

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, April 4, 2022, Town Office Building, First Floor Hearing Room.

Members Present: Chair Judy Mizner, Molly Hawkins, Kathy Feehery, also present, Conservation Agent Michelle Greene and interested townspeople.

Announcements: The Conservation Commission seeks applicants for appointment to fill one vacancy on the Commission. Applications and additional information can be found on Town Website

Wetlands Bylaw Update: Review draft wetlands bylaw with town counsel, Alex Weisheit of KP Law

Ms. Mizner reviewed the comments Mr. Weisheit had provided and responses including:

- The inclusion of agricultural exemptions which are referenced in the state regulations: Mr. Weisheit agreed the language is permissible but viewed it as unnecessary;
- The inclusion of both the terms permit and Order of Conditions. The Commission may develop local permitting forms This is similar to language found in bylaws in other communities.
- The exclusion of exemptions listed in the state regulations. The Commission intends to develop an administrative review process for these activities in regulations under the bylaw. Mr. Weisheit advised if this is the case than the use of the word permit in the bylaw is appropriate.
- The difference in timelines between the bylaw and state regulations. These are intended to give applicants as much time as possible. Mr. Weisheit advised the bylaw should follow the state timeframes as closely as possible and is not aware of any bylaws that differ substantially from the timeframes in the state law and regulations.
- The bylaw proposes to have Request for Determination of Applicability (RDA) filings heard in a public hearing rather than a public meeting to give the public a greater opportunity to participate in the review. Mr. Weisheit advised that many communities do have bylaws that require public hearings for RDAs.
- The term “foreseeable future” as used in Section 8 is in the Model Bylaw Ms. Mizner asked if there was case law that addresses whether this is too ambiguous or undefined. Mr. Weisheit advised that in this section the Commission’s review should be limited to the current proposed project.
- In connection with the authority to enter property for enforcement in Section 12 Mr. Weisheit advised that a filing is not implied consent for entry and suggested a form signed by the applicant authorizing entry could be created. Ms. Mizner asked if there was case law addressing this question and Mr. Weisheit advised there was not.
- An effective date had been added after Mr. Weisheit’s initial review.

Ms. Mizner shared a list of questions with Mr. Weisheit received from the Select Board which included:

- If property owners across the street from an intermittent stream wished to do work on their property which was within the 100' of the intermittent stream, would they have to file with the Commission for the work?
 - o Mr. Weisheit advised that they would and the question is to what degree would their proposed work be impacting the stream.
- Concerns that the proposed bylaw gives the Commission a "blank check" to create regulations that are not subject to a review.
 - o Mr. Weisheit advised that any regulations drafted that were consistent with the bylaw would be upheld in court.
- Would the definition of "alter" as used in the bylaw imply that someone repairing a building or replacing a window would need to file with the Commission if the area was subject to jurisdiction?
 - o Mr. Weisheit agreed with Ms. Mizner that a filing would not be needed if there would be no impact to the resource area; the questions is always what impact does the proposed activity have on the resource area; in his opinion replacing a window would have no impact.
 - o Brian Conn of 38 Maple Street suggested that replacing egress windows in a basement may require earth moving r and could require Conservation Commission review.
 - o Ms. Mizner and Mr. Weisheit agreed that whether or not the activity was subject to review would depend on potential impacts to the resource area.

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.

Ms. Greene reported that she has spoken to Jon-Eric of Newburyport who has advised the city is working with an engineer on a new filing for this project and will be submitting a new Notice of Intent Filing and requesting to withdraw this filing.

Public Hearing: Notice of Intent (continued): Town Wide, West Newbury DPW, Re: Hazard tree management, DEP# 078-0717

Applicant requests a continuance.

Public Hearing: Notice of Intent (continued): 87 Crane Neck Street, William P. Spalding, Re.: Construction of a gravel driveway, DEP# 078-0738

Gregory Hochmuth of Williams and Sparages appeared on behalf of the applicant. Mr. Hochmuth showed revised plans with locations of proposed plantings to mitigate previously disturbed areas. Mr. Hochmuth said the area will be seeded with a native seed mix and monitored to determine how the vegetation grows back with additional plantings and invasive plant removal as needed. Mr. Hochmuth also stated that the project will be subject to the town's recently enacted Stormwater Bylaw as it disturbs over an acre of land.

