

Weston Conservation Commission (WCC) - Public Meeting Minutes  
May 11, 2021  
Approved: June 15, 2021

Members Participating      Joseph Berman (Chair), Alison Barlow, Cynthia Chapra, Josh Feinblum; Rees Tulloss

Members Absent:              Ellen Freeman Roth, Rebecca Loveys

Conservation Staff:         Jordan McCarron, Sandra Gonneville, Emily Schadler, Pat Garner

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 concerning imposition on strict limitations on the number of people that may gather in one place, this Conservation Commission meeting was conducted via remote participation using Zoom.com. The Town provided access to such meeting via a link to call in. No in-person attendance of members of the public was permitted, but every effort was made to ensure that the public could adequately access the proceedings.

7:30 p.m.              Opportunity for Public Comment

No public comment.

7:35 p.m.              Cont. Notice of Intent (NOI): 15 Warren Place; C. Nash (DEP# 337-1407)

Jack Maloney of Dillis & Roy presenting for Applicant, Amy and Clifford Nash in attendance, and Pat Garner (Town Consultant). The Applicant filed this Notice of Intent for construction of a 2-car garage at 15 Warren Place. The work lies within Wetland Resource Areas and buffer zones. The Commission anticipates voting on this matter.

The applicant was last before this Commission on March 23<sup>rd</sup>. At that time the applicant was directed to submit the following material (1) revised NOI flood zone numbers, description about driveway work; an alternatives analysis, and submit additional fees. The engineer indicated that since that time he had submitted the revised plans, required fees, alternatives analysis, and cover letter with comment responses. The engineer read his response letter to the Commission.

On April 16, 2021, the DEP issued a comment letter to the Applicant and copied the Town of Weston. In the letter the DEP indicated that it appears that this project may not be permissible as proposed. The project must meet the Riverfront Area performance standards pursuant to 310 CMR 10.58(5)(a) through (g). It is unclear how the project meets performance standards for BLSF (310 CMR 10.57(4)(a)). The compensatory flood storage area should comply with the criteria in 310 CMR 10.57(4)(a)1 and 2. A cut and fill chart must be provided (in one-foot increments) showing each elevation up to the 100-year flood elevation that is being filled and the volume in which it is being compensated. Alternatively, the proponent should consider elevating the addition. If compensatory flood storage is provided, please explain how it will be permanently stabilized. Applicant should clarify if there are any new discharges to the Zone A. The Conservation Office has requested that the Applicant's engineer address DEP's comments in advance of the 4/27/2021 meeting date and submit them to the Conservation Office by Friday, April 23<sup>rd</sup> for review prior to the meeting.

Mr. Garner summarized his April 15, 2021 site visit where he and Town's Conservation Assistant visited 15 Warren Place to inspect the wetland delineation and affirm wetland resources as delineated by the Applicant's wetland scientist. A couple of newer wetland flags placed within the wetland area were observed, these flags are not on the plan and it was unclear what they were meant to denote. The wetland line as shown on the NOI plan was not staked or marked, and therefore Mr. Garner was not able to affirm

the delineation. Mr. Garner further noted that based on the wetland line shown on the Dillis & Roy plan, fill has been added to the rear wetland on the property. The plan submitted shows that the edge of the wetland runs roughly from north to south across the yard just east of the triple pine tree to be removed. The Conservation Office has notified the Applicant that Dillis & Roy (or a qualified environmental firm) should review Mr. Garner's memorandum and follow the suggested recommendations, which include:

1. Flag and stake the wetland line shown on the NOI plan and include the wetlands not originally delineated (found on the sidelines of the property).
2. Determine whether fill has occurred, and if so, survey the extent in sq. footage and cu. yards, and
3. Prepare a restoration plan for the lost wetlands that also restores the floodplain to its original elevations.

