



TOWN OF MERRIMAC
CONSERVATION COMMISSION
4 School Street, Merrimac, Mass. 01860
TEL: 978-891-0238 | mgreene@townofmerrimac.com

Conservation Commission Meeting Minutes

Tuesday, January 25, 2022

Merrimac Public Library – Library Meeting Room

Members Present: Robert Prokop, Chair; Jon Pearson; Gregory MacLean; William Andrulitis; Gregory Hochmuth, Alternate, Jerome Mathieu; Arthur Yarranton; and Michelle Greene
Conservation Agent

The meeting was called to order at approximately 7:01 PM.

Discussion: West Newbury Climate Resiliency Committee, Re: River Road erosion mapping & collaboration on MVP grant

Members of the West Newbury Climate Resiliency Committee, Nancy Pau & Elisa Grammer, met with the MCC to explain the MVP Grant they are applying for in West Newbury and gauge the MCC's interest in partnering as an additional community for grant funding. Ms. Pau and Ms. Grammer explained some of the focus areas the Committee is seeking grant funding which focus around sustainability and climate resiliency and that problems West Newbury faces in these areas are similar to problems Merrimac also faces. Possibly of interest to the MCC is funding that is being sought to map erosion along the Merrimack River and look into nature-based solutions to reduce the erosion which is occurring and funding for education and outreach to homeowners and home owner associations on stormwater management systems. The MCC expressed some interest but has concerns that much of the land along the river is privately owned. MCC was also concerned about the cost which Ms. Pau and Ms. Grammer indicated the grant required a 25% match from the towns but of towns partner together, the grant may get ranked higher compared to other applications for single towns. Ms. Pau and Ms. Grammer explained that a lot of the mapping can be done from the river, the bank, and from air. They also indicated they could get a quote from a third party to determine costs of mapping. The MCC asked to be kept abreast of developments with the grant. It may be too late to partner with West Newbury this year but could be worth looking into more and being ready to partner in future years

Public Hearing: Notice of Intent: 21 Middle Road, Lee Pratt, Jr., Re: Construction of a wood footbridge, construction of a wood elevated stairway, and installation of a seasonal float in the Merrimac River, DEP# 045-0XXX

Mr. Hochmuth recused himself from the Commission and acted as the applicants' representative from Williams and Sparages. He introduced the plan and explained that there are 4 lots that have deeded access to the river but that they are proposing to build one dock which they will share. Mr. Hochmuth explained that by permitting one dock, there will be a lesser impact to the

resource area and that the applicants are also planning to improve crossing of the swale adjacent to the former road with a footbridge that crosses wetlands on a footpath to the dock. Mr. Hochmuth continued that all work is above the mean annual highwater line, that sonotubes are proposed to raise the walkway at least 18" above the ground, that planking on platforms will be spaced at least 3/4" apart, no large trees are proposed to be removed, the seasonal dock will use helical anchors and elastic mooring ropes, and that the applicants are proposing an invasive species management plan and to remove some sections of pavement from the previous section of River Road that had been abandoned. Mr. Sinibaldi confirmed that after the road was abandoned, the property on both sides of the road and the road itself was returned to the abutting property owners. Mr. Hochmuth added that the location where the dock is proposed does not show signs of erosion. Mr. Hochmuth said that the centerline of the footpath is staked and the Commission will see the small trees that need to be removed during their site walk. Mr. Hochmuth advised the easiest way to the site will be to park at the end of River Road and walk in around the fence.

Mr. Pearson motioned to continue the hearing pending a site visit. Mr. Mathieu seconded. The motion passed unanimously.

