

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, March 6, 2023, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, George Preble, David Parrott, Jack Haley, 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. **Discussion: Transfer of Greenbelt's interest in Coffin Street Conservation Restriction to Town of West Newbury Conservation Restriction, 2 parcels of land, Map 230 Lot 120 and Map 230 Lot 110**
Ms. Greene said that in connection with the wrap up of the Save Our Wetlands LLC, which had acquired and, through financial contributions from Greenbelt and the Town, converted some properties on Coffin Street to open space, ownership of the properties is being transferred to Greenbelt. This, she has been told, means that the Conservation Restriction will transfer to the Conservation Commission, nullifying the stewardship agreement between the Conservation Commission and Greenbelt. Concerns were raised that the Town does not have sufficient capacity to maintain the trails it already has. Additionally, unpermitted homeowner excavation activities created ponds on the land in question, which have a history of having created flood conditions—and Greenbelt was supposed to assume responsibility for maintaining these areas. The Commission inquired why the stewardship agreement could not be revised to maintain Greenbelt's responsibilities. *Ms. Johnson-Hall of Greenbelt will appear at the March 20, 2023 Commission meeting.*
3. **Discussion: New appraisal needed for grant application for funds to acquire Sawmill Brook Conservation Land, Map R14 Lots 30 and 30F**
Ms. Greene informed the Commission that another appraisal will be undertaken in connection with this potential open space acquisition. The initial appraisal did not meet criteria for a state grant sought in connection with the acquisition. Also, the initial appraisal did not reflect a full understanding of the wetlands protection requirements associated with a roadway wetlands crossing that would be needed if the property were developed.
4. **Public Hearing: Notice of Intent (continued): 108 Turkey Hill Rd., Applicant: Ed Spalding, Re: Replace an existing septic system and driveway modification, DEP# 078-0757**
Consultant Greg Hochmuth said that the septic system had failed at this property, whose home had been built in 1924. Test pits had been dug in 2012 witnessed by the Town Health Agent. The test pit results do not expire unless Title V or the water table changes. The property is located near a public water supply on land with considerable ledge.

The proposed project, said Mr. Hochmuth, would keep the leaching field outside of the jurisdictional area and the system would be on the outskirts of the buffer zone, in the same place as it is now. The plumbing would remain basically the same. A combination tank with pressure distribution system will allow a smaller footprint and lower profile. A disused gravel road in the woods would be removed and seeded, and a shed would be removed. A bit more pavement would be installed to make a better turnaround area for the driveway. Erosion controls would be installed around the work area.

Mr. Hochmuth said that the project has a DEP number with no DEP comments and the Board of Health has approved the design. This is not an area of concern for the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage). Septic installation will wait 3-5 weeks, but the applicant would like to start demolition work as soon as possible.

A site walk was scheduled for March 19th at 8 am (and Ms. Greene may schedule a weekday site walk) and the matter was continued to the March 20 meeting.

5. Public Hearing: Request to Amend a final Order of Conditions (continued): 152 Middle Street, FKA 14 Kimball Road, Lot 1, Applicant: Maggie & Gordon Kent, Re: Driveway relocation, DEP# 078-0722

Mr. Hochmuth said that Natural Heritage reviewed the revised plan and requires the work to be conducted under their previously issued conditions requiring a turtle protection plan. Oxbow Associates has been engaged to manage the plan and install controls to exclude turtles from the work area. Erosion controls will be staked tomorrow. If the exclusion controls are in place before March 15 (when turtles become active) there will be no need to sweep the work area for turtles. The location of the proposed garage and driveway have been slightly modified, which has reduced the erosion control area by about 1300 sq ft.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to amend the final Order of Conditions to substitute the plan dated February 8, 2023 as the approved plan, with all other conditions remaining the same.

6. Public Hearing: Notice of Intent: 14 Turkey Hill Road, Applicant: Alyson & Kenneth Dell Isola, Re: Replacement of an existing septic system, DEP# 078-0758

Mr. Hochmuth said that the house on this property was built in 1980 but the property has had several failed septic systems, including the one now proposed for replacement. He said that the property has extensive bordering vegetated wetlands feeding into a public water supply and considerable ledge. The proposal is to remove the current system (located in the one viable spot), bring in new masonry sand and install a Presby system. The leach field will be moved so that only a sliver is in the 100' buffer. The property is not in a Natural Heritage area of concern and DEP had no comments.

