

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, January 3, 2022, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, and Kathy Feehery. 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. *Applicant requests a continuance.***
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. *Applicant requests a continuance.***
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): 87 Crane Neck Street, William P. Spalding, Re: Construction of a gravel driveway, DEP# 078-0738 *Applicant requests a continuance.***
6. **Request for Insignificant Change: 24 Main Street - Pentucket Regional School District Building, Re: Construction of a gravel driveway after October 15th, DEP# 078-0701**

Dan Blumberg, representing the applicant, appeared via telephone. He said that the request is to construct a gravel driveway during the wintertime work ban. This driveway, for National Grid access, had been addressed at a [prior Commission meeting](#). The applicant missed the window of opportunity before the October 15 stop work date and wants to get this done as soon as possible so that utility poles can be installed to provide power to the new school building. He noted that the erosion controls are still in good shape and that some of the planned driveway is where a temporary parking lot has been installed. The driveway will be about 20' wide and will not require significant grading since the grade varies by a foot or less. The project will involve excavating topsoil, applying filter fabric, and installing the gravel. Excavated

materials will be added to the existing soil storage mound.

Ms. Mizner moved, Ms. Feebery seconded, and the Commission voted unanimously to authorize a change allowing the work on the gravel driveway as proposed, conditioned on 1) prior Conservation Agent inspection and approval of erosion controls, 2) placement of excavated materials on the existing storage pile and 3) completion of this work by January 17, 2022.

**7. 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#
078-0739**

Michael Seekamp, the applicant's representative, stated that the Department of Environmental Protection (DEP) issued a file number for this project and the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) identified no issues with the project. He noted that during the site walk, some concerns had been expressed about placing pilings near the slope. Mr. Seekamp said the pilings are just on the property side of the road easement and cannot be moved closer to the road. Mr. Seekamp said that the applicant submitted a construction sequence to the Commission. Excavated materials will be taken offsite, a machine auger will be used to place 4 sonotubes, staked straw wattles will be placed below each sonotube hole, once the holes are dug, disturbed soil will be reseeded, and no significant trees will be removed—only shrubs, which are mostly invasive plants.

In response to Ms. Mizner's inquiry about the platform decking material and its ability to let light through to the area below, Mr. Seekamp said that the platform will be an aluminum mesh material shown on the plan, called ThruFlow decking. He said that this is the same material used on another dock on River Road that received a Certificate of Compliance, which is where the applicant learned of the need for light access. Mr. Seekamp said that the same decking materials would be used for the platform, the ramp, and the dock. He explained that it had a triangle design of mesh openings. The Commission then looked up ThruFlow decking on their smartphones and found that it could allow 43% of sunlight to get through, which is better than would be the case with decking planks spaced 3/4" apart.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue an Order of Conditions with standard and special conditions and additional special conditions providing that 1) all work would conform to the plans and the construction sequence, 2) work may occur only in the authorized work period between April 15 and October 15, 3) the site will be stabilized for winter, 4) decking material will allow at least 43% sunlight penetration, 5) erosion controls (12" diameter staked wattles below each footing) will be installed and no work will occur until the erosion controls have been inspected and approved by the Conservation Agent, 6) no trees greater than 4" diameter may be removed, 7) excavated materials will be disposed of offsite, 8) the applicant will provide the Conservation Agent a construction schedule at least 72 hours' prior to the commencement of work, 9) the applicant will use a flexible low impact mooring system, 10) no storage of dock components, etc. will occur on the riverbank, 11) removable components will not be hauled over the riverbank, 12) marine liquids will not be stored at or near the dock, 13) restrictions on use of chemicals such as pesticides, herbicides, fertilizers, etc. apply, 14) conditions not directly applicable to construction will apply in full force after completion of construction, and 15) any additional work will require a new filing before the Commission.

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

The applicant's representative Charles Wear said that after the sitewalk, the applicant added two missing flags, adjusted the wetlands line, and submitted a revised plan. With the new flags, elements associated with the septic system (the system proper being located across the street) were moved somewhat and grading was changed somewhat. The new plan also adds a water connection and shows use of wattles for erosion control. The extension of the wetland delineation with the new flags pushed the 100' buffer across the street. At the Commission's request, Mr. Wear measured to determine if the new buffer line would just graze where the force main for the septic system would be. Ms. Mizner advised that the force main in this area would have no impact on the wetland. Mr. Wear explained that the main would go across the street pursuant to an easement set up for this property.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue an Order of Conditions approving the project with standard and special conditions, including that 1) All work shall conform to the following approved plan: "Plan to Accompany Notice of Intent" with a final revised date of 01-03-2022, and Notice of Intent filing and narrative submitted December 7, 2021, 2) Due to the proximity to wetlands, a permanent naturally vegetated area extending 25' from flagged wetland lines A and B shall remain at the property and shall not be disturbed, 3) Conservation placards attached to posts selected by the applicant and approved by the WNCC, or pressure treated 8'x4" posts installed 4' into the ground and 4' above ground, shall be installed and permanently maintained to demarcate the 25' no disturb zone surrounding the wetlands. The posts shall be installed at a distance 25' from wetland flags A5, A7, A9, A11, A13, A15, A17 and at a distance 25' from wetland flags B1, B3, B5, B7, B9, B10, and B11, 4) Erosion control in the form of 12" staked straw wattles shall be installed as shown on the approved plan, 5) Erosion control is to be installed and inspected by the Commission prior to starting work, 6) Any excavated materials are to be stored outside of resource areas and the 100' buffer zone, 7) There shall be no application of pesticides, herbicides, insecticides or other chemicals in the 100' buffer zones of the wetlands, 8) Any fertilizer used in the 100' buffer zone shall be low in nitrogen, used in moderation, 9) There shall be no use of sodium based deicers on the driveway, walkway, or within the 100' buffer zone, and 10) Condition #2, 3, 7, 8, and 9 shall run with the land and shall remain in full force and effect after the issuance of a Certificate of Compliance.

