

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, December 19, 2022, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, David Parrott, Jack Haley, and Conservation Agent Michelle Greene.

1. Request for Withdrawal: Notice of Intent: Town Wide, Applicant: West Newbury DPW, Re: Hazard tree management, DEP# 078-0717

Ms. Greene reported that Department of Public Works Director Wayne Amaral decided to withdraw the Notice of Intent for a Conservation Commission-approved Town-wide tree management plan because the state Department of Environmental Protection disfavors a town-wide approach and the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) will need plans for priority habitats. DPW has a backlog in doing vegetative cutting to maintain road safety. As Mr. Amaral accumulates a list of trees to be cut, Ms. Greene said that she can do a quick review to see if some tree removal may be exempt from a filing under the WPA on grounds of public safety for the roadway—and which identified trees may be located in priority habitat areas. Ms. Mizner said that the Commission will need to see how a determination is made that a tree poses an immediate and substantial threat rather than simply being dead or dying.

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. Certificate of Compliance Request (continued): Cottages at Drakes Landing, Daley Drive, F/K/A 365 Main Street, DEP# 078-0679 Applicant requests a continuance

4. Insignificant Change Request: 18 Norino Drive, Applicant: Katherine & David Miller, Re: Relocation of platform, access to platform; change from steps to ramp to access tramway, DEP# 078-0667

Consultant Greg Hochmuth of Williams & Sparages said that the property owners installed the tramway down to the river and it works, but when the track was constructed in Minnesota, they did not accurately consider the existing slope and bend the track properly. This made the track 20' off in length, so adjustments have been necessary. The result is that the elevated deck is closer to—but still outside—the wetland. It has the same footprint, but instead of two large steps they will need to have a ramp that will be 2' longer between the existing grade and platform, and no light would get through for the first few feet. Because the structure was shortened, extra metal posts became available and they are proposed to be used instead of sonotubes, which will minimize soil disturbance. Thus, the wood deck (with planks spaced at ¾") will be attached to the 4 metal poles.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve an insignificant change for the relocation of the platform and change from steps to a ramp with slats spaced at ¾" to let light through. Ms. Greene inquired if the Commission would consider also approving ThruFlow decking for construction of the ramp and it agreed this would also be acceptable.

5. Discussion: Rogers Street Artichoke Bridge, Re: Additional tree clearing for utility pole relocations, DEP# 078-0756

Carolyn Gorss of BSC Group on behalf of National Grid said that certain tree cutting had been omitted from the initial Notice of Intent because it was thought that these trees (to be cut for safety reasons in connection with pole replacements) were exempt under [310 CMR Sec. 10.02\(2\)\(a\)2](#) concerning the maintenance, repair or replacement of an existing and lawfully located structure or facility used for utility services, as has been National Grid's typical experience. Ms. Mizner noted that this work would be in the resource area and stated that a pole may not be considered a structure or facility. Ms. Gorss said that National Grid views poles as structures and that the initially-filed NOI referred to poles as structures and identified the replacement poles now in question.

Ms. Greene recognized that the exemption was called out in the NOI. The Commission's approval as stated in Special Condition #8 of the Order of Conditions, however, was limited to specifically-identified trees, which did not include those now under review. Ms. Mizner reviewed the additional trees to be removed, and questioned why a cluster of 6 cherries need to come out. Ms. Gorss said that this was for safety reasons in connection with replacement of an overhead line. She said that National Grid's forestry group will trim as much as they can (as opposed to full tree removal) and will leave cut trees at a safe height (10') that will provide habitat.

Ms. Mizner moved, Mr. Haley seconded, and the Commission voted unanimously to amend the Order of Conditions to provide that tree removal shall be limited to trees shown on the original plans submitted in connection with the NOI filing on November 6, 2022 as well as the plan submitted by email on December 9, 2022 showing the additional trees to be removed, with the provision that stumps will be left 10' high and cut trees will be removed offsite.

