

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, June 22, 2022, Town Office Building, Second Floor Hearing Room.

Members Present: Chair Judy Mizner (participation via speaker phone until 8:00 PM when she arrived and commenced in-person participation), Molly Hawkins, Kathy Feehery, and David Parrott. Also present were George Preble, appointed to the Commission with a term to begin July 1, 2022, Jack Haley seeking appointment as an alternate member to the Commission, Select Board member Wendy Reed, Select Board member Rick Parker, and Conservation Agent Michelle Greene.

The meeting began at approximately 7:34 PM. Due to Ms. Mizner's participation via phone, Ms. Hawkins assumed the role of Chair until Ms. Mizner arrived in person and assumed the role of Chair at 8:00 PM.

1. Public Hearing: Notice of Intent (continued): Town Wide, Applicant: West Newbury DPW, Re: Hazard tree management, DEP# 078-0717

The hearing was continued at request of the applicant.

2. Public Hearing: Request to Amend Final Order of Conditions (continued): 87 Main Street, Lot 3, Applicant: Robert Johnson, Re: Construction of drainage and stormwater management systems to address runoff and sitework to stabilize site, DEP# 078-688

Ms. Greene advised that Robert Johnson has requested a further continuance of this public hearing to July 18th as his engineer is not available to attend the July 6th meeting.

3. Public Hearing: Notice of Intent (continued): 30 Pleasant Street, Applicant: Brian Boudreau, Re: Raze and reconstruct a single-family home, relocate existing driveway, relocate existing septic tank, and associated grading, DEP# 078-0748

George Zambouras of Millennium Engineering appeared on behalf of the applicant. Ms. Mizner advised that during the site walk on June 12th conservation markers were found in the rear of the property far from the proposed work. Ms. Mizner also reported that the Commission confirmed that the swale along the road in those location is not an intermittent stream as it does not flow from, to, or connect any wetlands and the only wetlands in proximity to the project are located across the street.

Ms. Mizner moved to issue an Order of Conditions with the Standard Conditions and Special Conditions as follows:

- 1. Erosion control as shown on the approved plan shall be installed and inspected by the Conservation Agent prior to the commencement of work;*
- 2. 72-hour notice shall be given to the Conservation Commission prior to the start of work;*

Ms. Hawkins seconded the motion and the motion passed unanimously.

4. Public Hearing: Notice of Intent (continued): 137 Indian Hill Street, Applicant: Joshua Wegrzyn, Re: Construction of a garage and after-the-fact permitting of an outdoor patio, DEP# 078-0747

Bob Prokop of Wetland Consulting Services appeared along with the applicant Joshua Wegrzyn and provided a mock up plan detailing some changes based on the site walk held on June 12th. Ms. Mizner asked that the plan be further revised to remove wetlands flags A8 – A17, which had not been reviewed by the Commission. Mr. Prokop reviewed some of the other changes shown on the plan including moving the woodchips at least 25' from the wetlands and eventually moving the stacked wood further away from the wetlands advising that Mr. Wegrzyn is unable to do this immediately due to an injury. Ms. Mizner also advised that the gravel located under the carport should be removed. Mr. Wegrzyn indicated that work will be in two stages and the gravel can be removed during grading. Ms. Mizner asked whether the deck was to be removed or to remain in place and Mr. Wegrzyn advised the plan is to leave it in place. Mr. Prokop added that in addition to the mitigation for the carport, the lawn around the deck can be converted to native plantings. Ms. Mizner advised that the Commission would like to see a 25' naturally vegetated buffer established around the wetlands. Mr. Wegrzyn was agreeable to this and added that he is open to planting native plants within this buffer zone too. Ms. Mizner inquired about the firewood stored in the wetlands. Mr. Wegrzyn said there are about 8 cords of fire wood stored there and he burns about 3 cords every winter. As the wood is burned, he can ensure that new wood is stored in a different location at least 25' away from the wetlands. Ms. Greene asked if the Commission was able to make a determination if the stream across the street was intermittent or perennial and Ms. Mizner advised she will review this.

The public hearing was continued pending further revised plans. In the meantime, Ms. Mizner advised she will draft and circulate Special Conditions for review, which will include posts with Conservation Placards installed 25' from the wetlands.

5. Public Meeting: Request for Determination of Applicability (continued): 5 River Meadow Drive, Jeffrey Proodian, Re: Septic system replacement

Ms. Hawkins reviewed the Commission's site walk during which they observed that the previous owners of the property had been dumping leaves and lawn clippings into the wetland and mowing close to the wetland edge. Ms. Hawkins advised that the area will likely revegetate on its own but that the new owners can plant native vegetation in this area to expedite the revegetation.

