

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, February 22, 2021, Remote Participation via Zoom.

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, 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.”

Continued Public Hearing --- Notice of Intent (NOI) DEP File# 078-0712 --- City of Newburyport Department of Public Services --- Lower Artichoke Spillway --- Construction of stone foundation at lower Artichoke spillway

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

Continued at the applicant’s request.

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

Continued at the applicant’s request.

Continued Public Hearing --- Notice of Intent DEP File # 078-0724 --- Town of West Newbury --- Middle Street Artichoke River Bridge --- Reconstruction of bridge

Continued at the applicant’s request.

Public Hearing --- Request for Determination of Applicability --- Pentucket Regional School District (PRSD) --- 22 Farm Lane Parcel A --- Construction of maintenance garage and parking area

Continued at the applicant’s request.

Public Hearing --- Notice of Intent --- Gorman Homes LLC --- Middle Street Assessors Map 22 Lot 2 Builders Lot A --- Construction of driveway, wetland fill and replication

Consultant Matt Steinel, wetlands scientist Mark West, and applicant John Gorman were present to discuss a proposed homebuilding project on subdivided parcels that front on both Archelaus Hill and Middle Street. Subdivided Lot A fronts on Middle Street. They said that the proposed driveway wetland crossing qualifies as a “Limited Project” and that local bylaws require that the applicant

show that it is possible that the driveway can be constructed over the frontage—even if ultimately the driveway would come in from a different place.

They noted that with respect to this lot, the Middle Street frontage is a large wetland and the only access is through the wetland. Ms. Mizner noted that wetlands regulations for a limited project require that the applicant show there is no alternative access, including access through adjoining property controlled or previously controlled by the applicant and questioned whether access through Archelaus Hill is an alternative. The applicant's representatives replied that Archelaus lacks sufficient frontage and that another wetlands area on the land precludes use of that route to access this lot.

Ms. Mizner noted that the applicant has yet to provide a written description of 1) the reasons why this proposal meets the requirements for a Limited Project and 2) the backup data supporting the wetlands delineation. Mr. West said that they don't typically do detailed data plots until they know the building plan, but he can provide the soil and plant information. *Mr. West committed to provide this information before the site walk for this property.*

The applicant's proposal will also have wetlands impacts associated with the septic system. A force main will be run through wetlands by means of directional drilling, which will take place entirely underground (at a minimum of 5' down) between two pits. Tree clearing will also be needed for the septic installation. Additional information about testing in the area of the force main was also requested.

The Commission scheduled a site walk for March 14 at 8:30 am and will continue this matter to March 15, 2021. Mr. Comins will leave the full size plans for Commission members to pick up in the Town Offices lobby.

Public Hearing --- Notice of Intent --- Gorman Homes LLC Middle Street Assessors Map 22 Lot 2 Builders Lot B --- Construction of driveway, wetland fill and replication

This lot is similar to and attached to the one discussed above, except that it requires no crossing for the septic system or the driveway if accessed through Archelaus Hill. The applicant would prefer to install the driveway from Archelaus Hill, but the plan submitted to the Commission shows a stubbed parking area crossing the wetlands along Middle Street and terminating a good distance from the proposed house. Accessing the house from the parking area would require either crossing additional wetlands or walking along Middle Street to Archelaus Hill and along Archelaus Hill to the home. The garage shown on the plan is inaccessible from the proposed parking area.. In response to Ms. Mizner, Mr. Steinel said that the applicant only needs to show parking onsite—not meaningful access to the home.

At the request of the Commission, the applicant will check with BioMap 2 about core habitat.

Ms. Reed noted that the usual process is to apply first to the Planning Board. The applicant insisted that because of Town bylaws, it must first be shown that access could be from Middle Street, where, unlike Archelaus Hill, the properties would have sufficient frontage. Ms. Mizner asked why the applicant could not obtain a variance from the frontage requirement. She said she remained

unconvinced that the proposal meets wetlands protections provisions for a Limited Project when preferable access is available from Archelaus Hill.

