

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:30 pm, May 16, 2022, Second Floor Town Offices.

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

**Announcements:** The Conservation Commission seeks applicants for appointment to fill one vacancy on the Commission. Applications and additional information can be found on Town Website

**1. Conservation Restriction Review: River Run Farm – 540 Main Street, Re: Review CR (Conservation Restriction) before executing with Essex County Greenbelt**

Maggie Brown, representing Essex County Greenbelt described a CR, which had been submitted to the Commission, that will preserve a property as a working equestrian farm. Greenbelt will monitor and enforce in the CR in perpetuity. Ms. Brown said that the state Executive Office of Environmental Affairs review has been successfully completed, the CR will soon be before the Select Board for approval and Greenbelt is here today seeking Commission approval. In response to Ms. Mizner, Ms. Brown said that Greenbelt is working on generating a baseline report and will complete that when the CR is ready to be recorded in the registry of deeds. She also stated that whether hunting will be permitted will be left to the landowner.

*Ms. Mizner moved to approve the CR, Mr. Atwood seconded, and the Commission voted 3-0-0 in favor. Ms. Feehery, who was granting the CR, recused herself and did not vote.*

**2. 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.***

**3. Old Business: Update on MEPA filing and issuance of a MEPA Certificate for new proposed Lower Artichoke Spillway project, City of Newburyport Department of Public Services *Applicant requests a continuance.***

Ms. Greene reported that a Massachusetts Environmental Policy Act (MEPA) certificate was issued for Newburyport's proposed project to raise the Artichoke spillway in certain storm events. She said that there will be a site visit with West Newbury's Water Commissioners and Newburyport. Ms. Mizner noted that the Commission did not submit MEPA comments because the matter will be presented for a Commission decision when Newburyport files a new Notice of Intent.

**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: 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**

Consultant John Morin of the Morin-Cameron Group provided an overview, saying that the plans for this development changed when the developer proposed a common driveway instead of 3 separate driveways, as the Conservation Commission preferred. He said that Lot 1 is complete, Lot 2 is almost finished, and Lot 3 remains under construction. A breach had occurred in the erosion controls. The Department of Environmental Protection had visited the site and agreed with the developer's wetlands advisor that it made more sense to leave the washed out sediment in place and allow vegetation to grow rather than remove the sediment. He added that a culvert is in place under the Lot 2 driveway carrying away water from Lot 3.

Mr. Morin said that the developer used DEP standards and the project did not come under stormwater regulation. He noted that the developer has installed a better stone riprap swale so that now there is a riprap channel all the way down the steep hill on which the development is located. He added that of his own accord, to be helpful, the developer installed plunge pools/stormwater retainage basins to the east of the common driveway, which were not specifically designed for storm events. Mr. Morin said that the riprap and the plunge pools are doing a great job slowing down sediment.

Ms. Mizner observed that the problems associated with runoff from the development were hardly confined to a single breach of an erosion control. There have been months of repeated incidents of runoff causing silt in the wetlands and there have been incidents when stormwater from the site crossed Main Street, causing silt to invade the wetlands across the road.

Mr. Morin said that this is still a construction site, which needs to be finalized and stabilized. He added that the plunge pools were in good shape last week and doing exactly what they are supposed to do in containing sediment. He said that once the site is stabilized, the plunge pools will not be needed and would be converted to a level spreader slowing water velocity.

In response to Ms. Mizner's request for an explanation as to how stormwater will be adequately managed into the future, Mr. Morin said that water will definitely continue to run off down the hill. He said that there is no proposed mitigation for runoff, and none is required. The developer is solely concerned about managing silt from the site.

In response to Ms. Hawkins' question about how the developer will address slumping of the hillside, which has been significantly cut into for this development, Mr. Morin said the proposed grades are the same as before for Lots 1 (which is perfect) and Lot 2 (half of which has an issue with water breakout, which is being worked on right now). Lot 3 is being worked on right now and is not finally graded. He noted that groundwater seepage cannot be evaluated.

When asked if the developer could provide a full evaluation of stormwater, Mr. Morin said that he had not been told about that. Ms. Mizner said that the developer had been asked to provide

such an evaluation at the last meeting at which this was discussed. Mr. Morin added that stormwater had been included in the calculations recently provided to the Commission.

Ms. Mizner asked whether the calculations really showed no runoff in a two-year storm. Mr. Morin indicated that in such circumstances the water would infiltrate at the site. Ms. Mizner asked whether the calculations assumed the permanent stormwater system would include areas on Lot 2, which would require grant of an easement from those property owners. Mr. Morin said that they have not discussed the potential easement with those properties because they do not yet have a final approved design.

