS: This is an application to demolish an existing dwelling located at 31 Martin Street. For those of you don't remember, this is for a building permit which was revoked due to the fact it did not meet the requirements of the Town of Essex Bylaws. I just reviewed the application and to the best of my abilities I find it does meet the Town of Essex Bylaws. The only aspect I am not sure of is that the Bylaws require having the plan show the height of the lot (6-7.2.b). This building was framed prior to when the permit was revoked. It has the approval of the necessary Town Departments.

Barry Richards, owner/applicant: The footprint has remained the same but the height dropped.

WB: I move we authorize the Building Inspector to reissue the permit for the Sara Richards Trustee, 31 Martin Street under 6-4.3 Preexisting Nonconforming Uses, also finding that the application now meets all the minimum standard of the Building Inspector's requirements and the Town of Essex Bylaws.

The motion was seconded and approved unanimously.

105 Southern Avenue, John Kusulas owner – Map 10 Lot 16

A member of the family of John Kusulas, his daughter Margo Kusulas present

BS: This is an application for a building which has a dirt floor to be converted to a concrete floor with a hung ceiling. Scottie asked if this was a change of use.

Bill Sanborn stated it was a change of use for the building codes but not for zoning.

Andrew St. John: I make a motion that we take a vote whether this is a Change of Use?

The motion was seconded and approved unanimously.

Bill Holton asked Bill Sanborn if he would be inspecting the property would because it would be a change of use and Bill stated it would be because it is considered a change of use under the building codes.

Bill Holton read Massachusetts case law which discussed change of use and the definitions of what constitutes a change of use.

BH: My case in point here is say the old restaurant on the causeway what if they wanted to change it to an adult bookstore? Would that be a change of use?

WB: I have absolutely no problem reviewing and regulating change of uses. I believe we should define what constitutes a change of use in the bylaws and that it should not be subjective.

BH: We should not allow the building permit for 31 Martin Street because under 6-4.3 because we don't have a definition for preexisting.

The Board proceeded to discuss change of use and the property located at 31 Martin Street for twenty-five minutes. The Building Inspector asked the Board who would decide if this requires Site Plan Review.

Kim Drake: All in favor of terminating the debate?

The motion was seconded and approved unanimously.

Bill Holton, Scottie Robinson and Andrew St. John voted that this is a Change of Use. Juergen Dietrichson, Westley Burnham, Jason Heath, Kimberly Drake voted that it was not a Change of Use.

The majority of the Board voted that the applicant would not be required to apply for Site Plan Review.

Lot 8 A Island Road – Map 23, Lot 17A - Eileen Hardy

BS: This is an application for new construction for a single family dwelling. The application has the approval of the DPW for a Curb Cut and the Conservation Commission. It does need the approval of the Board of Health for the septic system. It has the approval of the Fire Department /911 .

Westley Burnham read Bylaw 6-7.2 and the Board reviewed each criteria.

Scottie asked why the Board should approve the application without the necessary approvals. Westley brought forward 6-7.2.a.

Juergen: I make a motion to approve the siting of the dwelling located at Lot 8A Island Road, Map 23, Lot 17A, Eileen Hardy for the construction of a new dwelling finding it meets the Town of Essex Bylaws and has the necessary Town approvals.

The motion was seconded and approved unanimously.

17 Main Street – Jason Hammer – Map 40 Lot 31

BS: This application is to remodel kitchen and inside of existing house with new electrical and new plumbing and to add a two car garage with two bedrooms above the garage. The applicant has the approval by Wastewater/DPW, Conservation Commission, the Fire Department 911 and the DPW Wastewater added the contingency that it was not to encroach on sewer easement. The proposed dwelling will not have a new footprint which exceeds 2,500 square feet.

The Board discussed the non-conformity of the property.

WB: I move we approve the citing of the proposed construction at 17 Main Street, Jason Hammer under Town of Essex Bylaw 6-4.3 finding it meets the Town of Essex Bylaws and has the necessary approvals.

The motion was seconded.

