

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:00 pm, October 16, 2023, Second Floor Town Offices.

Members Present: Chair Molly Hawkins, David Parrott, Jack Haley, George Preble, Haley McCraven and Conservation Agent Michelle Greene. Associate member Alejandra Chandler

Members Absent: None

1. Discussion & Vote to Approve: Review & approve draft Conservation Restriction for Sawmill Brook / Austin Property for submission to MA EEA

Vanessa Johnson Hall of Essex County Greenbelt explained that Greenbelt is trying to get the Conservation Restriction (CR) done and submitted to the state's Office of Energy and Environmental Affairs (EEA) for approval so that it might be obtained by the end of the year. She said that the Town will be the property owner and will grant the CR to Greenbelt. The first paragraph does not identify a dollar amount because two grant applications have been submitted and action on them will determine funding amounts. The CR, she said, is largely based on the state's model and it has been reviewed by Town Counsel, the Conservation Agent, and the Select Board, all of whom have indicated approval.

In response to Ms. Greene's query whether further negotiation may occur if EEA changes the terms of the CR, Ms. Johnson Hall said that further negotiations could occur. In response to Mr. Haley about correspondence conducted by the Town Manager concerning repayment of funds spent to acquire the property in the event the CR is dissolved, she said that this would involve a highly unlikely event, usually occurring in the context of an eminent domain taking. In such a case the entity exercising condemnation would need to pay Greenbelt and/or the Town and they would need to reinvest the repaid monies in another conservation related project.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission unanimously voted to agree with the current CR draft and support its submission to EEA.

2. Public Hearing: Notice of Intent (continued): 0 River Meadow Drive – Whetstone Greenway, Applicant: Town of West Newbury, Re: Construction of a new trail and boardwalk, DEP# 078-0755 Applicant requests a continuance.

3. Public Hearing: Notice of Intent (continued): 0 Middle Street, parcel R27-28, Artichoke River Woods, Applicant: Essex County Greenbelt, Re: Construction of a parking area and portion of trail, DEP# 078-0766

The matter was continued to November 6.

4. Public Meeting: Request for Determination of Applicability (continued): 16 Donovan Drive, Applicant: Daniel Chiango, Re: Construct a 24'x32' barn

The matter was continued to December 4.

5. Public Meeting: Request for Determination of Applicability (continued): River Road Right-of-Way in front of 89 River Road, Re: Culvert improvements

The matter awaits a letter from the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program concerning endangered or threatened species and was continued to November 6.

6. Public Meeting: Request for Determination of Applicability: 333 Main Street, Applicant: Nathan Dennis, Re: Corrective grading, perc. tests, & installation of a temp. dirt structure to direct overflow

As an abutter, Ms. Hawkins recused herself and left the Commissioners' table. Mr. Preble, acting chair, said that the matter before the Commission requires it to determine the applicability of wetlands requirements to this project. Nathan Dennis, the property owner and applicant said that he is temporarily planning to divert overflows of culvert storm water on to his property at 333 Main Street with a swale around the exposed rear of his house until the culvert and driveway on the neighboring property at 335 Main Street are repaired.

In response to Mr. Preble's query, Mr. Dennis said he possibly could install erosion controls—he would have to think about it. He would put erosion controls in where the Commission wants it, but with the 40-50' of grass, there's ample room for the water to slow down, he said. Ms. Greene referred to Mr. Dennis' plan, and suggested erosion controls in the front of the property along the fence, with hay bale backing to make it stable.

When asked about his timeline for the work proposed, Mr. Dennis said he would do it as soon as he could get to it, and he has an incentive because he will be installing an expensive furnace in the basement. He noted that he may regrade in the spring.

Mr. Haley and Mr. Preble emphasized the importance of stabilizing the site as soon as possible, perhaps seeding with winter rye. Mr. Dennis said that he would not commit to a date, noting that he submitted the RDA at the Commission's request, not his, and he still believes that the area in question is not in the buffer zone.

