

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:30 pm, December 20, 2021, Town Office Building 2d Floor.

**Members Present:** Judy Mizner, Chair, Tom Atwood, Kathy Feehery, and Margaret Hawkins. Also present, Conservation Agent Michelle Greene.

- 1. Old Business: Review edits for Coffin Street Conservation Project, Map 230 Lot 40, Review Conservation Restriction with Essex County Greenbelt Association, Re: CR for permitting public access and Greenbelt to create and maintain trails and manage the land for wildlife habitat conservation.**
- 2. Old Business: Review edits for Coffin Street Conservation Project, Map 230, Parcels 110 and 120, Review Conservation Restriction with Essex County Greenbelt Association, Re: CR for - for the two parcels to be sold to different entities, for public access on existing and future trails, an access easement provision on an adjacent parcel owned by SOW LLC which is not subject to the CR; this access provision allows Greenbelt to create a trail connecting to Coffin Street, and for limited grazing and associated temporary structures on Parcel 110.**

Vanessa Johnson Hall of Essex County Greenbelt (Greenbelt), who earlier in the evening had discussed this with the Select Board, said that she circulated revised versions of the Conservation Restrictions (CRs) reflecting changes agreed upon at the prior Commission meeting, along with a Memorandum of Understanding regarding the property whose stewardship will be shared between the Town and Greenbelt. Open Space Committee member Patricia Reeser had comments, including such items as a perpetual ban on commercial use and permission for motorized vehicles in connection with disability access. Ms. Greene raised a question about allowing crops on the property that would stay in private hands, subject to a CR.

*It was agreed that Ms. Johnson Hall, Ms. Mizner, and Ms. Reeser will get together to revise the drafts, with a goal of completing revisions by December 30<sup>th</sup>, with the Commission to revisit this at its January 3<sup>rd</sup> meeting.*

- 3. Public Hearing: Notice of Intent (continued): Lower Artichoke Spillway, City of Newburyport Department of Public Services Re: Construction of stone foundation at lower artichoke spillway DEP# 078-0712 *Applicant requests a continuance.***
- 4. Public Hearing: Notice of Intent (continued): Town Wide, West Newbury DPW, Re: Hazard tree management, DEP# 078-0717 *Applicant requests a continuance.***

5. **Public Hearing: Notice of Intent (continued): Off Church Street (Parcel R13-341), Kenneth Cutcliffe, Re: Construction of a dock on the bank of Merrimack River, DEP# 078-0XXX Continued**
6. **Public Hearing: Request for Determination (continued): 159 Main Street, Dylan Randall – OP Real Estate, LLC, Re: Construction & installation of a tight tank to replace failing septic system**

Consultant Robert Grasso appeared on behalf of the applicant. He said that after the site walk, adjustments were made to the wetland line, moving it nearer to the house. He said that grass is on the site up to the wetland.

The Commission noted that erosion controls had been installed before work was approved—and that the erosion controls were located within the revised wetland lines. Mr. Grasso said that this involved only some stakes and that the applicant is very keen to move forward with the project. Heavy equipment is there now and the applicant feels under pressure to complete the project. Ms. Mizner said that the applicant's decision to undertake work prior to receiving permission raises questions about its compliance with any Commission conditions relating to an approval.

Mr. Grasso said that minor work is proposed: 1) finding, pumping out and removing existing septic structures in the grassy area, 2) digging the hole and dropping in the three thousand gallon tight tank, 3) installing new connecting lines; 4) cleaning up the site.

Ms. Mizner also raised questions about plans for other activities in the wetlands in the backyard. She stressed the importance of notifying new owners about wetlands limitations on the property. Mr. Grasso said that the area has been mowed for a long time. Mr. Atwood said that he found 1971 aerial photos showing mowing at the site. *It was generally agreed that this matter would be addressed later.*

*Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue a negative determination of applicability (RDA) for the proposed septic construction, on the condition that the applicant will provide a signed note from the current owner stating that they will inform the new owner that any alteration of vegetation in the wetlands area in the backyard must be reviewed and approved by the Commission prior to any alteration. The Commission agreed to sign the RDA immediately, with the provisos that before work can begin, the applicant must have the signed RDA in hand as well as the Conservation Agent's satisfactory inspection of erosion controls, and with the warning that if the applicant proceeds before completion of the appeals period, such work would be at the applicant's risk.*

7. **Public Hearing: Notice of Intent: 87 Crane Neck Street, William P. Spalding, Re: Construction of a gravel driveway, DEP# 078-0738**

Consultant Greg Hochmuth appeared, representing the applicant. He said that around 1994 Woody Cammett filed with the Commission a notice of intent (NOI) to build a house on the lot in question, which has about 10.6 acres. The current owner wants to get access to a large upland

area, but needs to cross an unnamed perennial stream to do so. Mr. Hochmuth said that the stream makes most of the area in question subject to Commission jurisdiction.