Ms. Gorss discussed issues with the following conditions:

- Special Condition #7 requires that pole 16, located in the road asphalt, be cut off at the base. In this case, Verizon is responsible for removing the pole and National Grid has no control over this—and it can take years for Verizon to act.
Ms. Mizner said that National Grid should send Verizon a copy of the Order of Conditions noting this condition. National Grid has sought this permission to remove pole 16 and is responsible for its execution.
- Standard Condition #3 requires consent of the property owner but, in this case, work is on the Town right of way, so there is no individual property owner.
The Commission said that the Select Board will be approving this work on behalf of the Town and the language can be changed to say the applicant must provide the Commission the authorization from the Select Board prior to beginning work.
- Standard Condition #11 requires an as built plan to obtain a Certificate of Compliance but this project does not have engineered plans.
The Commission said that under 11(d), the applicant can use an existing plan marked up to show the project as-built.
- State General Condition # 19, which concerns stormwater standards, has no exemption for pole replacement but this work will not create any stormwater runoff.
The Commission said that if no runoff is created, National Grid doesn't need to provide operation and maintenance for stormwater runoff.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to amend Standard Condition #3 to

provide that National Grid should obtain necessary authorization from the Select Board and provide that to the Commission.

6. Violation Update: 4 Norino Drive, Re: Clearing within the 25' no disturb buffer and clearing past the limit of work, DEP# 078-0740

Ms. Greene explained that this matter had been on the Commission's agenda for some time. Additional clearing had been done in excess of the approved limit of work line, and now the property is for sale. Thus, she said, it would be useful to have an enforcement order in place so that if the property sells, the Commission has something on the record about this matter.

Property owner/potential builder Joseph Neipp said that he put the property on the market because interest rates have gone up. He had just recently received the proposed enforcement order for review, but Mr. Neipp's consultant Tom Hughes reviewed and had no issues with it.

Ms. Greene noted that the proposed enforcement order references the Order of Conditions (including limit of work) the Commission issued for this property, the issues raised with excess clearing, and the meetings concerning this matter. The enforcement order provides that a restoration plan will be submitted to the Commission by March 6, 2023. Mr. Hughes had said that this date is achievable. Once the plan is approved, the enforcement order can be modified to incorporate it, Ms. Greene said. This, she noted, is a "friendly" enforcement order.

The Commission advised that the Order of Conditions and enforcement order follow the land, so a property buyer would also assume responsibility for the violation. Mr. Neipp said that he still intends to build the house (with a new owner or on a speculation basis), and plans to be responsible for restoration. He stressed that he wants to be able to start construction by April 15, 2023 and will be filing building permits before then. Stabilization of the area could occur during or after construction.

Ms. Mizner noted that the timeframe for a submission of a restoration plan in March should not impact construction—within the requirements of the Order of Conditions—beginning April 15. She noted that the limit of work still applies. Ms. Hawkins and Mr. Parrott indicated that it is good to have a timeline in place.

The Commission signed the enforcement order.

7. Violation Update: 21 Montclair Road, Re: Clearing trees within 100' buffer zone without a permit

No update

8. Enforcement Order Update: 15 Norino Drive, Colin Hodgson, Reinhild Hodgson, and Shirene Hodgson Re: Placement of a houseboat and dock along the Merrimac River without a permit with impacts to the 200' riverfront resource area, bordering vegetated wetland, inland bank, and rare species habitat

No update

9. Discussion (continued): Conservation Agent draft job description from the Collins Center

Ms. Mizner said that she sent the Town Manager an email asking for his views on the Conservation Agent job description and supervision. She has not yet had a response and recommended holding off on Commission

comments on the draft until a response is received. The Commission discussed potential expanded hours and work for the Conservation Agent in the future.

Mr. Parrott, who is also an Open Space Committee (OSC) member, noted that the Conservation Agent is also the Land Agent and thus has tasks that may not be subject to Conservation Commission overview. Although the Conservation Commission owns certain properties and holds conservation restrictions on other properties, it does not own all land for which the Land Agent may have a role. Mr. Parrott noted that the Agent has 2 jobs that are described as one, and it is unusual and potentially difficult for the employee to have to report to 2 different managers. Ms. Mizner said that the primary functions are under Conservation Commission purview and thus the supervisor should be the Commission. She again noted that it will be important to hear from the Town Manager about this.