Ms. Greene noted that the enforcement order with a requirement for action by today still stands and the Commission can amend that order to specify a new deadline for stabilization.

Mr. Preble moved, Mr. Parrott seconded, and after negotiation with Mr. Dennis over the wording of certain conditions, the Commission voted 4-0-0 (Ms. Hawkins recused) to issue a negative determination of applicability subject to conditions requiring that Mr. Dennis 1) install a silt fence backed with hay bales as shown on the plan and obtain Conservation Agent inspection and approval of the erosion controls before beginning work, 2) provide the Conservation Agent at least 72 hours' notice prior to commencement of work, 3) regularly inspect the erosion controls and remove sediment from them and repair them as needed or as the Commission orders, 4) comply with a Commission requirement for additional erosion controls if the existing ones fail, 5) install further controls such as stone or check dams if sediment laden water is observed being discharged from the 333 Main Street swale into Main Street and the wetlands below, 6) locate any stockpiled materials as far away from the fence with 335 Main Street as possible, 7) remove the temporary dirt structure and stabilize the area within 180 days after the culvert and driveway at 335 Main Street is repaired, 8) comply with the enforcement order of September 11, as amended, and may be further amended.

7. Enforcement Order Update: 333 Main Street, Re: Unpermitted excavation of a trench within the 100' buffer zone of the bank of an intermittent stream.

The Commission took up amendments to the enforcement order still in effect, which had required stabilization by today's date. Mr. Preble proposed November 15 as the deadline for stabilization; Mr. Dennis sought 45 days. The Commission specified planting of winter rye, to which Mr. Dennis agreed.

Mr. Preble moved, Mr. Parrott seconded, and the Commission voted 4-0-0 (Ms. Hawkins recused) to amend the enforcement order's deadline for site stabilization to November 20, with the requirement that the affected area be planted with winter rye.

8. Request for Certificate of Compliance: 365 Main Street AKA Drakes Landing, DEP# 78-679

As an abutter, Ms. Hawkins stated that she was recused and did not join the Commissioners' table for this matter. Consultant Steve Sawyer provided another plan that included foundation drains previously omitted and abutter Brad Buschur also reviewed the plans. It was noted that the missing conservation markers had been added to the as-built plan and located in the field and that issues with excessive riprap and improper grading of the stormwater system had been fixed.

Ms. Greene reported that the plantings in the focal point system, a depression that is part of the stormwater management system, were sparse. The approved plans called for over 200 native plants in the depressed area and only she only observed a dozen or so limited to the bio mulch area during her site visit on 9/28/2023. Plantings in the wetland restoration area were not as robust as in the plans, with many of the required plantings not able to be located. Consultant Tom Hughes filed a report on the restoration area noting that based on his observations, the restoration was successful with obvious hydrology achieved and with the area vegetated with over 75% of native plants. Due to the likely disturbance with additional planting, he does not advise requiring the plants shown on the approved plans to be planted now. She said that there were other minor discrepancies of little significance. For instance, additional walkways and pavers had been installed, but the consultants calculated the impervious area and overall, what was built was less impervious area than what had been approved. She also added that the required annual report on the operation and maintenance of the stormwater system had been filed today.

Mr. Haley asked if there would be any monitoring of the focal point's performance without the plantings shown on the plan. Ms. Greene said that normally monitoring like this is not required for a stormwater system. Mr. Sawyer said that while he did not design the focal point, his view is that soils are more important than plantings and grass is easier to maintain. Ms. Greene said that the operation and maintenance plan required routine inspections and removal of sediments and debris, but did not include any ongoing maintenance of the focal point plantings.

Mr. Parrott said he was disappointed from an aesthetic perspective, but that he did not feel this was so important as to preclude issuance of the certificate of compliance. Ms. McCraven asked what would happen if there were a problem say in five years. Ms. Greene said that the Commission does not provide a warranty, but rather makes a determination whether the site is in compliance with the order of conditions.