Public Hearing: Notice of Intent: 14 Nichols Street, Bob Cormier, Roam Realty, LLC, Re: Construction of a single-family home, driveway, utilities, and associated grading, DEP# 045-0XXX

Bill Manuell of Wetlands Land Management appeared on behalf of the applicant. He introduced the project and advised that the existing lot at 14 Nichols Street will be subdivided and the lot the applicant has filed for will become 16 Nichols Street; he also indicated a DEP file number had not yet been assigned. Mr. Manuell explained a perennial stream is located across the street from this property and that he was able to get permission to flag the boundaries of the stream. The lot proposed for construction is entirely flat and the majority of the lot is within the 200' riverfront area; all construction will occur within the 200' riverfront area. Mr. Manuell indicated the applicant is planning to install erosion control where the lot meets the street. Ms. Greene asked if the house will be serviced by gas or propane as neither was shown on the plan. Mr. Manuell indicated it would be gas and a line would be run from the street; the plan will be updated to show the gas line. Ms. Greene also asked about tree replacement as two trees on the lot will have to be cleared and asked about stormwater controls. Mr. Manuell indicated that they would be willing to replace the trees, and there were no plans for stormwater and that the water would be directed to the grass before infiltrating into the ground. Bob Sinibaldi, DPW Director and Building Inspector was present and advised the soil at the site is very sandy and installing gutters into drywells would be good at this site. Mr. Sinibaldi also indicated that the ZBA must clear the project before work can commence. Mr. Pearson asked if infiltration of roof drainage could be added to the plans. Mr. Manuell advised updated plans can show stormwater management and tree replacement. Mr. Hochmuth inquired if a deed restriction has been recorded to prevent future filling and Mr. Manuell responded he was waiting for one. Ms. Greene will work with Mr. Prokop to draft Special Conditions for this site.

Due to the lack of DEP file number and need for updated plans, Mr. Mathieu motioned to continue the hearing. Mr. Pearson seconded. The motion passed unanimously.

Violation: 7 Locust Grove Road, Gail Gorman, Re: Tree cutting in resource area and buffer zone without a permit

Gail Gorman, homeowner at 7 Locust Grove Road, appeared before the Commission. Ms. Gorman indicated she had no idea the tree removal she did required a permit otherwise, she would have filed. Ms. Gorman explained that her backyard is very wet which is causing trees to die and wanted to remove the trees before they fell on her home, driveway, or the sidewalk. Ms. Gorman indicated she'd be happy to replant at the property but does not want to replant trees. Mr. Prokop asked how many trees were cut and what species they were, Ms. Gorman indicate 10-12 oak and ash trees and said she'd be happy to have the Commission come see the lot. Mr. Hochmuth asked if the tree removal was for safety, Ms. Gorman said it was and Mr. Hochmuth said tree removal is normally allowed for safety but there is a process that must be followed which is receiving a permit from the Commission prior to starting the work. Ms. Greene suggested that Ms. Gorman could do an after-the-fact filing which would permit the trees that have already been cut, allow the additional proposed trees to be cute, and require plantings as mitigation for tree removal. Mr. Prokop advised Ms. Gorman can take the plan on record, mark up the tree removal locations and proposed planting locations, and submit that as part of the filing. Mr. Prokop suggested that trees be replaced at a 2:1 ratio, 10 trees were removed so 20 wetland shrubs should be replanted. The Commission advised they would be OK permitting this through an RDA filing as long as the stumps stay in the ground. Mrs. Gorman asked if the stumps could be cut lower and the Commission agreed they could and could be ground to be flush with the ground. Mr. Prokop asked that any wood chips from grinding and tree removal be removed from site. Ms. Greene asked Ms. Gorman to hold off on any additional work until the filing is made and reviewed and advised she would be in touch with instructions for the RDA filing.

Pre-Filing Consultation: Mill Street bridge replacement and jersey barrier dam removal in Cobblers Brook, CEI Engineers

No one from CEI Engineers was present, so Mr. Sinibaldi explained the project, which will involve rerouting the stream's current path just upstream of crossing Mill Street to make it more natural (the engineers and state DER rep all believe the current sharp angle of the stream was manmade), replacing the Mill Street Bridge, and remove the jersey barrier dam that is located upstream from the bridge near the Fire Station. The town is working with the state to receive a portion of the funding for this project as an ecological restoration project and by removing the dam, fish passage is improved for Cobblers Brook which allows this project to qualify for the funding. With this portion of the work in mind, Mr. Sinibaldi wanted to reach out to the Commission to ensure the dam removal and stream realignment was something they felt they could permit as without it, the town will likely not receive the funds needed to replace the bridge. Mr. Prokop inquired what the water elevation change over the current jersey barrier dam is and Mr. Sinibaldi answered about 6". Mr. Sinibaldi added that first the new bridge will be installed and then the stream will be rerouted to run under the new bridge with materials from the excavation used to fill the current area where the stream flows. Mr. Yarranton asked if the culvert and failing wingwall under Rt. 110 would be fixed as part of this project. Mr. Sinibaldi explained it would not, and that the MA DOT had looked at the site for repair previously but with the required wingwall repair/replacement, the project would cost over \$100,000. Once this cost came in, MA DOT advised that the repair would be the responsibility of the property owners. Mr. Sinibaldi indicated the McIntyres were the responsible property owners but Mr.

