

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place: 7:30 pm, October 5, 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, Ms. Reed 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# 078-0712 --- City of Newburyport Department of Public Services --- Lower Artichoke Spillway --- Construction of stone foundation at lower Artichoke spillway**

Conservation Agent Comins reported that the applicant has asked that this matter be continued. The affected areas had been delineated, but will have a new delineation and new plan. They will be trying to set up a new site walk before the next Commission meeting.

### **Continued Public Hearing --- Notice of Intent DEP File# 078-0713 --- Neil Angis --- 9 Newell Farm Drive --- construction of in-ground pool, patio and shed**

It was reported that the Commission did have a site walk. Consultant Mary Rimmer stated that this is a straightforward buffer zone project. All work on the pool and shed will be at least 50' from the wetland except the fence will be closer. Ms. Rimmer stated that the fence behind the tree line will be chain link where not visible, and will be more decorative within view of the yard. Work is expected to begin in the spring of 2021.

*By unanimous roll call vote the Commission determined to issue an Order of Conditions for the proposed pool, shed, and fence project, subject to standard and special conditions that applicant 1) commence work no earlier than April 15, 2021, 2) maintain the area 25' from the wetlands as an undisturbed natural vegetation area, 3) hand-dig posts for the fencing beyond the erosion controls, 4) dispose of any spoils outside of the buffer zone, 5) install erosion controls and receive Conservation Agent approval prior to starting any work, 6) dispose of any excavated materials that are not re-used offsite, 7) dispose of any water (greater than 1' in depth) removed from the pool for maintenance or other reasons of offsite unless stored and reused in the pool; and 8) dispose of any water (less than 1' in depth) removed from the pool for maintenance or other reasons outside the buffer zone.*

### **Public Hearing --- Notice of Intent DEP File# 078-0714 --- Aubrey & Joe Gruttadauria --- 44 Coffin Street ---Construction of single family home, driveway and septic system**

Consultant Greg Hochmuth stated that Paula Cutter, the homeowner at 44 Coffin Street, intends to carve off some land so that the applicants, her daughter and son-in-law, can build a home. He said that the plans have been submitted to the Planning Board and the Board of Health.

Mr. Hochmuth noted that wetlands above this property drain into wetlands across the street. The

work will involve a 24" culvert in a drainage ditch/intermittent stream paralleling Coffin Street in connection with the driveway crossing. In response to Ms. Mizner, Mr. Hochmuth said he would be happy to share the calculations supporting the culvert sizing.

The house would be 52.4 feet from the wetland and the driveway would be near the wetland edge. Mr. Hochmuth said that with planned grading, water would drain around the house and into the ditch/intermittent stream at the roadside. Some trees would be pruned or removed for this project.

Elisa Grammer, an abutter whose property is across the street, stated that she has no objections to this project.

*The Commission scheduled a site walk for 8 am on October 18, and continued the matter to October 19<sup>th</sup>.*

**Public Hearing --- Notice of Intent DEP File# 078 --- Charles Spencer --- 83 Ash --- Septic system upgrade, construction of barn and extension of gravel driveway**

Consultant Jim Scanlon showed plans for a 25' x 36' barn, a minor driveway extension (with a small wall at the driveway), and a standard new stone and pipe septic system. Work would be 71' from the wetland. Wetlands delineation occurred in 2019. Mr. Scanlon said he does not have data sheets from the delineation, but will ask. The flags, he said, are still there. Ms. Reed noted that the Commission is routinely asking for data sheets.

*The Commission scheduled a site walk on October 18 around 9 am and continued the matter to October 19<sup>th</sup>. Mr. Scanlon also agreed to provide additional details about the proposed retaining wall by the driveway*

**Discussion: 119 Bachelor Street DEP File# 078-0651 Request for Certificate of Compliance**

Consultant Mary Rimmer stated that this project had two replication areas under consideration for the Certificate requested. Mr. Comins said that he was at the site with Ms. Rimmer on Friday morning. Ms. Rimmer said that the replication areas are in good shape with 75% coverage. While much of the coverage may look like grass, it is really is sedges and rushes. The vegetation, including shrubs, are thriving notwithstanding some deer browse.

