

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place: 7:30 pm, December 7, 2020, Remote Participation via Zoom.**

**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, Ms. Mizner 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."

### **Discussion: Rescheduling of Commission Public Hearing to approve third party consultant policies**

Ms. Mizner said that due to inadvertent omission of this item from the agenda for tonight's meeting, the Commission needs to reschedule its public hearing to address its policy for third party consultants. *The Commission agreed to reschedule this matter to Thursday, December 10, 2020 at 7:15 p.m.*

### **Continued Public Hearing --- Notice of Intent (NOI) DEP File# 078-0712 --- City of Newburyport Department of Public Services --- Lower Artichoke Spillway --- Construction of stone foundation at lower Artichoke spillway**

*This matter was continued at the applicant's request.*

### **Continued Public Hearing --- Notice of Intent DEP File# 078-0718 --- Jennifer Attenborough --- 387 Middle Street --- replacement of failed sanitary disposal system**

*This matter was continued at the applicant's request.*

### **Continued Public Hearing --- Notice of Intent DEP File# 078-0717 --- West Newbury Department of Public Works (DPW) --- Town Wide --- Management of hazard trees**

DPW Director Wayne Amaral said that this matter had been continued so that the Commission members could review his draft blanket proposal to authorize tree cutting along Town rights of way and so that he could hear from the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage). He has been playing phone tag with Natural Heritage and Ms. Reed suggested that Mr. Amaral work with them and Conservation Agent Comins at the same time for efficiency and to aid communications. Mr. Amaral said that his current plan has perhaps 10 trees in Natural Heritage areas, largely along River Road.

Mr. Amaral stressed that the list of trees to be cut is extremely fluid, depending on emergency conditions. This requires flexibility, which is why blanket authorization is sought. It is not possible to consider and develop conditions for each tree before action is taken. To ensure that wetlands

protections are in place, he will be treating all trees as if they are in wetlands and will append the protective plan to the contract with tree removal companies. Mr. Amaral also stressed that he has a limited budget and must prioritize tree cutting based on degree of hazard. DPW is not looking for trees to remove.

Ms. Fusco noted that some the trees along River Road contain eagle nests and the area around the nests should not be disturbed while the birds are nesting. She added that she is concerned that some leaning trees along the river may take out a chunk of riverbank. Mr. Amaral added that a safety concern is presented by trees overhanging River Road.

*It was generally agreed that Mr. Amaral will revise his plan to 1) provide Mr. Comins a copy of the list of hazard trees to be cut as the list is provided to the contractor (and a copy of revisions), 2) develop more specific directions about stabilization and protecting the ground when tree removal equipment is used off the pavement, and 3) clarify that the height of tree trunks left standing will be based on the distance between the tree and the road.*

*The matter was continued to December 21. When Mr. Amaral next comes before the Commission, he will also address the composting issue Mr. Atwood has raised.*

### **Public Hearing --- Request for Determination of Applicability --- David Savoy --- 91 River Road --- Construction of new stone wall and demolition and replacement of an existing stone wall**

Mr. Savoy said that he has plans to do landscaping in the spring, but the pressing issue is removing a small wall with an eagle decoration that was mistakenly placed on his neighbors' (Susan and Philip Aberizk's) property. Mr. Savoy discussed plans showed on the computer screen and photos of the property. The plan is to demolish the wrongly sited wall and rebuild it closer to his driveway. An unidentified person accompanying Mr. Savoy said that the wall has a concrete cap and center, with stone covering the sides, and with a crushed stone base. This person said that the job could be done with a bobcat in a day. The decorative eagle atop the wall's end and the stone at the sides of the wall would be removed to the back of the carriage house, and the concrete debris would be removed offsite.

Ms. Reed expressed concern that this work would be inconsistent with the Commission's requirement that no ground disturbance may occur between October 15 and April 15 (when vegetation will not regrow over disturbed soil). Mr. Savoy and his companion offered to remove the eagle and wall only: the crushed stone base and the plantings would be left until spring. When asked, Mr. Aberizk said that this approach would suffice for the winter.

