

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:30 pm, June 6, 2022, Town Office Building, Second Floor Hearing Room.

**Members Present:** Chair Judy Mizner, Molly Hawkins, Kathy Feehery, Tom Atwood. Also present, George Preble who arrived at 7:49 PM after being appointed by the Select Board to the Commission with a term to begin July 1, 2022 and Conservation Agent Michelle Greene.

**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**

The hearing was continued at request of the applicant.

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

The hearing was continued at request of the applicant.

**3. 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**

The hearing was continued at request of the applicant.

**4. 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 and provided an overview of a revised plan showing the dock in a new location which results in a straighter path to the dock, and the addition of dense coconut fiber coir logs to prevent additional undercutting of the bank and prevent wake scour. Mr. Hughes also showed the detail of a small craft channel / bridge which was added to ensure that kayaks and other personal watercraft will be able to pass under the dock. Mr. Hughes also indicated that flood storage for the footings of the boardwalk will be compensated for at a 1:1 ratio and that invasive plants will be removed within 20' of each side of the boardwalk.

Ms. Hawkins inquired if the coir log will need to be maintained. Mr. Hughes responded it will biodegrade overtime and that it may stabilize the shoreline when it does but if it doesn't it would be a good idea to replace it. Ms. Mizner confirmed that the coir logs will be carried in by hand and not by machine; Mr. Hughes advised they can be carried in once the boardwalk is installed. Mr. Hughes also added that there is a fallen tree in the proposed dock location which the applicant seeks permission to remove by hand. Ms. Mizner questioned why there will be a wetlands disturbance when creating the replication areas. Mr. Hughes replied that deeper excavation was required for flood compensation. The stockpiling of materials on site was also discussed. Final location would be determined in the field during the preconstruction meeting but Mr. Hughes believes the only material to be stockpiled will be the organic material to be used in the replication area and all other materials will be hauled off site. Ms. Greene inquired if the applicant will seek a dock permit and Mr. Hughes advised that they will first seek an annual permit and then a permanent permit. Ms. Mizner suggested that the Commission's 25' natural buffer conservation markers be installed 25' off the wetland on the upland side and along each side of the path. Mr. Hughes suggested the markers be attached to existing trees and not to installed posts.

John Haley, an abutter at 175 River Road, said that his concern about river access had been addressed with the addition of the small craft channel / bridge and that he now supported the project.

*Ms. Mizner moved to issue an Order of Conditions with the Standard Conditions and the Special Conditions that all work is done as shown on the approved plans; that a 25' naturally vegetated no disturb area extends upland of each wetlands line with conservation markers installed 20' off each side of the proposed walkway; that there be no application of fertilizers, pesticides, herbicides, insecticides, or other chemicals on the bank, in bordering vegetated wetlands, in the replication area, or in the naturally vegetated areas, with the exception of herbicides approved for use in wetlands used for invasive control pursuant to a plan to be submitted to and approved by the WNCC prior to any application of herbicides; that within the 200' riverfront area any fertilizer used shall be low in nitrogen content and comply with state standards regarding fertilizer; footings are to be dug by hand; spoils shall be stored outside of resource areas; a construction schedule shall be submitted to the WNCC at least 72 hours prior to the start of construction; the mooring system shall comply with the conditions of the state's Natural Heritage and Endangered Species Program; no dock components shall be stored on the bank or within any other resource area; no boat fuels or oils shall be stored on the dock, bank, or other resource areas; dock components shall not be hauled out over the bank when being removed for winter; any additional work within the 200' riverfront area or other resource area shall require a new filing. Ms. Mizner also proposed draft conditions for the wetlands and flood storage replication area and the management of invasive plant species. Ms. Hawkins seconded and the motion passed unanimously.*

**5. Violation Update: 4 Norino Drive, Re: Clearing within the 25' no disturb buffer and clearing past the limit of work, DEP# 78-0740**

Tom Hughes of Hughes Environmental Consulting appeared on behalf of the property owner and explained that clearing had occurred beyond the limit of clearing shown on the approved plans. Mr. Hughes advised the property owner to spread oat seed to help stabilize the area and explained that in addition to stabilization, the oat plants should be beneficial to the soil. He also said that 20 bales of straw and NE Conservation seed mix are on order to further stabilize the area. Mr. Hughes also indicated that erosion control is installed where shown on the approved plan and that additional erosion control will be installed.

