

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, March 21, 2022, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, Kathy Feehery, and Tom Atwood (on speakerphone). Also present, Conservation Agent Michelle Greene, Select Board member Wendy Reed, and interested abutters.

1. **Public Hearing: Notice of Intent (continued): Lower Artichoke Spillway, City of Newburyport Department of Public Services Re: Construction of stone foundation at lower artichoke spillway DEP# 078-0712 *Applicant requests a continuance.***
2. **Public Hearing: Notice of Intent (continued): Town Wide, West Newbury DPW, Re: Hazard tree management, DEP# 078-0717 *Applicant requests a continuance.***
3. **Public Hearing: Notice of Intent (continued): 87 Crane Neck Street, William P. Spalding, Re.: Construction of a gravel driveway, DEP# 078-073**

Greg Hochmuth, consultant for the applicant, noted that a site walk had occurred, and the applicant made changes (reflected in the new plan) to the delineation of the wetlands and buffer. The Department of Environmental Protection (DEP) had inquired about the purpose for this new drive, which will cross wetlands including a stream. Mr. Hochmuth said that there will be a horse barn and a water well at the end of the driveway. He added that the applicant will be installing compensatory flood storage and bordering vegetated wetland replication. The project will adhere to the 25' no disturb boundary except at the stream crossing, which will consist of a drop in open bottom box culvert in compliance with Massachusetts stream crossing standards. Vegetation will be replanted under a rigorous protocol. All this, said Mr. Hochmuth, has been detailed in the plans submitted to the Commission.

In response to Ms. Greene, Mr. Hochmuth described the road work as comprising removal of the top soil layer, adding fill, and graveling the surface. Little grading will be needed, except areas approaching the crossing. Electrical conduit will be buried by the road and run under the culvert.

Mr. Hochmuth said that notwithstanding existing requirements concerning the 25' no disturb zone, the applicant had been maintaining (mowing) those areas, including to the edge of the stream bed. In response to Ms. Mizner, he agreed that some revegetation would be in order.

There were no comments or questions from the audience

Ms. Mizner proposed to circulate a draft order of conditions for this project, to be reviewed and voted on at the next meeting. Mr. Hochmuth will submit new plans showing the electrical conduit and the additional plantings. The matter was continued to April 4.

4. **Public Hearing: Request for Determination of Applicability (continued): 35 Cherry Hill Street, Paul and Lynn Delaney, Re.: Construction of a gravel driveway**

Consultant Greg Hochmuth described a project to construct an in-law apartment that will require a small amount of work on a mowed area in the buffer zone. During the site visit, the Commission had discussed with the applicants their unauthorized activities including mowing in the wetlands, which the applicants said

they did not recognize were not permitted. Additional wetlands were flagged to make the areas in which no activity is permitted without prior authorization more clear and the applicants are expecting a condition requiring that they cease mowing in jurisdictional resource areas.

In response to Ms. Mizner, Mr. Hochmuth said that construction access will be accomplished by driving over the lawn—no temporary gravel drive is planned. Once work is done, the area will have loam spread and will be reseeded.

Ms. Mizner moved, Mr. Attwood seconded, and the Commission voted unanimously to issue a negative determination of applicability for the project, conditioned on 1) no further disturbance in delineated wetland resource areas and 2) no use of a temporary gravel road for construction access.

5. Public Hearing: Notice of Intent: 10 Kelly Brook Lane, David Greenberg, Re.: After the fact work request for construction of a gravel driveway, DEP# 078-0XXX

Applicant Dave Greenburg, formerly of 10 Kelly Brook Lane, now a resident of Newbury, NH, appeared via an internet connection. The property had been sold to Kristen Marlow, who was also present in the hearing room. Ms. Marlow indicated that when buying the property, she had not been alerted to any wetlands issues.

The applicant had filed a Notice of Intent to construct a barn only, and pursuant to the Order of Conditions for that project, a 10' no disturb zone had been established and marked with five posts. Without submitting a filing to the Commission, the applicant also installed a gravel driveway that is in the buffer zone and partially in the no disturb zone. With the change in ownership, the applicant sought a Certificate of Compliance for the barn.

The Commission and Ms. Greene reviewed the Order of Conditions for the barn and discussed the wetlands markers. A minimum of 5 had been required, and 5 were installed. Ms. Mizner noted that one of the two posts marked on the plan as “optional” needed to be installed opposite of wetland flag A5. Mr. Greenburg and Ms. Marlow said that they would prefer not to add a marker. Ms. Mizner pointed out that in the circumstances, an additional reminder of the area not to be disturbed would be helpful and that the applicant is now coming to the Commission with a new Notice of Intent for retrospective approval of the driveway.

Ms. Mizner moved, Mr. Attwood seconded, and the Commission voted unanimously to issue an Certificate of Compliance for the barn and an after-the-fact Order of Conditions for the driveway, conditioned on the applicant's installation of a no disturb marker (4' high and 4' underground affixed with the West Newbury Conservation placard) opposite wetland flag A5.

In response to Ms. Marlow's question whether she could put more gravel on the driveway, Ms. Mizner noted if additional work is proposed in the buffer zone, a filing with the Commission would be required, and some form of erosion control could be required.

