

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:00 pm, September 6, 2023, Second Floor Town Offices.

Commissioner's Present: Molly Hawkins, Chair; George Preble, Jack Haley, David Parrott, and Conservation Agent Michelle Greene

1. **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.*
2. **Public Hearing: Notice of Intent (continued): Cherry Hill Conservation Land, Field at corner of Middle Street & Indian Hill Street, Riverbend & Tupelo Trail, Applicant: Town of West Newbury, Re: Professional chemical and mechanical removal of invasive plant species, DEP# 078-07XX**

Carol Decker addressed the Commission.

Ms. Greene informed the Commission that a DEP File Number had finally been issued and that there had been no additional public comments on the Notice of Intent. She reiterated the previously heard community concerns about the use of herbicides on public land.

Ms. Hawkins moved to close the public hearing, Mr. Preble seconded and the motion passed unanimously.

The commission reviewed the Special Conditions as follows with Ms. Decker:

1) All federal, state, and local laws and regulations for controlling pollution of the environment shall be complied with when any work is done; 2) Any work done shall only be done by those properly licensed, and insured to work on Town owned lands; 3) The storage or disposal of fuels, oils, chemicals, or other harmful materials on any project sites or neighboring property is strictly prohibited; 4) All invasive plant management shall adhere to all BMPs and shall be done in a manner as to prevent damage to the site(s) and avoid damaging plant species not being managed as part of the Order and the Notice of Intent filing; 4) A weekly written record (log) shall be provided to the WNCC of all work done, including herbicide applications, with dates and times of application, names of applicators, weather conditions, volumes & concentrations of herbicide solutions used, volume of invasive plant material removed, method of invasive plant material disposal, data collected, observations, and locations treated.; 5) The WNCC shall review all reports provided by the contractor and may provide additional guidance to ensure the work continues to be completed with the goals of the project in mind in accordance with this Order and any other issued permits; 6) Prior to the start of work and prior to the pre-work site meeting(s) the limit of work / limit of treatment area will be flagged by the town. These areas will be reviewed at the pre-work site visit(s) and treatment shall not expand beyond the limit of the flagged area(s) unless agreed upon by the Town, WNCC, and any person(s), entity/ies, contractor(s), and/or subcontractor(s) performing work under this Order; 7) A pre-work site meeting shall be attended by the Conservation Agent and any

person(s), entity/ies, contractor(s), and/or subcontractor(s) performing work under this Order to review the sites prior to commencement of any work under this Order. The purpose of these meeting(s) will be to review the site(s), answer any questions, and ensure understanding of the proposed work by all parties; 8) Only individuals appropriately licensed and certified by the Massachusetts Department of Agricultural Resources (MDAR) will be allowed to apply herbicides. Proof of licensure is required to be submitted to the WNCC prior to the start of any work; 9) Herbicide applications must comply with all applicable local, state, and federal regulations and label requirements. The WNCC must review all herbicides and surfactants prior to their application; 10) Herbicides will not be applied during the following adverse weather conditions: High wind velocities greater than 10 mph (for foliar applications), Periods of dense fog or moderate to heavy rainfall (for foliar applications), Periods of high temperatures and low humidity, per label specifications (for foliar applications), When rain is forecast within the four (4) hour period after any scheduled application; 11) When applying herbicides, all labeled restrictions shall be followed. All plant control treatments will be done following all applicable federal and state laws and regulations and adhere to any Conditions, restrictions, or limitations of this Order and any other issued Permits; 12) To prevent overtreatment with herbicide and to aid in any monitoring, when applying herbicides to cut stumps, dye shall be used to indicate that the stump has been treated; 13) The WNCC shall be provided with copies of any forms/reports filed regarding herbicide applications covered under this contract; 14) Signs shall be posted no more than 50 ft. apart warning the public when herbicides are used within 25 ft. of a trail or roadway. Signs shall remain posted until any danger of exposure for the public is past, and then removed; 15) In areas of phragmites treatment that are not within 25 ft. of a trail or roadway, signs shall be posted no more than 50 ft. apart along the perimeter of the treated area warning the public when herbicides are used. Signs shall remain posted until any danger of exposure for the public is past, and then removed; 16) No pulling of invasives or removal of roots shall be done as treatment of woody invasives. Woody invasives shall only be treated by cutting the plant and treating the stump by painting the cut stump with an approved herbicide; 17) Materials from cutting the woody invasives may be left in place where they are cut however, material shall not be disposed of in any wetland, in any river or stream, or on any bank and shall not block any trail; 18) At the completion of work at each site, a post-work site meeting shall be attended by the Conservation Agent and the person(s), entity/ies, contractor(s), and/or subcontractor(s) who performed the work under this Order to review the site(s); 19) The areas treated for phragmites shall be reviewed by the WNCC at the beginning of the spring growing season immediately following treatment. If the area(s) do not show signs of natural revegetation, the area(s) shall be seeded with an appropriate native seed mix as approved by the WNCC prior to application.

