

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, July 10, 2023, Second Floor Town Offices.

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

1. Appointment of Chair

Mr. Preble moved, Mr. Parrott seconded, and the Commission voted unanimously to appoint Ms. Hawkins Chair of the Commission.

2. Appointment of Vice Chair

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to appoint Mr. Preble Vice Chair (responsible for chairing meetings in Ms. Hawkins' absence) of the Commission.

3. Appointment of Clerk

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to appoint Mr. Parrott Clerk (responsible for taking minutes in Ms. Grammer's absence) of the Commission.

4. Appointment of Conservation Commission Representative to CPC Committee

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to appoint Mr. Haley as the Commission's Community Preservation Committee representative (responsible for participating in CPC meetings usually the 4th Thursday of the month when items are pending before the CPC).

5. 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.

No discussion

6. Public Hearing: Notice of Intent (continued): 0 Main Street, Parcel R-2, 35, Applicant: Town of West Newbury, Re: Installation of a pond leveler and spillway guard, DEP# 078-0763

Health Agent Paul Sevigny appeared on behalf of the Town and abutter Sandra Raymond participated by phone. Ms. Raymond said that she reached Dave Wattles of Mass. Fish & Wildlife who, she said, seemed to be under the impression that the Town-owned Macey Pond adjacent to her property had been constantly reoccupied by beavers. She said that Mr. Wattles told her that a pond leveler such as proposed by the Town is appropriate when beavers are constantly reoccupying the area on a regular basis. Otherwise, she said, Mr. Wattles indicated that trapping the beavers and breaching the dam is the thing to do.

Mr. Sevigny said that he had been in contact with Mr. Wattles as well and understood him to say that either using a pond leveler or breaching the dam would be suitable. Mr. Sevigny noted that the Town was attempting to respond to Ms. Raymond's concerns and had determined that filing this Notice of Intent and investing in the pond leveler and spillway guard (which prevent the water level from rising) was the best way to do that in keeping with restrictions on beaver management, which limit trapping to certain seasons unless a public health emergency has been established. He also noted the difficulty of trapping and dispatching beavers on Route 113 across from the school as trapped beavers can't be relocated. He asked that the Commission make a decision and either deny or approve an Order of Conditions, knowing that Ms.

Raymond has said she will appeal an Order which approves the Town's proposal.

Ms. Raymond then said that she would appeal the pond leveler, repeating her position that the natural water level is lower than what is shown on the 1972 plot plan for the lot where her house was later built. Mr. Sevigny said that it would be useful to have another state agency weigh in on the issue which would be MA DEP if Ms. Raymond files a appeal.

In response to Ms. Hawkins' inquiry about the beavers' coming and going, Ms. Raymond said that it is obvious when beavers are present. According to Ms. Raymond, their last presence at Macey Pond was in 2001 and 2005. They moved in during the summer of 2022, she said. The Town was authorized to breach and trap in December 2022, but in her opinion the job was not completed as at least one beaver remained.

Ms. Greene pointed out that the question before the Commission is what impact would the pond leveler have on protected wetland resources and not a question of determining the beaver population at Macey Pond.

Ms. Raymond asked what the Commission was doing about Mass. DOT, which was supposed to come back to remedy the contractor's excessive culvert clearing, which had destabilized part of the banking between the concrete spillway and the culvert. Ms. Greene explained that no additional Mass. DOT filing is needed because they are replacing the bank in kind under an emergency Certificate of Conditions. The Commission has not issued an enforcement order because Mass. DOT has been responsive to the Commission and is working with the contractor to schedule the work to stabilize the bank.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to close the public hearing.

Ms. Hawkins moved to issue an Order of Conditions for the Town's proposal, on the conditions that the applicant 1) maintain the pond at the 1972 level, with the pipe installed so that the top of the pipe is flush with the concrete spillway, 2) adopt and implement a maintenance plan with twice yearly inspection and repairs as needed, 3) install the new fixtures by hand, with no heavy equipment on the bank or in the pond.

Ms. Greene noted that to protect animals hibernating in the mud in winter, installation (which in the case of the spillway guard awaits completion of the DOT work) should not occur between the end of September to April 1.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve the Town's proposal with the conditions listed additionally and with the additional condition that no installation will occur between the end of September and April 1.

7. Public Hearing: Notice of Intent (continued): 13 Robin Road, Applicant: Stephen & Allyson Dalgar, Re: Replacement septic system, DEP# 078-0xxx

Consultant Bob Grasso said that this project has been given DEP #078-0764. He said that this proposal is to replace a failed septic system for a four-bedroom dwelling. The site has saturated soils, a water line, a gas line, and underground power and cable lines. The plan is to replace the old system with a Presby system, which can be smaller, 2'6" above the current level. He added that erosion controls would include a 12" silt sock and trees on the property would be untouched.

