



**TOWN OF MERRIMAC**  
**CONSERVATION COMMISSION**  
4 School Street, Merrimac, Mass. 01860  
TEL: 978-891-0238

**Conservation Commission Meeting Minutes**  
**Tuesday, November 23, 2021**  
Merrimac Public Library – Library Meeting Room

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

**The meeting was called to order at approximately 7:00 PM**

**Public Hearing: Notice of Intent (continued): 117 River Road, Daniel Schultz, Re: Installation of in-ground pool, patio, wood platform, and seasonal dock, DEP# 045-0308**

The applicant requested a continuance prior to the meeting

*Mr. Pearson motioned to continue the hearing. Mr. MacLean seconded. The motion passed unanimously.*

**Public Hearing: Notice of Intent: 1 Middle Road, Constance Miller Nucci & Paul Kelly, Re: Construction of an addition and deck at an existing house and associated grading. DEP# 045-0309**

The applicants' representative, Robert Grasso, explained that the entire property is within the 200' riverfront area. Mr. Grasso explained the applicants are seeking to remove the existing asphalt paved driveway, widen it, create the entire new driveway out of grass pavers, add an addition to expand the kitchen, and add a deck so the applicants have easier access to the outside of their property. Mr. Grasso also explained that the grading for the project will be in a flood area but by using permeable grass pavers, the flood storage at the site will increase. Mr. Prokop asked what kind of plantings would be used for the plantings shown on the plan and Mr. Grasso answered native shrubs. Mr. Mathieu asked if any of the new materials will be impermeable and Mr. Grasso answered that the cobblestone walkway would be.

*Mr. Pearson motioned to close the hearing. Mr. Umland seconded.*

Mr. Pearson commented that a lot of lawn was being converted to other uses but overall, the impervious area was not increasing. Mr. Prokop asked the home owner, Ms. Miller Nucci, if she knew what type of plants should would be planting. She advised she did not yet. Ms. Greene proposed a condition that the plantings must be native, can be selected by the homeowners, and approved by the Commission prior to planting. The Commission and the homeowners were agreeable to this. Mr. Kelly indicated that a tree will need to be removed where the carport is being constructed and advised they would replace it with a red oak or a red maple. *Mr. Pearson motioned to approve the project, issue the Commission's standard conditions, and issue special conditions regarding the plantings. Mr. MacLean seconded the motion. The motion passed unanimously.*

**Public Hearing: Request for Determination: 5 Alnette Road, Shawn Nicklas, Re: Construction of a two-story garage and associated grading**

Shawn Nicklas explained the project and advised that Seekamp Environmental did the wetland flagging on site. Mr. Nicklas explained that a large oak tree which is approximately where the back of the garage will be located will likely need to be removed and if so, he will plant another native tree on the property. Ms. Greene asked if the dock at the property that was seen at the site walk and shown on the plans was permitted through the state. Mr. Prokop asked Mr. Nicklas for the dimensions of the dock. Mr. Nicklas advised he was unsure but could get them and email them to Ms. Greene. Mr. Prokop advised the Determination of Applicability (DOA) will be conditioned to require Mr. Nicklas to come back for a dock permit. Mr. Pearson asked if the location where the garage is being proposed is currently grass and Mr. Nicklas answered it is currently gravel with a car hut. Mr. Prokop asked when construction would start and Mr. Nicklas advised he would like to start before winter but realistically would start in the spring.

*Mr. Umland motioned to close the hearing. Mr. Yarranton seconded. The motion passed unanimously.*

The following conditions were discussed: If the oak tree must be removed it will be replaced at the property with a native tree; due to the proximity of the lake, only low amounts of pesticides and fertilizers can be used for lawn care; all excavated materials being stored on site must be stored upland from the garage; erosion controls must be installed around all stockpiled materials; the applicant must get a permit for the existing dock. *Mr. MacLean made a motion to issue a negative 3 determinations with the above conditions. Mr. Pearson seconded. The motion passed unanimously.*

**Request for Insignificant Change: 7 West Hadley Road, Shane Wakeen, Project Manager, Re: Relocation of septic tank, DEP# 045-303**

Ms. Greene explained the request and showed the Commission a markup submitted by Mr. Wakeen showing the approved septic location and the proposed new location.