*By unanimous roll call vote, the Commission determined to issue a Certificate of Compliance, to be issued after removal of erosion controls.*

**Discussion: 13 Steed Ave Enforcement Order**

Mr. Comins stated that this matter involves potential filling of wetland with 6"-12" depth gravel dumped in the area in question. Mr. Comins met with the homeowner on Thursday of last week and issued an Enforcement Order the same day. Mr. Comins said he met with the homeowner and wetlands consultant Tom Hughes on the same day as this meeting. Mr. Hughes will be delineating the wetlands. A plan reflecting that delineation will be provided soon and the applicant will file an after the fact Notice of Intent soon.

*By unanimous roll call vote, the Commission determined to amend the enforcement order to allow reseeded. The*

*Commission noted that the property owners should 1) conduct an examination of soils under the gravel dump, 2) remove logs, garden waste, etc. from wetlands resource areas, 3) rake and hydro seed bare soils, with prior approval from the Conservation Agent.*

**Discussion: 72 Coffin Street violation**

Mr. Comins said that he met with the new homeowner, who stated that the perhaps 40+ trees removed (unknown species, apparently proximate to wetlands resources) were potentially threatening the house. Mr. Comins also stated that he spoke with the Building Inspector, who knows of no additional projects planned for this lot. The homeowner built the new deck and obtained the permit. Consultant Tom Hughes said he will provide a delineation as soon as possible.

*The Commission generally agreed that applicants will 1) submit a current delineation and an after-the-fact filing as soon as possible, and 2) adhere to revisions to the existing enforcement order, proscribing any further work, including stump removal.*

**Discussion: 72 Ash Street DEP File# 078-674 winter work request**

The applicant had no representatives present. Mr. Comins explained that the developer of three new houses on Ash Street close to the swamp is asking for an extension to continue work until October 29, after the October 15 cut off. The site is reasonably flat, and although some piles of fill next to the driveway require stabilization, that is not related to the extension sought.

None of the properties has a septic system installed. The septic systems will be in front of the homes and outside the buffer zones. Some grading will, however, take place in the buffer zones.

The Commission discussed options for stabilization, considering erosion controls, winter rye or sod, and/or moving the soil piles. Since this is a priority area for Blandings turtles, the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) should be consulted.

*The Commission generally decided that Mr. Comins will contact the applicant and seek more detail about the proposed work. It agreed that work could continue until October 20, and after more information is provided, the Commission will determine whether to extend permission for work beyond the 20<sup>th</sup>.*

**Discussion: 409 Middle Street DEP File# 078-666 winter work request**

Consultant Greg Hochmuth stated that this property is at the corner of Garden & Middle Streets. He said that this property faces the same hurdles as the prior docket item: the pandemic has slowed work down, the property owners seek to install a septic system, the property is relatively flat, the work area is surrounded by wetlands but there's not much threat and the applicant is willing to monitor the work. The septic system would be within 75 feet of the wetland, and work would be done by November 7, 2020.

The Commission discussed with Mr. Hochmuth measures to stabilize the site (planting winter rye, sod, erosion control, etc) and Mr. Comins pointed out that large piles of soil are on the site.

*By unanimous roll call vote, the Commission authorized the requested extension to 11/7/2020 , with the proviso that the 1) applicant's erosion controls are inspected and approved by the Conservation Agent, and 2) the area disturbed by septic installation will be stabilized by planting or winter rye, or other alternative means deemed necessary by the Commission.*

**Discussion: 87 Main Street planting plan**

Developer Robert Johnson said that he is seeking confirmation of the planting plan associated with the development whose permitting approvals he purchased. He noted that the plans called for identified trees and shrubs.

*By unanimous roll call vote, the Commission accepted the planting plan, with red maples located closer to the homes and spacing of the shrubs to provide for adequate light.*

**Discussion: Artichoke Reservoir stream crossing**

Mr. Comins said that he received an email inquiry whether the Commission viewed a proposed Middle Street bridge replacement as a river project. He indicated that Newburyport has stated it would treat it as a reservoir project. Ms. Mizner read the definition of a river beginning as a perennial stream and normally remaining a river except where interrupted by a lake or pond. She favored taking a look at the site before the Commission made any decision. Mr. Comins said it would be possible to do tests to determine the flow at the bridge.