6. Public Hearing: Request for Amendment to final Order of Conditions (continued): 18 Norino Drive, Katherine and David Miller, Re.: Request to allow construction of a hillside tram system, DEP# 078-0667 Continued

7. Public Hearing: Notice of Intent: 0 Middle Street, Map R8, Lot 6E, Jeff Smith, Re: construction of a single-family home, driveway, septic, and associated grading and utilities, DEP# 078-0741

Consultant Greg Hochmuth said that wetlands on this property were delineated in 2019 and in 2021 the

Commission issued an Order of Area Resource Delineation (ORAD) approving the delineation. He said that consultant Jim Scanlon has submitted a septic system proposal that has received Board of Health approval. Mr. Hochmuth said that because the lot is not large and is very wet, it was not possible to comply with usual 25' no disturb zones or the 50' no build requirement. The water well is very close to wetlands and the septic system is very elaborate with extra requirements and will require permanent monitoring.

Mr. Hochmuth said that the project has a Department of Environmental Protection (DEP) file number with no comments. The project is awaiting comments from the state's Natural Heritage and Endangered Species Program.

A direct abutter, Robert Fava of 121 Middle Street, wrote the Commission noting that his water well is only 100' from the project's proposed septic system and asked whether this project would cause more flooding on his property. Mr. Hochmuth did not address the flooding issue, but said that groundwater and water supplies are supposed to be protected and this would be a question for the Board of Health. Abutter Charles Spencer (83 Ash Street) asked if the wetland information had been verified and noted that at one time his father owned the property and was told it was unbuildable. It was noted in response that the wetland delineation had been verified, septic technologies have improved and the Board of Health has changed some standards.

The Committee continued the matter to April 4 as the applicant awaits a response from Natural Heritage. No site walk is needed because the wetlands delineation was confirmed with an ORAD which is still valid.

8. Public Hearing: Request to Amend Final Order of Conditions: 87 Main Street, Lot 3, Robert Johnson, Re.: Construction of drainage and stormwater management systems to address runoff and sitework to stabilize site, DEP# 078-688 Continued

9. Public Hearing: Notice of Intent: 177 River Road, Marcos Goncalves, Re: Construction of a platform, seasonal dock with float, and a footbridge, DEP# 078-0XXX

Consultants Tom Hughes and Steve Sawyer appeared on behalf of the applicants. Mr. Hughes said that the project received a clean review from the Division of Marine Fisheries, which noted that the Merrimack River is essential fish habitat for important species. He added that the mooring will include helical anchors and elastic rods that will minimize impacts on the river floor. Mr. Hughes described the plans, which include a footpath, a bridge over a stream, a platform, and removeable ramps and floats to the navigable portion of the river. At this point the footpath is traversing solid areas, so the thought is to leave the ground as is, without gravel.

Abutter John Hailey (175 River Road) said that the stream this project would cross forms a pond in front of the Hailey property and the Hailey's use that to access the Merrimack for kayaking. Also, ducks and geese feed there. He expressed concern that this project would cut off access for these purposes. Mr. Hughes said that ducks would just hop over the new structure and that the kayak access would be retained.

The Commission scheduled a site walk for Sunday, March 27 at 8 am and continued the matter to April 4.

10. Old Business: 15 Norino Drive, Re.: houseboat, update from Coast Guard and Salisbury Harbormaster

No update. Ms. Greene will reach out again to the Coast Guard & Salisbury.

11. Other Business:

Ms. Greene report that another flooding incident occurred at 87 Main Street over the weekend. The drainage system held but there was flooding onto Main Street. They also have not yet removed the very steep earthen access ramp due to the ground being too wet to allow for equipment to access this area. At this point they await engineering calculations showing the sufficiency of the proposed storm water management system, which needs to be presented to the Commission.

12. Wetlands Bylaw Update:

The Commission reviewed various comments on the bylaw received from resident Philip G. Christiansen, wetlands consultant Greg Hochmuth, and Town Counsel KP Law, who each had a range of specific comments. It discussed balancing compromise to enhance chances of passage at Town Meeting with maintaining the purposes of the bylaws. Another meeting with KP Law to discuss the bylaw is scheduled for April 4.

Ms. Mizner noted that Mr. Christiansen's arguments that the proposed bylaws infringe on property rights and go beyond the existing law had been addressed at the March 14 Select Board meeting, and that the Attorney General has approved other towns' similar bylaws. *She will provide a draft reply.*

Ms. Greene reported that she participated in a meeting with the Town Manager and a KP Law attorney about the bylaw. Among other things, the KP Law attorney disagreed with the bylaw's removal of statutory exemptions (which could be challenged as an impermissible preemption of state law), questioned the 300' provision for abutter notification for Notice of Intent filings, urged that the bylaw contain explicit timelines, and recommended an explicitly stated effective date.

Among other things, Mr. Hochmuth suggested that the bylaw clarifies what is meant by springs, as did KP Law. Including subsurface springs could be inconsistent with the Commission's statutory authority. He also recommended a clearer (with size limits) definition of isolated wetlands.

Ms. Greene raised a number of questions, many related to implementation. For instance, she asked if a Request for Determination would require a formal hearing (and thus greater cost in notices, etc), and whether every Commission determination would require a formal filing with the registry of deeds, as currently only Orders of Conditions are required to be recorded.

After reviewing these and other issues, the Commission determined to 1) provide KP Law the final version before April 4 and 2) hold an educational forum (including a PowerPoint presentation like that provided to the Select Board on March 14) for the Town voters on April 25.

13. Informal Discussion:

14. Community Input:

15. Approval of Minutes: March 7, 2022

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted (3-0-1, Mr. Attwood, not present on March 7, abstaining) to approve the draft minutes as revised.

16. Correspondence:

17. DEP Comments:

18. Land Agent Update:

19. Next Meeting: The Commission set the date of the 2nd April meeting to Tuesday April 19th due to the holiday on Monday April 18th.

Adjournment 10:16 pm

Meeting Documents

Presentations and records associated with each matter identified, as included in the Conservation Agent's files.

Respectfully submitted