

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, January 4, 2021, Remote Participation via Zoom.

Members Present: Via remote participation Chair Dawne Fusco, Wendy Reed, Margaret Hawkins, Tom Atwood (who joined shortly after the meeting began). Conservation Agent Bert Comins and present in Town Offices and participating remotely.

At the outset, Mr. Comins 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

The matter was continued at the applicant's request.

Continued Public Hearing --- Notice of Intent DEP File# 078-0717 --- West Newbury DPW - -- Town Wide --- Management of hazard trees

The matter was continued at the applicant's request.

Continued Public Hearing --- Notice of Intent DEP File# 078-0720 --- Philip & Susan Aberizk --- 89 River Road --- Construction of detached garage, driveway extension and temporary access road

Contractor Russell Mailloux, of Mailloux Brothers Construction, said that the applicant submitted a new plan addressing changes decided upon at the last Commission meeting, including relocated erosion controls. The Commission confirmed that state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) signed off on the proposed work.

By unanimous roll call vote, the Commission issued an Order of Conditions for this project as proposed on the current plan, with work not to commence prior to April 15, 2021.

Continued Public Hearing --- Notice of Intent DEP File# 078-0719 --- Nancy Pau and Albert Ting --- 183 River Road --- Construction of home, driveway and wetland crossing

Nancy Pau and Albert Ting, the new owners of this property, appeared before the Commission and noted that Tim Collins, their consultant, has provided revised plans describing the temporary wetlands crossing to the septic system and explaining the construction sequence. The applicants sought to determine if there are other issues of concern relating to the proposed project beyond the eagle nest that requires review from Natural Heritage.

No other issue was identified. Ms. Pau said that she is working with Natural Heritage to develop the eagle protection plan. The Commission will need a resolution of that issue before acting.

The matter was continued to the next Commission meeting.

Discussion: 28 Coffin Street Abbreviated Notice of Resource Area Delineation (ANRAD) peer review candidate interview

This matter was not discussed because on January 4, 2021, the applicant withdrew its ANRAD without prejudice.

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Continued Public Hearing – Abbreviated Notice of Resource Area Delineation DEP File # 078-0707 --- Cottage Advisors --- 28 Coffin Street --- Confirmation of Resource Area boundaries at 28 Coffin Street --- Selection of Peer Review Consultant---

This matter was not discussed because on January 4, 2021, the applicant withdrew its ANRAD without prejudice.

Continued Public Hearing --- Notice of Intent DEP File# 078- 0722 --- John Graf --- 14 Kimball Road Lot 1 --- Construction of paved driveway and grading

Consultant Greg Hochmuth said that the Commission's site walk resulted in no changes to the A series of wetlands flags pertaining to the driveway work under consideration, which was sited at the edge of the buffer zone in order to protect a group of trees at the roadside. He explained that the B series flags were missing. They were located on a neighbor's land, and even without the flags, it was apparent that the proposed work will be more than 40' outside of the 100-foot wetlands buffer zone. The revised plan does not show the flags. Mr. Hochmuth said that this B series wetlands line can be revisited if work is proposed that would impact the series B wetland resource.

In response to Ms. Hawkins, Mr. Hochmuth confirmed that this change has no impact on the turtle protection plan. *Mr. Hochmuth committed to provide a copy of the turtle protection plan for the Commission's files.*

Mr. Hochmuth said that the Planning Board has signed off and that the Board of Health approval is just awaiting recording of the Planning Board's ANR (Approval Not Required) determination, which will create the new lot. In response to Ms. Fusco's observation that the Commission usually acts after Board of Health approval, Mr. Hochmuth said that the applicant wants to have all the approvals in place.

By unanimous roll call vote, the Commission issued an Order of Conditions, contingent on Board of Health approval of the septic plan and compliance with the Natural Heritage requirements for turtle protection.

Continued Public Hearing --- Notice of Intent DEP File# 078-0721 --- John Graf --- 14 Kimball Road Lot 2 ---Construction of paved driveway and grading

Mr. Hochmuth said this property, part of the same development discussed above, has the same

wetland and Blandings turtle protection plan as well. The driveway and its grading will be at least 25' from the wetland and the plan is for recontouring the hill, and applying loam and seed.

Some of the swale feeds the wetland, Mr. Hochmuth said. To keep the turtles out, trenched silt fencing will be installed, with a buried 6" flap to form a seal. Additional erosion controls would need to be placed inside the silt fence, on the work side, so the turtles can not climb in.

By unanimous roll call vote, the Commission determined to issue an Order of Conditions for the driveway and grading, with standard conditions and a condition requiring installation on a 12" mulch sock inside the silt fence between flags A1 to A5.

Continued Public Hearing --- Notice of Intent --- Deer Run Land Development LLC --- 519 Main Street --- Construction of roadway and stormwater management areas, wetland fill and replication

Consultant Chris Sparages said that the Commission conducted a site walk and no changes were made to the wetlands lines, although one flag was eliminated at the back of the property. The final plan will remove flags of no relevance to the project and a letter will be submitted explaining this.