Ms. Hawkins moved to issue a Negative 3 Determination conditioned as follows:

- 1. No additional dumping or mowing shall occur in the wetlands;*
- 2. Conservation placards shall be hung along the delineated wetlands line to prevent further encroachment into the wetlands. The placards shall be affixed to an existing tree between wetlands flags 5A and 4A and another placard shall be affixed to a 4" x 4" post installed at least 4' into and 4' above ground adjacent to wetlands flag 2A.*
- 3. Erosion controls shall be installed as shown on the plan and inspected and approved by the Agent prior to the commencement of work.*

Ms. Feebery seconded the motion, Mr. Parrott abstained, and the motion passed unanimously.

6. Public Hearing: Notice of Intent: 13 Turkey Hill Road, Robert Scally, Re: raze and rebuild a single-family home, DEP# 078-0750

Robert Grasso of Engineering Land Services appeared on behalf of the applicant. Mr. Grasso provided an overview of the proposed project indicating that it was filed as a Category 2A project, wetlands were delineated by Norse Environmental, and it will consist of razing an existing 3-bedroom single-family home, garage, and shed, and rebuilding a new 3-bedroom single-family home that will connect to the existing well and septic system. Mr. Grasso explained that roof drainage and gutters with infiltration systems in two locations to help mitigate runoff and a post and rail fence along the wetlands line are proposed to minimize impacts to the wetlands. Mr. Grasso also advised that he had received MA DEP comments regarding the proximity of the house to wetlands and requesting the house be located at least 15' away from wetlands. The current plans show the house 14' from wetlands at its closest point and the deck 12' from wetlands at its closest point.

Mr. Grasso explained that the location of the wetlands was a surprise as wetlands were presumed to only be located off the rear property line, however, when Norse Environmental delineated the wetlands, primarily by the soils, the wetlands were found to extend on the property along the side of the existing house in an area that has been mowed. The existing well is also located within the now delineated wetlands. Mr. Grasso indicated that the applicant will be giving up lawn area by proposing the post and rail fence to prevent intrusion into the wetlands. Mr. Grasso also advised that the house can be shifted a foot further away from the wetlands to get the 15' setback requested by MA DEP.

The public hearing was continued to July 6th pending a site visit which was scheduled for Sunday June 26th at 8:00 AM.

7. Request to Withdraw Notice of Intent: Lower Artichoke Spillway, Applicant: City of Newburyport Department of Public Services Re: Construction of stone foundation at lower artichoke spillway, DEP# 078-0712

Ms. Mizner moved to accept the request for withdrawal of the Notice of Intent Filing for MA DEP# 078-0712. Ms. Hawkins seconded and the motion passed unanimously.

8. Public Hearing: Notice of Intent: 0 Middle Street, Map R27, Lot 31 – Lower Artichoke Reservoir Spillway, Applicant: City of Newburyport, Re: Construction of a stone foundation along the upstream side of the Lower Artichoke reservoir spillway and removal of trees along the dam embankment, DEP# 078-0749

Jon-Eric White, Engineer for the City of Newburyport, Tom Cusick, Water Supervisor for the City of Newburyport, and Tracy Adamski of Tighe and Bond appeared before the Commission. Also present were members of the Newburyport Conservation Commission and Julia Godtfredsen, Conservation Agent for the City of Newburyport. The Newburyport Conservation Commission will open a public hearing for the portions of work occurring within Newburyport for this project on July 5, 2022. The hearings will begin at 7:00 PM and this item is 3rd or 4th on the agenda.

Ms. Adamski introduced the project explaining that the lower Artichoke spillway is one of 3 reservoirs on the Artichoke River providing Newburyport's drinking water. While there are also middle and upper Artichoke reservoirs, the raw water intake for all 3 is located in the lower Artichoke reservoir. Ms.

Adamski explained that the top of the bank of the existing earthen dam at the lower Artichoke reservoir is at elevation 12 which is also the elevation of the 100-year floodplain, and the existing concrete spillway is at elevation 8.75 which is 3' below the floodplain for a 100-year storm. Hydraulic and hydrologic (H&H) studies done by Tighe and Bond have shown that in a large storm which produced a backwater event from the Merrimack River, contaminated brackish water would overtop the lower Artichoke spillway and contaminate the city's drinking water.

