

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, February 23, 2022, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, and Kathy Feehery. Also present, Conservation Agent Michelle Greene and Select Board member Wendy Reed.

1. **Public Hearing: Notice of Intent (continued): Lower Artichoke Spillway, City of Newburyport Department of Public Services Re: Construction of stone foundation at lower artichoke spillway DEP# 078-0712 *Applicant requests a continuance.***
2. **Public Hearing: Notice of Intent (continued): Town Wide, West Newbury DPW, Re: Hazard tree management, DEP# 078-0717 *Applicant requests a continuance.***
3. **Public Hearing: Notice of Intent (continued): 87 Crane Neck Street, William P. Spalding, Re.: Construction of a gravel driveway, DEP# 078-073 *Applicant requests a continuance.***
4. **Public Hearing: Request for Determination of Applicability (continued): 35 Cherry Hill Street, Paul and Lynn Delaney, Re.: Construction of a gravel driveway *Applicant requests a continuance.***
5. **Request for Insignificant Change: 9 Woodcrest Drive, Noah Askman, Re.: Removal of additional trees within buffer zone, DEP# 078-0737**

The applicant, Noah Askman, appeared by phone, explaining that the two non-native Austrian pine trees by the driveway, which he seeks to remove, are not healthy. They have many dead branches, which have fallen or are threatening to fall. He is willing to replace the trees with suitable native species. He submitted a letter from an arborist supporting the tree removal.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to allow an insignificant change permitting the removal of two Austrian pine trees, with their stumps remaining, contingent upon the applicant's submission of a plan to replace these trees with native ones, and with removal not to occur until the replacement plan has been submitted to and approved by the Commission.

6. **Old Business: 15 Norino Drive, Re.: houseboat, update from Coast Guard and Salisbury Harbormaster**

Ms. Greene said that there is no update at this point.

7. **Old Business: 87 Main Street, Lot 3, Robert Johnson, Re.: Review of plan changes and proposed stormwater / drainage water management design, DEP# 078-688**

In the wake of another of a series of stormwater flooding incidents into wetlands and Main Street, developer Robert Johnson presented and discussed two plans, including a redline version that shows

additional stormwater management solutions concerning lot 3. He noted that the Commission had supported a common drive as opposed to three driveways. He said that the Conservation Agent has now requested calculations on water flows, including groundwater—and groundwater is hard to predict. In response to Mr. Johnson's statement that he is seeking to appease the Commission, Ms. Mizner said that this is not a matter of appeasement, but rather correction of a real problem.

Ms. Greene provided background information about the Town's electronic PermitLink system, in which substantial changes to the location of the lot 3 house and septic system were made and were signed off by various Town departments at least in part because the system did not flag such changes. None of the plans for drainage had been formally approved by Commission vote, as they were all outside the jurisdiction of the Conservation Commission at that time since they were more than 100' from wetland resource areas. However because the silty runoff has impacted wetlands the Commission now has jurisdiction over the site.

Mr. Johnson said that he made the changes (including a deeper cut into the slope) to try to reduce the ground disturbance, and emphasized that the Town had given him a building permit, which he saw no reason to question. He said that now this is a matter of everyone's jurisdiction, stopping and starting is not helpful, and he needs to get this built.

Ms. Greene said that the state's Department of Environmental Protection (DEP) advised that the Commission issue a cease and desist enforcement order. This, she said, is problematic because of current conditions on the site, which features a very steep excavation ramp to provide machinery access to construct the septic system. The site condition requires remediation not possible under a cease and desist order. She said that she has drafted an enforcement order that allows the developer to drop in the septic tank and then remove the ramp as soon as weather conditions permit, and then cease and desist. She explained that this would be a living document, allowing (as the site comes into compliance) next steps of construction that will not cause more problems.

The Commission noted problems with stormwater management on the site, including collapsed check dams, the lack of a crown on the driveway, and other issues. Ms. Hawkins noted that there may be springs or seeps affecting water flow. Ms. Greene said that DEP is interested in this question. Mr. Johnson said that they poured the foundation without water incursion.