*Mr. Pearson motioned to accept the of septic location. Mr. Andrulitis seconded. The motion passed unanimously.*

**Request for Insignificant Change: 7 West Hadley Road, Shane Wakeen, Project Manager, Re: Change permanent wetland marking posts from 4x4 granite posts to 4x4 pressure treated wood posts, DEP# 045-303**

Mr. Mathieu commented that the Commission usually conditions with the option that the applicant uses either pressure treated wood posts or granite posts. Mr. Andrulitis mentioned he remembered a conversation about the posts during the hearing. Mr. Prokop confirmed that the requested wood posts would be 4 x 4.

*Mr. Mathieu motioned to accept the change from granite posts to pressure treated wood 4 x 4 posts. Mr. Umland seconded. The motion passed unanimously.*

**Certificate of Compliance Request: 11 Belmore Road, DEP# 045-298**

Ms. Greene advised the applicant had emailed prior to the meeting requesting a continuance.

*Mr. MacLean motioned to continue. Mr. Mathieu seconded. The motion passed unanimously.*

**New Business: Review and discuss the 2021 Annual Report prepared by Solitude Lake Management for Aquatic Plant Management Program at Lake Attitash in Amesbury & Merrimac, MA provided by the Lake Attitash Association, DEP# 045-242**

Veronica Wolfe and Denise Guida of the Lake Attitash Association were present to answer any questions the Commissioners had. They indicated that for the 2021 year, the Commission had approved using a new herbicide, procellaCOR, for the treatment of invasive milfoil was very successful but they may need to spot treat certain areas with it next year. Ms. Wolfe advised that with the improved water clarity from the previous alum treatment, there has been an increase in native pond weeds which have the potential to become a nuisance. Mr. Prokop agreed and stated that people fishing on the lake have also brought this to his attention. Ms. Wolfe advised that this may be something that requires treatment in the future.

**New Business: 118 East Main Street, Re: Crushed concrete as road base, DEP# 045-0302**

Ms. Greene explained that approximately a week ago, she had been included on an email from Mr. Prokop to the Commission advising of crushed concrete being used as a road base at this site along with information of the potential problems that can arise to groundwater from the leaching of chemicals and changes to soil and water pH from the leaching from crushed concrete. The email also contained information that crushed concrete had been used on a project in North Andover and had resulting in many issues that the Town is still paying to try and remedy. Ms. Green advised that she reached out to Mr. Sinibaldi to get additional information on how to proceed and that he advised he had already spoke to the Town's water engineer who indicated this was not a concern due to the location of the concrete and to the property owner who advised that the crushed concrete was a virgin material. Mr. Sinibaldi explained he did not ask for the work to cease after learning this information and also indicated that virgin crushed concrete has been used as a base on other roads in Town. Additionally, Mr. Sinibaldi advised that the issues from the crushed concrete used in North Andover are because that material was not virgin but was recycled crushed concrete and contained contaminates and pieces of rebar. Mr. Prokop advised he wants a letter signed by the engineer indicating that the crushed concrete will not impact water quality in perpetuity. Dennis Page, the project manager advised that he will be unable to get any engineer to sign off on a letter stating that no issues will arise in perpetuity. Mr. Page also explained the foundations of the homes at this site will be the same type of concrete that is being used in the road base. Mr. Sinibaldi advised that the road base for Veteran's Way, which is closer to the Town wells, has not leached or caused water quality issues. The discussion continued with Commissioners asking if pH monitoring could be done, indicating that once paved and filled the crushed concrete would be mostly sealed from runoff aside from stormwater, and that the tanks at the water treatment plant are made of the same concrete. It was generally agreed upon that the crushed concrete road base could stay, and that no additional action or future testing was needed. Mr. Prokop asked that the Minutes reflect the concerns he raised regarding the possibility for town well field and groundwater impacts in the future.

