

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:30 pm, October 4, 2021, Town Hall, Second Floor Hearing Room. The meeting was scheduled for 7:30 pm but did not begin until 8:00 pm when quorum was met.

**Members Present:** Judy Mizner, Chairperson, Margaret Hawkins, Tom Atwood, Conservation Agent Michelle Greene

**Members Absent:** Kathy Feehery

**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**

*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 # 078-0736 --- Parker River Realty Co. --- 326 Main Street --- Construction of a replacement septic system**

Robert Grasso on behalf of the applicant, James Pearson, reported that the wetland line was adjusted following the site walk. He explained that the Board of Health had approved both a traditional septic system and a tight tank plan. The holding tanks could be converted to pump chambers if a traditional system were to be installed in the future. The location for the tanks was chosen to avoid the need for shoring. Mr. Grasso explained that the Board of Health approved a 3 year maintenance plan and that they needed a 2 year maintenance plan and contract which they now had along with an approval letter from the board of health to be recorded at the Essex South Registry of Deeds. Mr. Grasso showed the erosion controls on the plan to be located just inside of the 25' no disturb line and said that construction would include removal and disposal offsite of an existing concrete pad. Mr. Pearson requested that the Commission condition both the tight tank plan with a final revision date of 09/30/2021 and the sanitary disposal system upgrade plan with a final revision date of 07/09/2021.

*Ms. Mizner moved to issue an Order of Conditions for both plans, with standard and special conditions.*

The special conditions discussed for the Order of Conditions are as follows:

- *Conditions would apply to either the Tight Tank Plan with a final revision date of 09/30/2021 or the Sanitary Disposal System Upgrade Plan with a final revision date of 07/08/2021.*
- *Erosion and sedimentation control is to be installed, inspected, and approved by the commission 72 hours prior to the commencement of any work at the site.*
- *A 25' no disturb line will be permanently marked with posts and conservation placards opposite of wetland flags 6A, 8A, 10A, 13A, halfway between flags 2B & 5B, and 6B.*

*Mr. Atwood seconded the motion. The motion passed unanimously.*

Mr. Pearson expressed concern over the timing of the issuance of the order of conditions and that with the appeal period he would possibly not be able to complete the work by the standard condition stop work date of October 15<sup>th</sup>. Ms. Mizner explained that this is a standard condition and to check with the commission to

see if an amendment can be made to this condition based on weather conditions at the time of construction.

**Continued Public Hearing --- Amended Order of Conditions --- DEP File # 078-0667 --- James Ward --- 18 Norino Drive --- Incorporation of invasive species management plan**

Ms. Mizner explained this was continued pending Natural Heritage's review which had been provided. Greg Hochmuth, the applicant's representative, explained that the applicant is seeking the amendment to the order of conditions to incorporate an invasive species management plan with hopes to begin work fall 2021 using a small excavator with a thumb attachment to remove invasive plants and their root systems. The plan would take place over 5 years beginning spring 2022 with the hand removal of plant shoots and include monthly inspections for the first 6 months, then quarterly inspections, then yearly inspections. The plan proposes using a chemical process to kill bittersweet vines that would be applied once by a licensed applicator and then again 6 months later to the cut bittersweet vines. Regarding bittersweet vines in ash trees, once cut the vines would be left to die then pulled off once brittle. Ms. Mizner confirmed that work would be taking place on a flat area and that there would be no need for erosion control due to this; that if any large holes were created from the removal of an invasive plant's root system the hole would be filled, seeded, and mulched ASAP; that work be done primarily in the spring and fall to reduce impact to native species; and that the applicant submit information for the seed mix to be used to the commission for review. Ms. Hawkins questioned if dead and dying ash trees would be removed and the Mr. Hochmuth explained they would not be as none are currently hazardous and any removal would be handled as part of the trail plan. Mr. Hochmuth reviewed the proposed shrubs for replacement plantings and explained that the shrubs would replace the removed invasive species in a 1 to 1 ratio. Mr. Hochmuth also proposed a site walk to show the proposed planting locations after removal was done.

*Ms. Mizner moved to issue an Amended Order of Conditions.*

The special conditions discussed for the Amended Order of Conditions are as follows:

- *All conditions in the original Order of Conditions remain in full force and effect.*
- *The 4 page invasive species management plan dated 07/29/2021 will be incorporated into the Amended Order of Conditions as submitted.*
- *Specifications for native grass mix to be used for planting be submitted to the Commission for review and approval prior to use.*
- *The density and location of replacement shrubs be submitted to and approved by the Commission prior to any planting.*
- *The results of the inspections be sent to the Commission beginning in March 2022.*
- *Invasive plant removal can begin Fall 2021.*
- *The total volume of removed invasive species is to be reported to the Commission.*
- *The removed invasive species shall be disposed of offsite.*

*Mr. Atwood seconded the motion. The motion passed unanimously.*

Ms. Mizner advised that an extension through December 2022 was issued for the existing Order of Conditions two meetings ago and that Mr. Hochmuth may need to request an extension in the future to prevent the Order of Conditions from expiring.