Mr. Haley noted that various waivers had been granted by the Board of Health in connection with this project

and asked whether this would have impacts for the homeowners. Mr. Grasso said that to allay such concerns, a poly liner would surround the system.

The Commission expressed interest in conducting a site walk. Mr. Grasso offered the opinion that in cases like this, where the property owner is making things better with a new septic system, the site walk serves only to delay the process. Mr. Parrott noted that in this case, the work is quite close to the resource area.

A site visit was scheduled for July 12 at 5 p.m. and it was noted that Commissioners could also get a good feel for the site by driving by. The matter was continued to the July 24 meeting.

8. Public Meeting: Request for Determination of Applicability: 2 Avon Lane, Applicant: James & Janet Thibeau, Re: Replacement septic system.

Consultant Bob Grasso said that the proposal is to replace a failed septic system for a 3-bedroom home built in 1985. The replacement would have a combination septic and pump chamber and would be a conventional size, with the new grade 2'7" above the existing grade. The Board of Health approved the plan and the work would be in a grassy area.

Ms. Greene said that she visited the property and noted that all the work would be done in an area currently maintained as lawn, be separated from the wetlands by the existing house, garage, and driveway, and that the lot is level.

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue a Negative Determination of Applicability conditioned on requirements that the applicant 1) install erosion controls and obtain Conservation Agent inspection and approval prior to commencement of work; 2) provide the Agent a construction schedule 72 hours prior to the start of work; 3) stockpile any materials inside the work area; 4) loam and seed the work area after the installation is complete.

**9. Public Meeting: Request for Determination of Applicability: 0 Moulton Street, Parcel R17 6A, Applicant: Wayne Amaral, City of Newburyport Director of Public Services, Re: Soil borings
Please note that this was withdrawn after advertisement of the public meeting ran in the Newburyport Daily News and no meeting will be held on this item.**

10. Insignificant Change Request: 18 Norino Drive, Applicant: David Miller, Re: Trench underground electrical conduit, DEP# 78-667

Homeowner Dave Miller said that this proposal is to dig a small trench for an underground conduit for low voltage wiring as part of his tramway system down to the Merrimack River. He said that after the tram was installed, the state elevator inspector said that the low voltage wiring needed to be underground. The work would involve hand digging an approximately 8' long 12" deep trench, putting in the wires, and filling it back in. No soil would be stockpiled and no erosion controls are contemplated. This would take a day or so at most.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve the insignificant change request on the condition that the trench be dug by hand.

11. Request for Certificate of Compliance: 9 Twig Rush Lane, DEP# 78-222

Former homeowner Jonathan Webber, who had recently sold this property, appeared before the Commission. Ms. Greene said that this DEP number concerns an underground propane tank whose original

Order of Conditions required perpetual testing of cathodic protections and an annual report to the Commission. She has found no records of the testing and reports but the underground tank passed all tests conducted by Eastern Propane last week. She said that if the Commission wants to pursue this as a perpetual condition, the new homeowner will have to be notified, adding that it would be quite time-consuming for the Conservation Agent to enforce this requirement and it is not the Commission's current practice to impose this requirement on other properties with underground propane tanks. The propane provider routinely does the tank inspection. Alternatively, the Commission could remove the requirement for perpetually reporting of the testing when it issues a Certificate of Compliance.

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue a Certificate of Compliance with the requirement for reporting on propane tank testing removed.

12. Request for Certificate of Compliance: 9 Twig Rush Lane, DEP# 78-102

Former homeowner Jonathan Webber, who had recently sold this property, appeared before the Commission. Ms. Greene said that this DEP number concerns infrastructure (the roadway) for the Twig Rush development, whose Order of Conditions encumbers this lot. Ms. Greene said that the roadway is in order.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a Partial Certificate of Compliance to release 9 Twig Rush Lane from the Order for the roadway/ infrastructure for the entire development.

13. Request for Certificate of Compliance: 9 Twig Rush Lane, DEP# 78-397

Former homeowner Jonathan Webber, who had recently sold this property, appeared before the Commission. Ms. Greene said that this DEP number concerns an open space area with a path to the river for the Home Owners Association (HOA) in the Twig Rush development, whose Order of Conditions also applies to the entire development. Ms. Greene said that there is an ongoing situation in this respect. The Order of Conditions allows mowing of the open space field once a year to a height not less than 6". The HOA is mowing the entire field (not just the pathway) more frequently and at shorter grass heights than is authorized.