The plans show a no disturb line off the B series wetland flags which is at least 25' from the edge of the wetlands and is further in some locations. Ms. Mizner requested additional posts with conservation placards and Mr. Hochmuth agreed to add 4 more, between flags B4 and B13, and to update the plan to show the markers as 4' tall. The method of erosion control, a trenched and staked silt sock was also confirmed.

Discussing the culvert, Mr. Hochmuth said the plans will be updated to show details for the curb, guardrail, and footing. The area of the footings will be excavated, the footings will be lowered in by crane, and then the footings will be backfilled. Ms. Mizner asked if any materials from the crossing will be used in the replication area. Mr. Hochmuth said yes but there may not be much material. Any material to be reused will be moved by truck to another area on site outside of any resource areas and buffer zones.

Mr. Hochmuth agreed that a slurry pit will be constructed for the well, located out of the buffer zone. He also stated all cleared trees will be removed from the site. Ms. Mizner said the Order will include a condition that no trees are to be disposed of in any resource area or buffer zone. The proposed trees shown on the plan for privacy were also discussed and Mr. Hochmuth said he would update the plans to indicate the trees shall be native evergreen trees.

Chris and Kelly Dukaski of 81 Crane Neck Street asked if the Commission had done a site walk, shared concerns about beavers at the site, and inquired who is responsible for them. Ms. Mizner responded the Commission had done a site walk and the town is not responsible for beavers but beaver problems can be addressed through a joint filing with the Board of Health and Conservation Commission. Mr. Dukaski expressed concerns of beavers damming the culvert and causing his abutting property to flood. Mr. Hochmuth stated the box culvert does not restrict the stream and is open bottomed; the beavers will be unable to dam it. Because the Dukaski's property is about 10' higher than the culvert water would go around the culvert and into the flood plain in a flooding event rather than backing on to their property. Mr. Hochmuth also indicated that the project as proposed increases the flood storage at the property. The Commission noted that the beaver dam at the Dukaski's property is regularly dismantled and the permitting process to address beavers was again discussed.

The Dukaskis also asked if the purpose of the project could change after the Conservation Commission permitting process was complete. Ms. Mizner explained that the building is proposed in an upland area which is outside of the Commission's jurisdiction. Nothing would need to be addressed with the Commission if impacts to jurisdictional areas did not change. Mr. Hochmuth also advised that any change in building purpose would have to go through the planning board and any plans for a septic system would require Board of Health permitting.

Ms. Mizner moved to issue an Order of Conditions for the work as proposed in the Notice of Intent filing as amended with the Standard Conditions and Special Conditions as discussed. Ms. Feebery seconded. The motion passed unanimously.

Public Hearing: Request for Amendment to final Order of Conditions (continued): 18 Norino Drive, Katherine and David Miller, Re.: Request to allow construction of a hillside tram system, DEP# 078-0667

Gregory Hochmuth of Williams and Sparages appeared on behalf of the applicant. Mr. Hochmuth provided a history of the project and explained the request for an amendment is to change the project from have stairs to access the dock to having an electronic lift system due to the steepness of the site. Marine Innovations designed the lift after inspection of the site. The lift system will be a track set on pipes installed in the bank using a hand hydraulic impactor tool. Mr. Hochmuth believed that the lift system would have less impact to resource areas as more light can reach vegetation than with stairs. The revised plans had been sent to the state's Natural Heritage and Endangered Species Program (NHESP) for their review and they have been approved in a letter. Ms. Mizner confirmed with Mr. Hochmuth that no changes to the ramp, moorings, or dock were proposed.

Ms. Mizner moved to approved the amended Order of Conditions with the Condition that the planks used on the landing be spaced at least 3/4" apart. Ms. Hawkins seconded.

Stephen Boyd, an abutter at 39 Way to the River, shared concerns over grading, indicating that because the bank at this site is a wetland on an angle he was concerned about the possibility of a land slide from construction. Mr. Hochmuth advised that project does not propose any grading and that the location of the posts for the lift system are not on the bank. Mr. Hochmuth also said that the property owners want to ensure the bank stays stable and vegetated. Mr. Boyd expressed a concern that workers may disturb the area. Mr. Hochmuth responded that once the track is in, the lift system will be used to transport materials and workers to reduce impacts to the bank. Mr. Boyd asked if there was a plan to manage invasive plant species along the high-water line. Mr. Hochmuth said there was not and that the current invasives plan manages up to the beginning of the steep slope. Mr. Hochmuth also explained that at this site, the invasive vegetation is helping to stabilize the bank.

