

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, September 1, 2020, Remote Participation via GoToMeeting.

Members Present: Via remote participation Dawne Fusco, Wendy Reed, Tom Atwood, Margaret Hawkins. Conservation Agent Bert Comins and Judy Mizner (acting as Chair) present in Town Offices and participating remotely.

At the outset, the Chair read the following statement: “Pursuant to Governor Baker’s March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor’s March 15, 2020 Order imposing strict limitation on the number of people that may gather in one place, this meeting of the West Newbury Conservation Commission will be conducted via remote participation to the greatest extent possible.”

Continued Public Hearing --- Notice of Intent DEP File# 078-0710 --- Stephen Swallow --- 131 River Road --- Septic system upgrade

Ms. Mizner noted that as a result of the site walk, one flag was moved and the applicant’s consultant, Jim Scanlon, said that this change is reflected on the updated plan submitted to the Commission. The trees that will be cut are in the footprint of the new septic system; they will be removed from the site. Ms. Mizner said that because the location is on a fairly steep slope, erosion controls should include both hay bales and silt fence.

By 4-0-1 roll call vote (Ms. Fusco, an abutter, abstaining), the Commission determined to issue an Order of Conditions approving the proposed septic repair, subject to standard conditions and special conditions including applicant’s 1) installation of hay bales and silt fence erosion controls, subject to inspection and approval of the Conservation Agent prior to commencement of work; 2) 72 hours’ prior notice to the Conservation Agent before work starts; 3) cutting only of trees marked for cutting in the field; 4) disposal of cut trees offsite; and 5) use of the erosion control line as the limit of work.

Continued Public Hearing --- Notice of Intent (NOI) DEP File# 078-0709 --- Thomas Neve --- 5 Sullivans Court (Lot 6)--- Construction of Dock

Consultant Greg Hochmuth said that the Commission’s site visit on August 14 involved a conversation about the astroturf surface at the proposed dock ramp, which had been installed prior to applicant Tom Neve’s purchase of the property. The Commission members present said that the astroturf should be removed; the Department of Environmental Protection (DEP) did not mention the astroturf. Part of the pathway to the water is very steep and not suitable for grass, which will be installed where the path is relatively flat. In the steeper area, the applicant is proposing to install stone as needed. The area with stone (and voids among the rocks) will also provide compensatory flood storage, a point that DEP has emphasized. The applicant will carefully scrape the surface below the astroturf. DEP’s comments also raised the question of this being a coastal site, but that was clarified with the explanation that upstream of the Chain Bridge, which this is, is tidal—not coastal.

Mr. Hochmuth also noted that the state’s Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) said that section 3 of the NOI should be filled out,

and the plans should be revised to clarify what is there now vs. what is proposed and to specify in greater detail that anchor and mooring system. Mr. Hochmuth said that the applicant did submit a revised NOI and revised plans to address these concerns but has not heard back from Natural Heritage. He also noted that the end dock has been reduced in size so that now the project will be below 600 square feet. He added that at the end of each season, all the dock pieces would be taken away except the wood platform at the shore.

Ms. Mizner stressed that it is very difficult to review plans on a computer screen—the applicant needs to provide full-scale paper plans. In reply to her inquiry, Mr. Hochmuth said that the 4-5” deep scraped materials under the astroturf would be removed to non-Commission-jurisdictional areas. Ms. Mizner added that the Commission should see that Natural Heritage is satisfied before it acts on this matter.

In response to Ms. Reed, Mr. Hochmuth said that rock at the river’s edge should not wash into the water. He expects to find sand under the astroturf at the river edge. The rock that applicant plans to use will be sharp edged and so it should lock in place—although this cannot be guaranteed. The intent is to bring in rock with a small machine, given the narrow and steep access way.

The Commission continued this matter until its receipt of Natural Heritage’s letter and requested that the applicant provide full size paper plans that include 1) a description of erosion controls (with some flexibility given the unknown stratum under the astroturf), 2) documentation regarding compensatory flood storage.

Public Hearing --- Request to Amend Order of Conditions DEP File# 078-634 --- John McGrath --- 11 Sullivans Court (Lot 3)--- patio, swimming pool and driveway modifications

Mr. Hochmuth, applicants’ consultant, called up the plans on his computer screen. He explained that the limit of work is not changing from what the Commission approved in 2015, which remains in force to April of 2021. The new owners are proposing an amendment to add a patio and pool and stairs in a way that will provide more room on the driveway. Also, they plan to relocate a current construction swale into the approved easement for the swale. He said that this proposed work would be in the existing approved lawn landscape, and thus acceptable under the law and regulations. The driveway and retaining wall (which will be 6.5’ high) are outside the lawn, but are within the approved limit of work boundary.

Ms. Reed noted that there had been many issues with the swale and asked if the Planning Board was notified about the proposed change. Mr. Hochmuth said that this work would merely move the swale back into the approved easement. He noted that the blocks for the retaining wall will be out of the easement and that the neighbors are satisfied with this proposed move of the swale. The slope by the pool will now be 2:1 instead of 3:1 to make room for patio & pool, and grass is proposed for this area. Mr. Comins said that he has been at the site and erosion controls have held up well.

