

Newbury Conservation Commission - Public Meeting Minutes  
*October 25, 2021*

Members Present:

- ☒ Brian Colleran (Chair)
- ☒ Benjamin Gahagan (Co-Chair)
- ☐ Peter Paicos (Planning Board Liason)
- ☒ Mary Rimmer (arrived late)
- ☒ Brad Duffin
- ☒ Dan Streeter
- ☐ Frank Wetenkamp
- ☒ Samantha Holt (Agent)

6:03 p.m. Meeting Called to Order

- Opening remarks from Commission Chair Brian Colleran

COMMISSION DISCUSSION

Ben Gahagan provided an overview of the process to-date. The Process began approximately two (2) years ago when Mr. Gahagan proposed the idea to former Conservation Agent Doug Packer, and gained more steam following his retirement while former Conservation Agent Bill Holt was in the position. A big driver for the plan to amend the by-law was due to concerns among the Commission for the way things were working with no by-law involving inland wetland areas. Mr. Gahagan noted that there was no intent at any point to make amendments regarding the by-law as it related to the barrier beach (Plum Island). He also noted that desire for by-law language related to inland wetland areas was a concern as much of the building and work in Newbury was beginning to take place near resource areas more and more as the demographic trends leaned towards expanding populations in this area. Ultimately a meeting of the Commission was held where these concerns were voiced and the decision to begin work on amending the by-law began.

Mr. Gahagan brought up a copy of the draft amended by-law to be viewed on screen, and noted that a large part of the focus for the amendments has been on the top section (95-1: Purpose). There was an addition of three (3) measures to Section 95-1(B) which included protection of the ACEC area, protection of coastal resiliency from sea level rise, and protection and preservation of the ecological function of all coastal wetland resources. Mr. Gahagan stressed that these protections help to apply to all coastal resources outside of the barrier beach, including the salt marshes. Points were added to this section as well encompassing inland areas and included five (5) inland wetland resource specific items. Mr. Gahagan noted that the intent with the addition of these points was to allow the Commission to develop more a more firm set of local regulations that apply to wetland buffer zones. Brian Colleran also noted that the law (Wetland Protection Act) does not include points regarding ecology, and the intent of the by-law amendment was to allow room to acknowledge the natural world that is being regulated.

Mr. Gahagan continued outlining the timeline to-date, stating that the bulk of the work developing the draft amended by-law took place over three (3) to four (4) months at which point the Commission noted that there had not been a significant amount of public participation. With the intent of getting the amended by-law on the warrant at the 2021 spring Town Meeting, one last meeting was held where a number of members of the public showed up (mainly from Plum Island) and voiced upset on how they believed this would further impact Plum Island residents. At this point the Commission noted that more work was needed before the by-law would be ready. Mr. Gahagan mentioned that there had also been meetings with Town Counsel at which they were told that the regulations regarding the barrier beach can not and should not be touched. He also stated that receiving public input is important to allowing for the development of a useful and meaningful by-law that won't "get in people's way".

Brad Duffin raised the question of sharing a document that shows the tracked changes to the by-law on the Conservation Commission webpage. He noted that it would be useful for the public to have access to that version of the document in hopes of eliminating some of the questions that will come from the public. Mr. Gahagan also

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mentioned a document that he and Mary Rimmer had been drafting that provided information explaining the overall intent and an executive summary of the by-law amendments. Mr. Gahagan and Ms. Rimmer plan to complete this document and have it posted on the webpage. Mr. Collieran mentioned an idea originally proposed by Mr. Duffin to also include links to all recorded meetings on the webpage section dedicated to the proposed by-law amendments, and Samantha Holt agreed to have those included.

Ms. Rimmer outlined what led to the implementation of the original by-law (the installation of the water and sewer project), and Mr. Gahagan and Mr. Collieran explained why the Commission was instructed not to make any changes to any part of it that pertains to the barrier beach. Mr. Duffin inquired as to whether Section 95-1(B)(14) of the amended by-law draft would allow for the opportunity for the Commission to regulate inland wetland areas that feed into Plum Island as coastal resources. Ms. Rimmer and Mr. Gahagan noted that a firm line is established between inland freshwater resources and inland coastal or tidal resources, as well as where the barrier beach regulations begin/end. Ultimately, Mr. Gahagan requested Samantha Holt to make a note that, in the future, 95-1(B)(9) and 95-1(B)(14) in the amended by-law draft should be revised.

Ms. Holt noted questions on defining certain terms in the by-law. She mentioned that, in the interest of transparency and answering questions before they arise, including definitions of certain terms could be beneficial. Mr. Duffin also mentioned that inclusion of definitions may help to speed up the permitting/hearing processes. Mr. Collieran noted that doing so could present the issue of redefining terms for inland resources in a different way than they are defined for the barrier beach, and Ms. Holt stated that the idea wouldn't be to redefine those terms but rather to define terms specific to inland wetland resources. Mr. Gahagan requested that this be noted for future conversation as well.

Mr. Collieran opened up the discussion for members of the Commission to explain their motivation for wanting to amend the by-law. Each member present took the opportunity to discuss their personal motivations.

#### PUBLIC COMMENT

Steve Mangion mentioned correspondence sent to Ms. Holt via email, which was forwarded to the Commission. Mr. Collieran noted that the email has been received and reiterated to Mr. Mangion that there is no plan to amend anything in the by-law as it related to the barrier beach. Mr. Gahagan mentioned that the questions sent in Mr. Mangion's email have been saved in the shared Dropbox folder for the Commission and that, while they cannot be discussed in this meeting, they will be brought up again in the future during a working meeting to make revisions to the amended by-law draft.

David Manty requested additional explanation of Section 95-1(B)(12) and 95-1(B)(13). Mr. Collieran explained the reasoning for those points and noted that they allow the Commission the opportunity to protect wetland areas that may contain rare and endangered species but that have not been officially mapped or certified. He also noted that if those proposed additions were removed then, functionally, nothing would change, it would just add a layer of complication. Mr. Manty inquired about who, locally, would determine what species are in a particular area and noted that the NHESP already does that. Ms. Rimmer confirmed that the NHESP does identify certified vernal pools that have been submitted to them, but that doesn't mean they have an exhaustive list of those areas. She noted that if a project were to come in where rare/endangered species were observed in an uncertified area, those additional points allow the Commission to have the discretion to protect that area. She also stated that if the Commission had reason to suspect the presence of such species that the Applicant for the project would be responsible for providing documentation on their presence, or lack thereof. It was also explained that these points don't authorize the Commission to inspect every property in town looking for rare/endangered species, but rather it authorizes them to protect them if their presence comes up during an application process.

Ms. Holt raised questions regarding the development of regulations as they relate to the by-law. Mr. Collieran confirmed that the by-law creates the opportunity to develop regulations. Ms. Holt inquired as to whether

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additional or revised regulations were proposed related to the barrier beach would be allowed even if the by-law relating to it cannot be changed. Ms. Rimmer explained that, as currently written, the barrier beach by-law incorporates regulation verbiage and that additional regulations or requirements would not be allowed.

Meeting adjourned at 7:08 p.m.

Respectfully submitted,  
Samantha Holt, Conservation Agent