

West Newbury

Conservation Commission Meeting Minutes

Meeting date & place: 7:44 pm, October 1, 2018 Conservation Commission Office, 1910 Building

Members Present: Judith Mizner (Acting as Chairman); Wendy Reed; Margaret Hawkins, and Conservation Agent Jay Smith

Cont. Public Hearing --- Notice of Intent (NOI)--- Gary Breitbord for 87 Main St. (lot 2) (DEP## 78-689) --- For the construction of a paved driveway and grading in the buffer zone to a bordering vegetated wetland.

Applicant's Consultant/Engineer Steve Sawyer described revised plans for Lot 2 that show mitigation including, consistent with Lot 3, 1) the planting of 24 shrubs and saplings (of which at least 8 will be trees) in the buffer area just below the grading; 2) a meadow planted with a native meadow seed mix; 3) a 24" wide, 18" deep stone trench all along the low side of the driveway to catch storm water; 4) use of silt fences and hay bales for erosion control; 5) "do not disturb" markers at prescribed locations; 6) restrictions for meadow mowing twice annually; 7) final planting plans to be submitted for Commission approval.

Concerning the applicant's proposal before the Planning Board (Board) to use a common driveway in lieu of 3 separate drives, Mr. Sawyer said that the Board's site walk will be on October 4 at 9 a.m. The Board's public hearing on the common drive proposal will occur 2 weeks from tomorrow.

Agent Smith stated that the Lot 2 Plan should show the garage (which is located in the buffer zone) that will be demolished. The applicant needs to submit a narrative for the file about the demolition. The Commission also noted that it generally restricts meadow mowing to once a year in the early fall.

Abutter Peter Haack raised several concerns. First, he provided the Commission a court case in which the West Newbury Planning Board was reversed when it approved a development on Archelaus Street whose lot access required a wetland crossing that had not received Commission approval. Ms. Mizner noted that in the litigated case, Commission approval was not granted and the wetlands spanned the length of frontage, making a wetlands crossing inevitable. The instant 87 Main Street project has requisite filings before the Commission and received approvals for Lots 1 & 3, where wetlands impacts are adequately mitigated. As distinguished from the *Archelaus* case, none of the lots in this project involves wetlands crossing but rather driveway(s) in the buffer zones. In response to Mr. Haack's strong suspicion (based on observing tractors mired in mud in the area in question) that the driveway(s) would cross actual wetlands, the Commission explained that it had carefully inspected the property's vegetation and soils, finding no wetlands in this area. The Commission further said that if Mr. Haack feels the Planning Board determinations are questionable, appeal would need to be taken to a court—not this Commission.

Second, Mr. Haack observed that the garage planned for demolition received no building permit and has been omitted from plans for the pending project. Mr. Sawyer stated the garage was on the plans before the Board and was inadvertently omitted from the plans before the Commission.

Third, Mr. Haack reported that he and other neighbors across the street are deeply concerned about extensive alterations to the hillside at 87 Main Street and the potential for erosion—the driveways may become waterways that pour water into the wetlands, the culvert at the street, under the road, and onto the properties across the street. Mr. Sawyer said that the applicant will have a stormwater plan, with weekly monitoring in coordination with the state Department of Environmental Protection (DEP) and the Town's Department of Public Works. Mr. Smith stated that the Commission can take action if a problem arises within its jurisdiction. The standard condition allowing no work from October 15 to April 15 (when vegetation dies back) will help because work affecting wetlands will occur only when naturalized vegetation is present to serve as an erosion control in addition to the erosion control barriers the Commission is requiring.

Fourth, Mr. Haack expressed concern that the large and beautiful maple tree on the property (located near the gazebo) should be preserved. Mr. Sawyer said he did not know if it could be saved, but the chances of keeping the tree increase with a common driveway. He promised to look at this and see if the tree could be kept.

