

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, May 2, 2022, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, Kathy Feehery and Tom Atwood. Also present, Conservation Agent Michelle Greene, Select Board member Wendy Reed.

1. **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.***
2. **Public Hearing: Notice of Intent (continued): Town Wide, West Newbury DPW, Re: Hazard tree management, DEP# 078-0717 *Applicant requests a continuance.***
3. **Public Hearing: Request to Amend Final Order of Conditions (continued): 87 Main Street, Lot 3, Robert Johnson, Re.: Construction of drainage and stormwater management systems to address runoff and sitework to stabilize site, DEP# 078-688**

Developer Robert Johnson explained his latest plan, noting that he had met with a representative of the State's Department of Environmental Protection and others about this. He said that the plan shows erosion controls including check dams with swales (some of which would be permanent) , and noted that the site has been seeded and he expects that the vegetation will resolve much of the erosion issue. Some of the check dams are on properties already sold to new homeowners. An easement would be needed to make those permanent.

The Commission noted that that it received the calculations supporting the adequacy of the stormwater managements systems shortly prior to the evening's meeting and time was needed to examine them. Mr. Johnson said that the calculations show that the proposed stormwater system would hold up in the event of 25-year storms and smaller storms.

In addition to the seeding taking care of erosion and potential silt runoff, Mr. Johnson said that groundwater seepage issues would be resolved once the groundwater relocates itself, which may take a year or so. He said that it's not possible to calculate for groundwater. He added that the steep ramp used for access for septic construction would be removed once it was dry enough to be safe to do so.

*Mr. Johnson agreed to 1) provide the Commission plans and condominium documents showing property lines, 2) put property lines on the plans, 3) include **all** drainage from all the newly developed properties on the plan and in the calculations, 4) include in the plan the size and location of the catchment basins in relation to all the drainage they will receive, 5) have his engineer appear at the Commission's next meeting on May 16 to explain the calculations, including the proposal's sufficiency to deal with groundwater and storms greater than 25-year storms.*

With Mr. Johnson's agreement, the matter was continued to May 16.

Susan Francoeur, an abutter who recently purchased one of the units in the development, described ongoing problems with standing water, which she attributed to seepage. She expressed her inability to understand how the Town and the State allowed this project to be permitted and allowed these problems to remain unresolved for over a year and a half. She said that the driveway is very treacherous in winter, no retaining walls have been constructed, and stagnant ponds of water are present on various parts of the development. She asked whether the stagnant water would be a health hazard and whether the catch basins would compound this issue. Ms. Greene said that the catch basins were intended to slow down water to catch silt.

4. Public Hearing: Notice of Intent (continued): 177 River Road, Marcos Goncalves, Re: Construction of a platform, seasonal dock with float, and a footbridge, DEP# 078-0742

Ms. Greene reported that the applicants have an updated plan but want to continue the matter to the 16th to address DEP comments.

5. Public Hearing: Notice of Intent (continued): 40 Maple Street, Alex & Dorothy Moerlein, Re: Raze existing garage, construct new garage, construct an addition, DEP# 078-0743

William Holt, an engineer for the applicants, said that a new plan showed revised wetlands lines. The plan also shows that the proposed new building would be more distant from the wetlands. To address drainage the applicant will install infiltrators (akin to a drywell) in the back which will reduce net runoff by a modest amount. Because the groundwater is only 2' from the surface, the area will be raised by 3' to accommodate it, with runoff from the raised yard going in both directions.

The applicant agreed to provide the Commission with larger sized hard copy plans and to continue the matter to May 16th.

Abutter Brian Conn questioned the net amount of impervious surface proposed to be added to the lot and asked for an explanation of the infiltration system. Mr. Holt said that the system has no maintenance plan but has inspection ports which can be checked to ensure the system is working.

6. Public Meeting: Request for Determination of Applicability: 1 Follinsbee Lane, Christine Kiezulas, Re: Installation of permeable patio, drip irrigation, landscape lighting and garden beds

Ms. Mizner noted that the Commission had done a site walk and noted that the proposed work is more than 50' from the wetlands except in one area. Ms. Hawkins questioned the use of fountain grass, which could escape into wetlands. *Landscape Greg Parachojuk said that he will find a satisfactory substitute.*

Ms. Mizner moved, Mr. Attwood seconded, and the Commission voted to issue a Negative Determination of Applicability (as amended to include plywood laid temporarily to protect areas from construction tires and to require applicants to obtain prior Conservation Agent approval of erosion controls before commencing work) with conditions that applicants 1) perform construction in accordance with the plan, 2) install straw wattles around the work site, and 3) submit to the Commission and obtain approval for a revised plant list.

7. Violation: 21 Montclair Road, Re: Clearing trees within 100' buffer zone without a permit

Ms. Greene said that a large clearing of trees occurred in the 100' buffer zone and onto an abutting property. The property owners are now working with a surveyor and wetland scientist to delineate property lines and wetland boundaries. The clearing may be around an acre of land and it may implicate the stormwater bylaw. The stumps and felled trees have been left in place.

