

West Newbury

Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, November 5, 2018 Conservation Commission Office, 1910 Building

Members Present: Chairman Dawne Fusco; Judy Mizner; Wendy Reed; Margaret Hawkins, and Conservation Agent Jay Smith

Public Hearing --- Notice of Intent --- Charles Fowler, 371 Main St. --- For the construction of a replacement leaching system within the buffer zone to a bordering vegetated wetland.

Consultant Greg Hochmuth explained that this matter concerns a septic repair behind a house located near Town offices. The home is pending a sale but it failed Title V because although the system works well, it is too low.

In siting a new septic repair (so called because of Title V definitions) solution, applicants encountered a number of problems, principal among them soft shale close to the surface, which under Title V is ledge ineligible for septic systems. Other limiting factors include setback requirements, requirements that septic systems be a minimum distance from the foundation, etc.

The only possible solution entails a Waterloo Biofilter (using foam cubes that employ microbes to degrade organic matter) at the front of the house. A force main will be installed to carry wastewater from the Waterloo Biofilter to a location at a corner of the back yard within the wetland buffer zone. At this spot (which is currently lawn) two concrete rectangles comprising bottomless sand filters will be installed to receive the wastewater. The bottomless sand filters will be about waist high and will sit on top of the ground, with only topsoil scraped off—no excavation or contouring is involved.

Mr. Hochmuth stressed that this is the only possible solution and only possible location. It is very expensive and requires maintenance and annual reports. Another one of these systems has been used at a home in West Newbury near Mill Pond. He also stressed that a sale is pending and work should begin soon. Work in the wetlands buffer zone, he said, will take less than a week.

The Commission advised that Mr. Smith can do the site walk for this project. *The Commission voted 4-0-0 to issue an Order of Conditions approving installation of the proposed septic system with standard conditions, except that the winter earth moving ban is lifted and with the following specific conditions: 1) a DEP number must be obtained before work begins; 2) a plan with silt fences and hay bales at the back lot line must be submitted to the Commission; 3) any soil or materials moved in connection with this work shall be either stockpiled outside the buffer zone and shall either be used in the installation or removed from the property; 4) any fill that may be used shall be clean fill; 5) the area between the system and the lot line shall be matted if the Commission deems this necessary to stabilize the area for winter; 6) no pesticides, insecticides, and herbicides shall be used in the buffer zone and fertilizer shall be low nitrogen in content and used in moderation; 7) a construction schedule shall be submitted to the*

Commission 72 hours before the start of work; 8) erosion controls shall be installed and inspected before work is begun.

Public Hearing --- Request for Determination of Applicability --- Scott Brown 219 River Rd. --- Applicant would like to do some work on his dock and pave his driveway. The work will be done in the buffer zone and river front resource area.

Mr. Smith explained that applicants propose to 1) replace and repave an existing paved driveway and 2) install an elevated ramp with 2 sono tubes (replacing a wooden walk right on the ground) connecting the dock to the road. The area is flat and not much disturbance will occur.

Mr. Brown stated that the driveway is in disrepair and that he and Ms. Boria, the homeowners, are hoping to remove the existing driveway and subsurface, and install a new subsurface and binder coat in the next week, before winter weather sets in. A finish coat of asphalt would be installed in spring. He has talked with two contractors. One says it could be done in a day; the other says that it can be done in a few days. He clarified that no waste materials can be stored onsite (all will be immediately removed). There is no room for onsite storage.

The Commission explained that work under its jurisdiction is usually banned in winter. Work generally must be stopped on October 15 and buttoned up by November 1. Ms. Boria noted that they were thinking that it could be less wet in fall than spring.

Mr. Smith observed that the rough edge will be lawn and the driveway at bottom will be 4-5" below the level of the grass, impeding runoff. Chairman Fusco agreed that the lawn will form a bit of a berm. She said that if the work stretches out over time, a silt fence could be required.

As to the elevated ramp accessing the dock, Mr. Brown clarified that this project would not be done until next spring. The Commission advised that with respect to this project, it will need to have an additional meeting with applicants in the spring to discuss and clarify exactly what work will be done, when, and how under a work plan. The Commission will impose minor conditions such as a requirement that soil excavated to install sono tubes shall be removed from the site. This meeting will not be a formal hearing, but rather a discussion item on the Commission agenda.