Ms. Mizner noted that the Commission would like to send a letter to the Board supporting the shared driveway, but first needs the plans the applicant submitted to the Board in this connection. Such a letter could also mention the benefit of saving the maple tree. *The Commission authorized Ms. Mizner to make such modifications to the existing draft letter to the Board so it can be sent out before the Board meets on this.*

The Commission voted 3-0-0 to issue an Order of Conditions for the work proposed for driveway construction on Lot 2, with standard conditions plus the following special conditions: 1) a 25' natural vegetated area extending from the wetlands line will remain in place undisturbed with no fertilizer, pesticide, herbicide or insecticide use; 2) the remaining buffer zone will have no fertilizer (except low nitrogen applied in moderation), pesticide, herbicide or insecticide use; 3) marker posts (to be 4' belowground and 4' aboveground) will be installed to identify the "no disturb" boundaries in accordance with the plans; 4) a plan for revegetation in the buffer zone will be submitted to and approved by the Commission before work begins on this; 5) the area to be revegetated as a meadow may be mowed no more than once a year after September 1; 6) demolition materials from removal of structures in the buffer zone will be disposed of outside the buffer zone; 7) any fill outside of the septic area will be clean fill; 8) the runoff control trench along the driveway will be built as shown on the plan; 9) erosion controls will be installed and inspected by Conservation Agent prior to commencement of any other work.

Public Hearing --- Notice of Intent (NOI) --- Josh Holden for Mass. Electric, Stewart St. --- For repairs to the Stewart St. substation. The work will occur within the buffer zone, bordering vegetated wetland and riverfront.

Project Manager Jack Webb, Environmental Engineer Josh Holden, and Consultant Tim Sullivan summarized the proposal as involving replacement of transformers in the substation at Stewart Street. Because a mobile substation with temporary transformers will be required within the substation fence to provide continuous electric service to the Town, a temporary access pad made up of large wooden pallet-like mats will be located on the adjacent wetland and buffer zone in order to create a solid deck supporting a crane and other necessary equipment. The plan (subject to weather delays) is to begin in late December and finish in April 2019, allowing revegetation in spring after the mats are removed.

Mr. Sullivan agreed to Ms. Mizner's request to check the accuracy of the plan in terms of the distance between the fence line and the wetlands swale. He also explained that of the options presented at the back of the filed NOI, bridging with several layers of mats will be used where the grades are steeper and mats will rest directly on the ground in flatter areas. The applicant is proposing tree trimming (with revegetation) as necessary to perform the work and as part of routine vegetative management will trim back any vegetation over the fence. New, sturdier foundations for the new, heavier transformers will be installed and the driveway will be repaved—with waste materials from this work being removed from the site. Straw wattles (likely 10") will be used for erosion control. Weekly environmental inspections will occur.

The Commission voted 3-0-0 to issue an Order of Conditions for the work proposed at the Stewart Street substation with standard conditions and the following special conditions: 1) the wetlands demarcation line on the northwest side of the project will be reviewed by the Conservation Agent and the applicant before any work is done; 2) erosion controls will be installed by the applicant and inspected and approved by the Conservation Agent prior to the commencement of work and will consist of straw wattles except in the area of driveway repaving, where hay bales and silt fences in accordance with West Newbury standards will be used; 3) the decking in the area of wetlands near Stewart Street will consist of layered bridged mats and the decking in the area beyond will consist of swamp mats, all as shown in the details of the NOI; 4) the applicant shall submit a replanting plan for the vegetation to be removed on the northwest side of the project; 5) any materials generated by removal of transformer pads and repaving of the driveway will be disposed of offsite; 6) work shall be allowed after October 15 and before April 15 because the project as proposed will have less impact during the winter as opposed to the growing season.

Discussion: Colin Hodgson, 15 Norino Dr. --- Placement of houseboat.

Mr. Smith said that Mr. Hodgson is asking about storing his houseboat against the Merrimac riverbank for the winter. Last year he put his houseboat in this area, which comprises about 32' with little or no vegetation (mostly a rocky area) at low tide. The houseboat is about 30' x 30' with a draft of about 2', resting on 3 pontoons. Mr. Hodgson said that he cannot store the houseboat at a marina, and the plan is to move it to shore in November or so when no vegetation would be growing. He added that in winter storms, the houseboat acted as a barrier to protect vegetation.

The Commission noted that the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) had raised concerns about the houseboat on the

riverbank and that the Commission and the applicant are still waiting to hear from Natural Heritage on this issue. *The Commission agreed that it should contact Natural Heritage and obtain a response.*

Public Hearing --- Notice of Intent --- Alexandra Guralnick, 210 Middle St. --- For the upgrading of a septic system at 210 Middle St. The work proposed is within the buffer zone to a bordering vegetated wetland.

