

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, January 15, 2021, Remote Participation via Zoom.

Members Present: Via remote participation Chair Dawne Fusco, Wendy Reed, Judy Mizner, Margaret Hawkins, and Conservation Agent Bert Comins.

At the outset, Ms. Mizner 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.”

Discussion: 387 Middle Street

The property owner, Jennifer Attenborough was present, along with her attorneys Olympia Bowker and Lisa Mead, and her consultant Greg Hochmuth. The prospective purchaser of this property, Chelsea McCarron, was present as well.

Canvas shed, gravel drive, yardwaste debris pile

Mr. Hochmuth said that the property owner sent the Commission another letter (which referenced the prior letter and included it as an attachment) discussing plans for removal and restoration with respect to the canvas shed, gravel drive, and brush pile in the wetlands.

Ms. Bowker and Ms. Mead explained that the new letter was sent to assist the Commission, to be issued by the Commission as a means of resolving this matter, with a universal understanding that the removal and restoration will occur, even if the house is sold. This letter includes no substantive changes from its predecessor supplied by the property owner, except that timeframes are added to the tasks to be undertaken. After Ms. Mizner and others said that they had not seen this letter, it was shared on the computer screen. *Mr. Hochmuth will ensure that the Commission members receive the letter under discussion.*

Mr. Hochmuth noted that the gravel would best be removed as early as possible in the spring to promote regrowth of grass. In response to Commission questions, Mr. Hochmuth said that the gravel could be removed now, but that would leave open earth that would need to be rescarified for seeding. He added that some 80% of the gravel area has revegetated, making its removal counterproductive, but some patches of gravel and gravel under the canvas shed require removal. Ms. Attenborough said that her intention is to have the septic repair contractor, who is ready to start work now, remove the shed and debris pile. It was also noted that as concerns the pending real estate transaction, an escrow has been established to ensure satisfactory completion of the septic replacement.

The Commission discussed revisions and items to be added to the letter, such as requirements that

gravel removal be done with inspection and approval by the Conservation Agent, and Conservation Agent inspection at the end of the growing season.

As to the mechanism for closing out this matter (enforcement order, letter, etc), Ms. Bowker said that where, as here, the property owner is seeking to become compliant, the Department of Environmental Protection (DEP) recommends a letter such as the one property owner has provided for the Commission to use. An enforcement order, she said, would be heavy handed in these circumstances. She added that the Commission will also have an opportunity to review compliance with respect to the shed/gravel/debris pile restoration program when it considers issuance of a Certificate of Compliance for the septic replacement at this property. Moreover, the last paragraph in the proposed letter reserves to the Commission the right to take enforcement action in the event of noncompliance.

Lawn mowing in wetlands

Prospective homebuyer Chelsea McCarron asked whether the issue of continued lawn mowing in the wetlands (*viz.*, the home's backyard) had been resolved. The Commission consulted Town Counsel on this matter but received no reply. Mr. Comins said that he provided DEP staff the legal interpretation materials the property owner's lawyers had developed, then discussed the matter with DEP, and prepared a summary of that discussion. DEP indicated that continued mowing of a lawn that was in existence prior to the wetlands protection regulations is not generally a violation. In review of proposed work, the Commission may establish no disturb zones. Ms. Mizner noted that "lawn" is not defined, and Mr. Comins said that he is seeking clarification of that from DEP.

Ms. Mizner said she would like to see a demarcation of the area of permissible mowing so that no inadvertent expansion of mowing in wetlands would occur. She suggested that the standard 4"x4"x 8' pressure treated posts could be installed at a height of 4' to mark a no-disturb area along the line demarcating the lawn as shown on the plan the property owner has submitted. Shrubs were proposed as a possible alternative to posts. Ms. Hawkins said that she also understood that large stones would be installed at the gravel driveway entry to thwart continued use of the way into the wetland by vehicles.

Ms. Mizner moved that the Commission issue a letter, based on that provided by the property owner, to memorialize the restoration plan for canvas shed, gravel and debris pile, with additional provisos and revisions discussed at this meeting including requirements that the property owner's professional wetland scientist consult with the Conservation Agent before work is done and after work and seeding has been completed and a growing season has passed so that a final determination can be made that adequate vegetation is in place. *By unanimous roll call vote, the motion was approved with an amendment requiring the homeowner to install post markers or other markers approved by the Commission, under the Agent's supervision, to define the edge of mowable wetland. Ms. Mizner will prepare the revised letter.*

Discussion: Conservation Restriction Monitoring Contract

Mr. Comins said that the term of the contract with Jennifer Hughes of Merrimack Valley Planning Council has expired. He added that the work is largely done but they did not complete the actual

reports. If the contract were extended for another month, that could be finished—or Mr. Comins could do it.

Ms. Reed asked if Ms. Hughes submitted monthly invoices, as stipulated in the contract. Mr. Comins said none had been received and that he did not know how many hours Ms. Hughes has spent on this. *Mr. Comins will obtain the invoices; the Commission generally agreed to extend the contract.*

Discussion: Other Business

Process for members signing documents The Commission discussed means, in this period COVID-constrained access to Town offices, of improving or facilitating its process for members to sign orders and issuances once they are ready. Ms. Fusco said that she knows of no way the Commission can use an e-signing or remote signing process and that it will continue to have a box in the Town offices vestibule with Commission documents for signing, which members will need to check on.

Commission submission for Annual Town Report *Mr. Comins will circulate to Commission members a draft of the Commission's submission.*

Discussion: Next meeting

The next Commission meeting will take place on January 25. February meetings will be held on the second and fourth Mondays of the month.

Adjournment

The Commission adjourned at 8:16 pm.

Meeting Documents

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

Respectfully submitted