

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:31 pm, May 18, 2020 Remote Participation via GoToMeeting.

Members Present: Via remote participation Dawne Fusco, Wendy Reed, Margaret Hawkins, Tom Atwood. Conservation Agent Bert Comins and Judy Mizner (acting as Chair) present in Town Offices and participating remotely.

At the outset, the Chair read the following statement: “Pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the West Newbury Conservation Commission will be conducted via remote participation to the greatest extent possible.”

Continued Public Hearing --- Notice of Intent DEP File # 078-0704 --- James Leclaire – 6 Waterside Lane – For construction of a dock system

At the beginning of this Public Hearing, Acting Chair Mizner reread the statement set forth above. She noted that no site walk had been conducted for this application, and the Commission had not yet received a response from the state’s Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage). George Zambouras, Consultant for the project, stated that he received a letter from Natural Heritage dated February 7, 2020. He shared that on the computer screen and said that Natural Heritage stated that the project will not adversely affect habitat, will not result in prohibited takings, and does not require additional conditions. Mr. Zambouras promised to email a copy of this letter to the Conservation Agent. Mr. Zambouras indicated that he does not believe that the issues the Department of Environmental Protection (DEP) raised apply here.

Ms. Mizner noted that a site walk is still required. Mr. Comins has not yet been out to inspect the site. Commission members raised questions about tree cutting and the large logs placed by the river. Mr. Zambouras said that the logs would be removed (increasing the flood storage capacity), and the applicant will try to locate the path in a way that minimizes tree cutting—but it is mostly scrub brush.

Ms. Mizner noted that it would be helpful to mark the location of the path before any site walk. The Commission discussed doing the site walk with social distancing and *determined to hold the site walk at 8 am on Friday, May 22, and continue this hearing to June 1, 2020.*

Public Hearing --- Request for Determination of Applicability --- Mark Corso --- 50 Garden Street --- For installation of an in ground swimming pool and construction of a patio and shed.

Acting Chair Mizner reread the statement set forth above. Consultant Greg Hochmuth stated that the wetlands had been delineated in 2016, and the property received a Certificate of Compliance from the Commission this past summer. Now the homeowners seek to build a pool and shed. To avoid the need for a Notice of Intent, the applicant is locating all the work at least 50’ from the wetlands. Erosion controls are still in place, and conservation markers are in place 25’ from the wetlands. Some of the excavation spoils will be used for grading, but most will be disposed of offsite. If any need to be stockpiled, the stockpiled spoils will be kept upland and away from wetlands.

By unanimous roll call vote, the Commission determined to issue a Negative Determination of Applicability,

conditioned upon the work remaining 50' from wetlands, any excavated soils being removed offsite or stored outside the buffer zone, and all subject to review of erosion controls and determination of their satisfactory condition by the Conservation Agent.

Discussion: Request for Certificate of Compliance. DEP File # 78-275. 16 Barberry Lane.

Mr. Comins reported that this matter stems from a July 1995 Commission Order applicable to the development. The applicant is asking for a partial Certificate of Compliance based on plans, which show that none of the work subject to the Order is on this lot. Others in the development with similarly situated lots have received a partial Certificate of Compliance.

By unanimous roll call vote, the Commission determined to issue a partial Certificate of Compliance because none of the work under the Order in question was proposed for or occurred on this lot.

Discussion: ECTA Trail Management Plan

Mr. Comins located and reviewed the Order of Conditions for the Essex County Trail Association (ECTA) trail maintenance plan, which was originally issued in 2009. It was renewed in 2017 but expired on March 13, 2020. ECTA believes that West Newbury has extended approval in perpetuity—which is not the case. The Order of Conditions requires an annual meeting between ECTA and the Commission. It requires that ECTA fill out a form to submit to the Commission before commencing work—requirements that have not reliably occurred. Also, it appears that ECTA is unwilling to allow other organizations to do trail work under this plan.

The Commission generally agreed that Ms. Mizner will draft a letter for Commission review to ECTA, inviting ECTA to the next meeting, reminding ECTA that the Order has expired, and reminding ECTA of the applicable requirements that need to be met.

Discussion: Budget/Town Meeting strategy

The Commission discussed reductions to the Commission's budget that keep the Conservation Agent pay rate below comparable pay rates in other towns and allow fewer than proposed hours for trail management. Ms. Mizner, who is also a member of the Personnel Advisory Committee, said that the Committee will be working on an analysis of grades and pay rates for town employees overall.