9. Public Hearing: Request for Determination of Applicability: 50 South Street, Martin & Anne Madden, Re: Cutting of seven trees along driveway

Homeowners Martin & Anne Madden participated by telephone, explaining that they had been visited by a certified arborist from National Grid who was interested in doing proactive work to keep their electric service in good working order. Trees near powerlines, particularly where the soil was in saturated wetland areas, pose a threat to service. The arborist suggested removing 10 trees, but the homeowners decided to keep some large oaks, and are proposing removal of 7 trees. Stumps with stems 10'-12' high will be kept in place and all machinery for the work would be kept on the driveway. Waste materials would be removed offsite.

Ms. Greene had done a site walk and Ms. Mizner said she is familiar with the driveway, noting that this kind of project will have no impact of the wetland.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue a negative RDA, conditioned on 1) leaving the stumps with 10' – 12' high stems in place, 2) all machinery for the work will be kept on the driveway, and 3) waste materials will be removed offsite.

10. Request for Certificate of Compliance: 10 Kelly Brook Drive, DEP# 078-0572

In the absence of the applicant or their representative, Ms. Greene said that the barn in question had been built to a slightly smaller size than initially proposed. She noted that the as-built plan submitted in connection with the request for a Certificate of Compliance is insufficient. It does not show the gravel driveway that has been installed in the buffer zone (and was not on the approved plan). Also, the 5 required posts demarcating the no disturb area (which are in the right places) were installed after the as-built plan was submitted.

Ms. Mizner noted that the as-built plan needs to reflect what was actually built and is now on the ground. She said that the applicant should explain why the driveway was built without Commission approval. Ms. Greene said that the property had been sold and the new owners will likely not know much about this. Ms. Mizner noted that the Commission's requirements go with the land and apply to whoever owns it.

Ms. Mizner noted that the property owner will need to make an after-the-fact filing with the Commission (which would entail a Notice of Intent given the proximity to wetlands) or remove the driveway.

11. Enforcement Order Ratification: 18 Turkey Hill Road, Eugene & Barbara Daigle, Re: Unauthorized activities in the buffer zone to a bordering vegetated wetland

Agent Greene said that the Director of the Department of Public Works (DPW) informed her that at 18 Turkey Hill Road (an undeveloped property adjoining the Artichoke Reservoir), someone had installed a mailbox, removed vegetation, made an opening in the stone wall, and put in a gravel driveway. Since all this occurred in the 100' buffer zone, she sent an enforcement order to the address of the mailbox (which the Post Office says is not a deliverable address) and to the owner of record, Barbara Daigle, who lives in Bangor, ME.

Ms. Daigle told Ms. Greene that she did not authorize this, does not know anything about it, and is not in a position to travel from Maine in the winter. Ms. Daigle called the police, who told her she needs to put up no trespassing signs. Apparently a neighbor was also wondering what was going on. DPW placed sawhorse barriers across the new driveway. Ms. Greene said that when she drove by, the sawhorses had been moved to the side, and she put them back.

Ms. Greene will send out the ratified enforcement order.

12. Request for Insignificant Change: 34 Ash Street Re: Construction of a driveway & culvert after October 15th, DEP# 078-0727

On behalf of the applicant, Greg Hochmuth explained that the [Commission had granted an extension before](#) but the work has not been done and the deadline of the prior extension has passed. Mr. Hochmuth said that they need to get the lawyer to make the prerequisite deed restriction prior to starting work (a precondition the Commission established). He also said that he is aware that the applicant needs to file a stabilization plan with the Commission.

Ms. Mizner moved, Ms. Feebery seconded, and the Commission voted unanimously to allow the wetlands crossing work and driveway installation to be done up to January 24, 2022, provided that the applicant 1) complies with the Order of Conditions, 2) installs and maintains appropriate erosion controls, 3) stabilizes the disturbed area over the winter, 4) stockpiles excavated materials outside the resource area, 5) obtains wetlands monitoring and reporting by a wetlands scientist periodically and after significant rainstorms, and 6) installs riprap on the driveway by the road for tire cleaning.

