

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place: 7:00 pm, August 8, 2023, Second Floor Town Offices.**

**Members Present:** Chair Molly Hawkins, Jack Haley, David Parrott, George Preble, 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): 45 Georgetown Road, Applicant: Gregory Bongo, Re: Construction of a garage and addition, DEP# 078-0765**

The applicant, Mr. Bongo, and wetland scientist Kristan Farr addressed the Commission.

Ms. Hawkins reported that the site visit had happened on August 2nd and that she had observed a very healthy stand of knotweed on the corner of the lot.

Ms. Farr explained that alternative locations and orientations of the garage had been considered, but that they would not comply with the town's zoning setbacks and were not able to apply for zoning relief due to lack of hardship at the site.

The commission asked for clarification on what mitigation alternatives had been considered. Mr. Bongo suggested that they could pull back the existing brick walkway and replace with shells or other pervious material. Mr. Farr offered the production of a more extensive mitigation plan with explicit tree and shrub species proposed for planting around the driveway in the area where the Japanese knotweed will be managed.

Mr. Haley asked for clarification of the size of the restoration area, as there were inconsistencies in the labels on the plan. Mr. Parrott also asked that the exact restoration area be clarified. Ms. Farr clarified that some part of what they considered to be a restoration area is where the driveway extension is planned to be installed.

The commission and applicant discussed the viability of counting the expansion of the driveway over the knotweed as restoration. They agreed to not count the installation of a gravel driveway as restoration, even if there was knotweed removal from that location, as the final state of the area would not be undisturbed. Ms. Greene clarified that the total restoration area will still be sufficient for the proposed work if the driveway is not counted toward restoration, as it will exceed a the 1:1 restoration ratio.

Ms. Hawkins clarified that the Commission would not be requiring wetland markers, as the wetlands and their 25' offset are beyond the property line. She asked how many trees would be removed and

if there were replacement plans. Mr. Bongo stated that only two trees, a cherry and an evergreen, would be removed. Ms. Greene asked for clarification as the site visit suggested that there may need to be more removed for the driveway area. Mr. Bongo clarified that there would only be two mature trees removed, but likely other shrubs and smaller trees. Ms. Farr explained that they were proposing to plant four trees and twenty-five shrubs as part of the mitigation plan.

Ms. Hawkins asked if the management plan would specify how many trees survive. Ms. Farr proposed that it might specify a 75% survival rate of plantings. Ms. Hawkins found that acceptable, and asked that the management plan specify that a minimum of 3 of 4 the trees and 20 of 25 the shrubs must survive at the end of two years in order to close out the Order with a Certificate of Compliance. She also asked if the brand of herbicide would be wetlands approved. Ms. Farr said they would either use Rodeo or Roundup. Ms. Greene asked if that should be conditioned or in the management plan. Ms. Hawkins suggested the management plan would be sufficient and asked how frequently monitoring would be reported to the commission. Ms. Greene clarified that the current plan called for monitoring, but was unclear on what was being reported and by whom. Ms. Farr proposed that annual reports be delivered at the end of each growing season and Ms. Greene asked her to ensure those details were added to the management plan.

Mr. Bongo asked what was in a monitoring report and Ms. Greene clarified that it would document how many plants are alive, how many herbicide applications were made, and other similar details. Mr. Bongo asked if he could develop and deliver these reports himself and Ms. Greene suggested that the important thing is that the reports were clear and that they satisfied the Commission that the work was being done appropriately.

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

Ms. Hawkins reminded the applicants that the commission generally conditions stop work over winter (October 15th through April 15th) and Ms. Greene clarified that they could entertain exceptions, but generally this was necessary. Ms. Farr asked if that would be necessary if it was a really cold winter and Ms. Greene clarified that the issue would be when spring arrives and there's no grass. Ms. Farr wondered if swamp mats or other physical stabilization could be mitigating alternatives and Ms. Greene said these were generally insufficient. Ms. Farr asked if framing could continue if the foundation was already in and Ms. Greene clarified that the stop work is only for earthwork, so framing and other above-ground construction work could continue as long as it did not impact the ground. Mr. Haley offered that stockpiles would also be an issue and need to be stabilized by October 15<sup>th</sup>. Ms. Farr asked if tarps or winter rye would be appropriate. Ms. Greene offered that winter rye or oats are good options, but that tarps could also be used.