Mr. Hochmuth said that consistent with approved plans, the driveway will be paved and that work will require a permit from the Building Inspector. He said that the additional paving will not change infiltration or the storm water design.

Mr. Hochmuth also said that the pool will have a non-backwash cartridge filter, so pool water should not go into the river. He expects that if the pool is emptied for repairs, the water would be pumped into a truck—not the river, and ideally returned to the pool after work is done. The pool will be 36' x 12'. Some pool water might get into the river if a storm event occurs. At the end of the season, pools are typically drained to lower them 6" to 1' and by that time there should typically be no chemicals. This end of season drainage could go into the retention pond or onto the lawn.

By unanimous roll call vote the Commission determined to approve the applicant's amendment to the Order of Conditions to accept the plan dated July 22, 2020 with the following additional conditions: 1) water removed to decrease the water level of the pool by a maximum of one foot will be disposed of on the lawn area outside enhancement area 3; water removed to decrease the water level of the pool by more than one foot will be either pumped into a truck and removed offsite or pumped into a temporary storage container and returned to the pool; 2) the slope between the patio/ pool and enhancement area 3 shall be vegetated. Otherwise, the existing Order of Conditions remains in full force and effect.

Public Hearing --- Request to Amend Order of Conditions DEP File# 078-0704 --- James Leclaire --- 6 Waterside Lane --- supplemental flood calculations and plan modification

Mr. Comins reported that after DEP appealed the Commission's approval on grounds of insufficient compensatory flood storage, he determined that DEP would drop the appeal if the Commission issued a superseding or amended order requiring additional flood storage. Mr. Comins shared a document on the computer screen. This shows an area located behind the rock path that would be regraded, providing 52 square feet of additional flood storage, 6 square feet above the required amount. In reply to Ms. Mizner, applicant James Leclaire said that material from the regrading will be disposed of offsite. He also explained that erosion controls for this work will be a 12' silt sock, to be installed tomorrow.

By unanimous roll call vote the Commission determined to approve the applicant's amendment to the Order of Conditions and to accept the plan dated July 9, 2020 with the following additional conditions: applicant will 1) install erosion controls between the rock path and the area to be regraded, with inspection and approval by the Conservation Agent prior to commencement of work, 2) all materials removed as a result of regrading will be disposed of offsite.

Public Hearing --- Notice of Intent --- City of Newburyport Department of Public Services -- - Lower Artichoke Spillway --- Construction of stone foundation at lower Artichoke spillway

On behalf of the City of Newburyport, consultant Tracy Adamski explained a proposed project to protect the Lower Artichoke Reservoir from incursion by the (likely polluted/saline) Merrimack River in flooding conditions that are expected to be of greater concern with climate change. Currently the spillway is 3-4' below the 100 year floodplain elevation.

The plan is to place rocks in the reservoir behind the spillway to its top level, so as to widen the top surface of the spillway. This widened area (permanently expanded to about 10' across atop the spillway) would then serve as a base, in emergency circumstances, for an aquadam (essentially a large balloon filled with water) or super sacks (very large sand bags) that would essentially plug the gap at

the spillway, temporarily raising the spillway about 3'-4'. The rocks would be larger at the bottom of the reservoir and smaller toward the top and held in place by their angle of repose.

Ms. Adamski explained that the existing access way would be used for this work and no excavation will occur—this is just placing rocks into the water by the spillway. A turbidity curtain would be used to control siltation during this operation, and then removed. This would alter about 200' – 998' square feet in the underwater body plus 50-60 square feet for the temporary turbidity curtain.

The plan also includes temporary installation of sandbags at a low point at the western side of the dam. This too would occur only in a flood emergency to protect drinking water.

The plan submitted to the Commission shows that there will be no work in the bordering vegetated wetland. Hancock Survey did the flagging, which can be refreshed. Newburyport city engineer Jon-Eric White said that the applicant is in the process of obtaining wetlands delineation sheets from Hancock. This project is DEP # 078-0712: no technical comments were received from DEP.

Applicants would like to complete this project as soon as possible, in light of the hurricane and storm seasons approaching.

The Commission continued this matter to September 21 and scheduled a site walk for September 11 at 8 am.

Discussion: 5 Sullivans Court culvert

Mr. Comins said that the Commission received a letter dated August 19, 2020 from developer Tom Neve identifying 3 plans to rectify the culvert whose wing wall concrete block has moved, is listing, and whose base is being eroded. The Commission's preferred option is Plan C, which involves removing the block in question, installing a stable 12" rock base, and replacing the block. Additional issues are gravel and sediment that need to be removed from the streambed and Mr. Neve's proposed curbs atop each side of the culvert to keep more gravel from spilling into the stream.