13. Request for Insignificant Change: River Road Reservation, Re: Request to move wetland replication location, DEP# 078-0733

David Rimmer appeared on behalf of Essex County Greenbelt, saying that wetlands scientist Mary Rimmer submitted a letter to the Commission about minor modifications that had been discussed on a site visit in July. A slight relocation of the replication area would place it nearer the road, making grading easier and reducing the distance needed for equipment to move to accomplish the replication. Also, it makes sense to wait until spring to finish the replication work, which had been ordered to occur right after completion of the parking area and trail work just recently completed.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to authorize the applicant to 1) relocate the wetland replication area as proposed and 2) modify the timeframe so that replication may occur after April 15, 2022.

14. Old Business: Open Spot on Conservation Commission

No update

15. Other Business: FY23 Budget

Ms. Greene reported that the proposed budget now includes funds for additional training, but otherwise is based on last year's budget.

16. Other Business:

17. Wetlands Bylaw Update:

Ms. Greene said that the draft bylaws were posted on the website and have been emailed to Town staff. The Building Inspector had some minor comments.

West Newbury resident and Fish & Wildlife biologist Nancy Pau thanked the Commission for drafting the bylaw and offered some questions and comments. She will also email some minor suggestions.

Vernal pools

Ms. Pau asked about the Commission's view of the intent and operation of provisions concerning vernal pools. She said that the Town has only 2 certified vernal pools, and not many possible vernal pools have been identified in aerial photos. It is hard to get certification for a vernal pool because the criteria are stringent, requiring among other things findings concerning certain key species.

The draft bylaw, Ms. Pau said, seems to emphasize a pool's physical characteristics: a depression of a certain size with two continuous months of standing water and no fish present. This would apply regardless of certification and the presence of the critical species and biological factors. This approach, Ms. Pau said, would reverse the burden of proof, requiring the applicant to prove that the necessary elements for a vernal pool are not present. She said that in her experience as a biologist working on endangered species, it is very difficult to prove a negative. She added that this approach would make it necessary for the applicant to hire expensive consultants and would cause delays.

Ms. Mizner said that the intent is to provide a 100' no disturb area around depressions that serve as vernal pools. *The Commission agreed to give this question additional thought.*

Consultant services for the Commission

Ms. Pau said that she encountered a Conservation Commission in a different Town that regularly required consultant services, causing additional delay and costs. Ms. Greene said that after complaints that practice had been stopped. Ms. Pau said that while the Commissioners now working in West Newbury would not excessively engage consultants, no one can know what a future Commission might do. Ms. Mizner noted that the bylaw restricts use of consultants for matters beyond the technical expertise of the Commission—and that is hard to speculate about what matters those might be. Ms. Greene noted that unreasonable requirements might be appealed to the Select Board.

Invasive plant management

Ms. Pau noted that controlling invasive plants and replacing them with native species has a positive impact on wetlands. She asked if there could be any exemption or waiver for such activities. Ms. Mizner said that the problem is that people may unilaterally, and erroneously, decide what is invasive or use improper methods for removing vegetation in wetlands. She added that the controlling state provisions do not allow for such an exemption or waiver. Ms. Greene stated that one of her goals is to reach out to landowners and clarify and explain what can and cannot be done.

Minimum size for ponds

Ms. Pau noted that the bylaw contains no minimum size for a “pond.” Would the bylaw require a protective buffer zone around something like a decorative koi pond? Ms. Mizner said that the definition would exclude ponds with an artificial bottom, such as a garden pond made with a liner.

18. Informal Discussion:

Conservation Agent Greene let the Commission know that she will be out from February 24 to March 1, 2022.

19. Community Input:

20. Approval of Minutes: November 1, 2021

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the minutes as amended.

21. Approval of Minutes: November 15, 2021

Ms. Mizner moved, Ms. Feebery seconded, and the Commission voted unanimously to approve the minutes as amended.

22. Approval of Minutes: December 6, 2021

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the minutes as amended.

23. Approval of Minutes: December 20, 2021

Defer to next meeting

24. Correspondence:

25. DEP Comments:

26. Land Agent Update:

27. Next Meeting: January 18, 2022, Please note, meeting is scheduled for a Tuesday due to Monday holiday; second February meeting is Presidents Day and the meeting will need to be rescheduled. Ms. Greene advised that while the Commission usually reschedules Monday meetings to Tuesday, that she will be unable to attend if this is the case as that is the regularly scheduled meeting for the Merrimac Conservation Commission. Ms. Greene advised she will send this out via email so Commissioners can check their schedules and determine a new meeting date at the next meeting.

Adjournment

The Commission adjourned at 9:35 pm.

Meeting Documents

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

Respectfully submitted