*Ms. Hawkins moved, Mr. Preble seconded, and the motion passed unanimously to issue an Order of Conditions to be released pending receipt of a corrected plan which does not designate the driveway as a restoration area with the Standard Conditions and following Special Conditions: 1) Erosion control shall be installed by the applicant as shown*

on the plan and inspected by the Agent prior to the start of any work; 2) A construction schedule shall be submitted at least 72-hours prior to the start of any work; 3) The proposed pervious material to replace the brick walkway will be submitted to and approved by the Commission prior to its installation; 4) Any spoils or materials removed from site shall be disposed of outside of any resource area or buffer zone or lawfully offsite; 5) Any materials stockpiled in the buffer zone for longer than 24-hours shall be protected with erosion and sedimentation control; 6) Management of the Japanese knotweed shall be done under the supervision of a qualified wetlands scientist or restoration ecologist per the management plan, a copy of which shall be recorded with the Order of Condition; 7) Any herbicides used to treat Japanese knotweed shall be approved for use in wetlands; 8) Planting in the mitigation area shall be done per the planting plan in the invasive species management plan and any deviations in species shall be submitted to the WNCC for review and approval prior to planting; 9) Plantings shall be replaced as needed so that at the end of 2 growing seasons 3 out of the 4 and 20 out of the 25 trees survive; 10) Monitoring and reporting shall be done per the invasives species management plan with reports submitted to the WNCC at the end of each growing season for 2 years; 11) Pesticides, herbicides and insecticides shall not be used on site within 100' of a resource area with the exception of herbicide to be used per the invasive species management plan; 12) Perpetually only low-nitrogen fertilizer shall be used at the site in moderation; 13) The gravel driveway and the portion of the walkway being converted to pervious material shall perpetually remain pervious.

**3. 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**

*Applicant requests a continuance.*

**4. Public Meeting: Request for Determination of Applicability: 33 Daley Drive, Applicant: Karen Iorio, Re: Poison ivy management**

*Ms. Hawkins recused herself as an abutter and Mr. Preble assumed the role of Chair.*

Karen Iorio addressed the commission and explained that she was seeking to manage poison ivy between the wetlands posts and her garden in an effort to keep the poison ivy from spreading into the garden. She has already been working with a professional that removes the ivy manually or with hand-held tools but was unaware until recently that the work should be permitted.

Mr. Preble asked if there would be herbicides used and Ms. Iorio assured the commission that they would not. Ms. Greene asked what would be done with the removed ivy and Ms. Iorio said the contractor would dispose of it offsite and that they would be managing the area four times per year.

*Mr. Preble moved, Mr. Haley seconded and the motion passed 3-0-1 with Ms. Hawkins abstaining to issue a Negative Determination with the conditions that no herbicide shall be used and that all work shall be done outside the boundaries of the wetlands markers.*

**5. Public Hearing: Notice of Intent: 0 Middle Street, parcel R27-28, Artichoke River Woods, Applicant: Essex County Greenbelt, Re: Construction of a parking area and portion of trail, DEP# 078-07XX**

Mary and David Rimmer addressed the Commission.

Mr. Rimmer described the reason for the Notice of Intent. Greenbelt owns the 38-acre parcel on Middle Street which has a Conservation Restriction granted jointly to West Newbury, Newburyport, and DCR. They intend to install a 6-vehicle gravel parking area to support public access to the property. This is permitted per the Conservation Restriction, but all three Grantees of the Conservation Restriction need to approve of the work in writing before it can proceed in addition to needing an Order of Conditions to permit the work in close proximity to wetlands.

Ms. Greene suggested that the Commission should hold off closing the public meeting and issuing an Order of Conditions until after all Grantees have approved the parking area to avoid having to re-open a public hearing or amend an Order of Conditions that could result if adjustments are required to secure approval of the Grantees.