Mr. Neve explained that he hired the Planning Board's consultant Meridian and paid them \$850. Meridian recommended not removing the block in question because doing so would expose the soil behind and underneath it. The block, Mr. Neve said, has stopped moving and will not move any more. Removing it is not an easy job. Mr. Neve recommended Plan A: removing the sediment from the streambed and thus better defining the channel, and then packing stones under the problematic block. Mr. Neve said that the Planning Board supports Plan A.

Mr. Comins reported that the block has not moved further but erosion under it has been increasing. Ms. Reed expressed concern that this will be a lingering problem for the homeowner who buys the property from Mr. Neve. In response to Ms. Hawkins' question how he would have done this differently initially, Mr. Neve said that he would do nothing different, but given that the soil under the block is likely unstable fine sandy clay, he would have applied geotextile fabric before putting in the stone base. This would have kept the stones from sinking into the soil below—some stone may have burrowed into the sandy clay.

By unanimous roll call vote the Commission determined to approve applicant's 1) removal of the listing block, installation of geotextile fabric, placement of a 12" stable stone base, and replacement of the block in proper alignment, 2) planting of grass or sod in any areas whose grass vegetation is removed in this process, 3) installation of erosion controls downstream, 4) removal of sediment in the stream by hand (to be disposed offsite), and 5) re-establishment of the stream channel—with all work to be done under the supervision of an independent professional wetlands scientist.

By unanimous roll call vote the Commission determined to amend the prior approval to add authorization for Mr. Neve to install masonry curbs atop the culvert and wing wall blocks after the blocks have been reset, such curbs to be at least 12" above the level of the existing surface atop the culvert. Ms. Mizner will draft a letter to Mr. Neve reflecting the Commission's determinations.

Discussion: Drakes Landing storm water

Mr. Comins said that the Planning Board's consultant Meridian has reviewed the storm water flooding situation and has reported that the best thing to do is to obtain as-built plans for the storm water structures and a copy of the storm water management plan. It appears that the water should be running toward the east, but instead is running west toward and beyond Carr Post. No representative of Drakes Landing participated in this discussion.

Mr. Comins reported that the silt sacks in the catch basins had filled and for a while no silt sacks were in place—apparently while waiting for new ones to arrive. New silt sacks are now in place. Hot patch asphalt was applied at the basins, but it is not clear how well they will hold water back. The hot patch had been in place when the most recent storm episode caused serious silty runoff from Drakes Landing to flood onto Main Street and then the neighbor's yard.

Mr. Comins reported that the 3 empty lots at the top of Daly Drive have no curbing, no erosion control, disturbed ground, and considerable sediment in the road. This is outside the buffer zone, but contributing to silt in wetlands resource areas. Ms. Hawkins noted that in some instances erosion controls have been defeated by piles of soil dumped over them and have been destroyed by being driven over.

The Commission agreed that it will send a letter and the Agent will speak to development representatives, informing them that the developer needs to 1) install erosion controls around disturbed earth, 2) clean up the road and dispose of sediment outside of the buffer zone, 3) restore and/or repair all pre-existing erosion controls, 4) have an engineer survey the site's erosion controls and report to the Commission on their condition and the actions undertaken to fix them. The Commission authorized Ms. Mizner draft such letter; Mr. Comins will visit the site to check compliance.

Discussion: Wetlands protection bylaw

Upon consideration, the Commission determined that the time available until Fall Town Meeting would be insufficient to develop and educate voters about a new wetlands bylaw, even if the Selectmen were willing to put bylaws on the agenda for this covid-constrained outdoor Town Meeting.

Ms. Reed suggested that the wetlands bylaw be a perennial agenda item so that it will move forward and Mr. Atwood urged that the Commission seek feedback from the Selectmen and other stakeholders as the draft progresses.

Discussion: MS4 storm water management update

Mr. Comins reported that work is ongoing on a new storm water bylaw for the Town. It may be presented at the Spring Town Meeting in 2021.

Discussion: Other business

Conservation Agent Computer During the course of this meeting, Mr. Comins' computer, essential to the GoToMeeting session, was worse than usual in its poor to unintelligible sound quality and its inability to pull key documents up onto the screen. *It was decided that Mr. Comins will get a separate mic to use the office computer and will look into getting a new computer.*

Dying Ash Trees in Wetlands Resource Areas Ms. Hawkins, also a member of the Tree Committee, explained that the emerald ash borer will be killing most if not all ash trees in town unless they are treated with an injected pesticide. It will be cost effective to treat only selected trees. It is better (safer and less costly) to cut an infected tree while it is still alive. Ms. Hawkins suggested that the Commission be prepared to address the issue of dead and dying ash trees in wetlands resource areas.

Discussion: Review of Minutes

By unanimous roll call vote the Commission approved the minutes of August 13 and 17, as revised.

Next Scheduled Meetings

September 21, 2020.

Adjournment

The Commission adjourned at 10:35 pm.

Meeting Documents

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

Respectfully submitted