

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, January 25, 2021, Remote Participation via Zoom.

Members Present: Via remote participation Chair Dawne Fusco, Wendy Reed, Margaret Hawkins, Tom Atwood. Conservation Agent Bert Comins and Ms. Mizner 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 DEP File# 078-0712 --- City of Newburyport Department of Public Services --- Lower Artichoke Spillway --- Construction of stone foundation at lower artichoke spillway

The matter was continued at the applicant’s request.

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

The matter was continued at the applicant’s request.

Continued Public Hearing --- Notice of Intent DEP File# 078-0719 --- Nancy Pau and Albert Ting --- 183 River Road --- Construction of home, driveway and wetland crossing

Mr. Comins reported that the state Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) approved the eagle protection plan for this homebuilding project. In response to Chair Fusco, consultant Tim Collins said that per the eagle protection plan, work on the house will begin in July and the crossing for the septic will likely be done in August, when the stream should have low or no flow. Work could continue to October.

Ms. Mizner raised some questions about details of construction of the temporary wetlands crossing to install connecting pipes for the septic system. Mr. Collins said that the stream crossing would take a day or two. The plan is to install an upstream sump and pump around the crossing area so that digging the 2’ trench will be in dry conditions. Soils would be reused as much as possible, but if additional fill is needed, it would be perhaps 3-4 yards of clay. Clay is similar to the material already in the stream bottom, and will not wash away. Stockpiled soils will be stored near the house area.

Ms. Reed expressed concern that the construction details and sequence be documented—she did not have hard copies of all of the documents. Ms. Mizner said that items could be specified in the Order of Conditions. The Commission also discussed having a wetlands scientist onsite while work in the

wetlands occurs.

By unanimous roll call vote the Commission approved an Order of Conditions for the proposed work, including standard, special, and additional conditions requiring that the applicants (1) install erosion controls consisting of a 12” straw wattle backed by a silt fence, and obtain Conservation Agent inspection and approval of the erosion controls prior to starting work; (2) perform work on the 2’-wide-trench to install the septic main in the wetlands crossing in a period of low or lowest stream flow; (3) obtain Conservation Agent review and approval, before this work, of the (a) secondary sump location, (b) area for stockpiling excavated materials (which shall be 50’ from the wetlands resource area), and (c) any imported soils to be placed in the wetland; (4) maintain a natural vegetated area 25’ from the wetland, to be marked with 8’ 4”x4” pressure treated posts embedded 4’ down, whose location will be determined by the Conservation Commission and the property owners; (5) comply with the bald eagle protection plan, which will be attached to and incorporated into the Order of Conditions, and (6) notify the Agent of the construction schedule 72 hours prior to commencement of work.

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

The matter was continued at the applicant’s request.

Public Hearing --- Request for Determination of Applicability --- Middle Street Holdings LLC --- 414 Middle Street --- Construction of a driveway

Consultant Greg Hochmuth noted that he had appeared before the Commission on January 4 to discuss this project, which involves construction of a driveway that, applicants came to realize, was across the street from wetlands on another property. The Commission had advised that it would entertain an exemption to its winter work ban if the applicants proposed a detailed plan for site stabilization over the winter months, when vegetation will not be growing.

Mr. Hochmuth said that such a plan had been submitted and, with the plan and photos on screen, discussed the steps that the applicants planned to take. The entire job would be done quickly—it is only a small driveway, he said. This work is expected to take 2-3 days.

With respect to the 12” culvert to be located at the ditch by the side of the road, Mr. Hochmuth said that the first step would be to install erosion controls consisting of a horseshoe-shaped mulch sock in the ditch where the culvert pipe would go. Also, coarse stone would be installed on the driveway (which will remain unpaved over the winter). This stone would serve to clean tires of mud and to help hold the driveway soil. Applicants will also sweep sediment each construction day to keep silty runoff away from wetlands. Applicants would cover exposed earth at the end of the driveway with erosion control blankets. In response to Ms. Mizner, Mr. Hochmuth said that the erosion control blankets could extend beyond the buffer zone if silty soils might travel down the driveway.

In response to Ms. Reed, Mr. Hochmuth agreed to serve as wetlands scientist to police the work and submit a report to the Commission.