When asked if the developer would provide the Commission a full plan of the development as of now showing current drainage management, current locations of structures driveways and associated utilities, along with proposed drainage management for the project when completed, Mr. Morin said that they had not had time to do this. It was pointed out that such a plan was required in an Enforcement Order the Commission issued in February. Mr. Morin said that the Commission already has issued an Order of Conditions governing Lot 3, and in any event the developer will have to come before the Commission seeking a Certificate of Compliance, and will need to provide such information then. Ms. Greene again pointed out that the February 2022 Enforcement Order requires those plans now. Mr. Morin said that the amount of water has not changed, but changed plans like the changed driveway and different drainage structures may have created problems. Ms. Hawkins pointed out that it was not the driveway but the changes to Lot 3 building locations that caused the problems.

Rob Johnson, the developer, said that certain aspects of the project are undergoing additional review at the Board of Health, making final grading on Lot 3 uncertain. New concerns about groundwater could require additional excavation behind the building on Lot 3 (which would involve removal of perhaps an additional 1,000 truckloads of soil, which nobody wants) or may require a relocation of the septic tank, which in turn would require that he put a trench through the garage to redirect the plumbing. That issue has not been resolved.

Brian Allenby an abutter who had purchased one of the homes in Lot 2 of this development said that the plans showed a retaining wall and drainage systems behind Lot 2 that were not built. All four units in the development that have been sold have water-logged yards growing algae and wet basements. Water is flowing out of the hill at an astounding yet increasing rate. This is in addition to the slump at Lot 2. He asked that the Commission address the water coming out of the hill. Mr. Morin said that groundwater will seep until the site is stabilized, but attempts could be made to intercept the water. Mr. Johnson said that it will be a dry summer.

Ms. Mizner and Ms. Greene said that the Commission needs to have as global a solution as possible. *The developer needs to 1) resolve matters with the Board of Health; 2) obtain an easement for stormwater management systems on Lot 2 (which, said Mr. Johnson, will need a reciprocal easement from Lot 3 to deal with water seeping from the hill behind Lot 2); and 3) submit to the Commission the plans required by the Enforcement Order.*

*The matter was continued for a month, until the second meeting in June. The developer will keep the Conservation Agent advised of all new developments.*

6. **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**

*Applicant requests a continuance.*

7. **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**

*Applicant requests a continuance.*

8. **Public Meeting: Request for Determination of Applicability: 58 Church Street, James McCarthy, Re: Removal of trees with emerald ash borer damage**

After consultation with a professional arborist and a state biologist, the applicants seek to remove 22 adult ash trees killed by emerald ash borers. Applicants said that the tree removal company is ready to do the work immediately. The plan is to leave the stumps and roots in place and cut up the wood and stack it. In response to Ms. Hawkins' query whether the dead trees could be kept in place until nesting season is over, the applicants stressed that the dead trees have begun to fall over and present a highly dangerous hazard to people in the area.

*Ms. Mizner moved, Mr. Atwood seconded, and the Commission voted unanimously to issue a negative determination of applicability for the removal of the dead ash trees, provided that the stumps and roots are left in place.*

9. **Public Hearing: Abbreviated Notice of Resource Area Delineation (ANRAD): Mill Pond – 693 Main Street, Town of West Newbury, DEP# 078-0746**

Greg Hochmuth of Williams and Sparages, a consultant to the Town of West Newbury in connection with a proposal to install new paths, some of which would be ADA compliant, at the Mill Pond, advised that the project will require a long Commission site walk (about 2 hours) to review wetlands lines. He said that this is a difficult site, in good measure because the soil has been disturbed, likely as a result of dredging Mill Pond. He also noted that the project has a DEP number with no comments from that agency. Mr. Hochmuth said that after the ANRAD is complete, a Notice of Intent will be filed.

*The Commission scheduled a site walk starting at 8 am on June 5 and continued the matter to June 6. In response to Deb Hamilton, a member of the Mill Pond Committee, the Commission clarified that the public could observe the site walk on public property.*

10. **Public Hearing: Notice of Intent: 30 Pleasant Street, Brian Boudreau, Re: Raze and reconstruct a single-family home, relocate existing driveway, relocate existing septic tank, and associated grading, DEP# 078-07XX**

*Applicant requests a continuance.*

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

Ms. Greene said that she talked with the homeowners' consultant, Tom Hughes, and was told they will have a plan shortly. The violation could be handled with an Enforcement Order requiring a restoration plan or an after-the-fact RDA or NOI depending on the proximity of the clearing to the wetlands.

