

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place: 7:30 pm, August 3, 2020, Remote Participation via GoToMeeting.**

**Members Present:** Via remote participation Dawne Fusco, Wendy Reed, Tom Atwood, Margaret Hawkins. 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 --- Request to Amend Order of Conditions DEP File # 78-555 --- Essex County Trails Association (ECTA)--- Amendments to town wide trail management plan**

Ms. Reed noted that the Commission had been awaiting the Selectmen's reaction to this plan—and they have now approved it. Carol Lloyd representing ECTA stated that ECTA incorporated revisions requested by the Open Space Committee, such as a photo of a bog bridge of the type intended for installation on Town trails and updated maps.

*By unanimous roll call vote, the Commission approved ECTA's town wide trail management plan, updated on June 22, 2020.*

### **Continued Public Hearing --- Request for Determination of Applicability --- Linda Tufts --- 82 Georgetown Road ---Installation of above ground swimming pool**

Ms. Mizner reported that the Commission conducted a site walk and determined that the pool work area will be over 50' from the wetlands, and that the site is generally flat, except for a slope where part of the pool will sit. The above-ground pool will be placed over a bed of sand, which will be contained with a frame retaining structure made of 4"x4" timbers. Ms. Mizner observed that during construction, the 4"x4" timbers can serve as a temporary erosion control system. Ms. Hawkins added that during the sitewalk, the Commission was told that work could be done in one day.

*By unanimous roll call vote, the Commission determined to issue a Negative Determination of Applicability conditioned upon applicant's 1) placement of 4"x4" timbers between the proposed pool area and the existing fence to serve as erosion control during construction, 2) disposal of any soil removed for the pool outside of the 100' buffer zone, 3) 72 hours' prior notice to the Conservation Agent, so that he can inspect and approve of the erosion controls before work begins.*

### **Continued Public Hearing --- Notice of Intent --- Sandra A. Schade --- 25 Bachelor Street --- Septic System upgrade**

Ms. Mizner said that the Commission's site walk showed that there is no other place to locate the septic system, even though it is only 39' from the wetlands. The area is flat and the proposed septic system is environmentally preferable. Applicant's consultant Jim Scanlon said that Norris

Environmental, which did the delineation, provided no data sheets.

Ms. Mizner raised a concern that regular mowing is occurring in an area delineated as wetlands, but the Commission has received no submissions explaining or justifying this. She suggested conditioning this project on a requirement of no such cutting unless and until the Commission receives such justification for making the wetlands into lawn. Mr. Scanlon stated that this area represents about half of the back yard (some 85-90") and that mowing has occurred since 1988 and thus may be grandfathered. Ms. Mizner stated that no grandfathering applies here. Speaking on behalf of the applicant, Heidi Roy stated that the homeowner is spending considerable money on a green septic system. Ms. Mizner identified that as a separate issue from the question of mowing wetlands.

The applicant's representatives explained that the proposed project has no Department of Environmental Protection (DEP) number because of a paperwork snafu at DEP.

*Because the Commission cannot issue an Order of Conditions without a DEP file number, the Commission agreed to continue this matter to the next Commission meeting on August 17. In response to Mr. Scanlon, the Commission indicated that should an Order issue, the applicant can start work at its own risk, during the 10-day appeal period. Mr. Scanlon also agreed to provide a letter about the moved wetlands issue prior to the August 17 meeting.*

#### **Continued Public Hearing --- Notice of Intent DEP File# 078-0708 --- Grant Stoffel --- 14 Dole Place --- Tree cutting and fence installation**

Ms. Mizner stated that the Commission's site walk resulted in a number of changes to the wetlands line and took about one and a half hours. She does not propose doing this again in the near future. The full size plan was not provided to the Commission, but a .pdf document was emailed. Applicant's consultant Mike Seekamp said that they have moved several flags and will be adding flags and providing a new plan once an engineer verifies the location on the ground.