Mr. Hochmuth said that this requires an alternatives analysis, and that will be handled by crossing at the narrowest point, perpendicular to the stream, and complying with applicable Massachusetts stream crossing standards. The applicant would use a precast open bottom culvert, which would be wide enough to preserve the banks on each side and would exceed requirements. A crane would be used to install the concrete structure. Two small block retaining walls would be installed on each side to keep the driveway as narrow as possible. Mr. Hochmuth said that to do this, wetlands will need to be filled and then replicated. The intent is to have replication exceed the required 2:1 ratio.

Mr. Hochmuth noted that there have been deviations from what the Commission approved in the Order issued pursuant to Mr. Cammett's NOI. There may have been maintenance activities (*viz.* mowing) within the 25' no disturb area. Also, there were changes in the driveway and a shed. Mr. Hochmuth said that the good news is that trees were not cut down, but there is lawn amongst the trees. Mr. Hochmuth suggested that these issues could be addressed with the currently proposed NOI.

In response to the Commission's inquiry about what the new driveway would be used for, Mr. Hochmuth said that the applicant just wants access. Perhaps there could be a barn and paddocks. The Commission noted that the Department of Environmental Protection (DEP) also has asked what would be built at the end of the driveway. Ms. Mizner asked if the applicant will be submitting plans for what would be done at the end of the driveway—including the construction's relation to wetlands. Later Mr. Hochmuth said that the applicant might be planning a subdivision.

Neighbors raised a number of concerns. Kelly Dukarski said that the area is highly unstable, wet, and subject to flooding from beaver activity. She and abutter Melanie Cosgrove said that development at Robin Road and Hilltop Circle caused serious runoff problems for them and their Crane Neck Street neighbors. She expressed concern that activity on wetlands at 87 Crane Neck would exacerbate problems. She asked how the applicant will ensure that flooding associated with this project will not harm neighboring properties.

The neighbors also said that it was very concerning that all this is proposed for an unknown purpose.

Mr. Hochmuth agreed that beavers can be a problem and flooding can occur. He said that sometimes neighbors oppose beaver management, that culverts are put in all the time, and that applicable requirements would be met. He added that the plan is to raise the grade only half a foot for the driveway, so if there were a flood, the waters would flow around the culvert, at a lower elevation than land of the concerned neighbors. The culvert, he said, would not create a dam.

Ms. Mizner noted that the neighbor's property is upstream of the proposed work and that the Commission's jurisdiction is limited to wetlands resource areas. If development occurs outside of those areas, the Commission cannot address those concerns.

Mr. Hochmuth said that this matter would be brought again to the Commission once the applicant has talked with DEP, and requested that it be continued.

*The Commission scheduled a sitewalk for 8 a.m. on January 9<sup>th</sup> and continued the matter to January 18<sup>th</sup>, 2022.*

**8. Public Hearing: Notice of Intent: 4 Norino Drive, Kevin Neville - Cobalt Development, LLC, Re: Construction of a single family house, DEP# 078-0XXX**

Consultant Charles Ware explained that the applicant plans to build a house on a vacant single family lot. He showed a plan containing wetlands lines that had been delineated by Michael Seekamp in early June, noting that the septic system was to be located across the street, so that no septic work would occur near the buffer zone. Mr. Ware said that this will be a fairly simple project, with grading largely limited to the front area for the driveway.

Mr. Ware noted that the seller is eager to complete the transaction; the Commission reminded him that no ground work can occur in areas subject to jurisdiction until April 15.

*In response to the Commission's request, Mr. Ware said that he would 1) provide data sheets supporting the wetlands delineation and 2) confirm that the wetlands flags are still in place.*

*The Commission scheduled a sitewalk for 9 a.m. on January 1, 2022, and continued the matter until January 3.*

The Commission advised abutter Tracy Peter that she would need to obtain the property owner's permission to go on the site walk.

**9. Request for Certificate of Compliance: 387 Middle Street, Jennifer Attenborough, Re: Sanitary system, DEP# 078-0718**

Mr. Hochmuth said that the difficulty in completing work on this property, where gravel had been removed from a driveway/carport area improperly located in an area subject to jurisdiction, was that grass would not grow where the gravel had been. A second scraping of the gravel removed more stones and the reseeded area has now been successfully revegetated. Ms. Greene confirmed that the site looks good: it is stabilized and requisite placards are in place. One piece of silt sock needs to be removed, and she recommends approval.

*Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue the Certificate of Compliance based on the reports received.*

**10. Request for Insignificant Change: 326 Main Street, Re: Continuance of site work for installation of a tight tank septic system after cease work date of October 15, DEP# 078-0736**

Ms. Greene explained that the Commission approved this project with a deadline of the middle of December to complete excavation work. Work has not yet begun, but erosion controls are in place and they are now ready to start as soon as they can—but need an extension of time.

*Ms. Mizner moved, Mr. Atwood seconded, and the Commission voted unanimously to grant an extension for completion of work to December 28, 2021.*

**11. Request for Insignificant Change: 46 Coffin Street, Re: Continuance of site work for the installation of overhang footings after cease work date of October 15, DEP# 078-0714**

Ms. Greene reported that erosion controls and other aspects of this site where work is ongoing are not in compliance. Mr. Hochmuth said that they moved the dumpster and would install winter rye and straw mulch. Ms. Mizner responded that straw will blow away and winter rye seed will not grow in this season. Mr. Hochmuth then suggested a mesh straw covering.

Ms. Greene expressed concern that the soil stockpiles had not been protected with erosion controls as stipulated in the Order of Conditions. The Commission noted that if the Order requires it, it should be done.

Mr. Hochmuth said that all the ground work had been completed except installation of 6 sonotubes for the front porch. The applicant would like to excavate this with a machine and drop in precast concrete footings. This, he said, could be done in 2-3 hours.

*Ms. Mizner moved, Mr. Atwood seconded, and the Commission voted unanimously to authorize the sonotube installation as an insignificant change after the October 15 no-work date (with spoils from the sonotube excavation placed on existing storage piles or moved offsite), provided that the applicant install the straw netting and erosion controls around the stockpiles no later than the end of this week.*

**12. Old Business: Open Spot on Conservation Commission**

*No developments.*

**13. Old Business: FY23 Budget**

Ms. Greene said that the plan is to continue the budget at prior levels, except that additional training costs need to be included. *The Commission members will provide estimated training costs to Ms. Greene.*

**14. Old Business: Letter from West Newbury Wild and Native seeking West Newbury Conservation Commission support for native plant landscaping at Pentucket Regional Middle-High School**

In considering the letter from the West Newbury Wild and Native group seeking Commission support for the group's efforts to have native plantings at the new high/middle school complex,

Commissioners raised concerns including the 11<sup>th</sup> hour nature of this request (Mr. Atwood noting that the landscaping has probably already been bid out), the lack of clarity in the definition of native, and the nature of the complex as a built semi-urban environment that will not offer insects or wildlife leaf litter and other habitat support.

The Commission noted that it supports native vegetation when it requires replanting in resource areas. Mr. Attwood suggested, and the other members agreed, that going forward, when additional planting may be needed, the school campus should use native plants. *Ms. Greene will draft and circulate a letter noting the late stage of work and supporting future use of native plants.*

#### **15. Other Business:**

87 Main Street Ms. Greene said that a video of the flooding from 87 Main Street on November 12, 2021 had been sent to the Town and another site visit occurred today. The developer is working to stabilize the hillside by the end of the year and to reduce siltation. A problem is that the driveway has no crown.

Invasive plant course Ms. Greene said that she would like to take an online UMass course about invasive plants to assist her work in supervising interns doing invasive plant management. *The Commission supports this provided that funds are available to cover the cost.*

#### **16. Wetlands Bylaw Update: Review draft bylaw & comments**

The Commission discussed Ms. Greene's comments and other aspects of the proposed wetlands bylaws. Among other things, the Commission considered

- The deadline for an applicant to pay the fee for a Commission consultant (Ms. Greene will find out what the Planning Board does)
- Specification that the Commission will use consulting services for technical matters the Commission does not normally address
- An expansion of notice to abutters
- A requirement that an applicant provide the same notice it gives to abutters to other affected Town boards

*It was agreed that Ms. Mizner will make and circulate the revisions and upon Commission review, the draft bylaw will be posted on the Commission webpage and opened to comment for a few weeks until mid-January. Then the draft bylaws will be sent to Town Counsel at KP Law.*

#### **17. Informal Discussion:**

*None*

#### **18. Community Input:**

*None*

#### **19. Approval of Minutes: November 1, 2021**

*Deferred*

**20. Approval of Minutes:** November 15, 2021  
*Deferred*

**21. Approval of Minutes:** December 6, 2021  
*Deferred*

**22. Correspondence:**  
*None*

**23. DEP Comments:**  
*None*

**24. Land Agent Update:**  
*None*

**25. Next Meeting:** January 3, 2022

**Adjourn**  
10:17 pm

### **Meeting Documents**

*Materials pertaining to each item, as maintained in Conservation Agent files.*

Respectfully submitted