A site walk was scheduled for March 19th after the first site walk (and Ms. Greene may schedule a weekday site walk) and the matter was continued to the March 20 meeting.

7. Public Meeting: Request for Determination of Applicability: 13 Meetinghouse Hill Road, Applicant: New England Colonial Properties, Inc., William Holmes, Re: Replacement of an existing septic system

Consultant Bill Manuell said that the project for this property is a septic repair designed by Jim Scanlan. The design has received Board of Health approval. The property is a 7-acre parcel with significant wetlands. The septic work would occur in the front yard about 70' from the wetlands. It would be a gravity Presby system.

Mr. Manuell said that he marked what he described as a non-jurisdictional wetland, essentially a small puddle, which is about 60' from the proposed work. Erosion controls would be placed around the area of work, which is a compact area near the house. He also said that the client became carried away with maintaining the underbrush, having weed whacked blackberries and other smaller vegetation within the 100' buffer zone and wetlands without engaging in tree cutting or grading.

A site walk was scheduled for March 19th at 9:15 am (and Ms. Greene may schedule a weekday site walk) and the matter was continued to the March 20 meeting.

8. Public Hearing: Request to Amend a final Order of Conditions: Pentucket Regional High School 22-24 Main Street, Applicant: W.T. Rich Company, Re: Change to stormwater structures and long-term pollution prevention plan, DEP# 078-0710

Kyle Leone, construction manager for WT Rich Company, Inc. at the Pentucket Regional High School, said that the applicant is proposing to install a new drainage structure for under field drainage of the baseball field using a flared pipe end with a riprap apron. The entire drainage structure and apron have been pulled out of the 25' natural vegetation zone which is the project's limit of work line. The amendment is in response to an enforcement order concerning siltation flows into a stream and then the Merrimack River. Nitsch Engineering, the original engineers for the project, were brought in and developed the plan intended to address the concerns. The revisions will manage drainage for a portion of the field—the rest is managed by other stormwater systems under the parking lot for the high school. Additionally, as required under the enforcement order, the applicant submitted a revised storm water pollution prevention plan (SWPPP) via email and had just provided a hard copy.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to amend the final Order of Conditions to substitute the new SWPPP dated February 27, 2023 and the plan dated February 2, 2023 with the new concrete flare and rip rap apron as the approved plan for drainage in this area, with all other conditions remaining the same.

9. Enforcement Order Update: 24 Main Street – PRSD, Re: Siltation into intermittent stream, DEP# 078-0701

Mr. Leone said that the enforcement order resulted from an existing but unknown drainage system in the old field which was later determined to have been a perimeter drain which had been permitted to manage drainage of the field. The contractor has since plugged the old perimeter drain and has incorporated measures to address the runoff coming from the filled area for the baseball field, including constructing a new earthen berm, check dams, and a basin to hold water. Engineer Michelle Callahan of Nitsch Engineering said that now they are proposing to accelerate storm water management work that had been planned all along, including removing 2 existing catch basins near the roadway between the Middle and High Schools that passes over the stream and adding the 2 new catch basins connected to a water quality structure, to also be installed, which was designed for final site conditions and is shown on the approved plans. This work should take about 2 weeks. It was explained that the discharge that occurred last Thursday took place before the new sediment basin was installed today. According to the applicant's representatives, the problems will go away once the area is vegetated.

The Commission agreed to amend the enforcement order to incorporate the plans the applicant has proposed.

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

Ms. Greene said that consultant Tom Hughes told her that she would receive the restoration plan due on March 6 today, but she did not receive it. After consulting with Ms. Mizner, she said that he would be given until tomorrow and should come to the March 20 Commission meeting.

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

Ms. Greene said that consultant Tom Hughes told her that she would receive the restoration plan due on March 6 today, but she did not receive it. After consulting with Ms. Mizner, she said that he would be given until tomorrow and should come to the March 20 Commission meeting.