Ms. Reed also noted that considerable yard debris materials have been impermissibly dumped in the wetlands on Mr. Savoy's property. As a condition to the wall removal project, the yard waste materials should be removed by hand and taken away from wetland resource areas.

*By unanimous roll call vote the Commission determined to issue a Negative Determination of Applicability for removal of the eagle and the stone wall, conditioned upon 1) leaving the crushed stone base in place, 2) installation of a silt sock around the area of work, 3) removal of debris from the wetlands by hand, 4) removal from the resource area of all debris from the wall and from the yard waste cleanup, and 5) inspection and approval by the Conservation Agent of the*

*erosion controls and the yard waste removal prior to commencement of work to remove the stone wall.*

The applicant can return to the Commission for review of the proposals for replacement of the small stone wall with eagle and other landscape work.

**Public Hearing – Abbreviated Notice of Resource Area Delineation DEP File # 078-0707 --- Cottage Advisors --- 28 Coffin Street --- Confirmation of Resource Area boundaries at 28 Coffin Street**

At the outset, Ms. Mizner said that this tonight's hearing is discussing only the delineation of wetlands boundaries on the 28 Coffin Street properties. Public comment would be permitted after the Commission discussion concluded, and anyone wishing to comment should type their name and address in the chat box. Consultant Tom Hughes said that developer Howard Hall and attorney Melissa Robbins were also on the line.

Mr. Hughes said that he brought in a peer reviewer and has moved some flags. A new plan will be submitted reflecting the changes. He said that the wetlands determination was soils-intensive and occurred last fall when the weather was very wet. He said that the applicant favors Commission peer review of the delineations.

Mr. Hughes described the plan of the property shown on the computer screen and explained that it has several distinct wetland areas. Some wetlands have standing water and some are derived from seeps. Drainage generally goes easterly to Coffin Street. Most of the wetlands are in woodlands; some are in meadows.

When asked if vernal pools had been identified, Mr. Hughes replied that no certified vernal pools are on the site. He said he did his homework on all areas where standing water is on the site. These areas would be within the wetlands.

In response to Ms. Mizner's inquiry whether data sheets had been prepared, Mr. Hughes said that data sheets on a site this large are not terribly informative. Instead he prepared a summary report. Ms. Mizner said that the Commission members usually do a thorough review of the plans and data sheets before conducting a site walk. Mr. Hughes suggested that if the Commission wanted data sheets, it might have asked for them during the period in which this matter was delayed to COVID precautions. Ms. Reed noted that the data sheets are a standard Commission requirement. Mr. Hughes replied that they are not strictly required by the regulations. He said wanted to provide useful information, and he does not believe that data sheets are terribly useful. He said his summary report contains a list of each wetlands line and its basic features.

Ms. Mizner said that the Commission does not have a hard copy of the summary report and that it would be helpful for each Commission member to have paper copies of the full size plans. Mr. Hughes committed to provide 8 full sets of the summary report and full plans.

Replying to Ms. Mizner's inquiry about the work the developer plans to do this winter, Mr. Hughes

said that they have been doing exploratory work under an exemption for minor activities. This includes tests for wastewater and storm water design. Nothing was terribly close to the wetlands, Mr. Hughes said.

Ms. Mizner said that the Commission will be meeting Thursday to act on the policy for a peer reviewer, and will move quickly to get that person in place. Mr. Hughes observed that the delineation can be done in the winter (so long as the ground is not frozen) since this mostly involves soils analysis. Mr. Hughes said that the developer will work to put a mechanism in place to pay for the third party consultant. He added that he wants to get the wetlands lines locked in place.

Jean Lambert, 215 River Road, said that she has worked with Kathy Feehry, an abutter to the project and with a naturalist to identify vernal pools with appropriate species. They identified one, which is partly on Ms. Feehry's property, and submitted the paperwork to have it listed. She said there is also a second possible vernal pool.

