

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, April 26, 2021, Remote Participation via Zoom.

Members Present: Via remote participation Dawne Fusco, Tom Atwood, Wendy Reed, and Margaret Hawkins. Conservation Agent Bert Comins and Judy Mizner (acting as Chair) 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 DEP File# 078-0712 --- City of Newburyport Department of Public Services --- Lower Artichoke Spillway --- Construction of stone foundation at lower artichoke spillway --- CONTINUANCE REQUESTED

Continued Public Hearing --- Notice of Intent DEP File# 078-0717 --- West Newbury DPW - -- Town Wide --- Hazard tree management ---CONTINUANCE REQUESTED

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

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

Consultant Matt Steinel summarized the proposal and prior Commission meetings concerning Lot A. He discussed revised plans detailing directional drilling under the wetland and explaining the wall by the driveway.

In response to Ms. Mizner, Mr. Steinel said that the directionally drilled pipe would be 5’ underground. He did not examine the depth of the wetlands, which, he said, were on the surface. Wetlands consultant Mark West said that the soil should be dense subsoil located beneath the hydric soil.

Mr. Steinel said that the pipe connecting the septic system and the house would be seamless and would be placed within a pipe sleeve to mitigate the possibility of leakage. The pipe would be made of PVC. Ms. Hawkins noted that this is the first such installation proposed in West Newbury, and

inquired about the potential of phthalates leaching from PVC into wetlands, particularly in view of the acidic nature of wetlands soils. Mr. Steinel said that PVC is used for residential plumbing, so it must be safe. He said that this has been done in Amesbury and the Department of Environmental Protection has no objection.

Mr. Steinel said that Health Agent Paul Sevigny had no problems with the septic proposal, although it has not received Board of Health approval. Conservation Agent Comins read Mr. Sevigny's communication about this, which did not specifically address the Commission's wetlands related concerns. In response to Ms. Reed, he said that very few drilling spoils would result and that the spoils could be used elsewhere on the property.

With respect to proposed wetlands replication, Ms. Mizner asked how the applicant determined that a 15" depth is appropriate. Mr. West said that this was tied to the elevation of the adjacent existing wetland, noting that a cross section was provided at the bottom of the plan. Ms. Mizner said that elevations should be shown on the plan, but were not. It was also clarified that a stockpiling area would be located outside of the wetlands. Ms. Mizner noted that this too should be shown on the plan.

The applicant and the Commission agreed that the applicant will provide a revised plan that includes the requested information and will provide additional information about the question of PVC leaching and Amesbury's approval of a similar proposal. The plan will also rename "northern berry" bush to northern arrow wood. The matter was continued to May 3, 2021.

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

The Commission expressed a number of concerns regarding the applicant's proposal that the Commission approve a proposed wetlands crossing for a stub driveway distant from the proposed house—which proposed crossing the applicant has no intention of building, and suggested that a "no-build" condition be included in the applicant's proposed Order of Conditions. Commission concerns included the Commission duty to consider alternatives with fewer wetlands impacts; the admittedly hypothetical, unreal nature of the proposal; use of the Commission for zoning and lot creation—as opposed to wetlands protection—purposes; and the question of pitting the Commission against the Planning Board.

Jeff Roelofs, counsel for the applicant, said that the instant application before this Commission is the result of Planning Board bylaws. In litigation brought by the abutter to this lot, the Land Court has held that these bylaws require that in this case, where frontage requirements cannot be met without a wetlands crossing, the applicant must first obtain a Commission Order of Conditions. Only then could the Planning Board legally allow a subdivided lot on an Approval Not Required (ANR) basis.

By unanimous roll call vote the Commission declined to issue an Order of Conditions because the applicant had not shown there was no alternative access that would not require a wetland crossing. The original plan showed frontage on

Archelaus Hill Road with an alternative driveway outside the buffer zone. The applicant's proposal called upon the Commission to redress a zoning bylaw issue as opposed to a legitimate wetlands protection matter. Ms. Mizner said that a written explanation of this determination would be provided to the applicant.

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

Consultant Chris Sparages went through, line by line, the draft Order of Conditions. A number of issues were clarified and resolved in the time spent in this process. Matters requiring additional consideration include

- The number, nature, and location of wetlands markers, the applicant having raised the concern that it is a large property and would require many markers
- Conditions applicable to mowing wet meadows
- Use of salt and snowpile locations

It was agreed that Ms. Mizner would work on and share a revised version of the Order of Conditions, and the applicant would provide an updated full size plan. Also, the Commission determined that it will separately address the West Newbury Department of Public Works document that addresses snow management and use of salt.

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

Consultant Greg Hochmuth reported that the Planning Board approved the applicant's driveway proposal, requiring planting of a replacement tree for the hickory that would be removed to make way for a driveway across a wetland. He explained that the replication area was constrained in its location and thus will be 1:1 and not larger. The potential isolated area subject to flooding was calculated and did not meet jurisdictional requirements. Work in the wetlands area will be supervised by a wetlands scientist or soil evaluator.

By unanimous roll call vote, the Commission determined to issue an Order of Conditions for the driveway and the wetlands replication, with standard and special conditions. The draft Order of Conditions will be circulated before the next meeting. The matter was continued to May 3.

Public Hearing --- Request for Determination of Applicability --- Margaret Poore --- 16 Steed Ave. --- demolition of an existing dwelling and grading

Mr. Hochmuth said that the applicant's plan is to raze the existing dwelling and its foundation, which are located across the street from a wetland in the form of an intermittent stream running along Bridge Street. A new foundation would be located more than 100' from the wetland and a prefab house would be built. The area would be graded, covered with loam, and seeded. A 12" mulch sock would be used as an erosion control on the property's Bridge Street side and extended for some distance along Steed Avenue. Waste materials would be disposed of off site. The Planning Board has granted approval and the applicant is consulting with the Board of Health.