Ms. Mizner asked what plant species were cleared; Mr. Hughes responded that many of the plants were invasive, including Oriental bittersweet and multiflora rose, but that some trees were cut down. Mr. Hughes explained his plan is to stabilize the area, come up with a planting plan for within the 25' no disturb zone as shown on the approved plan, and then inventory the remaining areas to remove invasive plants and plant additional native plants as needed.

Tracy Peter, an abutter at 824 Main Street, shared her concerns that the area where the clearing occurred had very thick vegetation and asked if trees will be replanted to assist in shading the wetlands. Mr. Hughes responded that trees planted at this time of year were not likely to survive and added that the stumps of the cut trees are still in place and should produce sprouts so the tree species can be identified and replanted as needed. Ms. Greene added that she observed the stumps of about 6 trees with DBH of up to 10" which were removed outside of the approved limit of work. Ms. Mizner inquired if trees will be replaced with mature trees or saplings and Mr. Hughes responded that mature trees are not always available and do not always take when they are planted. Mr. Hughes reiterated that he wants to evaluate what grows back and submit a plan based on that.

**6. Violation Update: 21 Montclair Road, Re: Clearing trees within 100' buffer zone without a permit**

Tom Hughes of Hughes Environmental Consulting appeared on behalf of the property owner and explained that he will be working to GPS locate the stumps of the trees that have been cut, get this information on to a plan, and then present it to the Commission along with a replanting plan. Ms. Mizner asked what the timeline for this would be and Mr. Hughes advised he is about 3 months out right now but hopes to get the plan done sooner.

**7. Public Hearing: Notice of Intent (continued): 40 Maple Street, Alex & Dorothy Moerlein, Re: Raze existing garage, construct new garage, construct an addition, DEP# 078-0743**

Alex Moerlein appeared before the Commission with a revised plan prepared by his engineer, William Holt, showing underground structures to manage roof runoff.

Brian Conn, an abutter at 38 Maple Street, questioned what the infiltration chambers sit on. Ms. Mizner explained that the plans showed the structure will be installed by excavating the area, placing stone on undisturbed soil, placing the chamber, placing stone on top of the chamber, and backfilling. Mr. Conn expressed concern that there is debris in the backyard which will prevent the chamber from infiltrating the runoff water into the ground. Ms. Hawkins explained that the purpose of the chamber is to collect the runoff water and direct it away from the house toward the wetlands rather than into the ground. Mr. Conn shared concerns that the area will become oversaturated and Ms. Mizner advised that the stormwater calculations show that the construction will not result in significant runoff in a 2-year storm. She added that under the Wetlands Protection Act, the stormwater can't be directly discharged into wetlands.

*Ms. Mizner moved to issue an Order of Conditions with the Standard Conditions and Special Conditions that all work shall be done as shown on the approved plan; that erosion controls shall be installed as shown on the approved plan and inspected prior to the start of construction; that any materials removed shall be disposed of outside of any resource area or buffer zone; that any material stockpile location shall be approved by the WNCC prior to its use; that a construction schedule shall be provided to the WNCC at least 72 hours prior to the start of construction; that no additional work may be done within a resource area or buffer zone without a new filing. Ms. Hawkins seconded the motion and the motion passed unanimously.*

**8. Public Hearing: Abbreviated Notice of Resource Area Delineation (continued): Mill Pond – 693 Main Street, Town of West Newbury, DEP# 078-0746**

Greg Hochmuth of Williams and Sparages appeared on behalf of the applicant, the Town of West Newbury. Mr. Hochmuth reviewed the findings from the Commission's site visit and went over the updated plans showing revised flags from the site visit.