**Continued Public Hearing --- Amended Order of Conditions --- DEP File # 078-0719 ---Nancy Pau & Albert Ting --- 183 River Road --- Request to relocate septic field**

Nancy Pau explained the request to move the septic field from the hill at the south east corner of the property to the North West corner of the property avoiding the need to cross the perennial stream and all

associated impacts. Ms. Pau provided an updated plan showing the new location of the septic field. Ms. Pau indicated that Mass Wildlife did not have any concerns regarding the associated tree removal for this project and advised she will forward the email from Natural Heritage indicating this to the Commission.

*Ms. Mizner moved to issue an Amended Order of Conditions.*

The special conditions discussed for the Amended Order of Conditions are as follows:

- *All conditions in the original Order of Conditions remain in full force and effect.*
- *The Amended Order of Conditions will replace the previously conditioned plan dated 11/02/2020 with the new plan dated 09/11/2021.*
- *Trees that are removed must be disposed of outside of resource areas.*

*Mr. Atwood seconded the motion. The motion passed unanimously.*

### **Continued Request for Certificate of Compliance --- DEP File # 078-0732 --- 64 South Street**

Ms. Greene advised that she completed a site visit and noticed that much of the area that was disturbed was being stabilized with wood chips which is not in compliance with the Order of Conditions that was issued. The applicant's representative, Jim Scanlon, said he was not sure why the disturbed area had not been revegetated and did not believe the wood chips were from the removed trees.

*The Commission determined that a Certificate of Compliance could not be issued on the basis of the information provided.*

- *The woodchips should be removed and the area vegetated.*
- *The removed woodchips should be placed outside of the buffer zone.*
- *The agent should be contacted for a site visit during the removal of the woodchips and again for a site visit when the area is vegetated and a new Certificate of Compliance request is submitted.*
- *Ms. Mizner also reminded the applicant that the area must be stabilized by November 1<sup>st</sup> per the Commissions standard condition.*

Mr. Scanlon advised that the property is for sale and that the hope was a Certificate of Compliance would be issued prior to the closing date of October 18<sup>th</sup>. Mr. Atwood suggested funds could be withheld in escrow pending the Certificate of Compliance being issued and recorded.

### **Continued Request for Certificate of Compliance --- DEP File # 078-0664 --- 83 River Road**

Ms. Mizner reported that the as-built for the dock that was received for this request shows mooring lines that were conditioned but were not built and does not show chains instead of elastic rods being used as lines at the end of the dock. The applicant had previously indicated that chains were used instead of the approved elastic rods as the current is too strong in this section of the river and that the elastic rods failed. Ms. Mizner said that the MA DEP Circuit Rider, Alicia Geilen, had been contacted previously regarding this matter and that she advised the Commission can issue an enforcement order, have the applicant submit an after the work amendment to the Order of Conditions which would require a public hearing, or accept the changes with an explanation as to why they are negligible. The Commissioners questioned whether chains as mooring lines were appropriate as once the dock was removed the chains would remain on the riverbed and could damage vegetation. They also noted that chains have not been approved as moorings for any other dock the Commission has conditioned since Natural Heritage has required elastic rods..

*The Commission determined that a Certificate of Compliance could not be issued on the basis of the information provided.*

- *Ms. Greene will contact Ms. Geilen for information on doubling up on elastic rods in areas of strong current or the*

*removal of chain mooring lines in the winter if the Commission decided to approve the use of chains as a mooring line.*

- *Ms. Greene will update Mr. Camp that MA DEP has been contacted regarding using chain mooring lines and that the Commission is awaiting their response.*

### **Certificate of Compliance Request ---DEP File #078-0272 --- 5 Woodcrest Drive**

*Mr. Atwood abstained as an abutter to the property.*

Ms. Greene explained that she made an error when adding this item to the agenda as there are actually two requests for this property, one for a Certificate of Compliance for this specific lot and one for a Partial Certificate of Compliance to release this lot from the Order of Conditions issued for the entire subdivision. Ms. Greene advised she had contacted the applicant to have the other request placed on the agenda for the next Conservation Commission meeting. Ms. Greene advised that the plan submitted with the Certificate of Compliance request was the original plan and not an as-built plan.. Ms. Greene also advised that she completed a site visit and that the plan submitted does not show the locations of an existing shed and in-ground pool on the property. Lastly, Ms. Greene indicated that the recording references to the Order of Conditions on both requests were incorrect.