The Commission generally agreed to start with 2 hours/week for Mr. Comins' trail management work and document how that goes so that in next year's budget process, data will be available to support the budget request in this regard. The Commission members will attend Town Meeting prepared to support their budget.

Discussion: Withers Construction

Mr. Comins reported that he left a note at the site near the reservoir where trees were cut to build an elevated platform but heard nothing. Another source indicated that these were some high school kids who were not concerned about the impropriety of such activities. Mr. Comins and John Dodge of the Open Space Committee removed all the platform materials.

Mr. Comins will check back at the site after about a week. It was noted that this kind of activity is an example of Mr. Comins' trail management work.

Discussion: PIE Rivers Town Rep. Program

Ms. Reed said that Jennifer Hughes of Merrimack Valley Planning Council asked that towns provide a staff member and committee member as representatives. There is one meeting per year and email correspondence throughout the year. She said that she and Mr. Comins are interested in participating, and the Town Manager supports this.

The Commission generally agreed to this participation.

Discussion: Response to Town Manager correspondence/by-laws/Coffin St 40B development

Conservation by-laws or regulations. The Commission discussed the May 14, 2020 tutorial concerning 40B procedures and rules as applicable to the proposed development on Coffin Street. In that tutorial, it was explained that one of the few matters a Board of Zoning Appeals can successfully consider are more stringent-than-state wetlands protections contained in Town Conservation Commission by-laws or regulations. At this point, however, the Commission has no such by-laws or regulations.

The Commission discussed whether or how the Commission might enact such by-laws or regulations in the near term. Ms. Mizner noted that the short timeframe might be difficult, and the Commission currently has the authority to address the Coffin Street proposed project under the state wetlands protection act. Mr. Atwood said that a conservation by-law would be an improper way to address an affordable housing issue (i.e., 40B development), and it is important to get a certified housing plan to address affordable housing issues to prevent 40B projects in the future. Ms. Reed noted that this might be the time for the greatest Town support for additional wetlands protection by-laws and/or regulations. Ms. Fusco and Ms. Hawkins expressed interest in pursuing this further.

Ms. Reed agreed to investigate this issue and report back at the next Commission meeting.

Coffin Street 40B development & comments. Ms. Mizner noted that several potential issues affect the Coffin Street project in terms of wetlands protection. The prior owner was known to engage in significant earth moving on the site, so a careful examination of soils is critical. Also, the plans indicate several wetlands areas and two wetlands crossings. Further, abutter Kathy Feehery is in the process of certifying a vernal pool that is not only on her property but also the property to be used for the development. Ms. Feehery identified additional issues such as the proposed extensive waste treatment area and its potential impact on wetlands.

The Commission agreed to look through its records relating to prior wetlands issues on this property. Ms. Mizner will circulate draft comments to be sent to the Selectmen, identifying initial wetlands concerns based on the plans submitted to MassHousing.

Ms. Mizner noted that this proposal requires an extensive site walk, which will be difficult to conduct with social distancing. There is also an ANRAD filed, but not opened, and necessary wetlands delineation information has not yet been submitted. Thus it is unlikely the Commission can conduct the site walk before comments to the Board of Selectmen and Town Manager are due.

Mr. Atwood left the meeting.

Discussion: Other business

Ms. Reed inquired about 58 Ash Street. Mr. Comins said that erosion control is needed and he is in the process of finding the builder contact person with whom he can discuss this.

Also, Sullivan's Court developer Tom Neve, whose failed culvert has been an ongoing problem for the Planning Board and the Commission, sent a letter today. He asserts that he is doing everything he is supposed to do, and will not do anything to comply with the Commission and Planning Board letters concerning his violations until he meets in person.

Discussion: Review of Minutes

By unanimous roll call vote the Commission voted to accept the draft minutes of February 24 and March 13, as amended. By roll call vote 3-0-1 (Ms. Fusco, not present, abstaining), the Commission voted to accept the draft minutes of March 16, 2020, as revised. Remaining pending minutes were deferred to a future meeting.

Next Scheduled Meeting

June 1, 2020

Adjournment

The Commission adjourned 9:24 p.m.

Meeting Documents

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

Respectfully submitted