Applicant Grant Stoffel indicated that tree cutting will occur between 30' and 50' from the wetland line. This is to provide more light for the house, the planned pool, and the planned solar installation. The tree removal will also provide a goat pasture. Mr. Stoffel said that measurements of shadow and sunline taken at winter solstice showed shading on the pool because of the height of the trees proposed for removal. Messrs. Seekamp and Stoffel did not know how many trees in the buffer zone would be removed—it could be 75-100. Twenty-one deciduous trees (birch, maple, oak) would be saved, all within the buffer zone. The proposal is to use an excavator, remove stumps, and dispose of all the removed wood offsite. The ground would be leveled, then grass suitable for goat grazing would be planted. A wood fence with wire mesh to contain the goats would be installed just outside of the 50' line from the wetlands, and Mr. Stoffel proposed to mow along the fence within the 50' buffer so that he can maintain the fence.

Commission members identified concerns with such matters as the extent of proposed tree cutting, removal of stumps, extension of mowing within the 50' buffer. Mr. Seekamp suggested some alternatives including leaving stumps in place nearer to the wetlands. Mr. Stoffel mentioned that no work was planned within 25' of the wetlands.

*By unanimous roll call vote the Commission determined to issue an Order of Conditions for the tree cutting with standard and special conditions, including applicant's 1) installation of erosion controls along the line shown on the plan as a heavy black line; 2) marking of the 21 trees to be saved; 3) 72 hours' prior notice to the Conservation Agent allowing his inspection and approval, prior to the start of work, of a) erosion controls and b) trees to be saved; 4) disposal of any cut vegetation off the property; 5) allowing stumps closer than 50' to wetlands to remain in place and leveling and revegetating areas where other stumps are removed; 6) installation of permanent markers (4"x4" pressure treated posts, 4' aboveground, 4' underground with a medallion on top) every 25' along the 50' line demarking protected no-cut areas, with no mowing within the 50' buffer to the wetlands (the fence can be located further from the wetlands to allow mowing on both sides without going over the 50' line); 7) no use of herbicide, insecticide, or pesticide in the buffer zone, and use of only low nitrogen fertilizer, in moderation; 8) provision to and receipt of Commission approval for details of the fence installation prior to any fence construction.*

**Public Hearing --- Request for Determination of Applicability --- Raymond & Erin Antonopolous --- 2 Gunners Hill Road --- Installation of in ground swimming pool**

Mr. Comins displayed a hand-drawn plan describing a proposed swimming pool, which applicant Erin Antonopolous described as being located 90' from a stream and 75' back from the goat project at 14 Dole Place described above.

Ms. Mizner and Ms. Reed explained that to evaluate this proposal, the Commission needs a wetlands delineation submitted by the applicant. When Ms. Antonopolous stated she had relied on the Conservation Agent to identify the wetlands, Ms. Reed explained that Mr. Comin's courtesy visit was to give general guidance about the likely location of wetlands—not to provide a definitive delineation. Having searched the Commission's records, Ms. Mizner said that in 1993, Lelito Environmental Consultants performed a wetlands delineation for this property. Ms. Antonopolous might want to start by contacting them to see if they could update previous work.

*The Commission continued this matter until additional information is provided.*

**Public Hearing --- Request for Determination of Applicability --- James Mclellan --- 229 Middle Street --- Construction of 12'x14' deck**

Mr. Comins explained that this is a post hoc review of activity that already occurred. In connection with construction of a deck, applicants dug and installed three sono tubes located more than 50' from wetlands. Applicants were not aware of wetlands issues until they applied for a building permit. Mr. Comins, who visited the site, said that erosion controls are now in place. The terrain slopes a bit at the sono tubes and then flattens out.

*By unanimous roll call vote the Commission determined to issue a Negative Determination of Applicability for the installation of three sono tubes more than 50' from wetlands.*

**Public Hearing --- Notice of Intent DEP File# 078-0709 --- Thomas Neve --- Lot 6 Sullivans Court --- Construction of Dock**

Consultant Greg Hothmuth said that developer Thomas Neve would like to have a dock permitted

to enhance the marketability of this lot. Like other docks on the Merrimack in town, this would have a wood platform & seasonal dock/ float, with a minimum of 18" clearance off the river bottom at all tide levels. A problem is the shallow stretch of the river bottom at this location. The proposed dock would be 234' out into the river, but it could only accommodate a small Boston Whaler type boat. A larger boat would require a mooring farther out. The applicant has not yet received a letter from the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage). The dock is proposed to be located at a relatively flat area on the riverbank that has been long used as a boat ramp. Someone other than the applicant covered this area in astroturf and an abandoned boat trailer is hidden amongst the vegetation, along with riparian debris.