*Ms. Mizner moved to accept the wetlands delineation and revised plans and issue an Order of Area Resource Delineation. Mr. Atwood seconded the motion and the motion passed unanimously.*

**9. Public Hearing: Notice of Intent (continued): 30 Pleasant Street, Brian Boudreau, Re: Raze and reconstruct a single-family home, relocate existing driveway, relocate existing septic tank, and associated grading, DEP# 078-0748**

George Zambouras of Millennium Engineering appeared on behalf of the applicant and explained the proposed project is to remove an existing house and driveway and rebuild a single-family home and driveway with all work within the buffer zone. Mr. Zambouras indicated that the new driveway and house will result in approximately 810 square feet of new impervious area on the lot and that roof infiltration is

being proposed as mitigation for this. Ms. Mizner questioned whether the roadside swale shown on the plans was a wetland resource area; Mr. Zambouras advised that he had followed this swale and determined it originates from catch basins and not a wetland system.

*The Commission scheduled a site visit for Sunday June 12<sup>th</sup> at 8 AM and at the request of the applicant the hearing was continued to the June 22<sup>nd</sup> meeting.*

**10. Public Meeting: Request for Determination of Applicability: 189 Ash Street, Nicholas Saraglow, Re: Tree removal and after-the-fact permitting of tree removal**

Nicholas Saraglow appeared before the Commission and explained that he had removed damaged and hazardous trees on his property without realizing he needed Conservation approval to do so. Ms. Mizner questioned who determined the trees were damaged and or hazardous. Mr. Saraglow said he had tree companies look at the trees and they made the determination. He added that he had just replaced the roof and did not want it to be damaged by falling trees. Ms. Mizner asked if he planned to remove any other trees. Ms. Greene advised that the RDA includes the removal of two additional trees at the end of the driveway which are dead which Mr. Saraglow may want to remove unless the town removes them as hazard trees first.

*Ms. Mizner moved to issue a Negative Three Determination with the conditions that the tree stumps of all currently removed trees shall remain in place and that the two trees at the end of the driveway may be removed at the applicant's discretion with their stumps also remaining in place. Ms. Hawkins seconded the motion and the motion passed unanimously.*

**11. Public Meeting: Request for Determination of Applicability: 45 Church Street, Angela Palmer, Re: After-the-fact permitting of tree removal**

Angela Palmer appeared before the Commission and explained that she had removed two black walnut trees that were damaged and hazardous, one invasive Norway maple to prevent its spread, and one spruce tree which was mostly dead and covered in invasive Oriental bittersweet. Ms. Palmer indicated she was unaware Conservation approval was needed to remove the trees and that all tree stumps were left in place. Ms. Mizner advised that any future work proposed in the buffer zone should be brought to the Commission to determine if a filing is needed before undertaking any work.

*Ms. Mizner moved to issue a Negative Three Determination with the conditions that the tree stumps of all removed trees remain in place and that native plants be planted as shown on the plan submitted with the RDA. Ms. Hawkins seconded the motion and the motion passed unanimously.*

**12. Public Hearing: Notice of Intent: 137 Indian Hill Street, Joshua Wegrzyn, Re: Construction of a garage and after-the-fact permitting of an outdoor patio, DEP# 078-0747**

Robert Prokop of Wetlands Consulting Services appeared on behalf of the applicant. Mr. Prokop said that he and Michael Seekamp delineated the wetlands at the property. The applicant proposes to move an existing shed and construct a new garage. Mr. Prokop indicated he believes a canvas carport currently installed at the end of the driveway near the road and within 25' of wetlands is in violation of the Wetlands Protection Act and can be removed as mitigation once the garage is constructed. Mr. Prokop also advised that an unpermitted deck is located within the 100' buffer zone of wetlands and that trees have been cut down within the 100' buffer zone, approximately 25' from wetlands, in anticipation of paving a new driveway. The stumps of the cut trees were ground down by a contractor and the woodchips were dumped in the wetlands. Mr. Prokop suggested that in addition to the mitigation where