Now that the wetlands lines are agreed upon, the applicant will respond to comments from the Planning Board's consultant Meridian. The applicant will also respond to storm water concerns raised by abutter Valerie Gingrich, who sent letters to both the Commission and the Planning Board.

Ms. Reed noted some concern about existing trails traversing wetlands—some may require crossing bridges. Mr. Sparages said that new trails will not be in resource areas, and that the changes in grade would make it difficult to make the trails ADA compliant.

The Commission is awaiting DEP comments and resolution of the Meridian comments before action can be taken.

The matter was continued to the next meeting.

Public Hearing --- Request for Determination of Applicability --- Middle Street Holdings LLC --- 414 Middle Street --- Construction of a driveway

Greg Hochmuth said that the applicant was ready to start work on the driveway when the contractor noticed a wetland area across the street. No earthwork was done and this RDA was submitted to the Commission. Mr. Hochmuth said that only the driveway and a 12" reinforced concrete pipe (RCP) culvert would be in the buffer zone, 34-40' from the wetland. The applicant will install erosion controls in case there is a heavy rain. Mr. Hochmuth added that the crowned road will prevent runoff from going across the street into the wetland.

Mr. Hochmuth said that the applicant would like to start as soon as possible. The Commissioners advised that they usually allow work during the winter period only in the case of an emergency, such as a failed septic system, and stressed their desire to act consistently. Mr. Hochmuth said that this

work would cause minimum impacts: it is a small area, a stone wall is in place to hold back sediment, erosion controls will be used, exposed areas would be covered with straw and then planted in spring. In response to Ms. Hawkins' inquiry about heavy construction vehicles passing through, Mr. Hochmuth said that riprap could be applied at the end of the driveway to catch mud.

At Ms. Reed's request, Mr. Hochmuth agreed to provide a written submittal detailing the measures that would be taken to justify this work during the winter ban. The matter was continued to the next meeting.

Discussion: Review of minutes

By unanimous roll call vote, the Commission approved the minutes (as revised) of November 16, November 30, and December 7, 2020. By 3-0-1 roll call vote (Mr. Atwood, not present, abstaining), the Commission approved the minutes of December 10, 2020, as revised.

Discussion: Schedule second January meeting

The next Commission meeting will take place on January 25.

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.

Regarding the question of continued mowing of the lawn in the backyard of this property, whose replacement septic system was approved at the last Commission meeting, Mr. Comins said that he provided the Department of Environmental Protection (DEP) with materials submitted by the property owner's attorneys and was told that DEP would have a response by the end of this week, clarifying whether such mowing is an allowed grandfathered activity or a violation of wetlands protection requirements. Mr. Comins had not yet spoken with Town Counsel about the issue.

Ms. Bowker said that a closing on the sale of this property is scheduled for January 19, 2021, and asked if a Commission meeting could be held before that date to resolve the lawn mowing issue. *It was agreed that Mr. Comins will consult with the Town Manager and reach out to Town Counsel, and a Commission meeting will be scheduled sometime around the end of next week, after an answer is received.*

Mr. Comins added that the property owner submitted a written restoration plan to remove a canvas shed and gravel from the wetland. Mr. Hochmuth described the plan to dismantle the canvas shed, remove railroad ties, remove a landscape debris pile, and take away the gravel that is loose and accessible. Erosion controls would be placed where the gravel under the shed had been taken away. Mr. Hochmuth said that in some places, vegetation is growing through the gravel and removal of the gravel would do more harm than good. The work will be done with hand tools and a break in the stone wall will be filled with large rocks.

Ms. Attenborough asked if the canvas shed could be removed immediately, noting that she would like to move forward with this. Mr. Hochmuth noted that this can be done with no ground disturbance and would not adversely affect the wetlands restoration. Ms. Reed said that she agreed

that this work is better done in winter.

By unanimous roll call vote the Commission approved removal of the canvas shed by hand, with no vehicles driven over the wetlands in the process.

Discussion: Wetlands protection bylaw

Ms. Reed noted that the Commission needs to move forward if it plans to submit this bylaw at Spring Town Meeting. *Ms. Hawkins will send her draft summary of the bylaw to Mr. Comins for circulation to the Commission members. The Commission generally agreed that it will do groundwork with the Selectmen, the Planning Board, the Open Space Committee, the climate change Municipal Vulnerability Working Group, and with the Department of Public Works.*

Discussion: Other business

Mr. Comins will set up a box in the foyer of Town Offices so that Commission members can pick up a hard copy of plans associated with matters before the Commission.

Ms. Reed suggested that the Commission inform members of the public at the beginning of the meeting that certain items will be continued or not taken up, so that those no longer interested need not wait to learn of the change to the agenda.

Adjournment

The Commission adjourned at 9:08 pm.

Meeting Documents

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

Respectfully submitted