

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, December 21, 2020, Remote Participation via Zoom.

Members Present: Via remote participation Dawne Fusco, Wendy Reed, Margaret Hawkins, Tom Atwood. 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."

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

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

Along with consultant Greg Hochmuth, attorneys Lisa Mead and Olympia Bowker appeared on behalf of Jennifer Attenborough, who was also present. Mr. Hochmuth noted that the Commission apparently has no issue relating to the tight tanks proposed to replace the failed septic system. He proposed moving forward on the septic matter separately from the questions of lawn maintenance and the canvas shed with a gravel access way in wetlands resource areas. The window for completing the septic this winter is closing.

Ms. Mizner noted that the Commission is concerned that a new buyer will not understand that the lawn mowing and canvas shed-with-gravel issues have arisen. Ms. Reed also expressed concern that the buyer might purchase under false pretenses. Ms. Attenborough stressed that she has been completely transparent with prospective purchasers.

Ms. Bowker referenced a letter that she and Ms. Mead had sent the Commission on behalf of the applicant. She stressed that the septic issue is separate, and asserted, citing regulations, that the work proposed in the NOI is all that the Commission can act on with respect to the instant application. Ms. Bowker cited Department of Environmental Protection (DEP) administrative law judge decisions, regulations, and website information that, she said, allow mowing to continue if a lawn had already been established before the wetlands regulations went into effect. This lawn has been in place since at least the early 1970s.

Ms. Mizner said that she has reviewed the regulations and does not agree that mowing in a resource area is not jurisdictional, particularly in light of advice the Commission recently received from DEP, saying that it is jurisdictional. She added that there is no definition of lawn or landscaped area.

Ms. Bowker said that when issuing that advice, DEP was not aware of the mowing having taken place since the 1970s. That, she said, changes the story. Mowing is exempt if it took place before the regulations became

effective.

With regard to the canvas shed and gravel drive, Ms. Attenborough found a letter dated June 4, 2008 from the Commission. That letter said that there was a possible violation. A notation (of unknown authorship) handwritten on the letter said that a Commission member had visited the site and found it acceptable. This question was apparently addressed at a July, 2008 Commission meeting, but minutes from that meeting have not been found. Ms. Attenborough's realtor Fraser Dewar said that the lack of Commission follow up reflected Commission acceptance of the canvas shed with gravel drive.

Ms. Mizner observed that any resolution was unclear and that, in any event, it is well established that erroneous decisions of prior boards do not bind the current board.

Noting that there is a real economic impact in this, and that the issue of possibly grandfathered lawn mowing is coming up time and again, Mr. Atwood moved that the Commission obtain advice of Town Counsel and the DEP on this question. Ms. Mizner noted that it is the Commission's role to interpret and implement the regulations. Mr. Atwood responded that if this goes to litigation, Town Counsel would be involved and the Town's insurance for such matters supports consultation with Town Counsel here. Ms. Reed expressed concern that delay might thwart the pending sale of the property, and wondered if a compromise with reduced mowing might be a solution.

The prospective buyer, Chelsea McCarron, said that she would not be interested in purchasing the property if the backyard lawn could not be maintained. She also indicated that a compromise in which a smaller lawn would be allowed is problematic because of the uncertainty that this same issue could arise if she wanted to sell the house. She indicated that some delay through January to get a solid answer would be preferable to the uncertainty.

By unanimous roll call vote, the Commission approved the motion to seek review of this issue from Town Counsel and DEP on an expedited basis.

Turning to the tight tanks to replace the failed septic system, the Commission confirmed that erosion controls would be a silt fence and mulch sock surrounding the construction area. These have been installed, but Mr. Comins has not yet inspected them.

By unanimous roll call vote (with an amendment concerning ground stabilization approved by unanimous roll call vote), the Commission approved Ms. Mizner's motion to issue an Order of Conditions for the work proposed allowing work after the October 15 winter cutoff date, and with standard conditions and special conditions requiring applicant to 1) install a 12" mulch sock and silt fence as proposed, 2) obtain Conservation Agent inspection and approval of erosion controls prior to the start of work, and 3) use matting or another alternative approved by the Commission to stabilize soils after work is completed.

Ms. Mizner proposed to record in the Registry of Deeds, along with the Order, a notice about the potential violations with mowing and placement of the canvas shed and gravel drive in the resource area. The applicant's attorneys said that the Commission has no authority to make such a filing, noting that they object to placing a cloud on the title.

To move things along, Ms. Attenborough offered to remove the canvas shed. Ms. Mead said that the applicant will provide the Commission a proposal with respect to the canvas shed and gravel drive leading to

it.

The matter was continued as a discussion item to January 4, 2021, when, hopefully, a response will be provided regarding the moving issue and the applicant will have provided a proposal regarding the canvas shed and gravel drive.

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

Continued at the applicant's request.

Continued 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

Continued at the applicant's request.