**New Business: Proposed appointment of Greg Hochmuth as an alternate member of the Conservation Commission**

Mr. Prokop advised that Greg Hochmuth, a previous Commissioner who had stepped down due to time constraints, would like to re-join the Commission as an alternate member. Mr. Andrulitis indicated that Mr. Hochmuth may be a better fulltime Commissioner than he is and offered to switch to the alternate position giving Mr. Hochmuth the full time positon. Mr. Yarranton advised that wouldn't be necessary. Ms. Greene advised she will send a letter to the Board of Selectmen asking them to appoint Mr. Hochmuth as an alternate Commissioner.

**New Business: 1 Birchmeadow Road, Discussion Re: Removal of hazard trees in wetland**

Ms. Greene explained that the homeowner for 1 Birchmeadow Road had contacted her regarding hazard trees in the wetland at her property. One of the trees had already fallen and crashed through her fence and she was concerned that the other dead standing trees could fall on her fence, her driveway and potentially cars parked there, and her kitchen. Ms. Greene advised the Commission she could issue an emergency certificate to quickly allow the removal of these trees. The Commission agreed and asked that it is conditioned to leave the tree stumps and to minimize impacts to the wetland during tree cutting and removal.

**Old Business: Cobbler Brook Greenway, Discussion Re: Proposed trail by the Sands family & Wetlands permitting**

Ms. Greene explained that the Board of Selectmen have advised that this project can move forward as the Commission previously gave the greenlight on it however, Ms. Greene explained her concerns that the trail project consists of a footbridge stream crossing (which has not been delineated and may be an intermittent stream or a drainage swale according to Open Space) and work (tree clearing and vegetation removal) seemingly within 200' of Cobbler Brook, a perineal stream, and 100' of wetlands and possibly an intermittent stream without the proper WPA permits. Mr. Prokop indicated that the consensus of the Commission is that any work within 100' of wetlands will require applying for an RDA or NOI and that the Commission could waive the local filing fees but that the applicant would still have to pay for the abutter notifications and the legal notice.

**Old Business: Lot next to 6 River Road, Parcel ID: 54-1-43, Discussion Re: trenching of drainage swale**

Ms. Greene explained that she had spoken to Elizabeth Sabounjian from MA DEP regarding the ongoing concerns of the Commission and the abutters, the DeWolfe's, that Mr. Richard has been trenching and attempting to drain possible wetlands that are on his lot. Ms. Greene explained that in her conversations with Ms. Sabounjian that she raised some concerns about the previously issued enforcement orders including that just because "work", in this case removing leaves and debris from an existing drainage swale, is happening in a jurisdictional area, in this case the 200' riverfront area of the Merrimack River, that the Commission can only act if the work is altering a resource area and that without proof that the goal of the work is to drain alleged wetlands, the Commission is unable to take enforcement action. With all of this in mind Ms. Greene advised that she had sent an email to the DeWolfe's and Mr. Richard outlining that as long as the work is not altering a resource area, i.e. not widening or deepening the existing swale, it may continue, that any work that alters the resource area such as widening or deepening the swale or removal of vegetation must be permitted through the Commission, that the swale may be an intermittent stream and would require delineation as such based on a soil and vegetation analysis but that the removal of leaves and debris can continue without a delineation, and that any leaves or debris that are removed from the swale must be disposed of offsite. Mr. Richard was present and agreed to the conditions.

**Old Business: 0 West Main Street across from Kenoza Vending 67 West Main Street, Discussion Re: Possible 40B Development**

Ms. Greene advised that this was added to the agenda as a touchpoint as some Commissioners had reached out looking to see if there had been any updates on this and that she had wanted to gather some information on where this was left off with the Commission. Mr. Pearson advised that an ANRAD for delineation had been done, that an enforcement order had been issued for unauthorized test pits, that the Board of Selectmen had reached out to the Commission for comments but that the Commission was not provided the document to

comment on. Mr. Sinibaldi advised that a site walk had been done and during it they found potential waste drums and leather scraps and due to this had asked for a 21e. Mr. Prokop indicated he had concerns that a vernal pool was located on the site.