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

Ms. Greene reported that she spoke with the property owners, who were not aware of the Wetlands Protection Act requirements. They plan to make an RDA filing for *consideration at the Commission's June 6 meeting*.

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

Agent Greene said that the homeowner submitted an RDA filing for *consideration at the Commission's June 6 meeting*.

**14. Violation Update: 145 Moulton Street, Re: Breaching beaver dam without a permit**

Ms. Greene was able to discuss this matter with the property owners who had previously taken action regarding the beaver impoundment in back of their property. They were unaware of applicable requirements and acted out of concern that the water was backing up and approaching their leach field. Ms. Greene provided them an overview of the rules in this respect, including a resident's ability and need to consult with the Board of Health and/or Conservation Commission to resolve such issues. In the meantime, the beavers have repaired the dam.

**15. 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**

*Discussed earlier in the meeting*

**16. Enforcement Order Ratification: 11 Pleasant Street, Sergio Vergara and Maia Vergara Azoulay, Re: Grading and filling within 100' of a bordering vegetated wetland; installation of fencing that constitutes a barrier to wildlife movement within 100' of a bordering vegetated wetland; and destruction of vegetation within 100' of a bordering vegetated wetland without a permit**

Ms. Greene said that the Building Inspector and the police came after an abutter reported the clearing activities—which were stopped but may have started again. The homeowners have done clearing and grading and installed a fence and planks as a bridge across a channel. They were asked not to do this. Ms. Greene issued an Enforcement Order (asking that a filing be made by July 6) and has heard nothing since giving the homeowner Conservation Commission forms. *Ms. Mizner advised that if nothing further is heard, Ms. Greene should contact the homeowner in two weeks to ask if erosion controls have been installed and if the forms are not being filled out, to come to the next meeting.*

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

Ms. Greene has heard nothing more from other officials. *Mr. Atwood suggested that she bring the Harbormaster's lack of response to the attention of the Town Manager.*

**18. Other Business: 4 Norino clearing**

Ms. Greene said that the vegetation clearing at this building site was the result of a misunderstanding due to a change in property ownership. The homeowners' wetland consultant Tom Hughes is working on a mitigation plan that will include invasive species mitigation. He suggested that the Commission could perhaps prevent misunderstandings like this in the future by requiring old homeowners to provide new homeowners a copy of the approved plan and Order of Conditions, at the time of a transfer. The Commission discussed this and the difficulty of enforcing such a requirement.

**19. Enforcement Order Ratification: 15 Norino Drive, Colin Hodgson, Reinhild Hodgson, and Shirene Hodgson Re: Placement of a houseboat and dock along the Merrimac River without a permit with impacts to the 200' riverfront resource area, bordering vegetated wetland, inland bank, and rare species habitat**

Ms. Greene reported that the state has declined to take action. She has circulated a new Enforcement Order and *the matter will be taken up at the June 6 meeting.*

**20. Filing instructions for RDA & NOI:**

The Commission reviewed redlined changes. *Ms. Mizner moved, Mr. Atwood seconded, and the Commission voted to approve the revised filing instructions.*

**21. Wetlands Bylaw Update:**

Ms. Mizner reported that at Town Meeting the No Action motion carried on the wetlands bylaw. Mr. Atwood noted that he had heard from some residents passionately against the proposal. *Commission members agreed on the need to engage in outreach to the community and to obtain feedback as they revisit the wetlands bylaw.* Mr. Atwood suggested using the next meeting to brainstorm about this.

**22. Informal Discussion:**

The Commission noted that George Preble, who may be interested in joining the Commission, attended for part of the meeting. *Ms. Mizner will call him.*

**23. Community Input:**

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

*Deferred.*

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

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

26. **Approval of Minutes:** April 25, 2022  
*Deferred.*

27. **Approval of Minutes:** May 2, 2022  
*Deferred.*

28. **Correspondence:**

29. **DEP Comments:**

30. **Land Agent Update:**

31. **Next Meeting:** June 6, 2022; Vote on date for 2<sup>nd</sup> June meeting which falls on Juneteenth and must be rescheduled. *The Commission determined to set the meeting date as Wednesday, June 22.*

**Adjournment** 9:58 pm

### **Meeting Documents**

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

Respectfully submitted