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

Consultant Mike Seekamp said that a site walk was held and the wetlands lines were reviewed. He noted that the proposed driveway would be in the buffer zone and that an eagle's nest is near the road. He said that a change is that the wetlands crossing for the septic access will be temporary only, with a pipe placed underground.

The eagle's nest will require review under the Massachusetts Endangered Species Act (MESA). The Commission noted that it will need to know the outcome of the MESA review before it can act.

Ms. Mizner said that the applicant should provide a description of the septic pipe that involves a wetlands crossing, and should provide revised plans as well as a discussion of the construction sequence. This should be submitted at least a week before the next meeting scheduled for January 4.

The matter was continued to January 4, 2021.

Continued 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 Steve Stapinski noted that the Commission participated in a site walk with the applicant's environmental consultant and that data sheets had been provided by email today, and hard copies of materials had been sent by FedEx to Town Offices.

Mr. Stapinski said that a new element is the applicant's plan to plant a row of arborvitae along the property line as a living wall. The Commission advised that the planting should be along the 25' no-disturbance line from the wetlands to serve as a demarcation and should have erosion controls between the no-disturb zone and the planting.

Other matters discussed included the distance between the toe of the soil storage pile and erosion controls—4' was preferred. Additionally, it was agreed that the erosion controls would be located between the plantings and the no-disturb zone and that an 8" mulch sock would be used along with erosion control fencing. In response to Ms. Fusco, Mr. Stapinski clarified that the pipe connecting the new garage to the existing septic system will be installed by a Town-certified contractor who will get a permit from the Board of Health for the

new interconnection—but this will not require a plan, etc.

In response to Mr. Stapinski's inquiry whether the Commission could just vote today with the items discussed as additional conditions, Ms. Reed said that the Commission prefers to have the filed plans be consistent with what is in the order. Otherwise, confusion may arise later on.

Mr. Stapinski also asked for a waiver to allow work to start before April 15. The Commission explained that such waivers are usually granted only in emergency situations, such as repair of a failed septic system. Mr. Atwood noted that even construction for the new high and middle school is complying with the winter ban.

Mr. Stapinski agreed to provide the Commission both an electronic version of the revised plan, and 5 paper copies of full sized plans.

The matter was continued to January 4, 2021.

Public Hearing --- Notice of Intent DEP File# 078- 0722 --- John Graf --- 14 Kimball Road Lot 1 --- Construction of paved driveway and grading

Consultant Greg Hochmuth said that this is a lot that is part of a subdivision at 14 Kimball Road, which has been endorsed by the Planning Board. The plan involves three single-family home lots and retention of the exiting farmhouse and iconic red barn.

For Lot 1, most construction will be outside the 100' buffer zone, but the jurisdictional activity involves part of the driveway and related grading. The driveway has been located in a way that preserves a cluster of trees on Middle Street.

Mr. Hochmuth said that almost all of the lot is Blandings turtle habitat and the applicant has already submitted a turtle protection plan to the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage), which provided a conditional no take determination conditioned on compliance with the turtle protection plan. The turtle protection plan will be submitted to the Commission. The project received a DEP number with no comments and the applicant is working on minor tweaks suggested by the Board of Health.

Mr. Hochmuth said that the applicant will ensure that the wetlands flags are in place in time for the Commission's site walk, which is scheduled for January 3, 2021 at 8 am, snow conditions permitting.

The matter was continued to January 4, 2021.

Public Hearing --- Notice of Intent DEP File# 078-0721 --- John Graf --- 14 Kimball Road Lot 2 --- Construction of paved driveway and grading

Mr. Hochmuth said that this is another lot in the development just discussed. It presents the same turtle issues and will be subject to the same turtle protection plan, which essentially consists of fencing around the property to keep the turtles out. The Board of Health is actively reviewing the septic proposal.

Mr. Hochmuth said that this Lot 2's frontage is almost entirely bordering vegetated wetland. The driveway and grading for the driveway and septic system involve Commission review.

The Commission scheduled a site walk on January 3 immediately following that for Lot 1 and continued this matter to January 4, 2021.

Public Hearing --- Notice of Intent --- Deer Run Land Development LLC --- 519 Main Street --- Construction of roadway and storm water management areas, wetland fill and replication

Consultant Chris Sparages provided an overview of the proposed Deer Run development, which would preserve the existing home and add three duplex homes. This is a large 35.6-acre lot that is oddly shaped, with a narrow strip providing access from Main Street to the larger areas that are bisected by a power line and are essentially two joined rectangles.

To comply with Planning Board requirements for the new roadway into the development, the project will need to build a road crossing wetlands—and with waivers from the Planning Board. To create the road, some wetlands would be filled and wetlands replication will be installed adjacent to that area. The wetlands were flagged in June and November of 2019. Mr. Sparages also explained that the storm water management systems will require Commission review of wetlands impacts. He said that the Planning Board consultant Meridian had made several comments and the applicant would like to obtain the Commission's views before responding. Mr. Sparages added that the developer intends to grant easements for several hiking trails on the property.

