

**West Newbury
Conservation Commission Meeting Minutes
Tuesday, February 22, 2011**

Conservation Commission members present: Dawne Fusco (chair), Barry Fogel, Rick Spieler, Wendy Reed. Conservation Agent Jay Smith and Consultant Judy Mizner were also present.

7:30 p.m. Discussion: Minutes

Fogel moved to accept the minutes from the Feb 7, 2011 meeting. Spieler seconded the motion. Motion passed (4,0).

7:35 p.m. Public Hearing – Notice of Intent – Bradley Kutcher for Cortland Lane (map R-24, lot 30)(DEP# 78-579) For the construction of a single-family home within the buffer zone to a bordering vegetated wetland that includes a stream crossing.

Mr. Kutcher, his consultant and several abutters were present for this hearing. As proposed, a single family house, driveway and septic system would be constructed outside the buffer zone for this lot. A stream designated as intermittent in 1996 would be spanned for construction of a driveway. There would be no impacts to the stream as a result of this span and only temporary impacts to the stream banks would be incurred during the installation of utilities. Several issues regarding this NOI were raised.

1. The DEP responded to this NOI with a letter dated 2/17/11 which required submittal of a detailed plan of the proposed stream span.
2. The wetland line and buffer zone shown on the proposed plan have not been confirmed by the Commission and a site walk in the spring will be necessary to do so.
3. The intermittent determination for the stream passing through the lot was made in 1996 when the guidance for such determinations was new and during a drought period. This determination was challenged in 1997, but upheld by the DEP. The guidance has since become more sophisticated and the Commission requested that the applicant's consultant provide a justification for the continued determination of intermittent in light of current guidance.
4. The lot configuration was changed in 2003 to add 20 feet of frontage in front of the detention pond on the eastern corner of the lot. This is not continuous with other frontage and abutters felt that this did not meet zoning requirements.
5. The Planning Board stipulated as a condition of the subdivision approval that there were to be 12 buildable lots only and that the 13th lot (lot 30) would be set aside for open space.
6. Mr. Kutcher has obtained verbal legal opinion that because the town did not act on purchasing this lot for open space within the 36-month time period that it is no longer subject to the restriction.

The hearing will be continued to the March 22, 2011 meeting. Applicant was requested to provide written legal justification for the re-designation of the lot as buildable and to modify the NOI to include a description of the stream determination process under

current guidance. These documents will be provided to the Agent by March 14, 2011 so that copies may be provided to interested parties if requested.

8:30 p.m. Public Hearing – Request for Determination of Applicability – Margo Parker, 87 Main St. For access through the buffer zone to a bordering vegetated wetland to construct a single-family home.

The proposed driveway crosses the corner of the buffer zone at the road where an existing driveway and foundation are also located. The wetland was delineated in December of 2010 and has not been confirmed by the Commission.

Fogel moved to issue a negative determination for proposed construction of a driveway that crosses the buffer zone with the following conditions.

1. A plan with construction details and sequencing for the driveway, including location of stockpiled materials be submitted prior to work beginning.
2. The existing driveway and foundation will be removed as part of this project after confirmation of the wetland line and with Agent's prior approval.
3. The sedimentation barrier line shown on the plan will be extended to the eastern corner of the barn.

Spieler seconded the motion. Motion passed (4,0).

9:15 p.m. Meeting Adjourned.

Fogel moved to adjourn the meeting. Reed seconded the motion. Motion passed (4,0).

The next scheduled Con Com meeting will be **Monday, March 7, 2011**