Mr. Preble moved, Mr. Parrott seconded, and the Commission voted 3-1-0 (Ms. Hawkins recused and Mr. Haley opposing on grounds that the missing plants at the focal point are important to water uptake and their absence may adversely affect the homeowners) to issue a certificate of compliance with ongoing special conditions.

9. Request for Certificate of Compliance: 14 Turkey Hill Road, DEP# 78-758

Ms. Hawkins returned to the Commission table and resumed the role of chair. Ms. Greene said that she found no issues or concerns with this property. The posts are properly installed, the site is vegetated, and the landscaping debris were removed from the wetlands as required. The property is subject to two ongoing conditions: 1) maintain the marker posts and 2) refrain from mowing or dumping in the wetlands.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a certificate of compliance subject to the two continuing conditions set forth above.

10. Request for Certificate of Compliance: R13-341 Church Street, across from 89 Church Street, DEP# 78-739

Ms. Greene said that this relates to a dock that has been removed for the winter and thus cannot be inspected for compliance. The applicant will return to the Commission in the spring.

11. Request for Certificate of Compliance: 64 Bridge Street, DEP# 78-728

This matter concerned a newly built home whose leach field is located across a wetlands area. Builder John Cronin appeared by phone. Ms. Hawkins said that an area of concern is the mowed area in the 25' buffer of the wetlands where the trench for the piping to the leach field had been dug. With new owners, it may be tempting to continue to mow in the 25' no disturb buffer of wetlands or undertake other such activities. This area should be permitted to grow back into a natural vegetation area. Ms. Greene said aside from that issue, the site is well vegetated and stable and the required conservation posts and placards have been installed.

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue a certificate of compliance. Ms. Greene will visit the site to inspect the woody debris placed to protect the wetland from disturbance and reestablish the 25' buffer and then provide Mr. Cronin the certificate of compliance.

12. Enforcement Order Update: 13 Turkey Hill Road, Re: Review restoration plan for unpermitted clearing in 100' buffer zone of wetlands

Ms. Greene said that she received an updated plan from Ms. Chandler today and printed it out. Ms. Chandler said that she added dates for monitoring and hopes to plant the proposed eight shrubs and seed mix within the next 2 weeks. She said that the area that was cleared is 30' x 10-14' deep and she calculated the number of bushes to plant in a way intended to give them the space to grow to their mature size. She said if more bushes are needed, she could plant them in the spring.

Ms. Greene asked Ms. Chandler to clarify the number of bushes in the back row and it was clarified that there would be 2—not 3. Ms. Hawkins said the plans for planting, seeding and watering look good but she had questions about the proposal to engage in such maintenance activities as pruning and weeding. Ms. Chandler said that she wants to pull bittersweet so it does not outcompete the plantings. Ms. Hawkins pointed out that Greenbelt owns the property where Ms. Chandler had cut and proposes to do maintenance. Ms. Greene said that it makes sense to keep the bittersweet in hand while the new plantings are growing in, but not in perpetuity on Greenbelt land.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to amend the enforcement order to incorporate the proposed restoration plan on the conditions that the property owner 1) install the seeding and plants by November 1, 2) limit maintenance activities to pulling or snipping bittersweet by hand around the plantings as the Commission specified, 3) perform regular monitoring of the revegetation, and 4) conduct an inspection no later than June 2024 to determine if additional plantings are needed.

13. Enforcement Order Update: 22-24 Main Street - PRSD, Re: Continuing sedimentation into intermittent stream, DEP# 078-0701

Matt Waltermire and Kyle Leone of builder WT Rich appeared before the Commission. Ms. Greene said that she had visited the site and found it looking good. She noted that it had not rained recently. Even in the area not vegetated, grass is starting. Certain perimeter controls can be removed. Mr. Waltermire and Mr. Leone said that they are keeping an eye on the hole that has released considerable water at the toe of the slope near the stream. They believe that it is an animal nest and have observed other fairly perfect holes going up the

embankment.

