

## West Newbury

### Conservation Commission Meeting Minutes

**Meeting date & place:** 7:30 pm, April 17, 2018 Conservation Commission Office, 1910 Building

**Members Present:** Chairman Dawne Fusco; Judith Mizner; Wendy Reed, and Conservation Agent Jay Smith

**Cont. Public Hearing --- Abbreviated Notice of Resource Area Delineation Cont. --- Fredrick and Stefanie Hufnagel for River Rd. (Map R-24, Lot 24-5 and 24-7) (DEP# 78-682). --- For the delineation of resource areas. Continuance requested for plan preparation**  
*Chairman Fusco stated that the delineation is continued.*

**Cont. Public Hearing --- Abbreviated Notice of Resource Area Delineation --- Wendy Willis, 35 Prospect St. --- For the delineation of resource areas at 35 Prospect St.**

Ms. Fusco noted that the Commission performed a site walk on this property on Sunday and did not find it necessary to move any wetlands delineation flags. Conservation Agent Smith reported that a new plan had just been submitted.

*Upon review, the Commission voted to approve the delineation as shown on the plan revised as of April 10, 2018, 3-0-0.*

**Discussion: Wendy Willis, 35 Prospect St. --- Certificate of Compliance (COC) Request.**

Ms. Willis explained that in connection with a proposed property sale, she is seeking a COC for work done a while ago on the house. The wetlands jurisdictional work involved a two-storey sunroom, replacement of an old fence, installation of a koi pond, and a stone walkway.

Reviewing the Commission's Special Conditions concerning this work (issued September 13, 2004), Ms. Mizner identified two deviations from that Order. The Order specified that 1) no koi pond could be installed, but it was and 2) the sunroom addition was to have been built on sono tubes, but it has a foundation.

Ms. Willis did not fully recall the circumstances, explaining that she attempted in good faith to comply with applicable requirements. She stated that the as-built koi pond (about 14' x 6") near the patio is aboveground on a slope, hardly disturbing any earth, and located in former garden space. With respect to the foundation, she recalled that her architect advised that a full frost wall would add value.

Mr. Smith examined the files and reported that the most recent COC for this property, issued in 2004, addressed work on the septic system and construction of a tennis court. No additional COCs or authorizations concerning the matters now in question had been issued.

In response to Ms. Willis' question about rectifying the situation, Ms. Mizner advised that next steps would be a request to amend the September 13, 2004, Order to 1) remove Special Condition #1 prohibiting the koi pond, and 2) allow the frost wall foundation in lieu of sono tubes. Ms. Willis stated that she will consult with Mr. Smith and submit such an amendment as soon as possible.

*The Commission determined to continue this matter for two weeks, until the next scheduled meeting.*

**Cont. Public Hearing --- Request for Determination of Applicability (RDA) --- Jeffery Mulqueen, Superintendent of Schools --- Applicant is seeking confirmation from the Commission that a stormwater pond is not jurisdictional at the Pentucket School, 22 Main St.**

Brad Dore and Jon Richardson, Dore & Whittier, Pentucket Regional School District (PRSD) School Building Project Designer; Rich Kirby, LEC, PRSD School Building Project Wetlands Consultant; Steve Theron, Vertex, PRSD School Building Project Owner's Project Manager appeared before the Commission to address the jurisdictional status of an excavated rectangular storm water retention pond on the PRSD high school/middle school campus, where new school construction is in planning stages.

Ms. Mizner reported that she had researched this issue and based on all information gathered, the pond is jurisdictional. Heidi Davis of the Commonwealth's Department of Environmental Protection (DEP) informed Ms. Mizner that a stormwater pond excavated in the 1950's-60's is jurisdictional if it had been wetlands before excavation and meets the definition of a resource area. Further, prior PRSD filings say it is a pond and the definition of wetlands resource includes an excavated pond. No exclusion has been identified for activities predating enactment of the Wetlands Protection Act. Additionally, the area contains wetlands vegetation.

