

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, March 15, 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.”

Public Hearing --- West Newbury Conservation Commission --- Proposal of Wetlands Protection Bylaw

The Commission reviewed questions submitted by the Town Manager on behalf of the Board of Selectmen, overall stressing in response that the proposed bylaws are based on the model bylaw of the Massachusetts Association of Conservation Commissions and bylaws of neighboring towns:

Are there really no ancillary costs in view of additional areas to require permitting? Yes, because most proposed projects within the scope of the bylaw would already be required to file with the Conservation Commission. A significant increase in filings is not anticipated

Why are abutter notifications expanded to 300’ when the Wetlands Protection Act (WPA) specifies 100’? To give greater notification to abutters.

What are intermittent creeks or brooks and why would they now be given a 200’ area of protection? Intermittent creeks and brooks are included in the definition of stream in the state wetland regulations. This extends the same protection provided for riverine areas.

What are the exceptions in the WPA that are referred to? The list will be provided to the Board of Selectmen

Why must the consultant fee be paid in full in 20 days or the permit is denied? The Commission has the discretion to require consultants (*see* the Commission’s [policy](#)) and the 20 days are standard practice.

Why was the minimum pond size downsized from 10,000 sq ft? This is to provide additional protections, consistent with the purpose of the bylaw.

Why change the period of water cover for wet fields/ vernal pools from 5 months to 2 months? To provide additional protections, consistent with the purpose of the bylaw. Certain amounts of water in a confined basin or depression are required and specific criteria, such as documentation of particular

amphibians are required for a vernal pool, so a little bit of ice on a field would not meet these criteria and a wet field would not be classified as a vernal pool .

The Board of Selectmen plans to meet with the Commission about the proposed bylaw at its March 29 meeting, which will not conflict with the Commission's scheduled meetings. *Mr. Comins will ask when during the Selectmen's meeting agenda the Commission will be participating.*

Tree Committee Chairman Fred Chanania (47 Coffin St, West Newbury) said he supports the proposed bylaw as well designed and well written. He said that he was pleased to see that it addresses damage to trees. He noted that if an expert consultant is required for trees, it should be a certified arborist as opposed to a general plant specialist. He also said that . damage to trees during construction is a particular concern. Equipment lay down areas, parking under trees, and driving over tree roots can be fatal, but the signs of damage may take 5 or more years to show up. In response to Ms. Mizner, he said that unlike obvious damage such as a wound to the tree or excavation of roots, damage from soil compaction has no clear signs until it is too late. The best thing to do is to prevent damage in the first place. Mr. Chanania added that the Tree Committee has developed guidance about avoiding damage to trees during construction. *He will share that with the Commission.*

Kathy Fehery (540 Main St, West Newbury) also expressed support for the bylaw. She noted that her daughter, who is studying environmental law, commented that the proposed bylaw is really well written.

It was noted that the meeting is being recorded by the Town.

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.

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 (RDA) --- Pentucket Regional School District (PRSD) --- 22 Farm Lane Parcel A --- Construction of maintenance garage and parking area

Wetlands Consultant Tracy Peter appeared on behalf of PRSD. She described her calculations to determine whether a depression in an area to the west of the PRSD property where a maintenance garage is planned to be built is isolated land subject to flooding.

She determined that the area in question held .052 acre feet, which is significantly less than the .25 acre feet required for an area to qualify as isolated land subject to flooding. In response to Ms. Mizner, she said that erosion controls would be installed along the lot line.

Bob Danforth, on behalf of PRSD, said that because of deer predation, the abutting neighbor does not want arborvitae as a screen. Accordingly, an 8' high stockade cedar fence will be erected along the property line. Also, the proposed garage has been moved to be as far as possible from the wet area, to 50' from that property line. Mr. Danforth also said that the driveway will be gravel for now, but is planned to be paved in the long term.

Ms. Mizner moved to issue a negative determination of applicability, and Mr. Atwood seconded. Ms. Reed expressed concern that she had not seen the calculations and would like to see them put on the plan, so that there would be a formal record explaining how the Commission reached its decision. She would also like to have an opportunity to consult the WPA about this.