Mathieu added that Bank of America owns both sides of the brook in this area. Mr. Prokop inquired what fish species this would improve passage for, Mr. Sinibaldi said he wasn't sure but a biologist checked the stream and caught fish and was very excited. Mr. Andrulitis asked if the jersey barrier dam plays any role in flood control and Mr. Sinibaldi said he doesn't think so and explained the jersey barriers were placed there after a beaver dam was removed. Mr. Prokop asked the next steps, Ms. Greene advised a Notice of Intent filing is needed, but the purpose of this was to gauge the Commission's feelings on the project to ensure they wouldn't be filing for a project the Commission would not approve. The Commission agreed that they were OK with the dam removal and added that they recognize this project is something the town has to do.

Discussion: 0 West Main Street (across from Kenoza Vending), The Flats @ Merrimac Square, Re: Review comprehensive permit application and determine recommendations to make to the ZBA

Ms. Greene explained the Comprehensive Permitting process as it pertains to the Wetlands Protection Act (WPA) and local Wetlands Protection Bylaw, she explained the applicant is required to file a Notice of Intent with the Conservation Commission under the WPA but is able to, and is asking for, a waiver to the local Bylaw. She continued that the Commission is able to recommend to the ZBA that the Bylaw and Regulations under it not be waived and explained that if the ZBA takes up this recommendation, the applicant may appeal it in court indicating that it makes the project too cost prohibitive to complete. Ms. Greene advised she drafted a letter from the Commission to the ZBA, which had been shared to the Commission for their review ahead of tonight's meeting, with recommendations that the ZBA do not waive the local Bylaw, do not waive the regulations under the Bylaw, and that if the ZBA does not allow these waivers, that they defer permitting under the local wetlands Bylaw and regulations to the Commission rather than with the ZBA. She explained that attached to the letter is a spreadsheet that reviews the Bylaw, section by section, explaining how each section relates to the proposed project and why the Commission is recommending each section not be waived. Ms. Greene also explained that there are two ponds on the property that may be vernal pools and that the ORAD issued by the Commission indicates that further evaluation of these pools by a biologist is needed to confirm if they are or are not vernal pools. She continued that one of the ponds is labeled as a potential vernal pool on the state's mapping program MassMapper, which means that during an aerial survey, they determined this pond could be a vernal pool but further evaluation is needed to confirm. Under the WPA the potential vernal pool does not receive protection however, the potential vernal pool would be protected under the local Bylaw. Mr. Hochmuth asked Mr. Manuell, who was still present and who delineated the site for the ANRAD, about his thoughts about the presence of vernal pools on the site. Mr. Manuell indicated that egg masses were found in the upper pool but not in the lower pool. The Commission agreed the recommendation letter and tables should be sent to the ZBA to attempt to keep control of the local Bylaw.

Mr. Mathieu motioned to issue the recommendation letter and tables to the ZBA. Mr. McLean seconded. The motion passed unanimously.