Messrs. Kirby and Dore noted that it is not known whether the pond's water source is stormwater (which would dry up if the new school used modern stormwater management techniques) or ground sources (which would continue to feed the pond). Noting that PRSD actually pumps water into the pond in dry summer months for maintenance purposes, they queried whether any additional hydrological information would be useful to determine the water source. What if after school construction, the pond simply dried up and became a big empty hole? Ms. Reed and Ms. Mizner noted that even if apparently dry, it could still be a marsh or wet meadow and thus remain a wetlands resource.

In response to Mr. Dore's observation that such a determination of jurisdictional status adversely narrows School Building Committee options, Ms. Mizner noted that the Commission is limited to considering wetlands impacts and cannot consider proposed use in its evaluation.

*The Commission voted to make a positive determination of jurisdictional status on the RDA, based on Commission research, definitions in the Wetlands Protection Act and implementing regulations, lack of information substantiating non-jurisdictional status, and Ms. Mizner's conversation with a DEP representative, 3-0-0.*

**Cont. Public Hearing --- Notice of Intent --- Twig Rush Dock Association for Twig Rush open space – For a dock located within the Merrimack River resource area, bank and bordering vegetated wetland. The work proposed is in the open space area on Twig Rush. (Map R-1, Lot 112).**

George Zambouras, Atlantic Engineering, discussed the Twig Rush Dock Association's intent to install a dock on the Merrimack River.

Ms. Mizner reviewed an April 6, 2018, letter from the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage), which stated that the proposed dock project should be conditioned to mitigate (by such means as low impact moorings) potential impacts on the protected sturgeon in the Merrimack River. These conditions are to be recorded with Essex Deeds and also included in the Commission's Order of Conditions.

Mr. Zambouras noted that the plan already calls for these measures, and that erosion control is also covered. He presented a revised plan, explaining that the dock location had been tweaked slightly. Attempting to save more trees made the dock angle out into the water, running into property line limitations. Also, per Commission conclusions as to wetland soils at the site, the revised plan shows expanded wetlands resources, further limiting dock placement.

As to vegetation, Mr. Zambouras explained that to allow light penetration to vegetation below the ramp at the river edge, aluminum slats will be ¾" apart and its elevation above Bordering Vegetated Wetlands will be about 18" at low tide, clearing the top of the bank at about 2'. The Commission emphasized preservation of as many trees as possible and questioned mowing authorizations and practices. Mr. Zambouras was not familiar with the mowing issue. Ms. Mizner noted that the Rivers Act restricting mowing at the river's edge does apply in these circumstances.

Ms. Mizner moved an Order with Special Conditions based on the Commission's standard special conditions for docks, as modified for this project. *The Commission voted to approve these Special Conditions, 3-0-0.*

**Cont. Public Hearing --- Request for Determination of Applicability --- Paul Hamilton and Amy Custance, 39 Main St. --- For the upgrading of a septic system within the buffer zone to a bordering vegetated wetland at 39 Main St.**

Consultant Jim Scanlan and Conservation Agent Smith explained that on the new plan, the wetlands line had been revised pursuant to Commission observations at the site visit and grading had been modified to get all construction out of the 50' buffer. Mr. Scanlan also reported that the Board of Health has approved the proposed new septic system.

Ms. Mizner moved to accept the revised wetlands line and make a negative a determination on the RDA with conditions that: 1) erosion control be in place and inspected and approved by the Commission prior to any work, 2) downed trees by the fence may be removed to a location outside the buffer zone, 3) any other work in the buffer zone will require an additional filing, and 4) use of pesticides, insecticides and fertilizers will be restricted. *The Commission voted to approve this motion, 3-0-0.*

**Public Hearing --- Notice of Intent ---Sam Aldrich, 66 Ash St. --- For the installation of a pool within the buffer zone to a bordering vegetated wetland at 66 Ash St.**

Inasmuch as no representative of the applicants was present, Mr. Smith explained that the applicants made an earlier filing with the Commission in January 2015 in connection with a proposed addition to the house. No COC has been obtained with respect to that project.

Mr. Smith explained that the property owners now propose a 44' x 22' swimming pool, with surrounding pavers as a patio, and a pool shed. The fence for the pool would be approximately 20' from the property line and 25' to the wetland. Although the wetlands delineation approved in 2014 for this property has expired, Seekamp Environmental Consulting performed a delineation on April 6, 2018, and submitted a report dated April 9 to the Commission, stating that the prior delineation remains unchanged.