By unanimous roll call vote the Commission determined to issue a Negative Determination of Applicability, and to

allow work to begin before April 15, 2021, for the driveway work as described in the January 22, 2021 letter sent by Mr. Hochmuth to the Commission, with conditions that applicants shall (1) have a professional wetlands scientist onsite during installation of erosion controls and installation of the culvert pipe; (2) inform the Conservation Agent 72 hours prior to commencement of work and obtain his approval of erosion controls; (3) obtain the Agent's approval of the stabilization measures used to prevent erosion at the end of the work, including the installation of erosion control blankets; and (4) have a wetlands scientist inspect the affected area 2 weeks and then one month after stabilization is in place, with a report by the wetlands scientist to the Commission.

Public Hearing --- Request for Determination of Applicability (RDA) --- Elisa Grammer & Fredric Chanania – 47 Coffin Street --- Removal of two trees

Mr. Comins said that this is a proposal to remove 2 trees in the wetlands buffer zone. He said that one is in bad shape and the other is diseased. Ms. Mizner said that the proposal would have no vehicles in the buffer zone and the stumps would be cut close to the ground and left there, 2 red maples would be planted to replace the trees being removed, and debris from removal would either be stored as woodchips out of the resource area or taken off the site.

By unanimous roll call vote, the Commission determined to issue a Negative Determination of Applicability conditioned on the applicant (1) complying with the conditions for the work as described in the RDA and (2) informing the Conservation Agent 72 hours before work begins.

Public Hearing --- Notice of Intent (NOI) DEP File # 078-0724 --- Town of West Newbury - -- Middle Street Artichoke River Bridge --- Reconstruction of bridge

Professional wetlands scientist Sara Kreisel of BSC Group shared the screen to provide a detailed overview of the area where the Middle Street bridge replacement will occur, as well as the proposed work and impacts on wetlands areas. She noted that the reservoir area has no rare species and no cold-water fisheries and the work plan will preserve undeveloped areas as much as possible. She emphasized that the new bridge using cast concrete will have a larger opening and consequently will leave more land underwater and will also increase flood storage capacity.

Engineer Micah Morrison added to the description of the construction process, noting that details of the construction timeline were left to the contractors. Ms. Mizner observed that dewatering work (with a coffer dam to create a dry worksite) is usually set forth in NOI plans for Commission review, but here it is proposed to be left to the contractor. Mr. Morrison said that applicants can make a filing to the Commission before the terms are finalized with the contractor. In response to Ms. Fusco, Mr. Morrison said that the goal is to start work in the spring; permitting is ongoing now.

Mr. Morrison said that the bridge will follow MassDOT standards (including practices for erosion controls, etc) and there will be no weight limit for the bridge. He said that the plan is to work through the winter construction ban because of the tight work schedule needed to meet grant funding requirements. Ms. Reed asked whether a professional wetlands scientist would be onsite, particularly to justify allowing work in winter. Mr. Morrison said that could be considered. The work is estimated to take 450-490 days, starting with sheet piles and sand bags for the coffer dam. With dry conditions, demolition will be done as quickly as possible, and then riprap will be installed to stabilize

the area. Then abutments would be built, and then the structure and roadway above.

In response to Ms. Reed's question whether the bridge designers had modeled climate change impacts that would increase flooding and the water level, Mr. Morrison said that the road level would be raised 1.5' and will meet the 100-year flood standard. Jon-Eric White of Newburyport said that climate change was seriously considered and though this was not modeled, the bridge should last to 2110.

Mr. Comins said that he has plenty of hard copies of the submissions and will put them in the Town entryway. The Commission determined to hold a site walk at 9 am on February 7, to forward questions to Ms. Kreisel, and to continue this matter to the next meeting on February 8, 2021.

Discussion: Request for Certificate of Compliance (COC) 70 Ash Street DEP File# 078-675
Consultant Denis Hamel said that this house building was approved by an Order of Conditions with a plan change. Now an as-built plan has been submitted to obtain a COC. Mr. Comins said that the required markers are in place, the site is well stabilized, and erosion controls have been removed.