Discussion: Capital Requests to Capital Planning Committee for FY 2023-2027

The Commission did not have any Capital Requests to make to the Capital Planning Committee

Discussion (continued): Lake Attitash ramp erosion along Attitash Avenue

Mr. Sinibaldi explained that previously, the town received a grant for this area to install a rain garden and a strip drain at the end of the street but that the strip drain is undersized for the volume of water it receives. Mr. Sinibaldi advised that the strip drain should be removed and a wide strip of 6-8" deep rip rap should be installed over geotextile fabric, he explained that the town would do this but there is no money to do the work or get engineered plans done for a Notice of Intent filing. Mr. Prokop mentioned that the state had the site delineated to as they plan to redo the boat ramp and asked if this could be included with that project. It was confirmed that the area where the erosion is occurring is about 20 yards from the state ramp and therefore is not on their property and is on town property and the right of way for the road. Mr. Sinibaldi also indicated the problems start further up the road as there is nothing to slow the water down as it heads to the lake. The Commission agreed that the deeply eroded sections of the shore presented a safety hazard as someone could trip in them, especially in winter if they were covered with snow or ice. Mr. Sinibaldi indicated the town likely has 3" washed stone that could be placed into the eroded areas for now and then this issue could be revisited next year. Due to the urgent nature of remediating the tripping hazard, Ms. Greene will work with Mr. Sinibaldi to issue an emergency certificate to fill in the eroded sections with rock.

Old Business (continued): Update on memorial tree planting in honor of former Conservation Commissioner Janet Terry

The Commission discussed a budget for the tree and determined that \$200-\$300 is a likely cost and it may cost up to \$500 to plant the tree. Mr. Pearson added that when the Commission planted a memorial tree in honor of former Conservation Commission Chair Lou Nucci, this money came from the Conservation budget.

Other Business: Discussion (Not on Agenda): 125 Bear Hill Road, Re: Culvert replacement, special Condition requires culvert to be replaced during a time of low flow, DEP# 045-295

Mr. Sinibaldi gave a history of the project and explained that although the Order of Conditions indicate that the culvert replacement must be done during a time of low flow, and not during the spring or the fall, that the company doing the project has availability to do the work this spring, likely in April. He added that if they are unable to do the project then, the town will fall to the bottom of the list for getting the repair done. Mr. Andrulitis added that he recalls a lot of discussions that the Commission had with the engineer regarding why the project should be done during a time of low flow during the permitting process. Mr. Hochmuth pointed out that the Condition leaves the decision of when the work can be done up to the agent. Mr. Pearson advised that he is comfortable with Ms. Greene making a decision to allow the work outside of the conditioned time period if needed.

Other Business: Discussion (Not on Agenda): 4 Little Pond Rd., f/k/a Lot 2 Little Pond Road, Re: Plan for as-built

Ms. Greene explained that an attorney representing the current homeowners had reached out to her for a partial certificate of compliance. The property was encumbered under an Order of Conditions, DEP# 045-0017, which was for the entire subdivision. There was a recorded partial certificate of compliance, but it indicated it was just for the streets and utilities and that each lot will need their own certificate once completed. This property does appear to be within the 100' buffer zone of wetlands but was built in the 1980's and the current attorney is the first to catch

that the property needs to be released from the Order. The issue is that the homeowners were not expecting this and do not have the money to have the wetlands flagged and an as-built plan made. The attorney submitted a copy of the real estate plot plan, which does not show wetlands, and was curious if the Commission could accept this plan for the request instead of an as-built plan. Mr. Sinibaldi who was still present gave history on the development and suggested that the Board of Health may have an as-built plan for the septic system that the Commission could decide to accept. The Commission agreed this would be worth checking into and that they did not feel the real estate plot plan showed enough detail to accept it as an as-built.

Informal Discussion:

A member of the audience who had not spoken on any other items was present and Mr. Prokop asked if there was an item he wished to discuss. He advised he just attended the meeting as an interested resident but he did wonder why the closed section of River Road that was discussed could not be turned into a hiking trail. Mr. Yarranton advised this option was discussed, but voted down at Town Meeting. Mr. Sinibaldi explained that once the road was discontinued, the town was forced to give the property back to the owners due to wording that all that was granted to the town/public was the right to pass and repass over the road with a vehicle.

Community Input:

None

Approval of Minutes: December 28, 2021

Ms. Greene advised minutes for this meeting were not yet available.

Correspondence:

None

DEP Comments:

None

Next Meeting: February 22, 2022

Adjourn:

Mr. Pearson motioned to adjourn the meeting. Mr. MacLean seconded the motion. The motion passed unanimously, and the meeting was adjourned at 9:15 PM