The Commission determined that it could not make a decision on Mr. Johnson's redline stormwater management plans (which would not require a new Notice of Intent filing) until it receives the stormwater and groundwater calculations. The person doing the calculations needs to confirm that the size and location of the stormwater management infrastructure (swales, dissipators, etc.) on the plans will suffice to prevent stormwater from adversely impacting wetlands. It advised Mr. Johnson to, within 30 days of this meeting, submit to the Commission a construction schedule including what is proposed to be done and when, with proposals to mitigate the adverse impacts and stabilize the site. This needs to be fleshed out with full, to-scale plans showing stormwater management infrastructure.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue the enforcement order, which Ms. Greene provided to Mr. Johnson.

Ms. Reed inquired whether PermitLink could be improved to flag changes such as the ones made here. The Commission agreed and also suggested that PermitLink also require that the plans submitted clearly mark that a plan has been revised. It was also noted that having stronger stormwater bylaws could have put everyone ahead on these issues.

8. Old Business: Open spot on the Conservation Commission

No update

9. Old Business: Coffin Street Conservation Project, Map 230, Parcels 110 and 120, Re: Review KP Law revisions and Essex County Greenbelt's Counsel's revisions to Memorandum of Understanding between Town of West Newbury and Essex County Greenbelt Association

Ms. Mizner said she had spoken with Greenbelt representative Vanessa Johnson-Hall and two minor changes were made to allow the Town access to certain documents and to send an email as well as using postal services for certain communications.

Ms. Mizner moved, Ms. Hawkins seconded and the Commission voted to approve the memorandum of agreement for circulation to Town counsel. Ms. Feebery, an abutter, recused herself.

10. Other Business: Planning Board Request for Comments, Re.: 0 Middle Street, Lot C, Reduced Frontage Lot - John Gorman (previously before the Conservation Commission as a portion of 0 Middle Street, Lot B, DEP# 078-0726)

The Commission reviewed the complicated history of the several plans the developer had proposed for this property over the years. The Planning Board has asked for Commission comments on the latest version. It was noted that the latest plan—which adds a new third lot—does not show the location of the septic system, making it difficult for the Commission to comment.

Ms. Mizner will draft a letter to the Planning Board saying that the Commission needs to know the location of the septic system and that it does not support the creation of a third lot without access from Archelaus Hill Road. She will circulate the draft among the Commission members and seek individual replies with comments to her.

11. Other Business: Review updated local filing instructions for RDA and NOI

Ms. Greene has drafted new, clearer instructions for those making filings before the Commission. Ms. Mizner said that she wants to review this; Ms. Hawkins said it is definitely an improvement. Ms. Greene said that the new version is not on the website but she has been informally sending it out to persons who have inquired.

12. Other Business:

13. Wetlands Bylaw Update: Discussion to prepare for meeting with Select Board March 14, 2022 to present draft wetlands protection bylaw

The Commission reviewed a letter from Select Board member David Archibald raising a number of questions about the proposed wetlands bylaw. Some of those questions had been addressed previously. As to “drainage ditches” being intermittent streams, Ms. Hawkins noted that it can be confusing because not all “drainage ditches” qualify as intermittent streams.

The Commission agreed to a clarification of the bylaw by removing the reference to “known as the riverfront” in connection with protections for streams.

Ms. Greene recommended, and the Commission agreed, that the Commission prepare a slideshow with visual recommendations, showing what is regulated now under state law and how the bylaws would or would not change this. Commission members will suggest slide topics to Ms. Greene and she will have the slideshow ready for Commission review by the March 7 meeting.

Ms. Greene also stressed that she has heard concerns that the bylaw should be accompanied by implementing regulations. The perceived problem is that the implementing regulations may contain unpopular surprises. *Ms. Mizner will work on having the regulations ready before Town Meeting.*

14. Informal Discussion:

15. Community Input:

16. Approval of Minutes: January 18, 2022

Ms. Mizner moved, Ms. Feehery seconded, and the Commission voted unanimously to approve the minutes of January 18, 2022, as revised.

17. Approval of Minutes: February 7, 2022

Deferred

18. Correspondence:

19. DEP Comments:

20. Land Agent Update:

Ms. Greene reported that she met with the Open Space Committee on February 16, 2022, but no substantive discussions occurred about Land Agent activities.

21. Next Meeting: March 7, 2022 at 7:30 PM

Adjournment 9:37 pm

Meeting Documents

Presentations and records associated with each matter identified, as included in the Conservation Agent’s files.

Respectfully submitted