Mr. Smith reported that applicant plans to use hay bales and a silt fence and will be subject to conditions limiting mowing. The Commission noted that it has not received a response from Natural Heritage and not learned if DEP has any comments. *It was agreed that Mr. Smith will talk with DEP to learn about timeframes and processes for DEP comments (or no comments) under the newly established system.*

The Commission voted 3-0-0 to issue an Order of Conditions for the proposed septic upgrade at 210 Middle Street with standard conditions and special conditions as follows: 1) this Commission authorization is dependent on receipt of favorable or negative responses from Natural Heritage and DEP; 2) demarcation of the area extending 25' from the wetlands as a natural vegetative area with markers (posts 4' belowground and 4' aboveground, to be selected by applicant and approved by the Commission) to be placed opposite wetland flags A7, A5, A4, A3; 3) erosion controls to consist of hay bales and silt fencing approved by the Commission; 4) use of clean fill; 5) submission of a construction schedule to the Commission at least 72 hours before work begins; 6) a 25' natural vegetated area extending from the wetlands line will remain in place undisturbed with no fertilizer, pesticide, herbicide or insecticide use; 7) the remaining buffer zone will have no fertilizer (except low nitrogen applied in moderation), pesticide, herbicide or insecticide use; 8) mowing of the meadow no more than once a year after September 15.

Discussion: Ryan Norman, 68 Ash St. --- Request to cut dead tree

Mr. Smith reported that he approved removal of a hazardous dead pine tree in the buffer zone, located right next to the driveway entrance.

Discussion: Tom Neve for Lot 1, Sullivan's Ct. --- Certificate of Compliance (COC) Request.

Mr. Smith said that Mr. Neve submitted an as-built plan, but Agent Smith has not had an opportunity to check the site. Overall, however, the area is well vegetated. *The Commission determined that it cannot act until the site is inspected and it is determined that 1) the 9 dogwoods have been planted; 2) the marker posts are properly placed. Mr. Smith will do a site visit.*

Ms. Reed noted that if the approach is to issue a COC for each individual lot, the Commission will need to devise a means to ensure a COC resolution for shared space in this development such as the detention basin and trails.

Discussion: Minutes of Sept 17, 2018

The Commission deferred this to the October 15 meeting.

Other Business:

95 Maple Street

Mr. Smith stated that he inspected and photographed the property from the road. He shared photos of a field bisected by a trench with bare sides, whereas the Commission had asked for a 25' vegetated strip along the trench. Additionally, Mr. Smith showed photos of large amounts of piled slash and vegetative debris on adjoining Greenbelt land, which may involve wetlands.

Commission minutes from the fall of 2012 describe discussions with John McNamara, the property owner, and Tyler Kimball. They claimed that this was normal agricultural management of field margins, but photos at the time showed areas scraped of vegetation. Messrs. McNamara and Kimball were told they needed to file with Commission by September 10, 2012. The Commission received a letter purportedly from Tyler Kimball on September 20, expressing disagreement with the Commission's regulatory interpretation and an assertion that they are following normal agricultural practices for a managed field edge.

Commission minutes from October 9 show that Mr. Kimball said he did not write the September 20 letter—Mr. McNamara wrote the letter and signed Mr. Kimball's name. The Commission sent a letter to DEP and cc'd the Selectmen. *Ms. Mizner recalled additional follow up at that time and will look through her files. She will also look at the agricultural manual to determine how "in agriculture" is defined. Ms. Reed will contact Greenbelt about the apparent dumping on Greenbelt land.*

Pentucket Regional School District (PRSD) High School Pond

In connection with proposed construction of a new high school, PRSD sought a determination that a stormwater detention pond was not a Commission-jurisdictional wetland. DEP recently overruled the Commission's determination that this is a jurisdictional wetland. *Ms. Mizner will call author of the DEP determination, whose prior discussion with Ms. Mizner formed part of the basis for the Commission's decision.*

Brian Hanrahan

Mr. Hanrahan expressed his interest in joining the Commission. He has degrees in fisheries and environmental science and would like to help, particularly with aquatic matters. The Commission welcomed him. Because the complement of 5 members is full, he would be an associate member. *Ms. Mizner will investigate the process for appointing an associate member.*

Adjournment

The Commission adjourned at 10:20 p.m.

Next Meeting

October 15, 2018

Meeting Documents

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

Respectfully submitted,