

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, March 20, 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 (continued): 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 she had discussed this matter with the Town Manager who consulted with KP Law. KP Law indicated that if Essex County Greenbelt takes ownership of the property, under the conservation restriction it will be obligated to open the land to the public and ensure that it is maintained in accordance with the restriction. This, in KP Law's opinion, makes the stewardship agreement between the Conservation Commission and Greenbelt unnecessary. Ms. Greene noted that this would mean that Greenbelt would no longer be responsible for building and maintaining trails. She said that she raised this with Vanessa Johnson-Hall at Greenbelt and Ms. Johnson-Hall asserted that Greenbelt was never under a mandate to build and maintain the trails. *Ms. Mizner will look into this.*

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

Consultant Bill Manuell said that minor changes are proposed but no changes would involve impacts to wetland areas. The project received Board of Health approval and the applicant is seeking a negative determination. He said that the trucks and machinery for the work would come in over the driveway and that because materials would be brought in as needed, there should not be a need for stockpiling.

Ms. Mizner moved, Ms. Hawkins 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) dispose of waste materials offsite; 4) surround any stockpile(s) outside the driveway with erosion controls.

Ms. Greene also reported that significant disturbance had taken place in the wetland and buffer zone. She issued an enforcement order requiring the owner to: 1) cease and desist unpermitted clearing; 2) submit restoration plans to the Commission by April 13, 2023; 3) complete restoration within the deadline the Commission established; and 4) install posts marking no disturb areas. In response to Mr. Parrot's query whether posts would be sufficient, Ms. Greene noted that the revegetation plan will also include shrubs demarcating the 25' no disturb areas.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to ratify the enforcement order.

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 noted that a site walk took place yesterday regarding this project to replace the septic system, remove a second gravel driveway, remove a shed, and install additional asphalt on the remaining primary drive for a turnaround. He said that the project has Board of Health approval. In response to Ms. Mizner, Mr. Hochmuth explained that because a family member who has consented to this work shares the driveway being abandoned, no easement need be in place for the work to occur. When the property is about to be sold, an easement will be filed with the Registry of Deeds.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue an Order of Conditions with standard and special conditions, requiring that the applicant: 1) install erosion controls consisting of a silt fence backed by a mulch sock, which must be inspected and approved by the Conservation Agent prior to the beginning of work; 2) provide the Agent 72 hours' prior notice before commencing work; 3) dispose of gravel from the abandoned drive outside of the buffer zone and resource area; 5) be permitted to move the shed provided that any materials removed will be disposed of outside of the buffer zone or offsite.

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

Consultant Greg Hochmuth said that in response to yesterday's site walk, a flag was moved and this is shown on the revised plan, which also includes a note the Board of Health wanted about the proximate public water supply. He noted that some garden debris will be removed from the wetland and the owner will stop mowing beyond the wetland line.

Because the owner wants to continue mowing in the buffer zone near the driveway, Ms. Mizner said she would like to have post markers installed in that area delimiting the area for mowing. That area had not been shown as wetland in the 2007 plans for this site.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue an Order of Conditions with standard and special conditions, requiring that the applicant: 1) install erosion controls consisting of a 12" mulch sock, which must be inspected and approved by the Conservation Agent prior to the beginning of work; 2) provide the Agent 72 hours' prior notice before commencing work; 3) install 4' high x 4"x4" wetland demarcation posts at flags A3, A5, A6, and A 7; 4) remove debris from the wetland and dispose of it offsite; 5) install erosion controls at the inlet and outlet of the pvc pipe under the driveway; 6) avoid further disturbance in the wetland; 7) stockpile materials outside of the buffer zone.

6. Public Hearing: Notice of Intent: 8 Crescent Drive, Applicant: Kyle Nickerson, Re: replace and expand an existing deck and regrade, loam, and reseed an existing lawn, DEP# 078-0XXX

Consultant Greg Hochmuth said that this lot, which is under an acre, has a drainage easement at the back of the lot and an intermittent stream in the bordering vegetated wetlands. While the house is in satisfactory condition, the garage and deck are settling and the back of the garage wall is cracked. The homeowner does not want to address the garage now, but would like to replace and enlarge the deck. This, said Mr. Hochmuth, would require new sonotubes and erosion controls would be placed along the existing fence. Mr. Hochmuth explained that the proposed grading in back would involve spreading 3-4" of loam so that the area can be smoothed out and reseeded. As much as a foot would be added in front to make it flatter.

The Commission scheduled a site walk for April 2 at 8 a.m. and continued the matter to its April 3 meeting.

