

## **DRAFT MINUTES**

### **Tamworth Conservation Commission**

#### **Wetlands & Subsurface Committee**

**March 16, 2007, 7:00 p.m.**

**Present:** Bill Batchelder, Ned Beecher, Bryan Berling, John Mersfelder, Charlie Townsend

**1. Approval of the Committee minutes of January 23, 2007.** Charlie moved, Batch seconded. Ned suggested 3 amendments. Batch moved and Charlie seconded. All approved amendments. Minutes unanimously accepted as amended.

**2. Buffer Waiver Request (under Tamworth Wetlands Ordinance) by Riverbend RV Campground, corner of Route 25 and Route 113, So. Tamworth. Property owned by the Vilbigs, who were present at this meeting, along with their consultant, Jim Rines of White Mountain Survey.**

**a. History of the project and process to date:** John reviewed the history of the project's interactions with the state DES and the Town, with a focus on wetland issues.

- To start, John noted that he believes there was no apparent willful avoidance of Town ordinances.
- End of March, 2006 – the TCC became aware of potential concern about work in the shoreland protection zone at the Riverbend RV Campground site. Selectmen were notified and examination from off the property suggested that there was excessive cutting of trees near the river.
- The DES was apprised of a potential violation and a letter from the TCC was sent to Mr, Vilbig on April 20<sup>th</sup>.
- May 9, 2006 – a letter from DES to Riverbend laid out guidelines concerning FEMA compliance with regards to the floodplain, as well as guidance about Shoreland Protection and Prime Wetlands. During this time, other communications between DES and Riverbend (through agent White Mountain Survey) dealt with site specific permit matters.
- May 12, 2006 letter from White Mountain Survey to DES discussed removing from the plans, 6 proposed campsites within 100 feet of the Bearcamp River.
- June 12, 2006 letter from DES to the landowners, noting a deficiency concerning the Comprehensive Shoreland Protection Act . It was also noted that an isolated wetland appeared not to be delineated.
- John noted that at this point in time, the TCC still was not aware of potential wetland matters at the site that might be covered by the Tamworth Wetlands Ordinance.
- July 18, 2006 - A restoration plan for the site, addressing the Shoreland Protection Act violation, submitted by White Mountain Survey, was approved by DES.
- January 25, 2007 – Selectmen met with the landowners and the TCC to discuss application requirements under the Town Floodplain and Wetlands Ordinances. The Selectmen earlier had requested an opportunity to visit the site, but that had been denied.
- Feb. 5, 2007 Letter from Jim Rines of White Mountain Survey, which included discussion of wetlands matters, including mention of no prior knowledge of Tamworth Wetlands Ordinance; this letter mentioned “benign use” of areas within the 25-foot buffer along the edges of wetlands, and Mr. Rines argued that the buffer area requirement of the Town

ordinance might not be applicable. He subsequently urged the Selectmen to seek a legal opinion of Town Attorney, who gave one, but the Selectmen decided not to receive it and the TCC has not seen or heard it. The Planning Board, at its February Meeting agreed with the TCC that Section F2 of the Tamworth Wetlands Ordinance is applicable and valid. The applicant decided to go ahead and ask the Planning Board for a waiver for the 25-foot setbacks in some parts of the proposed development (in part, because the Selectmen informed the applicant that, until all other local issues are resolved, they would not consider and finalize action regarding floodplain matters).

- White Mountain Survey (Jim Rines) next asked the Selectmen to permit them to work in the floodplain area within the 25' buffer area, but an agreement was reached to work 32' away from the wetlands until the buffer issue is resolved.
- It is for initial consideration of the applicant's request for a waiver of the 25-foot buffer requirement of Section F. 2. of the Wetlands Ordinance that this Committee is meeting.

The Vilbigs noted that they feel they properly submitted plans last year and they were not given the guidance by anyone about the potential applicability of the Tamworth Wetlands Ordinance. TCC members agreed that it was unfortunate that such guidance was not given, but also noted that any landowner or citizen is ultimately responsible for compliance. Jim Rines clearly stated that he and his company were responsible for the omission of knowledge of the Town Ordinance and its applicability to this project.

#### **b. The Section F. 2. Waiver Request**

- Jim Rines and the Vilbigs presented an updated set of plans, showing several campsites that they had agreed to shorten or remove entirely to reduce the amount of activity in the 25-foot buffer areas.
- The applicant also offered, in a letter to the Committee, to create, as a formal recorded deed restriction, a 30-foot wide no-construction or impact buffer area along all other wetlands throughout the entire property. Mr. Rines calculated that this would create a net additional 1000 square feet of buffer area on the property, above and beyond what would have been the case if the required 25-foot buffer was respected throughout the property. The Commission noted that trading an additional 5 feet on top of a 25-foot buffer did not provide the same level of wetland protection as adding 5 feet to a, say, 2-foot buffer – the latter is more significant in terms of wetlands protection.
- Discussion and negotiation followed, focused on minimizing any work or ongoing, long-term activities in buffer areas. This consisted of:
  - rearranging or realigning several proposed campsites to eliminate any campsite intrusion into the buffer area, and
  - relocating the perimeter road, which runs adjacent to the wetlands, to maintain a buffer setback as close to 25 feet as possible in those areas where the presented plan showed the road coming closer to the wetland (these areas were specifically circled by Mr. Rines, with notes made, on both copies of the plan).
- The Committee stressed that, during construction, which is when it really counts, every effort would have to be made to maximize the width of the buffer in those areas this meeting had identified as problematic (and which were circled).
- The Committee stressed that its finding on this matter was with regard to wetland buffer areas only, and is specific to this particular situation.

- The Committee acknowledged that the standard for a waiver for Section F (F.1. and F.2.) is not as high a standard as the standard for a Special Use Permit. However, the decision on this waiver recommendation requires consistency with waivers granted for septic system setbacks.
- The Committee and applicant agreed to various adjustments on the plans, leaving potentially 100 lineal feet of wetland edge, here and there, where less than the full 25-foot setback might exist. The applicant agreed to re-submit plans with these changes made, including the unpaved perimeter road realigned, to get as much buffer along all parts of the road as possible. The applicant said these plans would be available in time for the TCC meeting Tuesday, March 20<sup>th</sup>. The plans should include the following notes:
  - That signs will be placed along the roadway to advise drivers to avoid leaving roads in order to protect the adjoining wetlands;
  - That every attempt will be made during construction and ongoing operations to maintain 25' buffers in all areas where they are maintained on the plan and to maximize the buffers in those specific, limited areas where the full 25-foot buffer is not achieved; and
  - That the plan or attached letter makes clear that the applicant will formally record a property deed restriction prohibiting in perpetuity any development or construction activity within a 30-foot wide buffer area along the edge of all other wetlands on the property, this restriction to be recorded at the Carroll County Registry, along with a plan showing its intent.

Vote: Ned moved, Bryan seconded, and a vote of 4-0 (Chair not voting) approved that the Committee recommend to the full Conservation Commission that the Commission recommend to the Planning Board that a limited waiver be granted for specific, limited areas where the proposed development – i.e. the unpaved perimeter road – would intrude into the 25-foot buffer area, so long as the applicant submits the plans as detailed above, with all the notes and concomitant actions.

**3. Adjournment:** Move to adjourn by Ned; second by Bryan; all approved at 9:00 pm.

*Draft minutes respectfully submitted by Ned Beecher, March 19, 2007.*