

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, November 1, 2021, Town Hall, Second Floor Hearing Room

Members Present: Judy Mizner, Chairperson, Kathy Feehery, Margaret Hawkins (arrived at 7:34 PM), Tom Atwood (remote participation by phone), and Conservation Agent Michelle Greene

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

Public Hearing --- Notice of Intent --- DEP# 078-0XXX --- Off Church Street (Parcel R13-341) --- Kenneth Cutcliffe --- Re: Construction of a dock on the bank of Merrimack River

The applicant was represented by Michael Seekamp, Seekamp Environmental Consulting, Inc. who showed the Commission plans for a dock installed on the bank of the Merrimack River on a parcel of land off Church Street (no street address). Mr. Seekamp noted that MA DEP's website shows receipt of this filing but they have not issued a DEP file number yet as they are pending payment clearing.

The dock would be accessed by an articulated ramp and would be secured using a helix anchoring system. Only brush would be cleared on the shore and no trees with a DBH greater than 6" would be cleared. Ms. Mizner asked if the platform for the dock on the shore would have spaces to let light through; Mr. Seekamp confirmed it would and would likely be made of aluminum.

Mr. Seekamp explained that the dock would be removed in the winter. Ms. Mizner advised that the dock should be removed via the river for winter storage and not dragged over the bank at the site. Ms. Mizner asked Mr. Seekamp to provide a description of how the dock will be removed in the winter and where it will be stored.

Ms. Mizner confirmed with Mr. Seekamp that the plans have been submitted to Natural Heritage for review. Mr. Seekamp advised that Natural Heritage asked for a full MESA filing which has been submitted but not yet responded to. Ms. Mizner advised that the Commission will await Natural Heritage's response to the filing specifically as it relates to mooring.

The Commission set a site visit for Saturday November 6th at 8 AM. Ms. Mizner confirmed with Mr. Seekamp that the area will be staked prior to the site visit.

Ms. Mizner continued the public hearing to the November 15th meeting pending the site visit, the issuance of a MA DEP file number, and a response from Natural Heritage on the MESA filing.

**Request for Insignificant Change --- DEP #078-0730 --- 17 Rogers Street --- Jason Plummer ---
Re: Change from boulders to concrete construction blocks for culvert construction**

Jason Plummer explained his request to the Commission indicating that boulders, which are called for on the plan, are difficult to source and will also not hold the material around and over the culvert in place as well as concrete retaining wall blocks. For these reasons, Mr. Plummer requested the Commission allow an insignificant change from boulders to concrete retaining wall blocks on both ends of the culvert that passes under the driveway. Mr. Plummer also advised he would like to extend the concrete blocks out slightly further than indicated on the plan to better hold the material around the culvert in place. Ms. Hawkins asked what the concrete blocks would be set on for a base. Mr. Plummer explained a mix of 6" crushed stone with smaller 1" stone on top to fill in the gaps.

Ms. Mizner moved to accept the minor change to substitute concrete retaining wall blocks for the boulders called for on the plan around both ends of the culvert set on a base consisting of 6" stone with 1" stone filling in the voids. Ms. Hawkins seconded the motion. The motion passed unanimously.

**Request for Insignificant Change --- DEP #078-0730 --- 17 Rogers Street --- Jason Plummer ---
Re: Request to continue work through December 1, 2021 to excavate and pour foundation**

Mr. Plummer explained he would like to continue work at this site past the October 15th work cease date provided in his Order of Conditions through December 1st for excavation and pouring of the foundation. Mr. Plummer explained that the gravel base for the driveway has already been installed up to the location of the foundation of the home and that the area has further been stabilized with hay mulch over the disturbed area in the 100' buffer. Mr. Plummer also indicated the loam where the foundation would be excavated has already been removed.

Ms. Mizner confirmed with Mr. Plummer that grading at the site has not been done and is not necessary for the excavation and installation of the foundation. Ms. Mizner asked where the removed material will go when the foundation is excavated. Mr. Plummer would prefer to see it stay on site and could add a silt fence around the material stockpiles but could move material off-site if needed. Ms. Mizner requested that no materials be stockpiled within the 200' riverfront area. Ms. Mizner inquired if the culvert would be finished this winter and Mr. Plummer responded it would not as steel plates have been temporarily installed to allow access over the stream. Ms. Mizner asked if excavation and installation of the foundation would be completed by December 1st. Mr. Plummer responded it would be; he is ready to start excavation once he has the Commission's approval. Ms. Mizner asked Mr. Plummer how he intends to stabilize the area around the foundation. Mr. Plummer responded saying he would use hay like in the already stabilized area. Ms. Mizner indicated hay is not always the best stabilizer in winter and the Commission and Mr. Plummer discussed possibly trying to plant winter rye at the site.