Given the flatness of the impacted property and the limited scope of the project, the Commission voted 4-0-0 to issue a Negative Determination of Applicability, conditioned upon 1) the removal of the existing asphalt from the property immediately as it is removed from driveway—no stockpiling materials onsite; 2) the project work for this fall (viz., removal of existing asphalt and subsurface, installation of subsurface, application of binder coat) shall be completed by December 1, 2018; 3) applicant shall notify the Conservation Agent beforehand of the day the project to begin; 4) if project extends beyond two days, the Conservation Agent will determine if installation of erosion controls are needed; 5) the final coat of asphalt shall be installed no sooner than April 15, 2019.

Public Hearing --- Notice of Intent --- Terrence Hartford for the River Meadow Dock Association, River Meadows. --- For approval of a management plan within the Merrimack River resource area.

Conservation Agent Smith explained that the applicants filed online and provided a copy of a diagram showing intended mowing in hard copy. This matter does not yet have a Department of Environmental Protection (DEP) number. Mr. Hartford explained that the intent is to mow a 50'-wide path to the dock (which includes 30' of Town-owned conservation land) and to mow surrounding Town-owned conservation areas once a year. Rivermeadow dock users have installed stakes to show the proposed mowing areas and hope to do a site visit with the Commission.

Mr. Hartford said that the reason for a 50'-wide path is guidance received from the Commission, the longstanding tradition of mowing, and that 50' is a better number for the people who want to mow. The 50' path is used to walk from the road to the dock. The Commission noted that it has objected to the extent of mowing, and that rules changed to become stricter around 2011.

The proposal also includes mowing an 8' strip of Town-owned conservation land by the road. Mr. Hartford stated that if you let the vegetation grow up it will be dangerous from a safety perspective. He said that vegetation at the roadside is unsafe for sight lines in driving, walking, mowing and plowing. When Ms. Hawkins asked about the width of roadside mowing the Town usually does, Mr. Hartford stated that the Town does nothing in this area. The Commission observed that it is unclear how mowing improves sight lines in winter for plowing.

The Commission determined to hold a site walk on Sunday, November 18, at 8 a.m.

Discussion: Michael Walters, 97 Moulton St. --- For issues related to the winter ban.

Mr. Smith showed photos of home construction site located across from the reservoir. The site is not in compliance with the standing requirement that earthwork must stop on October 15 and the site must be buttoned up by November 1. Mr. Smith noted that

- The entrance (eventual driveway) is torn up and muddy and that per his request, additional stone had been installed at the entrance. It still needs 1) erosion control on the right hand side and 2) a sign with the DEP number at the front by the entrance.
- The footing for the house is in and the excavation for that resulted in a large pile of soil with a steep slope. He noted that they have installed erosion controls and his inspection showed that this remains stable even after the big rains experienced this past weekend. The plan is that the pile of soil will go to backfill the foundation.
- An unapproved pool has been located with concrete footings installed. The Commission-approved plans noted an intent to install a swimming pool but contained only a vague idea of where the pool might be located, with no specifics as to pool deck, exact location, etc.
- Some matting to protect raw ground in winter has been installed over the septic system, but additional leveling and matting needs to be done on exposed soil.

Mr. Smith added that overall the site is flat and not immediately unstable. Applicants should put in the foundation, replace the soil around it, and then install matting to stabilize the site for winter. The site is not, however, in compliance with the Commission's order requiring that earthwork cease on October 15 and be stabilized by November 1.

Homeowner Michael Walters explained that he has daily been chasing after general contractor to do the work, but the extensive rain this fall has impeded progress. He spoke with the contractor this morning and was told that if the Commission permits it, they can get the foundation poured by this Wednesday, waterproof it on Thursday, and backfill it by Friday. There may be one to two days of clean up after that.

Mr. Walters said that the applicants did show on the plan that a swimming pool was intended. This is necessary for Mrs. Walters, who has a medical condition involving mobility. The builders told him that he would not be able to install the pool unless the footings were installed now because it would not be possible to get heavy equipment in after the house is in place. He did not realize that additional Commission approval would be needed. The pool project is now complete for winter.

The Commission advised that before further work on the pool occurs, the applicant will need to submit and obtain approval for the detailed plans, including such matters as its exact location, fencing, and installation of pool pumps. This should be timed so that work can commence after April 15.

The Commission determined that the applicant shall 1) meet with Mr. Smith on Thursday to determine where additional matting should be installed; 2) install hay bales and silt fencing on the northerly side of the driveway from Moulton Street to the existing silt fence; 3) timely complete foundation installation, backfilling, and grading and then cease all earth moving; 4) remove excess soil (if any) off site so that no soil is stockpiled over the winter; 5) put up a sign at the beginning of the entrance showing the DEP number for this work; 6) submit plans for the swimming pool so that it can be finished after April 15 of 2019.