10. Discussion: National Grid's 2023 yearly operational plan for West Newbury

Ms. Mizner said that she could not locate the document, and Ms. Greene explained that the link the Commission had would work with a landing page for the document. Ms. Hawkins said she could not determine National Grid's criteria for sensitive areas—the map is difficult to see. She asked whether vernal pools or priority habitat are considered. It appears that they are not spraying in only two areas: Mill Pond and the Town wellfield.

Ms. Greene said that National Grid's intent is to identify wells near its rights of way. She noted that the comment period is only 45 days, and determined that the Commission does have time to address this at its January 9 meeting. Ms. Mizner suggested that the Commission members read the plan first and then decide on comments. If possible, the Commission could coordinate comments with the Select Board, but the Select Board may move ahead on its own.

The matter was continued to the next meeting.

11. Discussion: Open Space kiosk installation at Riverbend on Conservation Commission owned property

Mr. Parrott said that the OSC is trying to decide what kind of replacement kiosk to put in and is looking for Commission guidance as the landowner of the Riverbend property. Ideas include having something with an overhang, standardizing signage, and relocating the kiosk to the trailhead.

The Commission generally concluded that the kiosk could be replaced with something similar, perhaps with an overhang, at the same location as long as the ground is not disturbed. The Commission would also look favorably on an OSC proposal to relocated kiosks/signage to the trailheads on Coffin Street and Way to the River noting that installation of posts in these areas may be subject to a filing under the Wetlands Protection Act.

12. Wetlands Bylaw Discussion:

13. Other Business:

Pentucket Regional School campus athletic lights: Ms. Greene said a special permit modification has been sought to install lighting at the athletic fields. *Because the lighting work proposed in West Newbury is outside of any wetlands resource areas or buffer zones, the Commission has no comment.*

87 Main Street: Ms. Greene said that the site looks good. Water detained in the sediment basins adjacent to the common driveway is mostly clear. The topmost basin is, however, completely full. Ms. Greene asked the developer to put silt socks around the perimeter of this basin to filter any potential overtopping water from the forecasted rain and also asked that he clean up the road where silt has accumulated along Main Street near the catch basin. This matter will likely be on the January 9, 2023 agenda so the developer can seek extensions to each lots' Order of Conditions to wrap up work on the stormwater management structures.

Pentucket Regional School campus silty discharge into stream and Merrimack: An email from a resident walking the site alerted Ms. Greene to siltation entering the stream on campus.

The source of this siltation had been a mystery. The problem was found in the area that had been a temporary parking lot but now is undergoing extensive earthmoving to build a ballfield. It was found that runoff was getting into and then out of a perimeter drain that somehow had not been on the plans for new construction but was found on old plans. It appears that the perimeter drain was installed long ago to keep the fields that had been in this area (perhaps originally a wetland) dry.

Those working at the campus rearranged siltation controls and are adding straw wattles and hay bales and installing check dams along the stream to mitigate the problem. This is urgent because a major winter storm bringing heavy rains is forecast to roll in. A civil engineer will look at this and they will excavate to find the pipe and cap it to prevent more water from discharging into the stream. Over a longer term, they will have to develop appropriate drainage design. Ms. Hawkins noted that it is a complex site with large amounts of water draining into it.

14. Old Business:

15. Informal Discussion:

16. Community Input:

17. Approval of Minutes: August 15, 2022

18. Approval of Minutes: September 8, 2022

19. Discussion; Possible Further Amendment of Minutes: October 17, 2022

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to revise the second paragraph of the item concerning 528 Main Street to read as follows:

These minutes required further amendments to properly refer to the wetlands on and near the site which exist adjacent to the property under the powerline easement and on the opposite side of the property near Long Hill Orchard. The minutes were further amended as Ms. Hawkins noted that the directions east and west had been swapped in the minutes.

Ms. Mizner motioned to accept the minutes of October 17, 2023 as further amended. Ms. Hawkins seconded the motion and the motion passed unanimously.

20. Approval of Minutes: December 5, 2022

Deferred

21. Correspondence:

22. DEP Comments:

23. Land Agent Update:

24. Commission Representative to Open Space Update:

25. Next Meeting: January 9, 2023, please note the meeting is on the 2nd Monday of January. The submission deadline for items requiring a public hearing is Tuesday December 20, 2022.

Adjournment 8:15 pm

Meeting Documents

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

Respectfully submitted