Mr. Parrott questioned issuing a Certificate of Compliance when the HOA is not in compliance. Ms. Greene noted that other properties remain subject to the requirements and the question is being pursued with the president of the HOA.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted 3-1-0 (Mr. Parrott voting no) to issue a Partial Certificate of Compliance to release 9 Twig Rush Lane from the Order of Conditions for the open space area and pathway for the Twig Rush HOA.

14. Request for Certificate of Compliance: 9 Twig Rush Lane, DEP# 78-685

Former homeowner Jonathan Webber, who had recently sold this property, appeared before the Commission. Ms. Greene said that this DEP number concerns a common dock and its pathway for which the HOA is trying to get an as-built plan for and request a Certificate of Compliance. The same mowing conditions apply in this case and this matter also involves unauthorized kayak racks at the riverbank. She said that these issues are also being worked on with the president of the HOA.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a Partial Certificate of Compliance

to release 9 Twig Rush Lane from the Order of Conditions for the common dock for the Twig Rush Dock Association.

15. Discussion: 22-24 Main Street – PRSD, Re: Amount and location of conservation boundary posts and placards, DEP# 078-0701

Kyle Leone and Matt Waltermire of WT Rich said that the Groveland Conservation Commission allowed 100' spacing between the required conservation boundary posts. They proposed that the West Newbury Commission change its requirement from every 20' to every 100'. The Commission noted that the areas of concern are where heavy foot traffic can be expected along the golfcart path, especially near the stream. The intent, said Ms. Greene, is to prevent unauthorized clearing and landscaping encroachment. The Commission said that the goal is to have a clear site line from one post to another.

Mr. Leone and Mr. Waltermire suggested locations on the plan. *The Commission was receptive to an insignificant change request, saying that they can look at the changed plan and act at the next meeting.*

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

Mr. Leone and Mr. Waltermire said that two temporary retention basins have been removed and large amounts of raw earth have been landscaped. Some discharge is still occurring. Project architect Brad Dore interceded, saying that these stormwater issues are a construction issue, and long-term stormwater management is under his umbrella. He repeated several times his opinion, although he is not an engineer but has observed the area in wet conditions, that the silt is so fine that it defies containment as it seeps from the toe of the slope near the stream—and they “can’t do much more.” He said that since the problems arose two months ago and they have, in his opinion, done a decent job of trying to mitigate the issues. Ms. Greene pointed out that it has been more than two months noting that the violations have been an issue since December. Mr. Dore expressed the view that problems will diminish or cease once the landscaping is fully in place.

Ms. Greene observed that the site needs to meet performance standards of no discharges and those responsible will need to put a solution into play. She added that the site has hydrology issues that need to be understood. She said that many solutions have been undertaken since December but discharges are still occurring in every big rainstorm. She emphasized the importance of getting a full engineering investigation done to understand the hydrology of the site.

Mr. Dore again said that he was not sure what more could be accomplished. He agreed that the engineers should investigate and report on the site hydrology, looking at what can be done. Ms. Hawkins said she would like to understand the groundwater situation better. Mr. Dore said that if water only—with no silt—passes into the stream, that is what should be occurring and is acceptable. Ms. Greene expressed concern about a potential slope failure into the stream caused by groundwater flows.

Ms. Greene also said that she has asked many times about the silt fence very close to the stream. It has about an 18” buildup of stone, straw matting, and other materials pressing against it and it is bulging toward the stream. Mr. Leone and Mr. Waltermire said that the silt fence is reinforced with wire. Ms. Greene repeated that she has asked about this several times and is concerned that with all the rain, there is a high likelihood that the silt fence will fail, sending all that material into the stream. Mr. Leone and Mr. Waltermire said that they would take care of this immediately, removing by hand the debris against the silt fence.

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

Consultant Tom Hughes noted that a site walk with Commissioners occurred and it was seen that while trees were cut, the debris was not piled onto the wetland and that it now provides shelter and habitat for animals. Thus, he said, it is not worth the disruption to remove the tree cuttings except for the trees that fell onto the neighbor's property as they have requested that this be done. To access and remove debris on the neighbor's land, Mr. Hughes is proposing to install a metal plate (with protective haybales) over the swale that runs along Illsley Hill Road so that equipment can be driven in to cut and remove that material. They would use the same route to bring in and plant 6 red oaks and 6 shagbark hickories, which will be at least 6' tall. Invasive plants on the route would be cut and run over in this process. Once the new trees are planted, an area around each tree will be weed wacked to keep the invasives down and give the new trees a head start to establish. Red osier dogwood bushes will be planted to mitigate for any damage cause by the access route and they will pull out the plates and the haybales as the job ends. The planting will take place in September since no watering plan is in place. The homeowner may also have some downed trees outside the buffer zone removed by someone who would like this wood.