Ms. Adamski said the city had considered using an aqua dam (a large rubber bladder filled with water, which could be placed on top of the existing spillway to prevent overtopping in a backwater event) to prevent contamination, but this site would require one at least 16' tall which is taller than they are made. Mr. White advised that the city, along with Tighe & Bond, is also exploring a complete replacement of the existing dam but that engineering, funding, and permitting push the start of construction for a new dam out at least 4 years and a solution is needed in the meantime. Ms. Mizner inquired if the use of flashboard and stop logs had been considered and Ms. Adamski advised that the structure at the top of the spillway is damaged preventing securely attaching the system and also advised that without installing ramps or another structure, there is no way to bring equipment in to install the system.

With all aspects considered, the proposed spillway project involves building a stone ramp on the upstream side of the spillway to the elevation of the spillway on which large sandbags ("supersacks") could be placed to prevent contamination should a backwater event be predicted. Additional work in the project includes addressing the erosion on the Newburyport side of the spillway which will be brought back up to elevation 12, the elevation of the spillway, and remedying a low spot of the earthen dam embankment on the West Newbury side with temporary sandbags. The supersacks on the ramp near the spillway and the sandbags in the low spot of the earthen dam will only be placed when a storm with a high likelihood of a backwater event is forecast. Mr. White advised that in an emergency situation, the city would work 24 hours a day to install the supersacks and sandbags.

The final portion of the project includes clearing the trees from the earthen dam in West Newbury to comply with the Office of Dam Safety's standards. The trees present an erosion issue if they fall over and uproot. The proposed plan would clear cut all trees within a certain area and leave their stumps. It does not clear cut the entire length of the West Newbury earthen dam as the city is considering upgrading the embankment in the future. Ms. Adamski advised that the cut area would be replanted with grass for stabilization. Ms. Greene inquired how trees would be removed from the area once cut and Mr. Cusick indicated the stone ramp would be installed first so trees and equipment could be moved over it.

Ms. Hawkins asked how far in advance the supersacks would be installed. Mr. White explained that if they are installed too soon there is too much build up of water and suggested maybe half would be installed, the velocity would be observed, and the other half would be installed as needed. Mr. Cusick advised that if a storm was coming, it would take one day to get the supersacks installed. Ms. Greene inquired who makes the determination as to when the supersacks should be installed. Mr. Cusick advised that the city's

Conservation Reserve Program (CRP) plan will be updated to include protocols for supersack deployment. Ms. Hawkins asked whether potential flooding of graves at the Quaker Cemetery could result from raising the level of water at the spillway. Mr. White advised that Tighe and Bond performed a desktop analysis of contours and the location of the cemetery is much higher than the raised water level. Ms. Adamski added that there is another dam between the lower spillway and the cemetery which is at elevation 15' which is within the 500-year floodplain.

Ms. Mizner inquired how grading underwater will be done to install the stone ramp. Ms. Adamski indicated the work will be done in a period of low water flow, dewatering if needed. The material for the ramp (6"-8" stone tightened with gravel) will be piled into the area and then graded. Ms. Greene asked if there is concern about slumping and spreading out of the stone ramps. Ms. Adamski said a 3:1 slope is proposed so spreading is unlikely and the stones will tighten up overtime due to compaction. Ms. Greene also inquired if there was any consideration for fish passage. Ms. Adamski advised there is not for this temporary project but it may be included in the future dam replacement project. Mr. Cusick advised that the sandbags and supersacks will likely be filled annually and stored behind the pumpstation in Newburyport. When needed, they will be moved into place. Ms. Greene inquired how the sandbags for the low spot of the earthen dam will be moved in and Mr. White suggested possibly by boat. Ms. Godtfredsen asked if a trial run of deploying and retrieving the sandbags is planned. She indicated that the sandbags will shift and slump while they are in place and is curious what equipment will be used to remove them. Mr. Cusick acknowledged her concerns and indicated that some sandbags and supersacks will likely break when being removed. Ms. Greene inquired if a turbidity curtain could be installed during removal to reduce impacts from broken supersacks. Mr. White advised he will ask DEP for guidance on this and how long it should stay in place to let the silt settle out from the water. Ms. Mizner asked if an Operation & Maintenance (O&M) Plan was created for installation and removal of the sandbags and supersacks. Mr. Cusick advised they are working on one; Ms. Adamski asked if provision of an O&M Plan to the Commission prior to the start of work could be a condition of an Order and Ms. Mizner agreed it could be. Joe Teixeira, Chair of the Newburyport Conservation Commission cautioned that in the winter of 1930 the river backed up due to ice dams – a backwater event is not always due to a hurricane. Mr. Teixeira also questioned whether the gravel ramp will erode overtime from water flowing through it. Mr. White explained it should be stable due to the mix of large stones and small gravel but he will look into this further.