*The Commission determined that a Certificate of Compliance could not be issued on the basis of the information provided.*

- *Ms. Greene is to inform the applicant that the received plan is not an as-built plan. The applicant will need to consult with an engineer who will prepare an as-built including the shed and the pool on the plan.*
- *The references to the Order of Conditions on the request must be revised to reflect the actual recording references.*

### **Emergency Certificate --- DEP File # 078-0XXX --- 48-56 Stewart Street --- Re: Ratification & Discussion**

Ms. Greene explained that there was a car accident on Stewart Street with gasoline leaked near the Indian River and that William Mitchell from Clean Soils Environmental advised that they were contacted by MA DEP to do the cleanup on site. Mr. Mitchell explained that MA DEP is concerned that in addition to any gasoline contamination, there may be PFAS contamination at this site as the fire department sprayed fire suppression foam at the site. The foam used no longer contains PFAS. However, according to MA DEP the fire department either never decontaminated their tank that holds the foam or did not submit documentation of decontaminating their tank when switching to the new foam. MA DEP has suggested to Clean Soils that they may require PFAS testing in the water and in the soil around this area as part of the cleanup. Mr. Mitchell's goal is to get the work completed within the state allotted 60 day timeframe from when the emergency certificate is issued so that they do not need to file a full Notice of Intent. However he indicated to Ms. Greene he will do whatever ends up being necessary to get the work done at the site. Ms. Greene advised that she spoke to Ms. Mizner about this matter and signed the Emergency Certificate to allow work to get started at this site with a caveat that it would need to be ratified by the Commission at their meeting.

*Ms. Mizner moved that the Commission ratify the Emergency Certificate. Mr. Atwood seconded the motion. The motion passed unanimously.*

*Mr. Atwood moved to have Ms. Greene, on behalf of the commission, reach out to the fire chief for certification that the tank has been properly decontaminated to prevent an issue like this in the future. Ms. Mizner seconded the motion. The motion passed unanimously.*

**Discussion: Reimbursement Request**

Ms. Mizner indicated that she received a request from the Town Manager, Angus Jennings, to authorize the use of funds from the wetlands revolving account to pay for a past due bill in the amount of \$160.00 incurred from a virtual question and answer session held by the Essex County Greenbelt Association. Ms. Mizner explained Mr. Jennings was making this request as the bill was not received in time for payment in fiscal year 2021. Now that the town is in fiscal year 2022, the bill cannot be paid without being approved at Town Meeting and the deadline to add this to the warrant for the fall Town Meeting has passed. Ms. Mizner read the purposes for which the wetlands revolving account can be used and suggested this request does not fall within those purposes.

*Mr. Atwood moved to deny the request to use funds from the wetlands revolving account to pay the bill in question. Ms. Mizner seconded the motion. The motion passed unanimously.*

**Discussion: 15 Norino Drive, Re: Houseboat**

Ms. Mizner advised she had been in touch with Lauren at Natural Heritage regarding this matter and that Lauren has indicated the property owner has not yet filed with Natural Heritage. Lauren also requested that the Commission do a site walk at the property and take pictures of the houseboat.

*The Commissioners decided that a site visit would be conducted on 10/10/2021 at 8:00am. Ms. Mizner asked that Ms. Greene contact the property owner to advise him of this date.*

**Discussion: Review of Minutes**

Ms. Mizner indicated that there are no minutes available to review yet.

**Discussion: Open Spot on the Conservation Commission**

Ms. Greene advised that the Town Manager, Angus Jennings, asked her to see if the Commission had any ideas for recruitment to fill the open seat on the commission. Ms. Greene advised that the open seat was posted on the Town Website and suggested that it be shared on the Town Facebook page as well. The Commission decided against this and Ms. Mizner advised she would reach out to two people who had expressed interest in joining the commission when Ms. Reed resigned.

**Discussion: Administrative Details**

Ms. Greene suggested adding a DEP Correspondence item as a standing item on the agenda. The Commission agreed.

Ms. Greene shared a letter that MA DEP had sent to all conservation agents regarding conditions that may be helpful to use when conditioning pools. Mr. Atwood asked if there was a way to see if previously conditioned pools have these conditions in place and it was discussed that there was no simple way to do this. Ms. Mizner suggested that this be addressed as people file for swimming pools.

Ms. Greene indicated that the Town Manager, Angus Jennings, advised a standing agenda item of Land Agent Update be added to the agenda to keep the Commission updated on projects, the agent's involvement in them as land agent, and the requests received as land agent. The Commission agreed to this being added to the agenda. Ms. Mizner advised that Ms. Greene clear all requested land agent items with the Commission before proceeding. Ms. Mizner also indicated that she will invite John Dodge, of the Open Space Committee, to a Conservation Commission meeting at the beginning of the new year to see what projects he wants Ms.

Greene to be involved with as land agent and to outline all projects he wishes the land agent to work on for the year.