Ms. Hawkins moved to issue the Order of Conditions with the Special Conditions as discussed, Mr. Preble seconded and the motion passed unanimously.

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

Continued at the request of the applicant to October 16th

4. **Public Meeting: Request for Determination of Applicability: 362 Main Street, Applicant: Lorrie Gould, Re: Septic replacement**

Continued at request of the Applicant to September 18th

5. **Discussion: 0 Middle Street, R27 31, Lower Artichoke Spillway, Re: Time of year restriction in Order of Conditions, DEP# 78-0749**

Jon-Eric White and Tom Cusick of the City of Newburyport and their consultant Tracey Adamski, of Tighe and Bond appeared before the Commission.

The Commission had issued an Order of Conditions for the work at the Lower Artichoke spillway last fall with the Commission's Standard Conditions which include a time-of-year restriction from October 15th to April 15th of the following year. Newburyport has finally gotten the work out to bid and are hoping to get the work done before hurricane season. They represented that they are subject to an impossible conflict of time-of-year restrictions, as the Army Corp of Engineers has a restriction in their permit that prevents them from clearing any trees until after November, for the protection of long-eared bats.

Newburyport is seeking an exception to the Commission's Condition of time-of-year restriction, for only the stone work and clearing the absolute minimal number of trees necessary to complete the stonework. No tree removal on the earthen dam is proposed at this time.

Ms. Hawkins expressed concern that a high flow rate (common during the early winter) might complicate the project. Mr. White suggested that they currently had a relatively low flow rate and that flushing the hydrants in October would increase demand and lower the reservoir further.

Ms. Greene suggested a pre-work site walk and/or the opportunity to conditionally approve the work only when the site conditions were favorable. Mr. White suggested that if the water was too high, they would either wait until the spring to do the work or possibly siphon off excess water. They agreed that a 72-hour notice to the agent would be acceptable and expressed hope that they would be able to proceed with normal construction process and not a rushed hurricane response. They expect the work to take two weeks and are concerned about the time of year restrictions given the bidding process is already in-flight. Ms. Greene also raised the possibility of early icing of the Artichoke. Mr. White agreed that would be an issue and they likely would not proceed if they were not able to start the work before icing, given the risks.

Ms. Hawkins notified Mr. White that there had been observations of Japanese Knotweed near the existing stockpile of rock and that they would want to be very sure they did not spread it by carrying any parts of the plant with the loads of rocks to the spillway. Ms. Greene noted that a recent judgement found a developer in Pepperell liable for knowingly spreading knotweed in soil. Mr. White acknowledged the risk and agreed they would take appropriate precautions.

Ms. Greene asked about the operation and maintenance plan that was conditioned to be submitted to the Commission for their review before any work began. Mr. White offered that they were behind schedule due to staff turnover, but that they did have a draft of the O&M plan. Ms. Greene suggested that the commission needed clarity on how decisions would be made with respect to the sandbag deployment. Mr. White committed to presenting the Commission with a draft O&M plan at the September 18th meeting. Ms. Hawkins confirmed that the draft would include discussion of the removal and lifecycle of the super sacks.

Mr. Parrott raised concerns about the inability to fully stabilize any disturbed soil if the work is done in the time window proposed. There is a likelihood that the pathway from the stockpile out to the spillway would be more significantly impacted when the ground is wet and the grass is not growing. Mr. White confirmed that they would keep erosion controls in-place until all soils were stabilized and would deploy erosion mats where necessary. Mr. White expressed optimism that the site conditions would not be too muddy when work was ready to commence.

The commission agreed to review the exception to the time-of-year restriction at their September 18th meeting when the operation and maintenance draft plan was provided to the Commission.

6. Certificate of Compliance Request: 528 Main Street, DEP# 078-0752

Ms. Greene reported that she had visited last month, but they had just hydro-seeded and the site was not yet stable. Now the site is fully stable, their grass is green, and conservation posts are appropriately placed.

