

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, April 5, 2021, Remote Participation via Zoom.

Members Present: Via remote participation Wendy Reed (acting as Chair), Margaret Hawkins, Tom Atwood. Conservation Agent Bert Comins 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."

Ms. Reed informed participants that the meeting was being recorded.

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

Ms. Reed noted that at the last meeting, a question remained whether a professional engineer should provide the calculations concerning isolated land subject to flooding. PRSD wetlands consultant Tracy Peters provided the Commission a letter providing additional details regarding her calculation and Conservation Agent Comins participated in a site walk with PRSD representative Bob Danforth. In response to Ms. Reed, Mr. Comins said that the regulations indicate that the Commission could require a professional engineer, but this is not mandatory. Mr. Comins said that he is comfortable that there is no buffer zone and unless the applicant engages in work in the isolated land subject to flooding (which it will not), this is not jurisdictional.

No other outstanding issues were identified.

By unanimous roll call vote, the Commission made a Negative Determination of Applicability, provided that the applicant shall install erosion controls and notify the Conservation Agent prior to commencement of work.

Public Hearing --- Notice of Intent DEP File # 078-0723--- Deer Run Land Development LLC --- 519 Main Street --- Construction of roadway and storm water management areas, wetland fill and replication

Consultant Chris Sparages noted that at the last meeting, the question arose whether the applicant could double the size of a replication area from 1:1 to 2:1. He said that he provided the Commission a new plan sheet reflecting this change.

Also, the Commission was to prepare and circulate a draft Order of Conditions. Mr. Sparages had been sent a copy of the draft during the meeting and, upon reviewing it briefly, noted a potential conflict between the duty to keep areas within 25' of the wetlands as no disturb areas and the need for maintenance of storm water management systems, some of which are within the 25' limit.

With regard to Ms. Mizner's email query (sent to Mr. Comins) about stockpiling vegetation and soils from the wetlands crossing and then reusing them, Mr. Sparages indicated that stockpiling could occur on the west side of the new road between replication areas. Mr. Sparages also said that piling plowed snow in winter should not be a problem because the new road is long and has areas to its side available for snow piles. He said that the same is true for the driveways.

Ms. Reed noted that it is important that the homeowners understand that they will be responsible for maintaining the stormwater management systems. She noted, in response to Mr. Sparage's comments about the requirements being contained as deed restrictions, that homeowners often do not see or understand this. *Mr. Sparages agreed that the developer will hand out a paper copy of these requirements to the new homebuyers.*

It was generally agreed that:

- *Mr. Sparages will further review the draft Order of Conditions and will provide any questions/ comments to Mr. Comins.*
- *Mr. Sparages will identify those areas where storm water management systems within 25' of wetlands will require maintenance.*
- *Mr. Comins and Mr. Sparages will look into water pollution Best Management Practices for the storm water management plan.*
- *Mr. Comins will consult with Department of Public Works Director Wayne Amaral about the issue of no- or low-salt requirements in snow and ice.*

The matter was continued to the Commission's April 19, 2021 meeting.

Public Hearing --- Notice of Intent DEP File # 078-0727 --- Patricia A. Kelly --- 34 Ash Street --- Construction of wetland crossing

Wetlands consultant Greg Hochmuth noted that the Commission had conducted a site visit and looked at the proposed driveway crossing over the ditch at the roadway and the location of the proposed house, which would be far from the road. He also said that he identified a potential area of

land subject to flooding. He has submitted to the Commission calculations showing that he calculated .003 acre feet in the area—well below the jurisdictional standard of .25 acre feet of water volume. He noted that at the lower portions of the property, there may be a series of isolated wetlands.

Mr. Hochmuth described comments received from the Department of Environmental Protection (DEP), and noted that the applicant did respond to DEP this past Friday.

- DEP wants the applicant to provide replication for the crossing's impact on the drainage ditch. This, he said, is a gray area and the Wetlands Protection Act and its regulations do not define drainage ditch, which could be an intermittent stream. In considering where to locate the replication area, said Mr. Hochmuth, it should ideally be close to the impacted wetlands area, but here that would wipe out healthy hickory trees. So the applicant proposes to do the replication in the area between the stone wall and the ditch, lowering the grade by 1' to obtain 230 square feet. This would afford a 1:1 ratio of replication, and Ms. Reed noted that a greater amount of replication is preferred.
- DEP suggested a higher fee to encompass all the proposed lots. Mr. Hochmuth said that the applicant explained that at this time the intent is to sell only one lot. The driveway is sized, however, to accommodate a possible shared driveway serving all the lots. The proposal is for a 20' wide driveway, but the applicant may seek a waiver from the Planning Board to allow a 16' driveway width.
- DEP pointed out that unless Clean Water Act requirements are applied, the applicant will need to restrict fill to less than 5,000 square feet. Mr. Hochmuth said that this will need to be in deed restrictions and in the Commission's Order of Conditions.