Ms. Fusco said she favors assuming it is a stream crossing. Mr. Comins has spoken to DEP and one suggestion was that the applicant meet the stream crossing standards without a determination. That would not create a precedent.

**Discussion: River Meadow – Sullivans Court trail**

Mr. Comins said that Ms. Reed found that considerable yard waste has been dumped at the area by the proposed trail and bare dirt is exposed in the buffer zone, with indications that heavy equipment has been used. This occurred in the past week.

*Mr. Comins will contact the Town Department of Public Works (DPW) to determine whether this was a Town activity. If not, he will contact a River Meadows Homeowners Association representative to find out who has been doing this. He will also ask DPW if they have signs indicating that such activity is not allowed, and, if they do not, will obtain signs.*

**Discussion: Management of invasives in imported fill**

Ms. Reed reported that the Town's climate change Municipal Vulnerability Preparedness (MVP) Working Group is working on a program to control invasive plants, notably Japanese knotweed. A concern is that even after some invasives are controlled, "clean" fill soils may introduce them all over again. Elisa Grammer, who is also on the MVP Group, noted that knotweed is visible by the new tennis courts and track behind the Middle School, and it may have been introduced with fill soils. Screening the soils in advance may be difficult: knotweed, for instance, can root and take over if any

small part of the plant is present. A suggestion was to add a condition to monitor for and suppress certain invasive plants for a period of years whenever fill soils are used. This could educate homeowners and developers and perhaps reduce spread. *Ms. Mizner suggested taking a look at clean fill provisions and taking this issue up at the next meeting.*

#### **Discussion: Future meeting with KP Law**

Mr. Comins said that a Commission meeting with KP Law about procedures that might be used for the large 40B project on Coffin Street would not be in executive session. The Town Manager would like to participate in such a meeting. Mr. Comins said that if the Commission could schedule around the Selectmen's Monday meeting schedule, this matter could be on the next Commission agenda.

Mr. Comins added that the Commission received another letter from Cottage Advisors, the Coffin Street 40B developer, asking that the Commission begin review of the project. Ms. Reed noted that other developers, including the Deer Run project developer, will also be asking for Commission action. She suggested that the Commission develop clear criteria for what will or will not go forward. Ms. Mizner said that the Commission will need to determine how to proceed and move forward after that. Ms. Fusco noted that the Commission needs to receive plans from the developer first. Mr. Comins reported that Topsfield ConCom is shut down, Hamilton is proceeding but with no large projects, and West Newbury so far has been reviewing smaller single home projects. Ms. Hawkins inquired as to whether a wildlife evaluation should be undertaken.

*The Commission determined to 1) look into obtaining a 3<sup>rd</sup> party wetlands delineation and have prospective delineators join the next Commission meeting, 2) have Mr. Comins ask the Town Manager and Town Counsel for guidance on process, and 3) have Mr. Comins seek advice from the Department of Environmental Protection circuit rider.*

#### **Discussion: Wetlands protection bylaw**

The Commission discussed a proposed wetlands bylaw. Perhaps an executive summary would assist voters in understanding this. A handout at Spring Town Meeting could also be useful. Ms. Mizner noted that the current draft is based on existing bylaws of other municipalities. The Commission also discussed timing of submission of proposed bylaws to the Massachusetts Attorney General.

#### **Other Business**

Signatures When Mr. Comins said he needed two more Commission member signatures to issue a Notice of Intent, the Commission discussed the difficulty in accessing the building, particularly with work schedules. Mr. Atwood stated that the Board of Assessors has adopted a means of electronic signing, which works very well and solves the COVID-caused problem. *Mr. Atwood will forward information about electronic signing to Mr. Comins.*

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

*By unanimous roll call vote the Commission accepted the minutes of September 21, 2020, as amended.*

#### **Next Scheduled Meetings**

October 19, 2020.

**Adjournment**

The Commission adjourned at 10:14 pm.

**Meeting Documents**

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

Respectfully submitted