The motion to approved the amended Order of Conditions passed unanimously.

Public Hearing: Notice of Intent (continued): 0 Middle Street, Map R8, Lot 6E, Jeff Smith, Re: construction of a single-family home, driveway, septic, and associated grading and utilities, DEP# 078-0741

Gregory Hochmuth of Williams and Sparages appeared on behalf of the applicant. The NHESP issued a no take letter for the project as proposed. However, since the project is in a known location for Blanding's turtles and the site will be surrounded by silt fence, Mr. Hochmuth said a construction gate can also be added to reduce the likelihood of turtles entering the site. Ms. Greene asked if turtle monitoring would be planned and Mr. Hochmuth responded that it would make sense to sweep the area for turtles once fenced and that as long as the gate is closed, no turtles should get into the site.

The proximity to wetlands was discussed. The distance from the house to wetlands is 21'. However, the retaining wall is closer to the wetlands in some locations. Ms. Hawkins asked if there would be lawn around the house and Mr. Hochmuth responded that there would be up to the retaining wall.

Mr. Hochmuth explained a temporary slurry pit will be dug when installing the well and that a temporary gravel access road will be installed and removed after the well is drilled. The Commission located additional points on the plan to install markers for the 25' no disturb area with conservation placards affixed.

Ms. Mizner moved to issue an Order of Conditions for the proposed work subject to the Standard Conditions and Special Conditions to be issued upon receipt of updated plans. The Special Conditions include the installation of permanent markers with conservation placards as located on the plan to mark the 25' no disturb area; removal of the gravel access road after the well is installed with the gravel disposed of offsite; all fill brought in to be clean fill; any materials not to be reused on site shall be disposed of offsite; the revised plan shall show the turtle protection gate at the driveway; prior to construction and after installation of silt fencing the area shall be swept for turtles; a construction schedule shall be provided to the WNCC prior to construction; and the limit of disturbance at the site is the erosion control. Ms. Hawkins seconded and the motion passed unanimously.

Public Hearing: Request to Amend Final Order of Conditions (continued): 87 Main Street, Lot 3, Robert Johnson, Re.: Construction of drainage and stormwater management systems to address runoff and sitework to stabilize site, DEP# 078-688

Ms. Greene advised that the applicant requested a continuance.

Public Hearing: Notice of Intent (continued): 177 River Road, Marcos Goncalves, Re: Construction of a platform, seasonal dock with float, and a footbridge, DEP# 078-0742

Tom Hughes of Hughes Environmental Consulting appeared on behalf of the applicant. Based on the Commission's site visit the previously submitted plans need to be revised to show the new location of the wetlands replication area. Mr. Hughes showed aerial maps of the site in which a path through the wetlands to the river is visible. The plans will also be updated to include a 36" wide thru-flow boardwalk in the path's location. An engineer will also evaluate the undercutting that was observed at the bank where the dock is proposed. The applicant is proposing an invasive species management plan to address the honeysuckle at the site; it will be removed by hand using a weed wrench or similar tool with plans to use herbicide if pulling is unsuccessful. The applicant will include a small craft passage way under the ramp to maintain kayak access to the river. Mr. Hughes confirmed he would consult the abutter to the project to ensure that what is proposed will allow him adequate access to the river. Ms. Mizner believed the area of the replication area was adequate and Mr. Hughes advised it would provide adequate BVW replacement and over 200 cubic feet of flood storage. The Commission approved Mr. Hughes' request for a continuance pending revised plans.

Public Hearing: Notice of Intent: 40 Maple Street, Alex & Dorothy Moerlein, Re: Raze existing garage, construct new garage, construct an addition, DEP# 078-0XXX

Brian Conn, an abutter to the property at 38 Maple Street, announced he is recording the hearing.

William Holt of Land Survey and Design Services appeared on behalf of the applicant. Mr. Holt explained that the project proposes to construct a 30' x 38' in-law apartment attached to the current house and to raze and rebuild an existing garage. The closest approach to wetlands is 31.9'. The

existing septic tank will need to be relocated due to the location of the proposed addition. Erosion control is proposed starting at the road and extending halfway down the property.

