

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, September 21, 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 (NOI) DEP File# 078-0709 --- Thomas Neve --- 5 Sullivans Court (Lot 6)--- Construction of Dock

Dock Applicant’s consultant Greg Hochmuth provided on screen another plan for the proposed dock. He said the applicant received a conditional no take letter from the state’s Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage), which stated that the dock must be constructed in accordance with the submitted plan, anchoring must be installed as described in the plan to prevent scouring of the river bottom. Natural Heritage also requires that a copy of its letter be included with and incorporated into the Commission’s Order and recorded with the Registry of Deeds, or in the alternative recorded separately. Ms. Mizner indicated that the Commission would have no problem incorporating the Natural Heritage letter. She also stated that the applicant should provide to Natural Heritage (which had reviewed an 8/31/2020 plan) a copy of the most recent 9/21/2020 plan that the Commission has been reviewing.

Mr. Hochmuth said the revised plan also included more detailed information about the mooring system and the system of pipes to keep the floating dock at least 18” from river bottom. He added that the revised plan shows erosion controls and includes more detail about compensatory flood control, which will be provided when the astroturf at the river edge and the approach to the river is removed and replaced with rocks (4” minus stone riprap), whose voids can fill with flood water and provide a 48 cubic foot increase in storage. Ms. Reed noted that the conditions for this project should include specification of the 4” minus stone riprap for this purpose.

Mr. Hochmuth explained that the applicant, developer Tom Neve, will not be building this dock. After the property is sold, a new owner would do the construction. The permitting will aid in the selling the property.

By unanimous roll call vote the Commission determined to issue an Order of Conditions subject to the letter from Natural Heritage (which is incorporated in the Order and shall be filed in the Registry of Deeds with the Order), with standard conditions and special conditions including applicant’s 1) conformance with approved plans, 2) provision of a work schedule to the Conservation Agent at least 72 hours prior to commencement of work, 3) receipt of Commission approval of erosion controls prior to construction beginning, 4) placement of docking planks at least 3/4” apart to permit

vegetative growth below, 5) receipt of prior approval from the Commission before any cutting in the wetland resource area, 6) maintenance of the docking at least 18" above ground, 7) restrictions on use of pesticides, insecticides, fertilizers, 8) use of mooring systems approved by Natural Heritage, 9) refraining from storage of any items at the riverbank or other resource areas, 10) refraining from hauling removable docking up the bank, 11) submission of a new filing for any additional work, 12) compliance with ongoing conditions, which will remain in full force and effect.

Culvert Mr. Hochmuth described the removal and replacement of wingwall blocks at the culvert on this property, which had moved, listed, and were being undermined by erosion. Under Mr. Hochmuth's supervision, the blocks in question were removed down to a stable base, and after geotextile fabric was installed with a stable gravel base over it, the blocks were replaced. Also, the stream channel was cleared and restored by hand. Grass was seeded where needed. He said that they found considerable organic matter under the blocks that must have been missed in initial installation—and a boulder may have caused teetering and listing. It will take a season to restore the stream channel, but water should stay away from the block. Also, the blocks are now about a foot lower, down the footing elevation. The curb atop the culvert will be 1.5' high to keep gravel and other materials from sloughing into the stream channel.

Ms. Reed asked about the other blocks. Mr. Hochmuth said they have shown no evidence of moving or listing, indicating that the organic material and boulder were the foundation of only the one block.

**Public Hearing --- Notice of Intent --- City of Newburyport Department of Public Services --
- Lower Artichoke Spillway --- Construction of stone foundation at lower Artichoke spillway**
Pending clarification of some communications from the Department of Environmental Protection (DEP), the applicant asked that this matter be continued to the next meeting.

**Public Hearing --- Notice of Intent (NOI) --- Neil Angis --- 9 Newell Farm Drive ---
construction of in-ground pool, patio and shed**

Consultant Mary Rimmer stated that this project received DEP # 078 0713. All proposed work is outside of the resource area, with some fencing 50' away. Standard erosion controls are proposed: this is a straightforward buffer zone project. The wetlands delineation was done a few weeks ago. Ms. Mizner thanked Ms. Rimmer for providing data sheets with the NOI submission.