8. Violation: 189 Ash Street, Re: Clearing trees within 100' buffer zone without a permit

Ms. Greene said that a large pile of felled trees was visible from the road and she has mailed a letter to the property but does not know if it was received and has no contact information. *At Mr. Atwood's suggestion, she will contact the Assessor's Office for information about the property owners.*

9. Violation: 45 Church Street, Re: Clearing trees within 100' buffer zone without a permit

Ms. Greene said that there is a current Commission determination dating from June 2021 to allow reconstruction of a deck in the buffer zone—with no tree clearing. She has sent an email and a letter to the homeowners. The homeowners, Angela Treadwell-Palmer and Andrew Palmer were present at the meeting and explained that two diseased black walnuts, a Norway maple, and a dead blue spruce had been removed and were to be replaced with native trees. It was noted that the hazard tree exemption in the Wetlands Protection Act does not apply in these circumstances.

It was agreed that the homeowners should file an after-the-fact Request for Determination of Applicability (which could cover both the tree removal and the plans for replanting) to be on the agenda for May 16th.

10. Violation: 145 Moulton Street, Re: Breaching beaver dam without a permit

Ms. Greene recounted emails from a concerned abutter who enjoys the wetlands behind their house and expressed concern that neighbors have been breaching beaver dams and draining the wetlands. Ms. Greene said this is not visible from the street, but she sent out a violation letter that may or may not have been received. *She will follow up with the Assessor for better contact information and check with the neighbor to see if she can view the area from their property.*

11. Vote of Reconsideration: 0 River Road, Map R24, Lots 8, 8A, 7D, Nancy Pau and Albert Ting, construct a driveway and single-family home with garage, DEP# 078-0745 (vote required due to abutting Commissioner voting at 4/19/2022 meeting)

Ms. Mizner moved and Mr. Attwood seconded, reconsideration of the vote and reissuance of the order on this NOI because Ms. Feebery, who did not realize she was an abutter, had voted on the matter. The Commission voted to reissue the Order of Conditions 3-0-0, with Ms. Feebery, recused, not voting.

12. Enforcement Order Update: 87 Main Street, Lot 3, Robert Johnson, Re.: Construction of drainage and stormwater management systems to address runoff and sitework to stabilize site, DEP# 078-688

Ms. Greene said that this had been addressed in the earlier discussion of 87 Main Street.

13. Other Business: Discussion regarding proposed policy on site walks currently before the Select Board

The Select Board is considering a personnel policy providing that Town staff shall not be called upon to work on a 3 day holiday weekend or other holidays or on Easter Sunday. *The Commission agreed to recommend that instead of citing Easter, the policy apply to religious holidays observed by a staff member.* As to accommodating applicants, Ms. Mizner suggested that the existing policy is to accommodate them and this can be dealt with through a case-by-case approach.

14. Other Business: Discussion regarding new MassDEP Policy on stream maintenance/management of diadromous fish runs

Ms. Greene said that she shared the policy with the Commissioners. Since the list does not include tributaries to the Merrimack such as the Indian River, it has limited applicability in West Newbury.

15. Old Business: 15 Norino Drive, Re: houseboat, update from Coast Guard and Salisbury Harbormaster

Ms. Greene said that she still hasn't heard from Salisbury's Harbormaster, who is contracted to serve as West Newbury's Harbormaster. Mr. Atwood said that the Select Board may want to look into the apparent lack of cooperation *and Ms. Reed will follow up.* Ms. Greene said that in looking into the need for the Town Harbor Committee to coordinate with the Commission on mooring and other issues, she noted that the Committee has bylaws addressing derelict boats at the shoreline. *Ms. Greene will draft and circulate a new enforcement order.*

16. Old Business: Review updated local filing instructions for RDA and NOI

Ms. Mizner said that she will provide a redlined version of the new filing instructions.

17. Wetlands Bylaw Update: Continued discussion on bylaw ahead of spring town meeting

It was noted that Select Board member Richard Parker will be joining David Archibald in voting against the draft bylaw, in part because regulations are needed as well as a better explanation of buffer zones.

The Commission generally discussed prospects for passage and next steps. It was agreed that outreach, education, and resident feedback would be very important. The Commission agreed to move no action on the bylaw at Town meeting and work on regulations, as well as more feedback from and education for the Town. The Commission will work on this over the summer, aiming to take it up again at Fall Town Meeting.

Informal Discussion:

Ms. Greene alerted the Commission that the meeting on June 20th conflicts with the now-recognized holiday Juneteenth, so that will require an adjustment. Also, she will be taking time off between June 15-20.

18. Community Input:

Mr. Conn asked about the permitting process for 87 Main Street. It was explained that the Commission lacked jurisdiction over much of the site until the runoff of silt into wetlands became an issue.

19. **Approval of Minutes:** April 4, 2022

Deferred.

20. **Approval of Minutes:** April 19, 2022

21. *Deferred.*

22. **Approval of Minutes:** April 25, 2022

Deferred.

23. **Correspondence:**

24. **DEP Comments:**

25. **Land Agent Update:**

26. **Next Meeting:** May 16, 2022

Adjournment 9:53 pm

Meeting Documents

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

Respectfully submitted