Ms. Hawkins moved to issue the Certificate of Compliance, Mr. Haley seconded and the motion passed unanimously

7. Enforcement Order Ratification: 13 Turkey Hill Road, Re: Unpermitted clearing in buffer zone

Ms. Greene updated the Commission that Greenbelt had approved any restoration deemed appropriate by Commission for the unpermitted clearing. The enforcement order was updated to require immediate installation of erosion and stabilization controls and to require that a restoration plan be submitted to the Commission by Oct. 2nd. The Commission believes this is enough time to get plantings in the ground this fall so that restoration can be prompt. The Commission expressed regret that Ms. Chandler was not present.

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

Ms. Greene reported continued issues at the site, including the need to clean out sediment from the baseball field discharge apron overloaded with silt. The artificial turf company responded to the Commission's questions about potential long-term sediment issues with a general statement that they do not believe there will be any issues.

9. Other Business:

MACC is holding its annual conference on October 28th in Devens.

The commission discussed use of wetlands revolving funds for Ms. McCraven's training and agreed this would be of benefit to the town and Ms. McCraven's ability to contribute to the commission.

10. Informal Discussion:

11. Approval of Minutes: May 3, 2023

Ms. Hawkins moved to approve the minutes from May 3rd. Mr. Preble seconded the motion and it passed unanimously.

12. Approval of Minutes: August 8, 2023

Deferred.

13. Approval of Minutes: August 14, 2023

Ms. Hawkins moved to approve the minutes from August 14th. Mr. Preble seconded the motion and it passed unanimously.

14. Approval of Minutes: August 21, 2023

Ms. Hawkins moved to approve the minutes from August 24th. Mr. Preble seconded the motion and it passed unanimously.

15. DEP Comments:

Ms. Greene reported that a site visit with Pam Merrill of MA DEP, Paul Sevigny, Angus Jennings, Ms. Hawkins, Mr. Preble, and herself was conducted at 0 Main Street (across from the high school) for the appeal of the Order of Conditions permitting the installation of a pond leveling device.

The visit focused on fact-finding for MA DEP, and it remains unclear what grievance warrants the appeal. A new idea was raised that by maintaining a certain depth of water in the pond with the pond leveler device that the flood capacity of the wetlands may be reduced relative to removing the concrete headwall and fully draining the pond. Removing the headwall would be a substantial endeavor that would decrease the extent of land under water and increase the extent of BVW.

DEP will now either approve or deny the appeal but it unable to provide a timeline on when their decision will be made. Work at the site can't begin until the appeal process has been concluded.

16. Land Agent Update:

Ms. Greene advised that two article requests were submitted to the Select Board for their review ahead of the fall Special Town meeting. One article seeks an additional \$25,000 to continue to professionally manage invasive plants on town owned land. The second article seeks one month of funding for the salary and mileage reimbursements for seasonal land stewards or interns. She will be proposing adding funding for the land stewards or interns as a line-item to Conservation Commission budget for FY25, but if it were approved, the funding wouldn't be available until July 1 (FY 2025), and this article will cover the interns or land stewards for their work in June 2023.

The Commission discussed the water issues at 335 and 333 Main Street, and if a drainage study would be necessary to understand the hydrology.

The Commission asked Ms. Greene to issue an enforcement order for the unpermitted, unstable swale in buffer zone, a jurisdictional area, at 333 Main Street.

17. Commission Representative to Open Space Update:

Ms. Greene discussed the trails at the Sawmill Brook Conservation land that the town seeks to acquire. She had participated in a site visit to see the trails / trail easements at 519 Main Street, Deer Run, to better understand where they connect to the Sawmill Brook property and there was a lack of clarity around how the trails proposed at Sawmill Brook would be designed, permitted, constructed, and managed considering the extent of resource area between the properties, timelines for which were not fully understood by the participants during the site visit. The Open Space Committee will be discussing trails management at their September 20th meeting.

18. Commission Representative to Community Preservation Committee Update:

- 19. Upcoming Meetings:** September 11, 2023 @ 7:00 PM, administrative business / bylaw;
September 18, 2023 @ 7:00 PM, regular business
October 2, 2023 @ 7:00 PM, regular business

Adjournment

Mr. Preble motioned, Ms. Hawkins seconded the motion, and the motion to adjourn passed unanimously at 8:57 PM.

Meeting Documents

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

Respectfully submitted