Ms. Greene advised that the second floor hearing room has been reserved for Conservation Commission meetings through the end of the year. A discrepancy was found in the meeting schedule for the meetings in November as they should be held November 1<sup>st</sup> and 15<sup>th</sup> rather than the 8<sup>th</sup> and 22<sup>nd</sup>. Ms. Greene advised she would look into it and reserve the hearing room for these dates. Mr. Atwood advised he would have to participate remotely for the meeting on November 1<sup>st</sup>.

#### **Discussion: New Conservation Agent Michelle Greene**

Ms. Greene invited the Commissioners to schedule time to meet with her one-on-one to discuss their goals for her and what they hope to get out of being a Commissioner.

#### **Discussion: Other Business**

Noah Askman of 9 Woodcrest Drive had asked if he can remove a hazard tree on his property prior to the erosion control being installed and inspected for work on his proposed barn. *Commission agreed that Ms. Greene should do a site visit and have Mr. Askman show her the tree in question. If the tree is outside of the buffer zone, it can be removed but if it is within the buffer zone removal must wait until the erosion control is installed and inspected. Ms. Greene should remind Mr. Askman that work must stop by October 15<sup>th</sup> and that the site must be stabilized by November 1<sup>st</sup>.*

In response to a previous request to add wildlife crossing signs on Main Street in both directions near the Mill Pond Recreational area Wayne Amaral, DPW Director, requested authorization for this from MA DOT and offered to install the signs. MA DOT responded that that wildlife crossing signs are not a standard MUTCD sign and asked if the yellow diamond deer leaping sign would be acceptable to the Commission. *The Commission agreed that these signs are better than no signs at all and should be installed.* The Commission indicated that a request was made in fall or winter 2019 for turtle crossings signs to be installed on Robin Road up to Hilltop Circle before Woodcrest Drive, the dirt road section of Ash Street, and Middle Street between Crane Neck Street and Ash Street. The Commission believes DPW agreed to obtain and install these signs but that due to Covid-19, this matter fell by the wayside. *The Commission asked Ms. Greene to follow up with Mr. Amaral on the status of the turtle crossing signs.*

Ms. Greene advised MACC told her that the agent was not listed as a member. Ms. Greene relayed that as a staff member, there is a \$60 fee for her to become a member.

*Mr. Atwood moved to approve paying the \$60 fee for Ms. Greene to become a MACC member. Ms. Mizner seconded the motion. The motion passed unanimously.*

Ms. Greene advised that Mr. Jennings asked her to touch base about the wetlands bylaws with the Commission and advised that this can be added as a discussion item for the next meeting to have a full discussion. Mr. Jennings advised he would like to see the bylaws on the spring Town Meeting and wanted to provide the Commission with a timeline and advice for this occur:

- An agreed upon draft bylaw it should be sent to town counsel for review ASAP;
- The concerns addressed during the comment period for the previous draft bylaws should be addressed;
- Any specific items that the commission would like to have counsel feedback on or review during the draft period should be sent to town counsel;
- The spring Town meeting will likely be held the last Monday in April but due to Covid-19 it is being

- held outside which could cause the meeting date to move due to the weather;
- The warrant for the spring Town meeting closes for the around the end of January and if the commission would like to be on the warrant, select board approval will need to be obtained around/prior to then.

*Ms. Mizner advised she is working on the draft of the bylaws.*

The Commission discussed what laptop computer Ms. Greene will be using. The current laptop is being used by the volunteer who takes minutes for the Conservation Commission meetings. *Ms. Greene will follow up on allocating a laptop that she can use for her role as Conservation Agent in both Merrimac and West Newburyport with no impact to the laptop that is used to take minutes.*

### **Land Agent Update**

Ms. Greene advised that the wetland trail corridor maintenance plan which was approved in April 2018 was added to the Town Plans page of the Town website and added that there is an Essex County Trails Association management plan amendment that should be filed as part of it. *Ms. Mizner said that this Amended Order of Conditions was issued and recorded. Ms. Greene will locate this and add it to the Town website.*

Ms. Greene received a request on 10/04/2021 from a local artist in town, Megan Chiango, l to install a temporary art installation at Mill Pond the weekend of 10/23/2021. Ms. Greene advised that this request should go through the Mill Pond Committee and provided artist with their contact info. Ms. Chiango's art is large landscape paintings that blend with the landscape, and she would like to see if the Commission is interested in installations on other conservation land in town. *The Commission said they are open to having Ms. Chiango present her ideas at one of their next meetings.*

### **Next Meeting**

October 18, 2021

### **Adjournment**

*Ms. Mizner moved to adjourn the meeting. Mr. Atwood seconded the motion. The motion passed unanimously. The Commission adjourned at approximate 10:00 pm.*

### **Meeting Documents**

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

Respectfully submitted