Ms. Reed and Ms. Fusco said that this Commission will need to coordinate with the Planning Board on this matter. *It was generally agreed that Mr. Comins will consult with the Town Planner and with the Massachusetts Department of Environmental Protection.*

The Commission continued this matter to March 15 and scheduled a site walk for March 14, 2021 at 8:30 a.m.

Discussion: Artichoke River Woods Conservation Restriction

Vanessa Johnson-Hall of Essex County Greenbelt described the proposed conservation restriction as particularly complicated because of the number of parties involved, including the state Department of Conservation and Recreation, the City of Newburyport, and West Newbury. The land in question is adjacent to the Artichoke Reservoir, a drinking water resource, and approval from the state Department of Environmental Protection was required. Newburyport's Water and Sewer Board has veto rights over proposed use of the land, but no problem is expected with respect to proposed use for passive recreation and trails. Ms. Mizner noted that the Board cannot act in an arbitrary and capricious fashion in exercising these rights.

By unanimous roll call vote, the Commission approved the proposed conservation restriction. The Commissioners will sign this as soon as possible, and Chair Fusco will have her signature notarized.

Discussion: FY22 Budget

Mr. Comins said that the Town Manager had provided the prior budget for the Commission and asked about any changes the Commission proposed for this year.

Ms. Hawkins and Ms. Reed noted that to their knowledge the Town has no person certified as a pesticide applicator, but this is needed to manage invasive plants. It was estimated that the cost of a UMass course and the certification fee would come to around \$300 and that liability insurance would also be needed. Mr. Comins stated his interest in pursuing this, and *will check about Town insurance coverage for this.*

By unanimous roll call vote, the Commission agreed to propose adding this \$300 cost to the budget expense line.

Discussion: Land Agent position update

Ms. Reed said that she had contacted the Town Manager about using some of the Commission's roughly \$90K wetlands fund to cover three hours/week of administrative work by Mr. Comins. That would free up three hours/week of his budgeted time to perform land agent functions. Ms. Reed then presented the matter to the Selectmen, who agreed to the proposal with the provisos that Mr. Comins must separate hours attributable to this work on his timesheet and that this will sunset in June 2022 and be reevaluated at that time. At that point, perhaps Mr. Comins will be able to get an administrative assistant to perform these duties. Ms. Reed also said that she has been working with the Open Space Committee about setting up a formal process for trail users to request that work be

done. That Committee will also provide Mr. Comins some tools for land agent work.

Discussion: Stormwater bylaw

Mr. Comins said that a group of Town staff involved in the storm water bylaw met last week. This will be pushed back to Fall Town Meeting. The group is looking for input from the Commission. An unresolved issue is what Town body or department will be in charge of granting initial permissions and what Town body or department will be in charge of enforcement. Ms. Reed expressed concern about imposing additional responsibility on the Conservation Agent, in light of his multiple responsibilities and limited hours. Another question is whether this would apply only to more built up MS4 areas or to the whole of the Town.

It was agreed that Mr. Comins will circulate a draft of the storm water bylaw to the Commission.

Discussion: Wetlands protection bylaw

Ms. Mizner reported that she has provided the Town Manager the Commission's warrant article request for the wetlands bylaw (as well as the draft bylaw and its rationale). He thought it was adequate. *Ms. Mizner has a few more suggestions for the executive summary, which she will share.* Nonetheless, the paperwork for the warrant article is complete. *Ms. Mizner will send to the Commissioners the materials she provided to the Town Manager.*

The Commission targeted March 15, 2021 as the date for a public hearing on the bylaw. The Commission will also reach out to other Town boards about this.

Discussion: Other business

Mill Pond accessible trail wetlands delineation Ms. Reed reported that she had been asked if the Agent could delineate the wetlands for the project to build a handicapped accessible trail at Mill Pond. *The Commission advised that a conflict of interest may be raised if the Conservation Agent performed a delineation of a matter that will come before the Commission for a vote. The Agent can provide preliminary advice, however.* Commissioners wondered if a wetlands scientist in Town might volunteer to do this work.

Discussion: Review of minutes

Deferred

Next Meeting

March 1, 2021

Adjournment

The Commission adjourned at 8:42 pm.

Meeting Documents

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

Respectfully submitted