Scottie Robinson abstained, Bill Holton did not approve, the remaining Board members approved. The motion was approved by the majority.

Board Discussion – Town Meeting 2010

The Board discussed the proposed articles for the warrant and the next meeting with Carolyn Britt on December 16, 2009. The Board also discussed a change of use bylaw and if one should be proposed at the Town Meeting 2010.

Regular Business

Payroll

Motion to adjourn the meeting, seconded and the meeting was adjourned at 9:58 p.m.

The next meeting is scheduled for December 16, 2009 at the T.O.H.P. Burnham Library 7:30 p.m.

Presented by:


Mary-Ellen L. Feener, Secretary


Westley Burnham, Clerk

Meeting Minutes – Public Meeting – Town of Essex Planning Board December 16, 2009

The meeting was called to order at 7:30 p.m. by Co-Chair, Andrew St. John and was held at the T.O.H.P. Burnham Library. Attendees: Juergen Dietrichson (JD), Bill Holton (BH), Westley Burnham (WB), Bill Holton (BH), Andrew St. John (ASTJ) Absent: Kimberly Drake, Scottie Robinson, Jason Heath - Building Inspector: William Sanborn (WB)– Planning Board Secretary: Mary-Ellen Feener (MF)

Building Inspector's Report

There were no building permit applications to present to the Planning Board.

16 Tree Hill – owners; Stuart and Elizabeth Pratt – Map 13, Lot 11

Public Hearing – New Cingular Wireless LLC (ATT & T) – Applicant, Attorney Martin Cohen, Anderson & Kreiger LLP representing ATT & T --- Also present: Bill McQuade, Metro PCS – Peter Cook, TMobil - Peter Giard, Sprint - Rich Dench, ATT

On August 27, 1997 the Planning Board granted a Special Permit to Southwestern Bell Mobile Systems, Inc., D/B/A Cellular One, AT & T's predecessor-in-interest, to construct and operate the Existing Facility. Condition No. 7 of the special permit provided was, "This Special Permit and all subsequent amendments shall expire on September 30, 2007. At that time a new Permit may be issued based on the continuing need for such a facility. Renewal of this permit shall be conducted in accordance with all applicable rules in effect at that time."

ATT & T stated they propose no changes to its existing facility at this time. The only changes to the site currently contemplated are those necessary to accommodate collocation by Metro PCS. The Board reviewed the information provided by the applicant(s),

Westley explained the reasoning of the Board when the original 1997 Special Permit was written and why the decision had a expiration date. He said it was because at that time there had been a lot of concern by the public and that an expiration date would allow the Planning Board an opportunity to review the Special Permit for the cell tower. He also stated that at the time there had been discussions that 'in the future' there may not be a need for a cell tower.

Andrew asked if there were any additional emissions. Bill McQuade, Metro PCS answered that there would not be any addition emissions.

Then Andrew asked if there were any comments or discussion. The Board had no further comments or questions. No one from the public attended the meeting and the applicant(s) had no comments.

Westley Burnham made a motion to close the Public Hearing. Motion was seconded and unanimously approved.

WB: Move that we reauthorize the Special Permit for AT&T to operate a Cell Tower located at 15-16 Tree Hill with the same conditions as the special permit approval of August 20, 1997 which will not include an expiration date and as allowed by the Town of Essex Bylaws and that the owners find continuing need of the facility. Subsequent amendments will run in conjunction with the base permit.

The motion was seconded and unanimously approved.

WB: I move that we approve the application of Metro PCS to install 6 antennae at 110 foot high to run in conjunction with the base permit run by ATT&T at this time.

The motion was seconded and approved.

Carolyn Britt Informal Discussion

The Board discussed definitions for the zoning bylaws and the basic reformatting of the zoning bylaw, Chapter VI; both which potentially could be proposed articles for the warrant for the Town Meeting in 2010.

Motion was made to adjourn the meeting at 10:05 p.m. Motion was seconded and approved unanimously.

Next meeting is scheduled for January 6, 2010.

Presented by:


Mary-Ellen Feener, Secretary


Westley Burnham, Clerk