12. 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

Ms. Greene said she would provide an update at the next Commission meeting, after a planned meeting with the Harbormaster.

13. Discussion (continued): Conservation Agent staffing draft job description

Ms. Greene had made suggested revisions and circulated them to the Commission, and Ms. Mizner had minor edits. *Ms. Greene will send the revised version to the Town Manager.*

14. Discussion (continued): Attorney General determination regarding site visits

Ms. Mizner said that she has not found other opinions addressing the question of open meeting requirements applying or not when a quorum of Commission members attends a site walk together. She raised the issue at Massachusetts Association of Conservation Commissioners (MACC) workshops and at 2 sessions was told that open meeting requirements would not apply. She will raise the issue with the MACC help desk. In the meantime, the Commission will break up participation together at site walks to avoid a quorum.

15. Wetlands Bylaw Discussion: Review draft bylaw ahead of presentation to Select Board and Financial Committee for placement on Spring 2023 Town Meeting Warrant

The Commission conducted a detailed review of the language of the proposed draft bylaws. Among other things

- Mr. Parrott raised concerns that some minimum size should be established to define ponds—otherwise a small puddle could be implicated. *It was agreed that the minimum size of a pond would be 1000 sq ft.*
- Ms. Hawkins suggested that the Concord bylaws were easier to follow in part because they did not require so many cross-references to parse a section, but rather offered more direct statements.
- Ms. Greene offered a number of matters to be clarified, such as
 - Distinctions between land adjoining an intermittent stream as a 100' buffer zone rather than being a separate resource area
 - Situations that in her experience make it difficult to determine abutter notifications, particularly linear projects, underwater projects, and project proposed on very large properties
 - Abutter notifications for ANRAD vs RDA
 - Applicability of certain provisions to various types of orders, conditions, and other issuances by the Commission or the state

The Commission reviewed some comments on the proposed bylaws. Many restated positions taken when the bylaw was proposed before.

Ms. Mizner committed to make revisions resulting from this discussion and circulate the document so that Commission members could send comments to Ms. Greene, who would forward them to Ms. Mizner so that a new version could be available to the Select Board for its March 13 meeting. The Commission adopted a schedule for bylaws consideration:

- *March 20, 2023 Commission meeting: further consideration of the bylaws based on feedback*
- *March 27, 2023: Commission presentation of bylaw to Select Board*
- *March 29, 2023 7:30 pm Town Annex: public hearing on the bylaws*
- *April 3, 2023 Commission meeting: further consideration of the bylaws based on feedback*
- *April 10, 2023 7:30 pm Town Annex: public hearing on the bylaws if needed*

The Commission decided to review the executive summary of the bylaws at its next meeting on March 20.

16. Other Business: Insignificant change to conditions at 13 Turkey Hill Rd, DEP #078-0750

Alejandra Chandler, the new homeowner, said that she would like to revise provisions governing a fence around her yard, which would be installed after April 15. The Commission advised that the fence cannot be located in the wetland. *Ms. Chandler will send the Commission a revised plan for the fence.*

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to allow an insignificant change permitting extension of the fence around the property, in accordance with the approved plan, including a change from post and rail to chain link, with all other conditions remaining the same.

17. Old Business:

18. Informal Discussion:

19. Community Input:

Mr. and Mrs. Courtemanche, who bought 119 Middle Street (AKA 0 Middle St Map R8 Lot 6E), said that they plan to build a house and wanted to introduce themselves to the Commission, since the property contains wetlands. Ms. Greene provided a standing offer to discuss the plans.

20. Approval of Minutes: August 15, 2022

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the minutes of August 15, 2022 as revised.

21. Approval of Minutes: September 8, 2022

Ms. Mizner moved, Mr. Preble seconded, and the Commission (with Ms. Hawkins abstaining) voted unanimously to approve the minutes of September 8, 2022 as revised.

22. Approval of Minutes: February 22, 2023

Deferred.

23. Correspondence:

24. DEP Comments:

25. Land Agent Update: Article for 2023 Spring Town Meeting for professional invasive plant management

26. Commission Representative to Open Space Update:

27. **Next Meeting:** March 20, 2023

Adjournment 10:14 pm

Meeting Documents

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

Respectfully submitted