

## **West Newbury**

### **Conservation Commission Meeting Minutes**

**Meeting date & place:** 7:30 pm, July 2, 2018 Conservation Commission Office, 1910 Building

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

**Cont. Public Hearing --- Notice of Intent --- Gary Breitbord for 87 Main St. (lots 1-3) (DEP## 78-688 through 78-690) --- For the construction of a paved driveway and grading in the buffer zone to a bordering vegetated wetland. (Applicant seeks continuance)**

Mr. Smith said that the applicant is currently consulting with the Planning Board and thus has asked to continue this matter to the Commission's to July 16, 2018 meeting. He and Ms. Mizner also reported that the wetlands delineation was revised to include certain areas with sensitive ferns, which would not be impacted by construction in any event.

**Cont. Discussion: Tim Collins for 15 Church St. --- Certificate of Compliance (COC) Request.**

Mr. Smith explained that although vegetation is sufficient in an area behind hay bales, the required grass around the house is not yet grown in. Accordingly, the applicant has requested a continuance until the revegetation is established.

**Cont. Discussion: Michael Dacey, 16 River Rd. --- Request to cut trees.**

Michael Dacey and Judy Ashworth, owners of 16 River Road, explained their proposal to cut a total of 11 trees, 5 of which are in Commission-jurisdictional areas at the rear of the house near the Merrimack River. Mr. Dacey provided a plan and at the meeting penciled in the location of the trees, most of which have been damaged in windstorms. The trees include oak, possibly beech, a shagbark hickory, and several problematic locusts.

The applicants noted the river's action undercutting the bank on their property and agreed with the Commission that they have every interest in preserving root systems that help hold the riverbank. They also observed that theirs is a heavily wooded lot and removal of some damaged trees may promote health of the remaining ones. They explained that the proposed work in back would involve tree service personnel climbing the tree and roping and sectioning it for removal, with the pieces being hoisted over the roof to the front—with no heavy equipment in the back yard.

Of the 5 trees in the back within the Commission's jurisdiction, the Commission agreed that all but one were damaged and should be cut. Ms. Mizner noted, however, that the shagbark hickory in the middle of the back yard appears healthy. She further explained that cutting the tree down to decrease the shade would not comport with DEP's Rivers Act regulations and policies not to allow cutting within 100' of the river.

*The Commission voted 4-0-0 to permit removal of 4 trees (not including the shagbark hickory) at the back of the house, conditioned on 1) leaving the stumps and root systems in place and 2) barring heavy equipment in the area behind the house near the river.*

Regarding the 8' deck the owners installed, the Commission advised that the applicants should consult with Mr. Smith and present this in a filing to be discussed at a meeting after public notice had been given.

**Cont. Discussion: Anthony Poretta, 463 Main St. --- Enforcement issue.**

The Commission noted that it had issued an Enforcement Order requiring cessation of mowing in wetlands/buffer areas behind a retaining wall close to the house. Contrary to the order, the property owners are regularly mowing this area. Additionally, they improperly installed post(s) for birdhouses within the wetlands. The Commission discussed the possibility of recording an Enforcement Order with the Registry of Deeds.

*The Commission generally agreed that Mr. Smith will contact the property owners to inquire why they have not appeared at the Commission meetings and why they are ignoring the enforcement order, noting that in the absence of a satisfactory response, the Commission may take further action.*

**Discussion: Sheree Hill, 32 River Meadow Pl. --- Would like to discuss an issue involving jurisdiction and erosion control.**

Mr. Smith noted that this is the second time Ms. Hill has asked to be on the agenda but has not appeared at the Commission meeting. He explained that the issue—runoff from an adjacent construction project onto the Hill's land—was a one-time event and not subject to Commission jurisdiction.

**Discussion: Fred Clark, Sudbury Design Group for 52 Rivermeadow Ct. --- Plan change request.**

Mr. Smith explained that in August of 2017 the Commission issued a Negative Determination of Applicability with respect to the applicant's proposal to fill a depression in order to set up a grassy play area. Applicants did install an erosion control silt sock and did not perform a formal wetlands delineation, although the 100' riparian buffer is on this property. Additionally, wetlands are on nearby property.

On behalf of the applicant, Landscape Architect Fred Clark and Consultant Scott Parker recently submitted to the Commission a written summary and plan showing proposed changes to this project, making the grassy play area into a hard surface sports court. Homeowner Jeff Reisner explained that his young son is interested in sports and the intent is to have a dedicated area where neighborhood children could safely play over the long term.