On April 23, 2021, the Applicant submitted revised site plans with cover letter as well as a second letter entitled "Alternatives Analysis, Flood Plain and Impervious Areas. The Site Plan cover letter indicated that the Applicant and DEP Analyst coordinated to address the issues called out in the April 16th DEP Comment letter. The submission also indicates that the Applicant proposes to allow the filled portion of the rear lawn to revert to wetlands. However, there is no note on the plans that the that the actual fill is to be removed. Existing fill appears to be 6-12-inches of loam placed on top of organic, hydric soils that constituted the original wetland and it is our understanding that the Applicant intends to leave the fill. This historically placed fill (>4,500 s.f.) was been placed not only in a protected wetland, but in floodplain to Cherry Brook.

Pat Garner provided the following comments to this submission:

1. The plan indicates that limited shrubs and trees will be planted in the filled area (which is currently lawn). Conventional spacing for shrubs is 8-10 feet on center, which would dictate several dozen plants. The Applicant proposes 5 total shrubs. Similarly, trees are normally spaced at 20-feet o.c.; the Applicant proposes 5 trees, again below a normal replacement number.
2. The 5 trees proposed should be larger; normally, a 6-8 foot height is proper. The applicant proposes trees that are half this height.
3. The applicant also notes that New England Wetmix seed will be used to encourage growth of herbaceous plants. Mr. Garner has indicated that if the existing fill is not removed, the seed—which is quite expensive--will serve no purpose as it is dependent on contact with moist, organic soils, not upland loam.
4. The revised plan calls for compensatory replacement of floodplain. Under Wetland Protection Act regulations, filled floodplain must be replaced at a 1:1 ratio. The revised plans appear to meet that standard.
5. The Commission should require a visible barrier along the original wetland edge to discourage any tendency to continue to maintain this filled area.

Mr. Maloney highlighted that this is historic fill and discussed yard cleanup in 2018 as directed by the OOC. He also indicated that the applicant had received a COC in 2018 for the septic installation and that the yard conditions were similar to existing at that time. Clifford and Amy made appeal for modest restoration. Mr. Garner then stated that there is no clear indication when this area was filled. The question is now how does the commission want to take this restoration. There is fill roughly 6" throughout and the wetland seed mix may not take as it requires saturated organic soil. The applicant is proposing small number of plantings and small in size, the restoration proposed will not return to the area to the condition of the original wetland, only a lesser version will be established.

The Agent informed the Commission that on May 7, 2021, the he spoke with DEP analyst Danielle Mucciarone about the project. Danielle has spoken with both the project proponent, Jack Maloney, as well

as the Town's consultant, Pat Garner. Danielle has reviewed the updated plans for the project (4/22/21) as well as Mr. Garner's most recent comments and suggests the following:

1. If the Commission is committed to pursuing restoration plantings, or a complete replication of the filled-wetland on the property, it should do so through a separate Enforcement Order (EO) and not include it with this OOC. The reasoning behind this approach is that OOC's are meant to condition proposed work and should not be used to require that work be done. In other words, the applicant can choose not to pursue this project; if the Commission is committed to seeing that wetland-fill remediated, an EO is the better tool to ensure that it happens.
2. Mr. Garner's suggestion that permanent markers be staked at the BVW edge to prevent future disturbance is a good one. As opposed to boulders or a fence, ground-level FENO markers with "Do Not Disturb Beyond This Point" medallions can be used.

The Agent is in the process of developing the details for an Enforcement Order which will be issued separate from and not included with an Order of Conditions. The Agent will coordinate directly with the MassDEP on the EO.

Motion by Josh Feinblum to close hearing and issue an Order of Conditions for work associated with the 2-car garage; seconded by Rees Tulloss; roll call vote: each member responded Aye. The Order of Conditions is to be forwarded to the applicant.