The public hearing was continued to July 6th pending a site walk on Sunday June 26th at 8:45 AM.

9. Certificate of Compliance Request: 196 Main Street, DEP# 078-735

Ms. Greene reported that the area which was previously not vegetated has now grown in and shared pictures of the area. Based on this she recommended issuance of the Certificate of Compliance.

Ms. Mizner moved to issue a Certificate of Compliance. Ms. Feebery seconded the motion and the motion passed unanimously.

10. Certificate of Compliance Discussion: 64 South Street, Re: Bark mulch on slopes in buffer zone, DEP# 078-0732

Jim Scanlan of Scanlan Engineering appeared before the Commission. Mr. Scanlan explained that he and Ms. Greene met at the site on June 8th and observed that all areas have revegetated with the exception of the slopes where the woodchips were placed. However, no woodchips appeared to have washed off the slopes into the wetland. Ms. Mizner suggested that a planting plan be developed to bolster the vegetation at the toe of the slope to serve as a natural and permanent “wattle” to catch any woodchips which may wash down the slope toward the wetlands in the future.

11. Violation Update: 4 Norino Drive, Re: Clearing within the 25’ no disturb buffer and clearing past the limit of work, DEP# 078-0740

Ms. Greene reported natural vegetation is beginning to grow in. No plan has been received from Tom Hughes yet.

12. Violation Update: 21 Montclair Road, Re: Clearing trees within 100’ buffer zone without a permit

Ms. Greene advised no plan has been received yet from Tom Hughes.

13. 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 shared photos and described a siltation event she observed on June 9th at the site during a heavy rain event. Ms. Greene advised that the newly installed drainage pipes along the driveway from Lot 3 are working very well to collect runoff and prevent it from flooding Main Street by way of the common driveway, but the detention basins to which all of this runoff is being directed are undersized for the volume of water they are receiving. During her site visit on the 9th she observed that both basins were actively breaching and silty runoff water was flowing from the basins directly into the wetlands on the property and being carried by the culvert into the wetlands across the street from the property.

The Commission advised that another Enforcement Order be issued requiring the installation of detention basins on Lot 3 to reduce the volume of unsettled water that the detention basins along the common driveway receive. The Commission indicated that the new basins shall be installed by July 18, 2022.

14. Enforcement Order Update: 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 did not have an updated and advised she needs to contact the homeowners.

15. Enforcement Order Update: 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 advised that the Enforcement Order was mailed via certified mail to the Hodgson's on June 13, 2022 but she had not yet received a response.

16. Other Business: Discuss and possibly approve authorizing up to a specific number of hours each week for an administrative assistant to the Conservation Agent to be paid out of the Wetlands Revolving Account

The Commission, Ms. Greene, and Ms. Reed discussed the benefits of possibly hiring an administrative assistant for the Conservation Agent. Ms. Greene advised that while an assistant would sometimes be helpful, she does have concerns. While there are items that could be delegated to an assistant such as mailing Orders of Conditions after they are issued and drafting legal ads, the work is infrequent and unpredictable making it hard to delegate to a part time employee who may or may not be in the office when Ms. Greene is working on these items. Moreover, overseeing the invasive plant internship has taken up a lot of her time and she does not anticipate having the time to work with an assistant to get them set up until the internship ends in August.

Ms. Mizner asked Ms. Reed if the Commission approved money from the Wetlands Revolving fund to be used for an assistant and there was unspent funding at the end of the year, would the money be returned to the Wetlands Revolving fund and Ms. Reed advised it would be.

17. Other Business:

Mr. Haley introduced himself to the Commission. He advised he started attending meetings as an abutter to a project proposed near him and became interested in joining the Commission after attending these meetings.

18. Wetlands Bylaw Update: None

19. Old Business: None

20. Informal Discussion: None

21. Community Input: None

22. Approval of Minutes: April 4, 2022: Deferred

23. Approval of Minutes: June 6, 2022: Deferred

24. Correspondence: None

25. DEP Comments: None

26. Land Agent Update: None

27. Next Meeting: July 6, 2022, please note meeting is on a Wednesday as the first Monday in July is Independence Day.

28. Adjournment

Ms. Mizner moved to adjourn the meeting at 10:27 PM. Ms. Hawkins seconded the motion and the motion passed unanimously.

Meeting Documents

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