**Old Business: Update for Open Space Committee regarding progress on action items assigned to Conservation Commission**

Ms. Greene shared Mr. Pearson's comments on the progress of the action items assigned to the Commission by Open Space. The Commission agreed with Mr. Pearson's comments and advised they reflect the general consensus of the Commission and could be sent as is to the Open Space Committee for their update.

**Other Business: Memorial tree planting or memorial donation to The Merrimac River Feline Rescue Society in honor of former Conservation Commissioner Janet Terry**

Mr. Prokop proposed planting a memorial tree off Broad Street in the area of the existing Cobbler Brook trailhead. Mr. Prokop confirmed with Mr. Sinibaldi that the town keeps this area mowed. Mr. Sinibaldi suggested planting the tree in the area further down Broad Street away from 495 due to the illegal dumping that occurs closer to 495. Mr. Prokop agreed and suggested planting the tree close to the existing tree line which the Commission agreed with. Mr. Yarranton suggested planting dogwood tree as it is a good sized tree for the area. Ms. Greene advised she would seek approval from the Board of Selectmen and confirm that the Commission has funds available for the memorial tree.

**Other Business (not on agenda): 7 Bisson Lane, Re: Tree Removal**

Mr. Prokop advised that the homeowners, Melanie Drivas and Jim Lundrigan, will be filing in the spring to rebuild their retaining wall but that there is a tree that is half dead in the backyard that they want to remove ASAP. Ms. Drivas indicated she is concerned a bad wind storm will take the tree down and it could land on their home. Mr. Prokop suggested that the Commission can allow them to remove the tree now without a permit and include the tree removal and mitigation when they file their NOI for rebuilding their retaining wall in the spring. Ms. Greene disagreed with this and suggested issuing an emergency certificate now to remove the tree and condition it to require the stump being left in place. Mr. Lundrigan advised he would like to remove the stump. Ms. Greene suggested leaving the stump for now, grinding it as much as possible, and including stump removal on the NOI filing for the retaining wall.

**Other Business: Letter from West Newbury Wild and Native seeking Merrimac Conservation Commission support for native plant landscaping at Pentucket Regional Middle-High School**

The Commission indicated that the school is not in Merrimac or abutting it but that they acknowledge students from Merrimac attend the school. The Commission also indicated there may need to be some work done by West Newbury Wild and Native to define what their definition of native is. However, the Commission was generally in agreement that planting native plants at the school would be beneficial. Ms. Greene advised she would draft a letter on behalf of the Commission and send it to West Newbury Wild and Native.

**Other Business (not on agenda): Email from West Newbury Climate Resiliency Committee asking if the MCC would like to partner with them on mapping erosion issues along the Merrimac River**

Mr. Yarranton advised that he suspects this is of interest to the Town and Commission and indicated that the most attended Town Meeting was the one that discussed the closing of River Road. Mr. Yarranton did advise that addressing these issues are difficult as the property owners along the river own right to the shoreline. The Commission advised they were interested in supporting mapping the erosion issues by boat but that they would need more specifics from the Committee before getting more involved.

**Informal Discussion:**

None

**Community Input:**

None

**Approval of Minutes: October 26, 2021**

Ms. Greene advised she will have these minutes prepared and sent for review prior to the next meeting.

**Correspondence:**

None

**DEP Comments: Update from DEP regarding delays on the issuance of DEP File Numbers**

Ms. Greene advised that MA DEP has emailed indicating that there are delays on issuing DEP file numbers and that the Commissioners should advise applicants as such when they are discussing with them and that the Commission should refrain from closing public hearings until a MA DEP File Number has been issued.

**Next Meeting: December 28, 2021, need to schedule site walk date as Saturday before meeting is Christmas Day**

The site walk date was moved to December 18<sup>th</sup>. It was also agreed upon that the meeting time will be changed to 7 PM to allow the Commission & Ms. Greene time from 6:45 PM to 7 PM to set up the meeting room for the meeting.

**Adjourn**

*Mr. Yarranton motioned to adjourn. Mr. Umland seconded. The motion passed unanimously and the meeting was adjourned at approximately 8:45 PM.*