Ms. Mizner explained to Mr. Plummer that the proposed excavation would occur in the 200' riverfront area but not within the 100' buffer and showed these locations on the plan to Mr. Plummer.

Ms. Mizner moved to allow work through December 1, 2021 for the excavation and pouring of the foundation contingent on appropriate stabilization as determined by the Commission, siltation protection installed around stockpiles, and stockpiles kept out of the 200' riverfront area.

Mr. Plummer asked the Commission if he could request an additional change at this site. Mr. Plummer showed a plan with the footprint of the house shifted at this location. Mr. Plummer explained that by shifting the house it would be more accessible from the driveway. Mr. Plummer explained this would not change any grading or move the house closer to any resource areas.

Ms. Mizner amended her previous motion to include the modification of the house location as well. Ms. Hawkins seconded the motion. The motion passed unanimously.

Request for Certificate of Compliance --- Off Indian Hill Street, Map 16 Lot 13 --- DEP# 078-0438

Ms. Greene explained this request was for a well field that is not in use by the Town as the wells do not produce enough water and will eventually be filled. She advised she conducted a site visit with Michael Gootée, the Water Department Manager, and together they were able to locate all wells shown on the plan. The site was fully stable and vegetated.

Ms. Mizner moved to issue a Certificate of Compliance. Ms. Hawkins seconded the motion. Vote in favor was 4-0.

Request for Partial Certificate of Compliance --- 87 River Road --- Re: Dock --- DEP# 078-0518

Ms. Greene explained the issued Order of Conditions was for a dock and an addition but the applicant requested a Partial Certificate of Compliance for the dock only. The Commission reviewed site pictures provided by Ms. Greene. Ms. Hawkins confirmed with the applicant, Timothy Thomas, that the dock will be stored by floating it up river.

Ms. Mizner moved to issue a Partial Certificate of Compliance for the dock only. Ms. Hawkins seconded the motion. Vote in favor was 4-0.

Request for Partial Certificate of Compliance --- 5 Captain Pierce Drive, Lot 7, formerly part of 83 Crane Neck Street --- DEP# 078-0258

Ms. Greene explained the issued Order of Conditions was for a single-family home for the property at 83 Crane Neck Street, now 87 Crane Neck Street, which was issued prior to the land being sold to create the development at 5 Captain Pierce Drive. While the Order attaches to this property, no work on this lot was done under this Order. Ms. Greene also indicated she did a drive-by site visit and was able to see that this lot was vegetated, the house appears to be located where it is shown on the site plan, and no additional construction or structures could be seen in the buffer zone.

Ms. Mizner moved to issue a Partial Certificate of Compliance to release 5 Captain Pierce Drive, FKA Lot 7 Captain Pierce Drive from the Order of Conditions for DEP File# 078-0258. Ms. Hawkins seconded the motion. Vote in favor was 4-0.

Request for Certificate of Compliance --- 4 Waterside Lane --- DEP# 078-0521

Ms. Greene explained the open Order of Conditions for this property is for a dock which was never constructed. She advised she was waiting to hear from the current owner to schedule a site visit to confirm no work was done, but from talking to the applicant requesting the certificate and reviewing the Town's GIS mapping with aerial photos from 2014-2020 there is no evidence that a dock was ever constructed or that any of the conditioned clearing to install a dock was ever done. Ms. Greene recommended conditional issuance of a Certificate of Compliance pending her site visit to confirm no work was ever done.

Ms. Mizner moved to issue a Certificate of Compliance subject to a site visit by Ms. Greene to confirm that work conditioned was never commenced. Ms. Atwood seconded the motion. Vote in favor was 4-0.