Mr. Haley asked if an investigation had been undertaken in connection with the collapsing asphalt. Mr. Waltermire and Mr. Leone said that this may have resulted from a blowout at a connection where piping goes into the stormwater structure. It has been repaired and no settling has been observed since. They noted that leaves are accumulating around some silt sacks in catch basins near the main drive, causing water to flood the drive. Ms. Greene said that those silt sacks could be removed but the ones along Main Street must stay until the grass in this area is established.

14. Insignificant Change Request: 22-24 Main Street - PRSD, Applicant: Pentucket Regional School District, Re: Time of year restriction waiver request, DEP# 078-0701

Mr. Waltermire and Mr. Leone said that they want to remove the rest of the erosion controls in the stabilized areas and install the conservation markers after the winter work ban starts. They also want to do remedial work in terms of removing silty materials and erosion controls from the wetlands. This would occur after the consultant Epsilon completes a report about needed remediation measures. No schedule has been set for this yet.

Mr. Haley asked if they had observed any spoils from digging where the animal hole was located. They had not.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve the insignificant change request, on the condition that the remediation takes place in appropriate weather conditions and the work is subject to the Conservation Agent's inspection and approval.

15. Discussion: Potential Conservation Commission tables at 11/9/2023 & 11/15/2023 town forums

Ms. Greene said that there will be a couple of town forums and boards such as the Conservation Commission are invited to have tables with flyers where the Commission can interact with townspeople. She can update a wetlands flyer and provide her business cards. *Ms. Hawkins and Ms. McCraven (tought David had volunteered as I have a prior commitment) will participate on November 9 and Mr. Parrot and Ms. Chandler will do so on November 15.*

16. Discussion: Scheduling upcoming administrative business meetings to work on bylaw

The Commission set a date and time of November 7 at 7 pm, and Ms. Greene will check to see if this date conflicts with elections.

17. Approval of Minutes: September 18, 2023

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve the minutes of September 18, as amended.

18. Approval of Minutes: October 2, 2023

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to approve the minutes of October 2, as amended.

19. Land Agent Updates:

a. Invasive plant work day scheduled for 11/4/2023;

Ms. Greene reported that volunteers will work on invasive plant management at Cherry Hill on November 4 from 10-12 and 1-3.

b. Two articles on 10/23/2023 fall STM warrant: \$50,000 for additional professional invasive plant management & partial funding for summer 2024 invasive plant interns;

Ms. Greene described the two articles for funding invasive plant management on the agenda for Town Meeting and urged the Commissioners to attend and vote.

20. Conservation Agent Updates:

a. Grant application submitted for study on 2 undersized culverts on River Road;

Ms. Greene said that the state Department of Conservation and Recreation was offering a grant for pilot programs to improve culvert crossings at areas subject to sea level rise. The grant would provide engineering and design services. The Town applied for the grant for the culvert at the end of Coffin Street and the culvert by the hay field.

b. MVP grant awarded and work getting started for River Road resiliency study;

Ms. Grammer described the \$150K state grant to evaluate existing conditions and climate change vulnerabilities at River Road and Coffin and Bridge Streets.

c. Invasive water chestnuts at Mill Pond

Ms. Greene reported that volunteers in small boats pulled some 300-400 invasive water chestnut plants from the perimeter of Mill Pond.

21. Commission Representative to Open Space Update:

Mr. Parrott said that a meeting is scheduled for Wednesday the 18th.

22. Commission Representative to Community Preservation Committee Update:

Mr. Haley reported that the Committee had no meetings in October and has nothing pending on the calendar.

23. DEP Comments:

None.

24. Other Business:

None

25. Informal Discussion:

None

26. Upcoming Meetings: November 6, 2023 @ 7:00 PM Regular business

Adjournment 9:08 pm

Meeting Documents

Presentations and records associated with each matter identified, as included in the Conservation Agent's files.

Respectfully submitted