8:24 p.m. Cont. Request for Determination of Applicability (RDA): 7 Westerly Road; D. Keene

The Commission opened the continued meeting on this RDA for the installation of a fence and vegetation removal at 7 Westerly Road. Mr. Doug Keene, the owner, presented the project at the meeting. He reported that Kevin O'Leary (Jillson, Co.) had attended the site walk on his behalf earlier that morning. Goddard Consulting, the wetland scientist, completed the required wetland delineation and the Wetland Plot Plan by Jillson Company dated May 4, 2021 was submitted to the Conservation Department for review. Motion by Rees Tulloss to issue a Negative 3 Determination of Applicability with the following special conditions: (1) that no equipment is allowed w/in the 25 feet No Disturb Zone (NDZ) of the wetland, (2) and any disturbance inside the 25' NDZ shall be restored and that the Conservation Department shall be notified of this disturbance, and (3) that the erosion control barriers shall be inspected prior to start of work; seconded by Cynthia Chapra; roll call vote: each member responded Aye.

8:37 p.m. Abbreviated Notice of Resource Area Delineation (ANRAD): 120 Rockport Road; B. Robinson

The Applicant filed this Abbreviated Notice of Resource Area Delineation to confirm the delineation of a Bordering Vegetated Wetlands (BVW) at 120 Rockport Road. The Applicant has consented to continue this meeting until May 25, 2021 at 7:40 p.m. to allow time to address comments made by the Commission's wetland scientist. Motion made to continue the hearing by Josh Feinblum; seconded by Rees Tullos; roll call vote: 5-0-0.

8:38 pm Request for Certificate of Compliance: 5 Willow Road (DEP # 337-1253)

The agent reported that there were no outstanding issues, however it was a condition of the original Order of Conditions that prior to issuance of a Certificate of Compliance, the applicant shall file a revised O&M Plan describing the approved snow removal and de-icing methods. The updated O&M Plan has been submitted to the Conservation Department and provided to the new buyers. Motion by Cynthia Chapra to issue a Certificate of Compliance; seconded by Josh Feinblum; roll call vote: each remaining member responded Aye.

8:48 p.m. Request to amend Tree Removal Approval – 21 Center Street

At the March 23 meeting, the Commission approved a request by the applicant, Center Street Trust, to remove 8 dead/dying trees within the Wetland Resource Area. At that time, the applicant agreed that (1) all stumps will be left with at least 8-10 feet of the trunk in place to provide wildlife habitat, and (2) all cut material will be left in the area for which it originated. However, after cutting the trees, the applicant and his neighbor find the results unsightly and are requesting that tree stumps now be cut flush. Staff visited the property and recommends that this be approved, as this is typically what we permit at residences. The Commission asked that the stumps be left in place because we thought that this area was not visible, but have now learned differently. Regarding (2), staff recommends that this condition remain, as this provides wildlife habitat and is also what is typically required. Also, as part of the original approval, mitigation plantings were required. The applicant proposes to plant two native red maple trees. Motion by Josh Feinblum to amend previous approval and allow the 8 trees being removed to be cut flush to the ground; Seconded by Rees Tulloss; Roll call vote; 5:0:0.

8:49 PM – Discussion of Japanese Knotweed in Town Green

The Agent provided an update on the issue. The Select Board, Town Manager, and others involved in the Town Beautification project have been made aware that Japanese Knotweed has been planted in various locations in Town, including the Town Green, as a result of the soil they have been using on the Town Center Project. The soil was brought in from the DPW brush dump and the project was unaware that it was contaminated with Japanese Knotweed. The seedlings are growing a quickly and need to be addressed. The Weston Owl has also written about the planting of the Japanese Knotweed on the Town Green and some of the soil and compost piles on Merriam street. The Agent has corresponded with Tom Cullen (Department of Public Works – project manager for the Town Center Project), who has indicated that the issue is being vetted by the landscape architect and the contractor and will address the problem. The Commission discussed the possibility of an “invasive species committee” with stakeholders be formed to deal with the Japanese Knotweed issue in Town. All concurred that invasive species management and education for the residents would benefit the Town.

9:03 p.m. Approval of 3/30/21 Con Com minutes – Motion by Josh Feinblum to approve; Seconded by Rees Tulloss; Roll call vote; 5:0:0.

Next Conservation Commission Meeting: May 25, 2021

Meeting adjourned at 9:06 p.m.