Given that the October 15 cutoff on winter work is approaching, the applicant would look to the Commission on whether work could start this fall or next spring.

The Commission scheduled a site walk for Friday, September 25, and continued the matter to the next meeting on October 5.

Discussion: 119 Bachelor Street DEP File# 078-0651 Request for Certificate of Compliance

Mr. Comins said the Commission has received an as built plan that includes two wetland replication areas. The only report about the wetland replication is a 9/23/2019 letter indicating that the areas had been built. Photos indicate that the vegetation is sparse, appearing to be mostly grass.

The Commission determined that Mr. Comins will inspect the replication areas with the Order in hand to determine whether the plantings required by the Order are in place. The matter was continued until the next meeting and Mr. Comins' further report.

Discussion: Drakes Landing storm water update

Update Mr. Comins said that a staff meeting was held among Town employees to address issues of silty storm water running out of the Drakes Landing development under construction by Cottage Advisors/Chip Hall. During the meeting they received an email from the developer's engineer, Cammet, saying that the developer would pave the roads to the final grade, and remove the silt sacks to allow the storm water management system to function as planned. There will also be a diversion trench from the source of the silt, though it is not clear where the silt would be diverted to. Meridian, consultant to the Planning Board, said that if this does not work, it would be a design problem.

Ms. Hawkins stated that it appears that with additional hotpatching, runoff is being diverted to the handicapped accessible ramp at Carr Post, causing it to run into her backyard. Additionally, Ms. Fusco reported that state crews have been working on the silt-filled catchment on Rt 113.

Lawyer's letter Mr. Comins said that he received a communication from Mr. Hall's attorney, counsel to Cottage Advisors, stating that Commission members who are also abutters cannot deliberate on a matter affecting their property. In a quoted section without referenceable citation, the letter suggested that those who are both abutters and Commission members cannot be present when a matter affecting their property is discussed.

The Commission noted that in its meetings discussing the problem of silty runoff from Drake's Landing ([7/15/2019](#), [10/28/2019](#), [8/3/2020](#), [8/17/2020](#), [9/1/2020](#)), the Commission never took a vote or engaged in deliberation. Rather, the Commission attempted to understand the situation and what should be done about it from developer Chip Hall, his consultant Tom Hughes, Ms. Hawkins as an abutter, and others.

Mr. Comins will consult with Town Counsel about this matter.

Discussion: 72 Coffin Street violation

Mr. Comins reported that a new deck was built (and possibly permitted after the fact, so Mr. Comins did not receive advance notice in the usual course of events) and considerable tree cutting occurred in an area that is identified on MIMAP as near or in wetlands. Mr. Comins reached out to the homeowner, who said there was a plot plan showing that wetlands were over 100' from the work. It appears that the plot plan dates from the mid 1990s. Mr. Comins said he issued a Notice of Violation.

Mr. Comins will contact the homeowner again and review the area of disturbance. He will also consult with the Building Inspector about the permitting of the new deck.

Discussion: Wetlands Protection bylaw

Ms. Mizner reported that she has revised a draft of a wetlands protection bylaw. Ms. Reed expressed an interest in shortening the draft for ease of review by the Town. Ms. Mizner will provide the draft to Mr. Comins for circulation among Commission members.

Discussion: Future executive session

It was reported that the Town Manager would like to set up an executive session for the Commission to obtain legal advice from attorneys at KP Law about preparation for the hearings concerning the 40B development proposed for Coffin Street. Ms. Mizner noted that the Commission will need to state the basis for the executive session. *Mr. Comins will coordinate with KP Law to determine availability for such a meeting.*

Discussion: Other business

None

Discussion: Review of Minutes

By unanimous roll call vote the Commission accepted the minutes of September 1, 2020, as amended.

Next Scheduled Meetings

October 5, 2020.

Adjournment

The Commission adjourned at 8:52 pm.

Meeting Documents

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

Respectfully submitted