Ms. Lambert also noted that the Tree Committee has designated a significant tree on the property to be developed and asked in the Commission would address this. Ms. Mizner explained that the Commission's jurisdiction is limited to wetlands protection. The Commission would become involved with the tree only if it were within protected wetlands areas—if not, other committees would need to deal with this question.

*This matter was continued to December 21, 2020.*

**Public Hearing --- Notice of Intent DEP File # 078-0719 --- Timothy Collins --- 183 River Road --- Construction of home, driveway and wetland crossing**

Consultant Mike Seekamp described the plan on screen for construction of a home on a wooded section of property recently subdivided by Joseph Grew. He said that the property is mostly bordering vegetated wetlands. There's a small isolated wetland at the front of the property by the street. A small corner of the house will be within 100' from the wetlands. The septic system will be up the hill and will require a permanent wetlands crossing for access to do maintenance or repairs.

Mr. Seekamp said that if the wetlands crossing requires replication, it could be located at the top of the isolated wetland area by the driveway. This could avoid tree cutting. Ms. Fusco asked if this wetland area is a floodplain. She said that it is often covered in water for weeks, with the water coming up from the ground. Mr. Seekamp said he will check on this. He added that a tree by River Road has an eagle nest, and he will be making a submission to Natural Heritage.

Mr. Seekamp will drop off 6 copies of full sized plans at Town Offices.

*The Commission scheduled a site walk for Sunday December 13 at 8 am and continued this matter to December 21.*

**Public Hearing --- Notice of Intent DEP File # 078-0720 --- Philip & Susan Aberizk --- 89 River Road --- Construction of detached garage, driveway extension and temporary access**

## **road**

Consultant Stephen Stapinski described the plans shown on the computer screen. The applicant intends to build a 2-story garage in the buffer zone. Since his existing driveway cannot withstand heavy construction vehicles, a temporary access road will need to parallel the existing drive. To make the temporary driveway, loam will be scraped off and 8-12" bed of gravel will be installed at grade. A new electric line will be installed under the temporary drive. Once construction is done, the gravel will be removed and loam replaced and reseeded or sodded. The existing concrete block driveway will be extended to the new garage, which will also have an adjacent concrete or asphalt pad for storage. The garage will have a sink and toilet and water and a septic line will be connected to it.

Mr. Stapinski said that the applicant made a submission to Natural Heritage, which sent a letter saying that the project is acceptable. He said that they may need to file with the Board of Health for a permit for the septic connection, but this adds no bedrooms and requires no additional septic work. He added that they plan to remove 2 dead trees in the River Road right of way.

Norse Environmental prepared a new wetlands delineation this summer, and the markers are in place. This was included with the NOI application. Data sheets were not included, but Mr. Stepinski will email them to the Conservation Agent. The work will maintain a no-disturb zone 25' from the wetlands. No floodplains are on the property. Compost filter socks will be used as erosion control during construction. There will be a temporary soils and gravel stockpile place located outside of the buffer zone.

*The Commission scheduled a site walk for Sunday December 13 at 9 am and continued this matter to December 21.*

## **Discussion: Drakes Landing trail easement**

Melissa Robbins said that as a belts and suspenders measure, the developer will grant another trail easement to cover a gap in the trail easements. This has the same language as used before. This will also need approval from the Board of Selectmen as well as the Commission.

*By 4-0-0 roll call vote (Ms. Hawkins, recused, not voting), the Commission approved the trail easement.*

## **Discussion: Wetlands protection bylaw**

*Deferred*

## **Discussion: Other business**

Ensuring receipt of plans and data sheets: *The Commission agreed that particularly in this COVID era, it is important that the Commission members each need to receive paper copies of 1) full size plans and 2) data sheets. To make this happen, the Commission decided to put this requirement 1) in the NOI application and 2) on the Commission website.*

## **Discussion: Review of Minutes**

*Deferred*

**Next Meeting**

December 21, 2020

**Adjournment**

The Commission adjourned at 9:46 pm.

**Meeting Documents**

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

Respectfully submitted