By unanimous roll call vote, the Commission determined to issue a Negative Determination of Applicability, conditioned on applicant's installation of the erosion controls described and disposal of waste materials offsite.

Public Hearing --- Notice of Intent DEP File#078-0728 --- Kenneth Cutcliffe --- 64 Bridge Street --- Construction of single family house and associated grading and utilities

At the outset of this hearing, Ms. Reed recused herself as an abutter.

Consultant Mike Seekamp described the applicant's proposal to build a house on a newly reconfigured lot, which will require a wetlands crossing to connect the septic system to the house. Mr. Seekamp said that work would be done in a dry period and would use a coffer dam to divert water from the work area. Work would involve trenching, installation of 2 PVC pipes 4' deep (the second as a reserve in case of clogging or leakage in the first) and should take only one day, with the trenched soil put right back. The trench would be 4' deep and 4' wide and removed soils would be put next to the trench, in the wetland, and then replaced. After discussion, the applicant offered to place tarps under the piled soils and to determine if the work could be done from the side to minimize heavy equipment in the wetland. Mr. Seekamp said that the delineation occurred on August 5, 2020, and that data underlying the delineation was included in the NOI filing.

The Commission asked the applicant to provide additional details including documentation concerning the potential for PVC to leach chemicals into the wetland, and specifics of the trench construction.

The Commission scheduled a site walk for May 9, 2021 at 8 am and continued the matter to May 17.

Abutter Wayne Sanborn of 85 Church Street offered some comments and concerns. He said that he believes, based on the presence of frogs and the pool's ephemeral nature, that a vernal pool (not certified) is present on the applicant's property, and on his property also. He suggested a sleeved pipe with a leakage detection mechanism to connect to the septic field. He also noted that the failed septic system on 70 Bridge Street is in very close proximity to the proposed new system but this is not shown on the plan.

Discussion: Pentucket School project DEP File# 078-0701 plan modification request

Consultants Brad Dore and Maria Donovan described plan changes required by National Grid. Several utility poles will be moved away from the ball field and closer to the wooded 25' line from the wetlands. All would remain outside the 25' buffer and a new 12' wide gravel maintenance road would be installed to allow maintenance of the poles and their overhead wires. The drive will not be paved. The consultants said that they inquired about undergrounding the lines, and whether the drive would really be needed, but these were National Grid requirements.

By unanimous roll call vote the Commission accepted the plan modification as proposed.

Discussion: Conservation Restriction monitoring MIMAP

Mr. Comins said that the Merrimack Valley Planning Council (MVPC) launched an initiative that would put conservation restriction data onto MIMAP. West Newbury is the guinea pig for this. He said that this could be a good tool for land agent work in monitoring, and that data could be uploaded from a smart phone. *The Commission asked for cost information and suggested a demonstration.*

Discussion: Wetlands protection bylaw

Ms. Mizner said that she is working on revisions to the proposed bylaw. The Commission's request for the comments from Town Counsel has not been answered. *Ms. Mizner will ask again.* Ms. Reed noted that the Select Board voted 2-1 to remove this matter from the spring Town Meeting warrant. Mr. Atwood suggested that the Commission make adjustments and have this ready for the fall. *The Commission agreed to continue work on this to be prepared for fall Town Meeting.*

Discussion: Other business

Conservation agent position—Ms. Reed noted that the Town Manager spoke with Hamilton and with Merrimac about a shared full time position. Groveland is not interested in partnering. All recognize that a variety of personnel issues would need to be worked out if two towns share an employee. Ms. Reed said that she reached out to the Massachusetts Association of Conservation Commissions and MVPC to determine if there are any examples of towns sharing a full time agent. Mr. Atwood suggested that the Commission also consider using a third party consultant to deal with filings before the Commission. *It was agreed that the hiring subcommittee (Ms. Mizner and Ms. Hawkins) will set up a meeting with the Town Manager and his counterpart in Merrimac about a shared full time position.*

Preserving the River Road riverbank—Ms. Fusco noted that the Climate Change Resiliency Committee has been looking into erosion along River Road and that she is concerned that many residents along River Road have been cutting the shrub layer (whose roots are essential to holding the bank). She suggested an educational effort (perhaps a targeted mailing) to be done by the Climate Change group telling people why vegetation is important to preserving the riverbank and the need to go to the Conservation Commission before doing such pruning on the bank.

Recruiting committee members at Town Meeting—Ms. Fusco recommended *and the Commission agreed* that Town committees looking for new members should set up tables at Town Meeting to recruit new members and provide information about the committee.

Unauthorized bog bridges in Mill Pond—Ms. Hawkins reported that bog bridges in the Mill Pond area, which the Open Space Committee has been planning and [has discussed with the Commission](#) for Commission approvals, have been installed by unspecified parties without Commission approvals. *The Commission agreed that the unauthorized bog bridges should be removed, and Mr. Comins will work on this.*

Roadside tree cutting—Ms. Hawkins reported that trees are being cut (likely on an emergency basis) along the roadway on Main Street near wetlands.

Discussion: Review of minutes

Deferred

Adjournment

The Commission adjourned at 11:06 pm.

Meeting Documents

Presentations and records associated with each matter identified, as included in the Conservation Agent's files.

Respectfully submitted