7. Insignificant Change Request: 181 River Road, Applicant: Nancy Pau & Albert Ting, Re: Removal of trees for utility connection to utility pole along River Road

Ms. Greene said that the Town Tree Warden Wayne Amaral determined that the trees to be cut to permit an electric line to a new house are not in the road right of way. Ms. Greene, Mr. Amaral, National Grid, and homeowners Nancy Pau (present at this meeting) and Albert Ting met to discuss what trees need cutting for the power line. The state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) said that to protect the eagles nesting at the property, the cutting should take place on or after May 15 and chipping should occur outside of a 330' buffer from the eagles' tree. Ms. Pau said that she would mark the buffer.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the insignificant change request with the conditions that: 1) work be done on or after May 15; 2) trees and debris be disposed of outside of the buffer zones; 3) the homeowner shall mark the eagles' buffer zone and obtain inspection and approval from the Conservation Agent prior to work; 4) trees to be removed are limited to a double trunked basswood tree and clearing of overarching limbs of an elm tree if possible but also allowing removal of the elm tree if necessary; and 5) chipping be done outside of the 330' eagle nest buffer zone.

8. Extension to Order of Conditions Request: ECTA Townwide Maintenance Plan, Applicant: Essex County Trails Association (ECTA), DEP# 078-0555

Consultant Michael DeRosa explained that ECTA is seeking to extend its trail maintenance plan and is willing to continue the relationship with the Town in using this plan for non-ECTA Town trail work. Ms. Mizner provided some background, noting that the plan sets standards for trail maintenance and still requires submissions to the Commission prior to wetlands-jurisdictional work. It avoids the need for repeated RDAs and waives certain fees for NOIs. In response to Ms. Greene's inquiry, if a boy scout did work under supervision of ECTA or the Town, the plan would cover that project.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to extend the Trail Maintenance Order of Conditions for three years through 9/02/2026.

9. Public Hearing: Notice of Intent: 40 Rogers Street, Applicant: Anne Fitzgerald, Re: Ecological Restoration Limited Project for invasive species management & the thinning or planting of vegetation to improve habitat value, DEP# 078-0XXX

Michael DeRosa explained that this project (which just received its DEP number) will remove invasive plants and replant native varieties. He said that the applicant requests waiver of engineered plans. The intent is to flag wetlands, take a hand-held surveying instrument, and put the wetlands lines on a google earth photo. A range of invasives has been inventoried, including buckthorn, multiflora rose, bittersweet, etc. These will be removed without using chemicals, using a mini excavator (with rubber tracks) that can grab and remove roots. No tree removal is planned, and native plants will be left in place. The area will be stabilized the same day and attractive native plants will be installed. The area will be monitored monthly for the first growing season, and for two years with annual reports. The owner is proposing this project because she is interested in the ecology on her land. Also, the native plantings will be colorful and attractive.

The Commission scheduled a site walk for April 2 at 8:45 a.m. and continued the matter to its April 3 meeting.

10. Certificate of Compliance Request: 95 River Road, DEP# 078-0587

Ms. Greene said that the project was a 2011 septic replacement and addition on a flat lot across from the river. The Order of Conditions had no specifics about the number or style of the required wetland markers

along the natural vegetation area. After consulting with Ms. Greene the landowner has installed 6 evenly spaced posts that are 4 foot high x 4" x 4"s affixed with Conservation Placards. This project was closed out with the Board of Health for the septic system. The whole site is well stabilized and there has been no disturbance in the wetland.

Based on Ms. Greene's site inspection, Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue a Certificate of Compliance for the Order of Conditions at 95 River Road.

11. Enforcement Order Update, Ratification of Amended Enforcement Order issued 3/14/2023, and Discussion of Potential Cease and Desist: 22-24 Main Street – PRSD, Re: Continuing siltation into intermittent stream, DEP# 078-0701

Ms. Greene recounted that last week before issuance of the enforcement order concerning the high school building site, which had been amended at the 3/6/2023 meeting, more discharges of silty material into the stream resulted from the storm on Tuesday 3/14/2023. Consultant Mary Rimmer said that at the baseball field both overland flows and seepage contribute to large flows with sediment.

Kyle Leone, construction manager for WT Rich Company, Inc. at the Pentucket Regional High School, said that they had constructed more sediment basins and have a 10,000-gallon weir tank onsite to help settle sediment out of the water. He said that water was pumped into retention basins as they tried to hold water so it would exit with less sediment. In accordance with the amended enforcement order they have hired engineering consultants, Epsilon Associates, to do an investigation of stormwater and how to manage it onsite.

Consultant Dave Klinch of Epsilon Associates said that he became involved very quickly. He has known Mary Rimmer for some time and grew up in the area. He spent several hours looking at the site and going upstream and downstream. A number of failures led to discharges but the site looked clear today. He will be looking to determine the sediment source for a specific area or road, how stormwater is handled, and the volume and nature of the retention basins. They may need more weir tanks to let sediment settle. The area has very fine-grained soil, so that some sediment will not settle for days. They may need to treat the water to remove sediment and may consider using a nontoxic flocculant. They will do an assessment of the site—where it is now, what has gone wrong, and what new measures can be taken. This has a quick timeframe, as the report is due to the Commission on March 27.

WT Rich representatives said that many solutions Mary Rimmer proposed have been completed. The berm height at the upper basin has been raised, the SWPPP was updated, straw matting has been extended on the sloped berm behind the tanks, and the old catch basins have been disconnected, now serving only as sumps. The silt fence has been repaired and made stronger, and the revisions to 4 catch basins have been completed.