Ms. Mizner noted that the wetlands delineation on the submitted plans is shown as having been done in 2011 and advised the delineation is not valid after 3 years. Mr. Holt said that the wetlands are not on the property and are cutoff from the property by a driveway and a fence. Ms. Mizner advised that a new delineation is needed and that property owner permission will be required. Ms. Mizner asked if there would be an increase in impervious area at the site. Mr. Holt responded there would be an approximate 400 square feet increase and that the plans can be updated to show infiltration. Ms. Mizner requested drainage calculations be done as well and that the plans be updated to show elevations. Mr. Holt said the Board of Health also had to review the plans due to the relocation of the septic tank.

Mr. Conn expressed concern about runoff entering his property from the proposed addition and the increase in impervious area. Mr. Conn also said that various debris, including a pool, were buried at 40 Maple Street and that because of this, there is groundwater only 17"-18" under the existing grade.

Mr. Holt requested a continuance of the hearing pending a wetlands delineation, site walk by the Commission, and updated plan including infiltration, grading elevations, and mitigation for runoff. The Commission approved this request.

Public Hearing: Notice of Intent: 0 River Road, Map R24, Lots 8, 8A, 7D, Nancy Pau and Albert Ting, construct a driveway and single-family home with garage, DEP# 078-0XXX

Albert Ting appeared in person and Nancy Pau participated remotely by phone. A MA DEP File number had not yet been issued and t NHESP had not yet issued a letter from their MESA review. Mr. Ting explained the plan proposes a driveway in the buffer zone following an old gravel driveway to the proposed house location. Ms. Mizner asked if the submission to NHESP included the Japanese knotweed removal component in the riverfront area and Mr. Ting advised it did. Ms. Mizner inquired if any infiltration systems were proposed. Ms. Pau responded that vegetated swales could be added along the driveway if they are found to be needed; these would be located on the side of the driveway away from the wetlands if possible but depending on the amount of water, swales may also be needed on the wetlands side of the driveway. A site visit was scheduled for April 9th and the applicant requested that the hearing be continued to April 19th; the Commission approved.

Request for Determination of Applicability: 12 Moulton Street – Maple Crest Farm, John Elwell, Re: hand removal of invasive plants, installation of material to slow invasive plant growth, planting of native plants

Annie Madden appeared on behalf of West Newbury Wild and Native (WN2) which is proposing the pollinator garden. Ms. Madden explained WN2 is seeking approval to create demonstration gardens at the property showing native plantings that are attractive and beneficial to pollinators. The site was selected as it has high visibility along the reservoir walkway. The project proposed removing invasive plants from the area prior to planting the native plants. Ms. Mizner asked if herbicides were being proposed to manage the invasive plants. Ms. Madden responded they are not; the plan is to cut

repeatedly, extract the invasive plants, and then cover the area with cardboard, woodchips, or plastic, if needed, to suppress plant regrowth. Ms. Hawkins asked if Newburyport had been informed of the project. Ms. Greene advised she had informed them and that as long as no herbicides were used, they have no objection to the project. John Elwell, the property owner, spoke in favor of the project. He likes educating people and has found that people learn a lot about trees from the existing tree walk that is there. A site walk was scheduled for April 9th.

Ms. Greene advised that the applicant has requested the Commission waive its local filing fees as the project is being funded by the Guld of Maine Research Institute, a non-profit.

Ms. Mizner moved that the Commission waive the local filing fee. Ms. Hawkins seconded the motion. The motion passed unanimously.

Old Business: 15 Norino Drive, Re.: houseboat, update from Coastguard and Salisbury Harbormaster

Ms. Greene advised there had been no updates from the Coastguard or the Salisbury Harbormaster on this matter.

Other Business:

Informal Discussion: None

Community Input: None

Approval of Minutes: March 21, 2022

Deferred to the next meeting

Correspondence: None

DEP Comments: None

Land Agent Update: None

Next Meeting: April 19, 2022. Please note meeting date is a Tuesday due to Monday holiday

Adjournment

Ms. Hawkins moved to adjourn the meeting. Ms. Feebery seconded. The motion passed unanimously and the meeting adjourned at 10:35 PM.

Meeting Documents

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

Respectfully submitted