Mr. Hughes said that the plantings will be monitored in the following spring and the spring after, with replacement of any plants that did not survive, and the applicant will update the Commission and then the applicant will send the Commission a final report.

Ms. Greene confirmed that the site is stable and vegetated. Invasive plants are present.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to amend the enforcement order to accept the restoration plan as proposed.

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

Consultant Tom Hughes noted that a site walk with Commissioners occurred and it was seen that the biomass on site is intact. Many of the cut trees are now are sprouting multiple stems and the plan originally proposed would plant 24 native saplings and 18 native shrubs. Since there is now a dead ash at the back of the property in close proximity to where the house will be built, the applicant would like to amend the plan to remove the ash and plant 3 more native saplings in its stead. Also, the applicant would like to trim a willow bush that is encroaching over the roadway. The planting will take place in September since no watering plan is in place.

Mr. Hughes said that the plantings will be monitored in the following spring and the spring after, with replacement of any plants that did not survive, and the applicant will update the Commission and then the applicant will send the Commission a final report.

Ms. Greene said that she views this as a good plan. The Commission would want to consider the ash tree removal and additional 3 saplings and the willow trimming as an insignificant change request to the Order of Conditions for the project.

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to approve an insignificant change to the plan to allow removal of the dead ash tree, planting of 3 replacement saplings, and trimming of the willow.

Ms. Hawkins moved, Mr. Parrott seconded, and the Commission voted unanimously to amend the enforcement order to accept

the revised restoration plan as discussed.

19. Enforcement Order Update: 7 Worthy Lane, Re: Unpermitted clearing in 200' river front area, 100' buffer zone, and NHESP mapped priority habitat

Consultant Bob Prokop appeared with homeowner Andrew Simon. Mr. Prokop noted that the undergrowth has come back strongly after the trees were cut and said that the applicant was proposing a restoration plan to remove some of the wood chips and plant 4 river birch and 4 gray birch saplings.

Mr. Prokop said that although not expressly stated in the plan, the intent is to plant saplings at least 6' tall and to monitor the plantings in the following spring and the spring after, with replacement of any plants that did not survive, and the applicant will update the Commission and then the applicant will send the Commission a final report. He will revise the plan to include the monitoring schedule and height of the proposed saplings.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to amend the enforcement order to include the restoration plan, which will be revised to include the 6' sapling size and the monitoring plan.

Mr. Simon had several other questions

- His property has 10-15 dead ash trees—is it worthwhile to remove them and replace them with other trees? The Commission advised that a separate filing (a less involved Request for Determination of Applicability) would need to be made.
- If he wanted to build a dock, what would be involved? That would require a more involved review and a Notice of Intent would need to be filed with the Commission.

20. Enforcement Order Update: 35 River Road, Re: Unpermitted clearing in 200' river front area, 100' buffer zone, and NHESP mapped priority habitat

Consultant Bob Prokop appeared and said that homeowner Christopher Campbell had removed the woodchips which were spread in the riverfront area where trees were cut. Mr. Prokop noted that the undergrowth has come back strongly after the trees were cut and said that the applicant was proposing a restoration plan to plant 2 river birch and 2 gray birch saplings.

Mr. Prokop said that although not expressly stated in the plan, the intent is to plant saplings at least 6' tall and to monitor the plantings in the following spring and the spring after, with replacement of any plants that did not survive, and the applicant will update the Commission and then the applicant will send the Commission a final report. He will revise the plan to include the monitoring schedule and height of the proposed saplings.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to amend the enforcement order to include the restoration plan, which will be revised to include the 6' sapling size and the monitoring plan.

21. 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

22. Discussion (continued): Attorney General determination regarding site visit

Ms. Greene will follow up with legal counsel for MACC to try to obtain a more definitive answer to applicability of the Open

Meeting Law to Commission site visits.

23. Discussion (continued): Pumping in wetlands adjacent to Indian Hill Reservoir, DEP# 78-0445

Ms. Greene observed that the Commission had permitted the pumping—the issue is that the authorization stipulated an automatic pumping trigger when certain water levels were exceeded and now the pumping is being done on a case-by-case basis triggered by visual clues of the water height. She noted that Newburyport is expected to be making a more substantial filing before the Commission and that this issue can be addressed at that time.