Mr. Clark explained that the sports court would be surrounded by a drainage trench with perforated piping and gravel going to a large drywell engineered for a 100-year storm, all to prevent runoff into

wetlands. Additionally, the plan proposes native vegetation around the sports court, and beyond that a boulder wall serving as marker/barrier for the wetlands.

In response to Ms. Reed's concern that this may be more than a mere change but rather a whole different project requiring additional notice and review, the Commission considered that the location, grade, size, and drainage impacts of the revised project are no different from those already given the Negative Determination of Applicability. What is different is the stiff underlayment and hard surface.

*The Commission voted 4-0-0 to accept the proposed plan change and issue an amended Negative Determination of Applicability with additional conditions requiring the applicant to 1) submit a planting plan to the Commission, 2) no later than 72 hours prior to initial work, submit a construction schedule to the Conservation Agent, including steps to be undertaken and approximate dates for each stage, 3) notify the Conservation Agent after grading and trench digging each have been completed, and 4) maintain a no disturbance/ no cutting zone behind the boulder wall serving as a wetlands marker/ barrier.*

Mr. Reisner added that an oak with a big hanging broken branch at end of the 100' buffer from the river presents a safety concern. If the broken limb is just cut off, the tree may be compromised and still be a danger. The Commission advised that Mr. Smith will need to inspect this and determine next steps.

#### **Discussion: Scott Brown, 219 River Rd. --- COC Request**

Mr. Smith reported that homeowners Scott Brown and Julie Boria put in the requisite markers, the vegetation is established, and the new septic system looks good. Everything fit in well. The only applicable conditions were 1) setting the markers and 2) limiting use of insecticides and pesticides.

*Based on this report, the Commission voted 4-0-0 to issue the COC.*

With respect to a dock on the property, the Commission noted that the access way between the road and the dock needs to be raised above the riverbank so that light penetrates and vegetation can grow. Ms. Fusco observed that prior owners may have used cinderblock to elevate a narrow connecting ramp. The Commission advised the homeowners to consult with Mr. Smith to determine how to develop a plan to do something about an elevated connecting ramp.

#### **Discussion: Colin Hodgson, 15 Norino Dr. -- Violation**

Ms. Mizner reported on her inspection of this property. The houseboat is now in the river channel and the path down to the river is fine though very rough and difficult to navigate. A wooden structure that looks like a float is on the bank, apparently resting on a rocky area—not vegetation. This is intended to be attached to the houseboat. A canoe and rowboat used to access the houseboat are also stored on the riverbank.

The Commission agreed that this raises questions about storing items on the riverbank and potential precedents. Ms. Mizner reviewed a May 14, 2018 letter from the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage), which was copied to the Commission. This letter informed Mr. Hodgson the Natural Heritage had received information about a structure resting on the riverbank, which requires a project filing. No such filing has been made, making the structure not in compliance.

*The Commission generally agreed that Mr. Smith should contact 1) Natural Heritage to determine the status of its investigation and 2) Mr. Hodgson to determine whether anything is still being stored on the riverbank.*

### **Discussion: Minutes of June 4, 2018**

*The Commission voted to accept the Minutes of June 4, 2018, 4-0-0, with edits and corrections.*

### **Other Business:**

#### **Boat moorings and docks in West Newbury**

The Commission generally discussed boat moorings and docks within West Newbury waters in the Merrimack River. With no Harbor Master, processes for permitting docks upon annual inspection and issuing mooring permits have become unclear. Both may raise Rivers Act and safety considerations. In particular, Ms. Fusco expressed concern that some moorings appear to be in sensitive areas near Riverbend where endangered plants may be located.

*The Commission generally agreed that Mr. Smith should obtain a listing of the moorings in West Newbury that have been approved. The Commission will then be able to evaluate them. There may be a need to limit moorings, inasmuch as they seem to have proliferated.*

#### **Drake's Landing**

Mr. Smith reported that the plantings in the wetlands replication area are done and looking good. Recent extreme heat may cause losses of one or two plants and if so they will be replaced. Water was wicking up in the new soil—a good sign. In the back they saved some extra trees, but more vegetation than expected has been removed in front. The Commission may suggest bushes or trees at the front of the property, which is now very exposed.

#### **Adjournment**

The Commission adjourned at 8:59 p.m.

#### **Next Meeting**

July 16, 2018, then August 6, 2018

#### **Meeting Documents**

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

Respectfully submitted,