New Business --- 68 Ash Street --- Re: Tree clearing --- DEP# 078-0673

Ms. Greene explained that a resident contacted her regarding potentially unauthorized tree clearing in a wetland at 68 Ash Street and that based on this information, she conducted a site visit. During the site visit Ms. Greene observed active tree clearing on the back of the property and spoke with one of the homeowners, Scott Barney, to advise that there is an open Order of Conditions on the property and that the clearing was potentially taking place in the buffer zone of a wetland without a permit. At this time Mr. Barney indicated that additional tree clearing had already taken place in the front of the property as well. After the site visit Ms. Greene consulted with Ms. Mizner and issued a letter to the Barney's which included potential conditions the work was in violation of and asked them to attend the next ConCom meeting. Mr. Barney explained at the meeting that most of the trees that were being removed were dead and/or hazard trees, that stumps have been left in place, and that all removed trees and woodchips were being removed from the site. Mr. Barney also explained he was unaware of the open Conditions on his property and Ms. Mizner explained that the Order follows the property and not the person. Mr. & Mrs. Barney advised they would like to plant trees and ferns behind and around the house and Ms. Mizner advised that as long as this occurred out of the buffer zones in the front and back of the home they could proceed with plantings without any additional filings. Ms. Mizner also explained the process for obtaining a Certificate of Compliance to close the open Order.

Old Business --- Sullivan Court Extension Trail Easement, Re: Comment review and discussion with KP Law

Ms. Shirin Everett, Attorney at Law from KP Law met with the Commission virtually to review comments that the Commission had previously made on the revised Sullivan Court Extension Trail Easement. The Commissioners and Ms. Everett addressed the Commission's previous comments and KP Law's comments and revised the easement.

Old Business --- 48-56 Stewart Street Emergency Certificate and PFAS update from Fire Chief

Ms. Greene advised that she confirmed with MA DEP that amendments and extensions are not permitted for Emergency Certificates and that she so advised the applicant for the Emergency Certificate at Clean Soils. The Emergency Certificate was issued on October 7, 2021 and will expire 60 days from that date, at which time a Notice of Intent filing will be required for any site work. Ms. Greene advised she also spoke with Michael Dwyer, the Fire Chief, about the potential for contaminated fire suppression foam to be used at other sites. Chief Dwyer indicated that PFAS containing foam may have been in the tanks up until 2003, that he is working with their suppliers to determine when their foam no longer contained PFAS, and that he is awaiting guidance from MA DEP on how to proceed with tank and pump decontamination if it is needed. Chief Dwyer advised that MA DEP will contact him if soil and water samples taken from the Stewart Street site indicate high levels of PFAS which would likely indicate that the tanks and pumps are contaminated.

Old Business --- Open Spot on Conservation Commission

Ms. Mizner indicated that she had reached out to someone who is unavailable and that she is still making inquiries.

Wetlands Bylaw Update

Ms. Mizner informed the Commission she did not have any bylaw updates.

Other Business

Ms. Mizner asked Ms. Greene to provide to the Commission an update on the proposed relocation/alteration of the trail at Ocean Meadows for which the Commission holds the easement. Ms. Greene advised that after

the last meeting where the Commission authorized ECTA to clear the section of trail that had fallen out of use, she learned that the proposed clearing was not on the approved section of trail but would be done to re-route the approved trail to the existing gate at the property line where the trail meets private property. Ms. Greene advised that she would be meeting with members of ECTA and the Ocean Meadow Board of Directors to better understand what was being proposed and that at this time; ECTA has been advised there was to be no clearing of anything that is not the approved trail.

Informal Discussion

None

Community Input

None

Approval of Minutes --- October 4, 2021

Ms. Mizner moved to accept the meeting minutes of October 4, 2021 as revised. Ms. Hawkins seconded the motion. Ms. Feebery abstained as she was not present during the meeting. Vote in favor was 3-0-1.

Approval of Minutes --- October 18, 2021

Ms. Mizner moved to accept the meeting minutes of October 18, 2021 as revised with the addition of an omitted letter to be provided by Ms. Hawkins. Ms. Feebery seconded the motion. Vote in favor was 4-0.

Correspondence

None

DEP Comments

None

Land Agent Update

None

Next Meeting

November 15, 2021 with a site walk on Saturday November 6, 2021 at 8:00 AM for the proposed dock at Church Street.

Adjournment

Ms. Mizner moved to adjourn the meeting. Mr. Atwood seconded the motion. Vote in favor, was 4-0. The meeting adjourned at 9:47 pm.

Meeting Documents

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

Respectfully submitted