Mr. Hochmuth said that this project would require no tree cutting and would involve 4 sono tubes. A small amount of flood storage would be lost, but the applicant would be willing to provide compensatory flood storage. Mr. Hochmuth indicated that his current intent is to get the discussion started with the Commission. Ms. Mizner said that the Commission will need to look at the wetlands delineation. Mr. Hochmuth noted that the delineation was done this past fall. He indicated he would prefer to have the site walk now, so that any changes can be included in a revised plan.

*The Commission scheduled a site walk for Friday, August 14 at 8 am, and continued the hearing on this matter to the August 17<sup>th</sup> meeting.*

#### **Discussion: Lot 6 Sullivans Court Culvert**

Mr. Comins reported that he recently visited this site. Developer Tom Neve wants to know if he can build his gravel containment system at the gravel driveway atop the culvert above a stream. The Commission discussed the need for Mr. Neve first to rectify problems associated with the culvert's integrity and with improper deposits of gravel and sediment in the stream. The Commission reviewed photos of the concrete wing block on the downstream side of the culvert from February 2020 and August 2020. The block has shifted and erosion has occurred under its base. It appeared from the photos that erosion is worsening. The Commission noted that the Planning Board consultant Meridian is no longer pursuing this.

*Mr. Atwood suggested, and the Commission concluded, that a site walk be held on August 14 and the Commission will address this matter at its next meeting on August 17.*

#### **Discussion: Scenic Road Bylaw**

Ms. Reed said that one of the new homes on Ash Street came before the Planning Board for a violation of the Scenic Roads Bylaw, which protects trees and stone walls along all town roads except Main Street. At this home, a tree was cut and stone wall destroyed to accommodate a driveway. The homeowners will have to buy a tree to rectify this. Ms. Reed suggested that since the Commission reviews many construction projects, it may be able to work with the Director of the Department of Public Works/Tree Warden to add this issue to the form for Commission review.

#### **Discussion: Other business**

Drakes Landing Ms. Fusco noted that again, serious issues of erosion and silty storm water occurred

at Drake's Landing during the most recent heavy rain. Ms. Hawkins provided photos, which Mr. Comins shared on screen, of a small river of silty water running down the entry road to Drake's Landing, turning in front of the Carr Post. Ms. Hawkins said that it ended in a temporary muddy pond in her front yard. Mr. Comins reported that by the time he arrived on Monday morning, the scene had been cleaned up. The Commission remarked that the same thing happened before in heavy rains, raising concerns of poor maintenance/clearing of the drains, inadequate street sweeping and/or a need for remedial redesign of storm water management.

*The Commission generally agreed that Mr. Comins should contact Drake's Landing development officials and the Town Planner, since the Planning Board consultant Meridian is supposed to be involved with this. Mr. Comins should ask the Drake's Landing officials to come to the next Commission meeting to address this issue.*

Pipestave—Riding & Driving and Park & Rec competing events Ms. Fusco noted that it appears that both the annual Riding & Driving Club horse event and the flag football jamboree have scheduled Pipestave Hill (which cannot accommodate both) for September 13, 2020. The Town Manager has asked for any Commission comments on this. Ms. Reed suggested that this inquiry is just a courtesy in case the Commission wishes to comment.

*The Commission agreed to reply that since neither wetlands nor land ConCom supervises is involved, the Commission has no comment on this issue.*

Ch 61A Grew Property Right of First Refusal The Commission has been asked to comment on the potential for the town to exercise a right of first refusal to purchase a 4.358 acre portion of riverfront property at the Grew property for \$250,000. The Commission discussed this and determined not to advocate town acquisition of the property.

*By unanimous roll call vote the Commission determined to send a letter stating that it does not request that the Selectmen exercise the right of first refusal to buy the property. Ms. Mizner will obtain a prior Commission communication to this effect and draft a response for Commission review.*

### **Discussion: Review of Minutes**

*By unanimous roll call vote, the Commission approved the minutes of July 20, 2020, as amended.*

### **Next Scheduled Meeting**

August 17, 2020

### **Adjournment**

The Commission adjourned at 9:49 pm.

### **Meeting Documents**

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

Respectfully submitted