Ms. Greene noted that there is another trouble spot, with discharges from a new midstream outlet which conveys stormwater from the parking lot of the high school. The consultants will monitor this. In response to Ms. Mizner's question about how to address underground seepage, Mr. Klinch said that there will be more involvement with the design team—this has to be examined holistically. He hopes to have this done by March 27.

Ms. Mizner moved, Mr. Preble seconded, and the Commission voted unanimously to ratify the amended enforcement order, which will be sent to both the Pentucket Regional School District and WT Rich.

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

Ms. Greene reported that Consultant Tom Hughes has completed the restoration plan now, and will be at the next meeting to address this.

13. 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 reported that Consultant Tom Hughes has completed the restoration plan now, and will be at the next meeting to address this.

14. 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 reported that the planned meeting with the Harbormaster about this issue has been rescheduled to this Thursday.

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

Deferred

16. Discussion: Pumping in wetlands adjacent to Indian Hill Reservoir, DEP# 78-0445

Ms. Greene said that she reviewed Commission records and found a 2003 file with an Order of Conditions allowing the City of Newburyport to put a new style pump into an existing catch basin in wetlands, allowing pumping of ponded water into the adjacent Indian Hill Reservoir. A Certificate of Compliance was issued in 2005 with ongoing conditions that wetlands hydrology must be monitored over 2 years, with reports submitted every 3 months to the Commission to ensure the pumping did not alter the hydrology of the wetlands. The Commission records contain no such reports and Newburyport says they have no records about this.

The Order of Conditions provided that pumping was allowed on an automated basis and the pump would turn on once the water levels of the wetlands reached a specified height and then automatically turn off once a specified volume of water was pumped. Now it seems that Newburyport goes out to the site, looks at the water level in relation to a certain rock, and starts and stops the pumping based on its observations. Mr. Parrott said that it would be good to understand if the pumping occurs on an automated basis, triggered by sensors monitoring water levels, or if it is manual. *Ms. Mizner will review the paperwork.*

Ms. Greene said that her concern relates to freezing out hibernating animals if the water levels drop. Ms. Pau, a biologist, said that many states have restrictions to protect hibernating frogs, reptiles, and amphibians by using a gauge to control pumping at preset levels.

17. Wetlands Bylaw Discussion:

Ms. Greene reported that the Select Board decided against putting the wetlands bylaw on the upcoming Town Meeting warrant. The view was that its wording was too legal and difficult to understand, and the Commission was urged not to use the Massachusetts Association of Conservation Commissions template.

Ms. Hawkins said that the Concord bylaw is easier to read. She agreed with Ms. Greene's suggestion to break

it down and change the layout. Having to stop and cross-reference definitions as you read through a sentence makes the text difficult to follow. Ms. Greene indicated that the bylaw had improved, with, for example, greater clarity of intermittent streams vs rivers. The suggestion to use bullet formatting instead of long strings of items was generally well received. Ms. Mizner said that this is a legal document that will need approval from the Attorney General and that the bylaw had been shortened compared to the version previously submitted. Mr. Haley noted that at the Select Board meeting, member Wendy Reed said that it would be good if the Commission could prioritize the several items requiring codification in a bylaw and encapsulate those items in an abbreviated form.

Ms. Greene added that there was some concern that the prior version of the bylaw had been removed from the warrant for the Spring 2022 meeting so that additional review and community outreach and feedback could occur, but then nothing happened until shortly before this upcoming Town Meeting. She asked if the Commission wanted to develop a timeline and perhaps raise the matter again at Fall Town Meeting. *Ms. Mizner will work on wordsmithing and reformatting with bullet points.*

18. Other Business:

Mr. Haley said that he had seen a postcard about the proposed Sawmill open space acquisition adjacent to Mill Pond, which said that the cost would be \$705K. He said that it was his understanding that another appraisal would be taking place, since the first one did not fully take into account the wetlands and was insufficient for state grant purposes. *Ms. Greene will check on this.*

19. Old Business:

20. Informal Discussion:

21. Community Input:

22. Approval of Minutes: February 22, 2023
Deferred

23. Approval of Minutes: March 6, 2023
Deferred

24. Correspondence:

25. DEP Comments: MassDEP release of updated Handbook for Delineation of Bordering Vegetated Wetlands and Inland Wetland Replacement Guidelines

Ms. Greene said that the new handbook is on the website and DEP will be hosting trainings. She will provide updates about this.

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

Ms. Greene reported that the Spring Town Meeting Warrant has an article to spend up to \$20K to supplement the program for interns to manage invasive plants on Town land with professional invasive species management services. They may need to use mechanical devices such as the mini excavator described earlier and perhaps even chemical means.

27. Commission Representative to Open Space Update:

Ms. Greene said that the Open Space Committee is considering a proposal to block off the dirt road at the end of Way to the River. A concern was raised that money from Fish & Wildlife may have been used for this open space acquisition, with the intent to parking for river access.

28. Next Meeting: April 3, 2023; meeting after falls on Patriots Day; instead date April 18

Adjournment 9:25pm

Meeting Documents

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

Respectfully submitted