the carport is currently located, plantings could be done by the deck as further mitigation. In reviewing pictures included in the filing, Ms. Hawkins also noted that logs for firewood appear to be stacked close to wetlands. Ms. Greene asked if trenched utilities to the new shed are proposed and advised that if they are, the plans should be revised to show their locations. Ms. Greene also advised that in reviewing the plans and the filing, she does not believe that the stream across from the applicant's home is perennial and that the current USGS map does not seem to show this as perennial. Ms. Mizner advised the Commission will review this during the site visit.

*The public hearing was continued to June 22<sup>nd</sup> pending a site visit and a site visit was scheduled for Sunday June 12<sup>th</sup> at 8:30 AM.*

**13. Public Meeting: Request for Determination of Applicability: 5 River Meadow Drive, Jeffrey Proodian, Re: Septic system replacement**

Jeffrey Proodian appeared before the Commission with plans showing the location of a replacement septic system, a wetlands line, and proposed locations of erosion and sedimentation control. Ms. Mizner indicated that, depending on the results of a site walk, a Negative 3 Determination with conditions to ensure that the erosion and sedimentation controls are installed as shown on the plan and that no materials are disposed of in the Buffer Zone could be appropriate.

*The Commission planned to conduct a site visit on June 12<sup>th</sup> after the other site visits scheduled for that morning.*

**14. Insignificant Change Request: 16 Bachelor Steet, Rose Yates, Re: Extending length of retaining wall within the 100' buffer zone, DEP# 078-731**

Rose Yates appeared before the Commission and explained that there have been issues with soil and water washing on to the walkway. To combat this Ms. Yates proposed extending the retaining wall along the entire length of both the walkway and the driveway to better hold back the soil and help direct the water away from the house.

*Ms. Mizner moved to accept the insignificant change request as increasing the length of the retaining wall will help to decrease intrusions into the wetlands and flooding. Ms. Hawkins seconded the motion and the motion passed unanimously.*

**15. Certificate of Compliance Request: 10 Kelly Brook Drive, DEP# 078-0572**

Ms. Greene advised that the additional wetlands post and marker required in the Order of Conditions, MA DEP# 078-0744, for the after-the-fact permitting of the gravel driveway to the barn had been installed and its location added to the as-built plan. The work that was approved under the Order of Conditions for MA DEP# 078-0572, the construction of the barn, is now in compliance with the Order of Conditions, the site is stable, and Ms. Greene recommended that the Commission issue the Certificate of Compliance.

*Ms. Mizner moved to issue a Certificate of Compliance. Ms. Hawkins seconded the motion and the motion passed unanimously.*

**16. Certificate of Compliance Request: 10 Kelly Brook Drive, DEP# 078-0744**

Ms. Greene advised that the additional wetlands post and marker required in the Order of Conditions, MA DEP# 078-0744, for the after-the-fact permitting of the gravel driveway to the barn had been installed and its location shown on the as-built plan.

*Ms. Mizner moved to issue a Certificate of Compliance. Ms. Feebery seconded the motion and the motion passed unanimously.*

**17. Enforcement Order Update: 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 there is no update at this time.

**18. Enforcement Order Update: 11 Pleasant Street, Sergio Vergara and Maia Vergara Azoulay, Re: Grading and filling within 100' of a bordering vegetated wetland; installation of fencing that constitutes a barrier to wildlife movement within 100' of a bordering vegetated wetland; and destruction of vegetation within 100' of a bordering vegetated wetland without a permit**

Ms. Greene advised she needs to contact Mr. Vergara to see if steps have been taken to stabilize the disturbed area.