24. Discussion: Conservation Commission approval to hold a Conservation Restriction on the Sawmill Brook/Austin Property if LAND Grant is not awarded for Greenbelt's Conservation Partnership Grant application

Ms. Greene explained that two grants are being sought to help cover costs of the Sawmill Brook open space acquisition: 1) a LAND grant application by the Town (which necessitates land ownership by the Town and a Conservation Restriction (CR) held by Greenbelt) and 2) a Partnership grant submitted by Greenbelt (which necessitates land ownership by Greenbelt and a CR held by the Town). Since the CR cannot be held by the landowner, Greenbelt's grant application (to be used in case the Town's LAND application is not awarded) needs to document that the Conservation Commission is willing to hold the CR if Greenbelt's grant is used.

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to agree to hold the CR if Greenbelt's Partnership grant is used to acquire the Sawmill Brook property.

25. Discussion: Potential scheduling of a special meeting date with Selectboard

Ms. Greene noted that the Town Manager and the Select Board are interested in seeing changes in certain Commission operations to, for instance, streamline Commission decisionmaking and establish that the Town Manager is the Conservation Agent's direct supervisor. Ms. Hawkins noted that she and Ms. Greene had met with the Town Manager and Select Board Chair Wendy Reed. Ms. Greene indicated that a direct meeting between the Commission and the Select Board would be better than having Ms. Greene try to act as go-between in communications between the Select Board and the Commission. *Ms. Greene will propose a meeting date of Thursday, July 27th after 4 pm.*

26. Wetlands Bylaw Discussion:

Ms. Hawkins discussed a revised draft of the bylaws, which she shared with the Commission members. She explained that she had converted a number of long sentences into more user-friendly bullet points and had followed Concord's example by, for instance, framing the provisions more positively, saying that clearer language about activities for which landowners could attain waivers if they complied with various provisions. Ms. Greene said that now the Select Board seems to have reversed its position and favors a wetlands bylaw because it would help gain the town points on certain grant applications. *The Commission will look at the revised draft and discuss it at the next meeting.*

27. Other Business:

87 Main Street Certificate of Compliance Prospective homebuyer Sameer Reddy Alapati (who is interested in purchasing a property at Lot #3 of what had been 87 Main Street and is now 95 Main Street) said that his attorney notified him that the property's title is not clear because there is an open Order of Conditions. It was explained that the builder Rob Johnson needs to obtain a Certificate of Compliance and still needs to install wetlands markers to satisfy one of the special conditions of the Order.

Ms. Greene said that Mr. Johnson is proposing that instead of using the 4”x 4” x 8’ pressure treated posts the Commission ordered, he would like to use a metal spike system. Mr. Haley said that the spike system offers a variety of metal and corrosion protections. The literature also states it has limitation son resisting lateral wind load and rotational loads which could affect longevity of the posts if installed using the spikes.

The Commission determined that it will maintain the post requirements as written in the Order of Conditions.

In response to Mr. Alapati’s query whether a deadline applies to Mr. Johnson’s obtaining a Certificate of Compliance, it was explained that currently there is a cloud on the title that inhibits sale of the property. This creates a financial incentive for the builder to obtain the Certificate but that there is no deadline.

Ms. Greene reported that the stormwater issues at the site appear to be satisfactorily resolved.

MACC Training Mr. Haley is on the waitlist for upcoming MAC training on the new MA DEP Delineation Manual.

Commission Meeting Time Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to change the Commission’s regular meeting time to 7 p.m., starting with the July 24th meeting.

28. Informal Discussion:

None

29. Approval of Minutes: May 3, 2023

Deferred

30. Approval of Minutes: May 15, 2023

Deferred

31. Approval of Minutes: June 5, 2023

Deferred

32. Approval of Minutes: June 20, 2023

Deferred

33. Correspondence:

None

34. DEP Comments:

None

35. Land Agent Update:

Ms. Greene said that the Town will be submitting a Notice of Intent for professional invasive plant management on some Town properties. She will be providing the Commission copies of the approved proposal for this, and hopes that the Commission will be able to close the matter out in one meeting so that work can commence. The areas do not have wetlands flags, but she will be closely supervising this effort,

identifying resource areas before work starts.

36. Commission Representative to Open Space Update: Update on professional invasive plant management on town owned land contract

No update.

37. Next Meeting: July 24, 2023

Please note that in July 2023 the Commission will meet on the 2nd and 4th Monday

Adjournment 11:10 pm

Meeting Documents

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

Respectfully submitted