Mr. Danforth said that although keeping the construction schedule on time is very important, having the Commission look into this further and make a decision at the next meeting would not significantly impact it. Ms. Mizner withdrew her motion.

It was agreed to have a site walk and to continue this matter until April 5, 2021.

Continued 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

Continued at the applicant's request.

Continued 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

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

Consultant Chris Sparages said that since the last meeting with the Commission, the applicant responded to the abutter's letter, finalized peer review with Meridian, the Planning Board consultant (but for a couple of typos), and responded (with a cc to the Commission) to 3 points from the Department of Environmental Protection (DEP):

- 1 *Provide greater details about stormwater management.* Mr. Sparages said that greater detail was provided, including information addressing how small shallow wetland basins will be constructed by the entrance and will allow water to meander, delaying passage and providing greater treatment

- 2 *Provide details about wetland replication.* Mr. Sparages said that the plans now include greater detail with a 10 scale blow up of the replication area, along with plans for use of a wetland replication seed mix for the wet meadow
- 3 *Explain why a Sec. 401 water quality certification is not required under the Clean Water Act.* Mr. Sparages said that an exception applies if there is a valid, unexpired Order of Conditions limiting wetland fill to 5,000 square feet, followed by a Certificate of Compliance, plus deed restrictions preventing new owners from any future filling.

In response to Ms. Mizner and Ms. Reed, Mr. Sparages clarified that

- 1 They used DEP accepted rainfall data (which has not been updated in years and does not take into account more recent patterns of more frequent, larger, and intense storm events) and not more current data from Cornell. The design is based on 6" of rain over a 24-hour period.
- 2 The project is designed to avoid changing the quantity of water returned to wetlands over the course the year, using decentralized small storm water management areas.
- 3 The Sec. 401 exemption works in terms of timing because the Order of Conditions and the deed restrictions on additional wetlands fill will be in place before work starts
- 4 The replication area near the entrance will be expanded from 1:1 to 2:1
- 5 The grades for different storm water management areas vary based on the water table and elevations DEP wants—higher for infiltration basins vs. lower for constructed storm water wetlands
- 6 The proposed septic system on Lot 1 is closer to the wetland than the septic reserve area because the soils are more favorable for septic on the site chosen
- 7 The trail easement is to Essex Country Trail Association (ECTA) instead of the Town because ECTA already holds trail easements on this property

Fred Chanania of the Tree Committee said that he participated in the site walk for this property and said that he was interested in the large trees to the western side. Mr. Sparages said that because of requirements for the driveway and storm water management, some trees in front will be taken down.

The applicant and the Commission agreed that the Commission would prepare a draft Order of Conditions, circulate it, and vote at the next meeting. The matter was continued to April 5, 2021.

Public Hearing --- Notice of Intent --- Patricia A. Kelly --- 34 Ash Street --- Construction of wetland crossing

Consultant Greg Hochmuth said that in 2005, applicant Patricia Kelly put together an Approval Not Required (ANR) subdivision plan for 34 Ash Street. At this point she plans to develop only Lot D, the easternmost lot. Ash Street has a roadside ditch and a bordering vegetated wetlands delineation has been done for this project.

Because it is infeasible to use an access point at the transmission lines (the electric company being highly unlikely to approve a new driveway on its easement), the plan is to build a driveway with a

culvert at the easternmost edge of the property. The driveway will be sized so that it can be a common driveway if other lots are developed in the future. A hickory tree with undermined roots will need to be removed for the driveway and the Tree Warden has been consulted about this. Also, the Planning Board will need to schedule a public hearing and approve the break in the stone wall and removal of the hickory tree in accordance with the Scenic Roads Bylaw.

Work will occur in the dry months and as a precaution an upgradient sump will be used to dewater, Mr. Hochmuth said. Work should be completed in a couple of days.

The field portion of lot D has damp areas and there are some isolated wetlands, Mr. Hochmuth said. They do not border on the ditch. The house is proposed to be built far at the back of the property. The only tree cutting involving Commission jurisdiction would be the hickory at the roadside. A new tree would be planted to replace it. This project does not yet have a DEP file number.