Ms. Mizner said that the Commission would like to receive 1) data sheets for all the wetland areas (to review before the site walk), and 2) another hard copy of the storm water report.

The Commission scheduled a site walk on December 27 at 8 am and continued this matter to January 4, 2021.

Discussion: Potential compost facility meeting recap

Mr. Atwood met with the Conservation Agent, the Director of the Department of Public Works (DPW), and the Health Agent to discuss the idea of a Town composting program for yard waste as a means of preventing yard waste dumping in wetlands. They pointed out that applicable rules make this subject to requirements not unlike those imposed on garbage management. Requirements for a concrete pad and other infrastructure, plus ongoing management and supervision, are prohibitive in their view.

Mr. Atwood noted that he does not know what the Town does with its own grass clippings and yard waste. He wondered if this could be accomplished in coordination with Merrimac and Groveland. He noted that when he lived in Attleboro, that town's yard waste recycling operation was a success. Education and partnership with private recyclers are also options.

Ms. Hawkins wondered about working with the Town's waste disposal company to take bagged leaves in the fall. Ms. Mizner noted that grass clippings are an issue over the whole growing season. In response to Ms. Hawkins' query about the status of No Dumping signs to discourage yard waste dumping on conservation lands, Mr. Comins said that the signs have been ordered.

Discussion: Annual town report

Mr. Comins said that it is time to prepare the Commission's submission for the annual Town report. He will circulate last year's report, updated to discuss his additional hours, work as land agent, what the Commission has accomplished (including how many hearings were opened), and the Commission's priorities going forward.

Discussion: Filing policy and procedures

Ms. Mizner said that the Commission should tell applicants to provide 24 x 36" paper plans (as well as an electronic copy) at 1" = 20' scale. Applicants (particularly homeowners submitting a request for determination of applicability) may request a Commission waiver for the large plan requirements, and, if granted, provide a smaller plan. Additionally, applicants should be told to provide delineation data sheets for each wetlands line, along with descriptions of vegetation, soils, and water bodies.

These requirements will be on the Commission website and in the instructions for filings submitted to the Commission.

Mr. Atwood stressed the importance of obtaining and maintaining electronic files. A fire in the Town Offices could decimate Commission records.

Discussion: Riverbend trail hazard tree

Mr. Comins showed photos of a tree leaning over and jeopardizing a trail bridge over the Indian River in the Riverbend trails. The Essex County Trail Association (ECTA) had a person on site, ready to take the tree down. This raises the issue of compliance with the Trail Management Plan. Ms. Mizner noted that this project comes under the Plan's provision for "Other:" any project not specified elsewhere is subject to Commission approval.

The Commission generally agreed to approve ECTA's tree work without another meeting, provided that ECTA comply with the Plan by submitting a written plan of work to the Commission, subject to 1) leaving the trunk 12-15' high to provide habitat and 2) removing the cut tree parts 15' away from the river's high water mark.

Discussion: Conservation Restriction (CR) monitoring report

Mr. Comins said he talked to Jen Hughes from Merrimack Valley Planning Commission about putting together a report of baseline conditions for lands subject to conservation restrictions. Greenbelt properties already have this and the Greenbelt reports can serve as a model.

Discussion: Wetlands protection bylaw

Tabled

Discussion: Other business

Ms. Reed noted that the climate change Municipal Vulnerability Working Group has a subcommittee tackling invasive plants and is working on a proposed warrant for Spring Town Meeting to use interns to work on mapping and removing invasives. She noted that Nancy Pau, biologist at the Parker River Refuge has experience with interns and is leading the invasives committee. Ms. Reed wondered if the Commission would be interested in using its revolving funds to pay for interns in the January to June period to assist Mr. Comins with such items as conservation restriction monitoring, and perhaps to work on protocols for the summer intern program.

Ms. Mizner sought clarification about the details for this program; Ms. Fusco was interested in the concept. Mr. Atwood and Ms. Hawkins noted that interns could help Mr. Comins with scanning to create electronic files and could develop a spreadsheet to track and identify Orders of Conditions that require close out.

Ms. Reed said that Nancy Pau and Carol Decker (a naturalist for Audubon who is also on the invasives committee) would be doing the planning and mentoring for this and there is interest in having Mr. Comins, a Town employee, as the supervisor.

It was generally agreed that more information is needed (for instance, do interns qualify among those who can be paid with the Commission funds), and that the Commission is interested in the concept.

Discussion: Review of Minutes

Deferred, to be the first item on the agenda for the January 4, 2021 meeting.

Next Meeting

January 4, 2021

Adjournment

The Commission adjourned at 10:50 pm.

Meeting Documents

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

Respectfully submitted