Mr. Hochmuth said that his calculation requires a 24" culvert, which is larger than those in the neighborhood. He also described some of the work process for the crossing, including dewatering, work by hand, and reseeded.

Ms. Reed noted that the Commission will need to wait to see if DEP is satisfied and that if the upcoming application to the Planning Board for the break in the stone wall is approved.

The matter was continued to April 19.

Continued Public Hearing --- Notice of Intent DEP File # 078-0725 --- Gorman Homes LLC --- Middle Street Assessors Map 22 Lot 2 Builders Lot A --- Construction of driveway, wetland fill and replication

Applicant John Gorman & TJ Melvin of Millennium Engineering described a new proposed retaining wall at the start of the driveway, which was requested by DEP to preserve the 25' no disturb area. Mr. Melvin also noted that the revised plan includes the changes in wetlands flags that resulted from the site walk. The applicant has responded to the DEP comments, but has not received further comments from DEP.

It was agreed that outstanding items in this matter include submission of a plan with details for the construction of the retaining wall and adjustment of the flags as discussed. Also, details about the directional drilling under the wetlands for the septic connection will be provided. Ms. Hawkins noted that the directional drilling method is new for West Newbury.

When asked whether the applicant has made a septic submission to the Board of Health, Mr. Gorman stressed that he has consulted frequently with the Health Agent. Mr. Gorman is, however, waiting for an order from the Commission before he makes a submission to the Board of Health. He first wants to get approval from the Planning Board to split the lots. Once he has Commission approval for the wetlands crossings for the driveway, he will then go to the Planning Board.

Ms. Reed noted that the applicant is proposing an unorthodox procedure. Usually the Town permitting bodies work in tandem so that they are all dealing with the same application.

With the applicant's agreement, Ms. Reed opened the matter concerning Lot B, below.

Continued Public Hearing --- Notice of Intent DEP File # 078-0726 --- Gorman Homes LLC Middle Street Assessors Map 22 Lot 2 Builders Lot B --- Construction of driveway, wetland fill and replication

Mr. Melvin said that they have made adjustments including minimizing grading along with wetlands crossing and removed some work upslope because it is outside the buffer zone.

DEP had more extensive comments for this Lot B, questioning whether this could be a limited project when alternative access with less impacts to wetlands has been shown. The applicant did respond to DEP, as did his attorney. That was about two and a half weeks ago and no further response from DEP has been received.

Ms. Reed noted that the Commission cannot take action before knowing that DEP is satisfied with the applicant's response. Ms. Hawkins noted that it will be difficult for the Commission to approve the novel directional drilling proposal without a sign off from the Board of Health.

It was agreed that

- *Mr. Comins will consult with the Health Agent about directional drilling and the piping under the wetlands and will find out if DEP is satisfied with the applicant's response.*
- *The applicant will provide additional details about the Lot A retaining wall and its construction.*
- *The applicant will amend the NOI to make it clear it is not being filed as a limited project.*
- *With regard to applicant's request for an unusual Commission condition indicating that this is about Lot B, the applicant will provide the Commission examples of instances where this condition was used elsewhere.*

The matter was continued to April 19.

Discussion: Wetlands protection bylaw

The Commission discussed comments received from wetlands consultant Greg Hochmuth. Ms. Hawkins said that his point about the proposed treatment of intermittent streams was well placed. In West Newbury the impact would be very broad. It was noted that Boxford handled this by identifying important intermittent streams. Mr. Comins noted, however, that West Newbury has not inventoried or even named important intermittent streams. Options that might be considered included excluding intermittent streams along roadways, adding a definition (as well as other definitions of such items as vernal pools), or adding a provision for waivers so as to avoid sweeping in minor projects.

Mr. Comins reported that Ms. Mizner had indicated that she would draft revisions to address these comments. *The Commission generally agreed that notwithstanding comments, expanding notification to abutters enhances notice and transparency.* Ms. Reed said that the revisions may be available next week.

Ms. Reed inquired whether the Finance Committee will want to discuss this. *Mr. Comins will ask the Town Manager about that.*

Discussion: Other business

Ms. Reed noted that the Commission is still looking for new members. Ms. Fusco will be stepping down and if Ms. Reed is elected to the Select Board, she too will leave the Commission. Mr. Atwood said that he will seek reappointment to another term. *Elisa Grammer, as administrative assistant, committed to reviewing past minutes to find and share the name of the person who had expressed interest in joining the Commission.*

Discussion: Review of minutes

Deferred to next meeting

Next Meeting

April 19, 2021

Adjournment

The Commission adjourned at 8:57 pm.

Meeting Documents

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

Respectfully submitted