

## West Newbury

### Conservation Commission Meeting Minutes

**Meeting date & place:** 7:30 pm, June 4, 2018 Conservation Commission Office, 1910 Building

**Members Present:** Chairman Dawne Fusco; Judith Mizner; Wendy Reed; Tom Atwood; Margaret Hawkins, and Conservation Agent Jay Smith

**Cont. Public Hearing --- Notice of Intent --- Gary Breitbord for 87 Main St. (lots 1-3) (DEP ## 78-688 through -690) --- For the construction of a paved driveway and grading in the buffer zone to a bordering vegetated wetland.**

**(Applicant requests a continuance and to set a site visit date)**

Conservation Agent Smith reported that Steve Sawyer, the project's engineer/surveyor, came in with Tom Hughes, the wetlands consultant. They will reflag the property and submit a new delineation. They asked for a June 17 site visit, prior to the upcoming Commission meeting scheduled for June 18.

Ms. Reed noted the abutters' concern about impacts to wildlife and their question whether an Environmental Impact Statement might be required. Ms. Mizner said that she will take a look at this. It appears to be a Massachusetts Environmental Policy Act Office issue. Ms. Mizner also stated that the Commission can keep this question in mind when conducting the site walk. Other issues abutters raised, such as the large maple tree on the property, are outside of Commission jurisdiction.

*The Commission scheduled a site walk on June 17<sup>th</sup> at 8 a.m., **provided** that the new plan with wetlands delineation and information supporting the delineation methodology, is provided to the Commission no later than the Wednesday before the site walk.*

**Discussion: John Cluney, 175 River Rd. --- Certificate of Compliance (COC) Request.**

Mr. Smith explained that the applicant in this matter had 3 sets of conditions concerning 1) a new septic system, 2) a wetlands crossing to access a garage/barn, and 3) construction of said barn at the back of the property. All but the last has received a COC, and the applicant now seeks one for the barn. Mr. Smith said that he inspected the property found no issues. Among other things, the crossing to the barn and the vegetation look good, he noted.

*The Commission voted 5-0-0 in favor of issuing the requested COC (Order 78342).*

**Discussion: Anthony Poretta, 463 Main St. --- Cutting request and finalization of COC.**

Mr. Smith provided an overview of two issues concerning a newly built house near the intersection of Main and Bridge Streets. First, close to the rear of the house is a low retaining wall that is within 15' of a wetland. The Order of Conditions specifies that this area behind the retaining wall and proximate to the wetland is a no cut zone. Nonetheless, mowing has occurred and the owners are

seeking permission to cut in order to manage mosquitoes. Also, without Commission approval, a patio has been installed between the back of the house and the retaining wall.

Second, the plans forming the basis for the Order of Conditions specified numerous wetlands plantings that either were not put in or failed to survive. The as-built plans erroneously show the plants installed. Some funds (\$5K) were withheld from the builder in closing because a COC had not issued.

The new owners met with the Commission several months ago, but did not receive permission for cutting in the 15' buffer zone behind the retaining wall. They agreed to provide the Commission a new planting plan but have not yet done so.

*The Commission voted 5-0-0 to issue an Enforcement Order directing the property owners to cease and desist unauthorized cutting and to come in to discuss this with the Commission.*

Subsequently, Elaine Poretta, one of the new property owners, joined the meeting. She explained that they installed a walkout patio abutting the retaining wall and want to mow a strip behind the wall to keep the bugs down. Chairman Fusco noted that the Commission had just addressed this matter and voted on an Enforcement Order to prevent such cutting.

Ms. Mizner said that mosquitoes are inevitable near wetlands. She also explained that the normal requirement was a 25' buffer in these circumstances, but a special allowance was made for 15' here in view of other mitigating wetlands on the property and the shape of the lot—so a compromise has already been made. She also stated that the patio had not been permitted by the Commission.

Ms. Poretta said they did not have an attorney representing them in the property purchase and were unaware of the Order of Conditions applicable to the property. They did not know about cutting limitations. She added that when they bought the house, rocks were where the patio is now. They simply replaced the rocks with pavers.

The Commission noted that Orders of Conditions are recorded with the deeds and are binding on all future property owners. Ms. Hawkins offered potential solutions such as increasing the height of the retaining wall or installing a fence if the homeowners feel that uncut vegetation is encroaching.

Ms. Poretta also said that they would like to have a Certificate of Compliance in the event they want to sell the property. Ms. Fusco inquired whether, following up on the prior meeting, the current property owners had prepared a planting plan. The Commission explained that notwithstanding the builder's claims, the plants described in the builder's approved plan (blueberries, shad bush, and others) either had not been planted or had died, so that this requirement in the Order of Conditions remains unmet. The plantings are required in several spots, including behind the retaining wall.

Commission members offered potential solutions such as the homeowners contacting the lawyer holding the funds withheld from the builder at closing so that such funds could be used to accomplish compliant planting. The Commission offered to have Mr. Smith go to the site to determine which plants shown on the builder's plan are missing and then prepare a letter stating that the builder did not comply and specifying what needs to be added. Even with tall grass, these plants will grow and eventually overcome the grass.

*The Commission reconsidered the Enforcement Order voted before Ms. Poretta's appearance, voting 5-0-0 to rescind the order and continue on a wait-and-see basis.*

#### **Discussion: Voting for Chairman and Clerk**

*The Commission voted 5-0-0 to make Ms. Fusco the Chairman in the coming year and voted 5-0-0 to make Ms. Mizner Clerk of the Commission in the coming year.*

#### **Discussion: Minutes of May 21, 2018**

*The Commission voted 4-0-1 (Ms. Mizner, not present, abstaining) to accept the Minutes of May 21, 2018, as revised to reflect a June 18, 2018 deadline for compliance in the matter of riverside violations at 15 Norino Drive and to correct a typographical error.*

#### **Other Business:**

##### **Construction at Sullivans Court**

Mr. Smith reported that an issue actually not within Commission jurisdiction has been raised by Howard and Sheree Hill at 32 Rivermeadow Place. This property abuts Sullivans Court, which is undergoing development. To accommodate the Hills, developer Tom Neve installed silt barriers voluntarily in areas under Commission jurisdiction. Some runoff did occur on the Hill property, but with no evidence of any silt flow. The Hills now seek additional silt barriers. Mr. Smith reported that Mr. Neve stated that he will try to work with the Hills, but also asked that Mr. Smith send them a letter explaining that the matter is not within Commission jurisdiction.

*The Commission generally agreed that Mr. Smith should send such a letter and that he should not have to arbitrate a dispute between neighbors on a matter outside of Commission jurisdiction.*

##### **Construction at Drakes Landing**

Mr. Smith stated that silt fencing has been completed in the front portion of this large housing project whose construction has just begun. A couple of minor changes have been permitted, allowing temporary placement of 1) soil where the parking lot will be behind the Carr Post and 2) reclamation soil in a spot that will become a retention basin. Mr. Smith noted that he will be checking this daily and it may become necessary to cover the soil piles. Mr. Smith also stated that he is working closely with Town Planner Leah Zambenardi on this matter and is working with Tom Hughes, of Hughes Environmental, the wetlands replication monitor on this project.

**Telephonic Meeting Participation**

Ms. Mizner announced that she will be out of town during the next Commission meeting and will participate via phone. Mr. Atwood observed that several rules, such as roll call voting, pertain to this procedure and that the Commission should obtain a copy of such rules from Town Counsel.

**Adjournment**

The Commission adjourned at 8:40 p.m.

**Next Meeting**

May 21, 2018

**Meeting Documents**

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

Respectfully submitted,