Discussion: Angus Jennings, Town Manager --- Updating the Management Plan for Pipestave/Mill Pond and the Conservation Restriction (CR) Boundary line agreement.

Town Manager Angus Jennings explained that the Mill Pond Committee and the Board of Supervisors want to review and update the [Management Plan](#) for the Pipestave/Mill Pond complex. Mr. Jennings has met with the Mill Pond Committee to go over the Plan and is collecting ideas from various stakeholder boards and committees. Once he has the comments collected, he will prepare a redlined version of the Plan and submit it to the stakeholders. Mr. Jennings reviewed the Mill Pond Committee's suggestions, which are largely of a housekeeping nature.

The Committee agreed to obtain a copy of the pertinent documents and review them at the next meeting. Ms. Reed said that a new Trail Management Plan relating has been signed by the Mill Pond and Open Space Committees. This was approved by the Commission and the state's Division of Fisheries & Wildlife

Natural Heritage & Endangered Species Program (Natural Heritage). This should be referenced in the Pipestave/Mill Pond Management Plan.

Mr. Jennings also explained that the deeded Essex Greenbelt [Conservation Restriction](#) for the Mill Pond/ Pipestave complex requires review to obtain a definitive boundary between areas subject to conservation restrictions as opposed to areas available for municipal use. This would be used to develop a Geographic Information System (GIS) shape file and to install markers that demark the boundary. The GIS file would become an updated exhibit to the CR. Mr. Jennings and others gone out to stake this as accurately as possible based on the plans and Global Positioning System (GPS) data will be derived stake locations.

In looking at the CR document, Ms. Mizner observed that the narrative describing the boundaries notes some discrepancies occur on the plans. *The Commission asked Mr. Jennings to determine what the discrepancies are.*

Mr. Jennings said that at this point the review of the CR boundaries is informational and work on this is occurring in tandem with review of the Mill Pond/ Pipestave Management Plan.

Discussion: Colin Hodgson, 15 Norino Drive --- Update.

Mr. Smith provided the Commission communications that Natural Heritage sent to Mr. Hodgson in May but that Mr. Smith received only recently. According to Natural Heritage's communications, Mr. Hodgson's use of the Merrimack Riverbank to store his houseboat requires prior Natural Heritage based on a Massachusetts Endangered Species Act (MESA) application, and because no such application has been filed or approval granted, such houseboat storage is in violation. Natural Heritage provided Mr. Hodgson information about the filing fee and the MESA checklist, as well as information about biologists qualified to perform the botany survey that will be required.

This May 2018 Natural Heritage communication comes in contrast to Mr. Hodgson's report to the Commission that he had not yet heard from Natural Heritage. More recently Mr. Hodgson left a voicemail for Mr. Smith indicating that Mr. Hodgson is expecting Natural Heritage to conduct a review to determine what if any endangered species might be present. Mr. Hodgson also seems to think he is exempt from the filing requirements Natural Heritage identified.

The Commission agreed to send Mr. Hodgson a letter again forwarding Natural Heritage's May communication to him, explaining that he is not exempt from the MESA filing requirements and he needs to make the filing before he gets an answer. Meanwhile, the houseboat cannot be moved to riverbank. Also, Mr. Smith will check to see if the houseboat is already at the bank and if so, inform Mr. Hodgson that this is a violation.

Discussion: OSPD Bylaw

Ms. Reed reported that the Planning Board's most recent proposed amendments (which did not pass at Town Meeting) to the Open Space Preservation Development Bylaw initially conflicted with Commission policy to the extent that the revisions proposed to reduce the buffer zone below the

25' line that the Commission uses. Ms. Reed contacted Town Planner Leah Zambenardi and the line went back to 25' in the proposal. This, however, indicates a larger question about the process going forward when zoning bylaws are revised. *The Commission agreed that Ms. Reed will contact Ms. Zambenardi about this issue.*

Discussion: Minutes of September 17 and October 1:

This was deferred to the next meeting

Other Business:

The Commission briefly discussed work at Drake's Landing. Among other things, with all the rain, temporary retaining ponds are full.

Next Meeting

November 19, 2018

Adjournment

The Commission adjourned at 9:41 p.m.

Meeting Documents

Presentations and records associated with each matter identified, as included in Mr. Smith's files.

Respectfully submitted,