Kurt Umholtz, an abutter, reported that the applicants recently cut down large pine trees in the vicinity of the proposed pool. The applicants' tree service was about to move onto Mr. Umholtz' property and cut his tree when he stopped it. Mr. Umholtz is concerned about potential impacts to his property relating to the proposed pool. Mr. Smith noted that he had given the applicants permission to cut trees overhanging the house, which was done in February 2018, but the authorization was limited to that.

*The Commission generally agreed that it would be useful to identify the property line closest to the proposed pool, scheduled a site walk for May 6, 2018, at 8 a.m., and continued this matter to the May 7, 2018, meeting.*

**Discussion: Terry Hartford for the Rivermeadow Conservation Area --- Requesting a cutting and planting plan.**

Ms. Fusco noted that this discussion continues prior exchanges regarding mowing in an area adjacent to the Merrimack River that includes a right of way affording Rivermeadow residents river access.

Mr. Hartford presented an aerial photo map describing the right-of-way and a “conservation area” of native meadow grasses, which would be clearly marked and mown only once a year in the fall. The intent is to establish a clearly identified area 25’ from the river’s mean high water mark that would not be mown or disturbed except to remove invasive bittersweet by hand and install native wetlands plants to stabilize the bank.

Ms. Mizner suggested a more narrow mowed right-of-way for the footpath giving river access and suggested that perhaps a grass height specification could be established for the 8’ wide mown shoulder along the roadway.

Ms. Reed and Ms. Mizner advised that all such riverfront activities involve Natural Heritage, which will review to assess potential impacts on rare or endangered species. Mr. Hartford should prepare a plan. This can be done with a Notice of Intent filing that may include a hand-marked up MIMAP printout, showing the narrower path and the 25’ line. So that potential soil disturbance, among other things, can be evaluated, there should also be a detailed description of the bittersweet removal processes and disposal, as well as a plan for replanting with native plants. This should be submitted to DEP, the Conservation Commission, and Natural Heritage, which will review and then send recommendations to the Commission.

**Discussion: Vanessa Johnson-Hall, Greenbelt --- To talk about a conservation restriction for Brown Spring Farm, Main St.**

This matter was deferred to a future date.

**Discussion: Ted Dunajski for the farm on Bailey’s Lane/Bridge St./River Rd. --- Discuss drainage issues.**

Mr. Dunajski was not present when this matter came up on the agenda. Mr. Smith observed that he did not understand what relief or permissions Mr. Dunajski is seeking. Ms. Fusco noted that she recently observed a bulldozer on this property.

*The Commission generally agreed that Mr. Smith will phone Mr. Dunajski and attempt to reschedule a meeting.*

**Discussion: Letter drafted by Wendy Reed concerning trail maintenance.**

Ms. Reed, the Conservation Commission representative on the Town’s Open Space Committee, explained that she researched trail management best practices (focusing on wetlands issues) and prepared a document to establish specific procedures for this activity. Rather than attempt to delineate wetlands in the Town’s extensive trail network, she proposed to make this one set of procedures applicable to all trail maintenance. This would, among other things, address clearing trails of downed trees.

She intended to present this to the Open Space Committee on the following evening, and the expectation was that that Committee along with the Mill Pond Committee would co-file an RDA

(the appropriate filing since no soil would be disturbed in trail clearing) to adopt this plan—and other groups such as the Riding & Driving Club would join, although Ms. Reed had not had a response from that group.

The Commission concluded that a formal filing with Natural Heritage may not be required because these are existing trails undergoing no new changes, but Natural Heritage would be notified as would other groups performing trail maintenance. The Commission further decided that those planning trail maintenance should notify the Conservation Agent either before trail clearing, with the proposed dates, or within 24 hours after trail maintenance had been performed. Additionally, the Commission determined that Ms. Reed would have no conflict of interest in participating in the Open Space Committee vote on this matter.

**Other Business:**

None.

**Adjournment**

The Commission adjourned at 9:46 p.m.

**Next Meeting**

May 7, 2018

**Meeting Documents**

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

Respectfully submitted,