**19. Enforcement Order Ratification: 15 Norino Drive, Colin Hodgson, Reinhild Hodgson, and Shirene Hodgson Re: Placement of a houseboat and dock along the Merrimac River without a permit with impacts to the 200' riverfront resource area, bordering vegetated wetland, inland bank, and rare species habitat**

Ms. Greene shared the draft enforcement order to be sent to Mr. Hodgson regarding the unpermitted storage of a houseboat and dock components in wetland resource areas and unpermitted stairs within the 200' riverfront resource area. Ms. Greene advised that the Salisbury Harbormaster has not returned her call for assistance with enforcement under the town's Harbor Committee Bylaw. The Commission asked if Town Manager, Angus Jennings could attend a meeting to discuss this further. Ms. Mizner said she will review the harbor master contract with Mr. Jennings.

*Ms. Mizner moved to ratify and issue the Enforcement Order. Ms. Hawkins seconded the motion and the motion passed unanimously.*

**20. Other Business: Discuss how to proceed on old escrow account for Barberry Lane FKA 124 Main Street, James Managano – Bayberry Realty Trust, DEP# 78-0275**

Ms. Greene reported that Town Treasurer, Kaitlin Gilbert, had contacted her regarding outstanding escrow accounts which she believed may be held by the Commission for projects that they permitted. Ms. Greene looked into the accounts and one of them for 124 Main Street does seem to relate to the Commission. The account was set up by the Planning Board for the project. While the majority of the funds have been released by the Planning Board, correspondence from the Commission to the Planning Board requesting that money remain in escrow until a Certificate of Compliance was issued seems to account for the outstanding balance that remains. In 2008 the town's Finance Department had contacted the Commission to close out the escrow account after an attorney representing James Managano contacted the town requesting the money. At that time the Commission informed the attorney that the money could not be released from the escrow account until an as-built plan was submitted to the Commission and a Certificate of Compliance was issued. Both items are still outstanding. Ms. Mizner suggested reaching out to the homeowners of the property where the stormwater detention basins are located and conducting a site visit to determine if they have vegetated and if they are functioning, and also reviewing the homeowner's association documents. If there are issues with the stormwater structures, the

money in the escrow account could be used to resolve them. Ms. Mizner said she will review the documents that the Commission has on this file and Ms. Greene said she will follow up with Planning Board, as they set up the initial escrow account for the project, to see if they have any additional information.

**21. Other Business:** None

**22. Wetlands Bylaw Update:** None

**23. Old Business:** None

**24. Informal Discussion:** None

**25. Community Input:** None

**26. Approval of Minutes: April 4, 2022**  
Deferred.

**27. Approval of Minutes: April 25, 2022**

*Mr. Atwood moved to approve the minutes with the minor revisions as circulated. Ms. Mizner seconded the motion and the motion passed unanimously.*

**28. Approval of Minutes: May 2, 2022**

*Mr. Atwood moved to approve the minutes with the minor revisions as circulated. Ms. Mizner seconded the motion and the motion passed unanimously.*

**29. Approval of Minutes: May 16, 2022**

The Commission discussed and further revised the minutes.

*Ms. Mizner moved to approve the minutes with the minor revisions as circulated and as discussed during the meeting. Mr. Atwood seconded the motion and the motion passed unanimously.*

**30. Correspondence:** None

**31. DEP Comments:** None

**32. Land Agent Update:**

Ms. Greene provided an update on the invasive plant internship. Two interns had accepted their offers and will start with the town on June 13<sup>th</sup> beginning with a two-week training with Ms. Greene and members of an invasive plant working group including Carol Decker, Nancy Pau, Patricia Reeser, and Rick Parker. The training will focus on field safety, plant identification, plant morphology, and using the program EddMapS to map invasive plant species on town owned lands.

**33. Next Meeting: June 22, 2022, please note meeting is scheduled for Wednesday due to Monday holiday**

**34. First July Meeting: Discuss and determine a date for the first meeting in July as the first Monday falls on Independence Day**

The Commission decided that the first July meeting will be held on July 6, 2022.

**35. Adjournment**

*Ms. Mizner moved to adjourn the meeting at 9:57 PM. Mr. Atwood seconded the motion and the motion passed unanimously.*

**Meeting Documents**

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