The matter was continued to April 5, with a site walk set for March 28 at 8:30 am.

Public Hearing --- Request for Determination of Applicability --- Town of West Newbury --- 363 Main Street --- site work to restore Carr Post building

Denis Hammel, consultant for the Town of West Newbury, described proposed site work for the Carr Post, which the Town prefers to call the Soldiers & Sailors Memorial Building, and which is a historic preservation rehabilitation project.

Mr. Hammel said that pavement in front will be removed, the flagpole near the road will be relocated closer to the structure, grass and a walkway be installed at the front, vegetative screening will be removed to install a tight tank with alarm for sewage, a cesspool will be removed, an underground conduit will be installed for possible future underground electric service, the rear parking lot will be paved, and a possible future natural gas connection will be prepared. He noted that this utility work would be outside the 100' buffer zone to the bordering vegetated wetlands.

Mr. Hammel noted that the wetlands are across Daley Drive from this Carr Post/ Soldiers & Sailors project. He stressed that wetlands requirements and storm water management had already been fully analyzed, approved in connection with the Drakes Landing development project, and put in place. The proposed tight tank is outside the wetlands buffer zone. Construction of the tight tank will require removal of some recently-planted vegetative screening at the property line.

In response to Ms. Mizner, Mr. Hammel said that there will be a 12" compost silt sock at the lower edge of the property, opposite the Daley Drive side. The alarmed tight tank will be sized at 3,500 gallons. Paving materials and materials associated with the cesspool will be removed offsite for disposal. The removed plantings will be replaced with 3 arborvitae to help screen the adjacent property and a smaller tree will be planted in front.

By 4-0-0 roll call vote (Ms. Hawkins, an abutter, not participating), the Commission voted to issue a negative determination of applicability given the nature of the proposed work and the roadway separating the work from the

wetland. The determination was conditioned on removal of waste paving and cesspool materials offsite and installation of the 12" silt sock as described, with the applicant obtaining Conservation Agent inspection and approval of the erosions controls prior to commencement of work.

Discussion: Request for Certificate of Compliance 25 Coffin Street DEP File #78-660

The Commission recently issued a partial Certificate of Compliance for work done on a garage and septic system. Requirements for planting vegetation in a replication area, however, remained outstanding. The applicant's wetlands consultant, Tom Hughes, provided an as-built plan showing plantings and said that as a demonstration of good faith the applicant installed 28 new plantings, in addition to the 15 dogwoods he found. These plantings, Mr. Hughes said, are more than the amount the Commission required and only 1/3 need survive to be in compliance with the Order of Conditions. Homeowner Cassandra Tomaz said that 5 more red maples were planted. Mr. Hughes said that there is no bare soil in the area and the invasive plants, though hard to eliminate, have been drastically reduced. As to whether the new plants will take, Mr. Hughes said that the dogwoods have done really well. Mr. Comins said that he does have a list of what had been planted and that will go into the files.

By unanimous roll call vote, the Commission approved issuance of a Certificate of Compliance, based on the as-built plan and the submissions by the applicant.

Discussion: Wetlands protection bylaw

The Commission noted that two parties expressed support for the bylaw.

Discussion: Other business

Ms. Reed noted that while it is a good idea to put large documents into Google drive as opposed to trying to email them, she is encountering a problem in terms of exceeding the Google space limits. *Mr. Comins will work on that issue.*

Ms. Reed also noted that she is running for the Board of Selectmen and intends to resign from the Commission if she wins that post. She suggested that the Commission consider finding a replacement, ideally with some period of overlap before Ms. Reed departs. *Ms. Mizner volunteered to assume Ms. Reed's position as the Commission liaison to the Open Space Committee.*

Discussion: Review of minutes

By unanimous roll call vote, the Commission approved the minutes for March 1, 2021, as revised.

Next Meeting

April 5, 2021

Adjournment

The Commission adjourned at 9:47 pm.

Meeting Documents

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

Respectfully submitted