It was noted that an underground propane tank, which was not included in the Order of Conditions, had been installed perhaps 89-90' from the wetland. Mr. Hamel did not know the size of the tank, guessing that it may hold 500 gallons. Mr. Comins said that Standard Condition # 29 (a West Newbury—not state—condition) prohibits underground storage of “petroleum products” whose leakage would be difficult to monitor.

The Commission determined to investigate whether the prohibition on underground storage includes only liquid petroleum products or also extends to gas such as propane. Mr. Comins will inquire with the Department of Environmental Protection. The matter was continued to the next meeting.

Discussion: Request for Certificate of Compliance 171 River Road DEP File# 078-0700
Mr. Hamel explained that this request for a Certificate of Compliance concerns a dock built into the Merrimack River. An as-built plan was submitted to the Commission. In this case, the property owner deviated from the Order of Conditions and Natural Heritage requirements by installing mooring chains instead of elastic rodes, which Natural Heritage had specified to protect the river bottom. Mr. Hamel explained that this may be of less of a concern because the river bottom at this location is ledge.

It was agreed that the applicant will consult with Natural Heritage and report back to the Commission once a determination from Natural Heritage is received.

Discussion: Sullivans Court trail easement

Ms. Reed noted that because the trails need to be ADA compliant, the Town will take on the cost (with \$10K from the developer) but developer Tom Neve still needs to provide an easement. The Commission identified several concerns with Mr. Neve's draft, including --reference to the Town of “West Amesbury,”

--failure to specify the width of trail easement (it should be over 6' to accommodate a 6'-wide-trail),
--lack of a plan for Trail B, which, though not to be constructed now, may be built in the future

It was agreed that Mr. Comins will phone Mr. Neve to address these matters.

Discussion: Merrimack Valley Planning Council (MVPC) Contract

Mr. Comins said that he did receive an invoice from Jen Hughes of MVPC and there is still \$1,096 in the contract, which has expired. He believes that if the contract were extended, that amount would be enough to finish the conservation restriction report. *Ms. Fusco will sign the extension tomorrow.*

Discussion: Drake's Landing trails

Ms. Reed reported that the trails at the Drakes Landing development, particularly steep trails by the septic area, are already failing. They are severely eroded and should have water bars to divert runoff. Developer Chip Hall had repairs done, but Ms. Reed is not confident the repairs will hold and is concerned that the homeowners association, and the Commission, will inherit the problem.

The Commission's ability to act is limited by the fact that the areas of concern are not in wetland resource areas or buffer zones and thus not under Commission jurisdiction. Ms. Reed indicated that an additional problem is that the Planning Board—which does have jurisdiction and has not signed off on the development—appears inclined to leave the matter to the Commission.

It was decided that Ms. Mizner will draft a letter to the Planning Board (with a copy to the developer) noting the Commission's limited jurisdiction and asking the Planning Board take action to ensure proper repairs and correct construction.

Discussion: Annual Town Report

Mr. Comins noted that because he inadvertently included information for the annual year instead of the fiscal year, he needed to make some revisions to the draft report. Also, in response to Ms. Reed, Mr. Comins said it would be easy to include in the Commission report brief descriptions of the matters the Commission addressed over the fiscal year.

Discussion: Wetlands protection bylaw

Ms. Hawkins thanked Ms. Mizner for her edits to the draft and Ms. Mizner said that she believes the materials are ready to go. Ms. Reed noted that warrant articles are due in a couple of weeks. No other Commission members had comments.

Ms. Hawkins will have the materials circulated to all Commission members again and the Commission will begin to plan how to roll this out and build support for a Town vote.

Discussion: Other business

Ms. Reed noted that she had seen a UMass certificate program for managing invasive plants. She said that Mr. Comins was interested in this and would be a valuable asset in the Town's efforts to deal with invasive plants. The cost is a little under \$400, which is in the budget.

By unanimous roll call vote, the Commission approved the expenditure for the U Mass course in invasive plants.

Discussion: Review of minutes

Tabled to the next meeting

Next meeting

The next Commission meeting will take place on February 8, 2021.

Adjournment

The Commission adjourned at 9:44 pm.

Meeting Documents

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

Respectfully submitted