Mr. Rimmer emphasized that the funding of the property was done with the expectation of public access and that there is already a great trail network on the site. Ms. Rimmer explained that she had reviewed all flagged wetlands and the entire frontage of the property is jurisdictional, so there is not an alternative no-impact option. They explored the alternative of using a span, but it was not viable given the proximity of the wetlands to the existing road. However, they have identified the location of a moderately raised area, possibly the location of a former woods road, which passes over a failed culvert, which they could use for the parking lot crossing with minimal impact. Replacing the failed clay culvert is proposed to maintain the connectivity of the wetland on both sides of the crossing. The replacement culvert would be standard 12" RCP and the access way to the parking area would be a single lane with gravel shoulders to stabilize. The existing trail already comes through the proposed parking area, so it will match up without much disruption to the site. The plans propose 5 regular parking spots and 1 van-accessible spot, in addition to a space to turn around. There are plans for infiltration trenches, but as the parking lot will be permeable gravel, they won't have full control over stormwater. Some trees will need to be removed for the parking area, but they will minimize how many mature trees are impacted. Boulders will edge the parking area to prevent encroachment.

Mr. Preble asked if the boulders already on the site will be used. Ms. Rimmer affirmed that this would be common practice. Mr. Rimmer said that if any boulders turn up during excavation, they'll use those first. There are also existing boulder piles on-site that can be user, but he did not believe they would need very many.

Ms. Rimmer explained that they would start work with the culvert, so as to secure the wetland crossing and complete the impactful work quickly. Mr. Rimmer suggested that they plan on getting the project completed before October 15th. Ms. Hawkins asked if there would be any stockpiling of

materials. Mr. Rimmer confirmed that there would be no stockpiles over winter, that they'd either get it all done before October 15th or wait until the Spring to start.

Ms. Hawkins asked what the plans were for winter maintenance, once the site was completed. Mr. Rimmer clarified that they would plow the parking area, as is their standard practice for Greenbelt parking areas. The infiltration trenches will catch the snow melt around the parking area and they will be able to push snow back to turn around and to the sides. They might use a blower around the perimeter, if necessary. They do not use salt and rarely use sand. Mr. Rimmer suggested they would be happy to accept a continuing condition of no salt use on the site.

Ms. Hawkins asked if there was a maintenance plan for the infiltration trench. Ms. Rimmer said that they would basically just need to keep the leaves out and that it would be reasonable to condition regular maintenance. Mr. Rimmer clarified that there was not a lot of slope or runoff and so it shouldn't be a substantial issue. They do normal leaf pickup or blowing in the fall.

Ms. Hawkins asked about fertilizer use in the seeded areas. Ms. Rimmer suggested that there's not much that will need to be seeded and they won't need fertilizer for what they do seed. Mr. Rimmer suggested they might seed, but usually don't fertilize as general Greenbelt policy and would be happy to accept a condition of no fertilizer use.

Ms. Hawkins asked if heavy equipment would be used and how the limits of work would be established. Ms. Rimmer suggested they would stake out the limits of work before anything else was done, likely with construction fencing. Mr. Rimmer offered that there would likely be a single excavator with trucks taking away or delivering material. The site will likely get weed-trimmed once a month, as there's not a lot of lush grass that needs mowing due to the heavy shading of the site.

Ms. Hawkins asked if DPW had approved the culvert and Ms. Greene suggested that DPW should provide their approval of the culvert before the Commission issues an Order of Conditions in case DPW requires any changes or adjustments to what's proposed. Mr. Rimmer said they would file a request to place the culvert in the town right-of-way. Ms. Greene asked if it might make sense to install a larger culvert. Ms. Rimmer explained that the ditch was rather shallow at the crossing location, but that they could review the possibility of size and impact trade-offs. She emphasized that they are trying to avoid direct wetland filling, which would then require replication.

*Ms. Hawkins moved, Mr. Haley seconded, and the motion passed unanimously to indicate the Conservation Commission's approval of the parking area as a Grantee of the Conservation Restriction.*

The applicant requested a continuance of the public hearing for the Notice of Intent, pending the written approvals from other Conservation Restriction Grantees.

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

Ms. Greene gave the commission an update. She said that the site did remarkably poorly in today's heavy rain. The contractor said that they had done everything requested. The inspection on Friday showed the site was not in compliance. Videos of the run-off show significant siltation. There were possible flooding concerns because of how water filters into the driveway (it being the low spot). Parallel to the National Grid access road, the grading has created a swale that conducts all water to the stone apron for the baseball field drainage where it causes a breach and ultimately a discharge into the intermittent stream and wetlands. Ms. Greene again was asked to let it be and given assurances that once the site is stabilized it will be fine.

Ms. Greene also commented that all of West Newbury looked pretty bad everywhere, given how much rain had fallen. The most interesting runoff was from the football field on the Groveland side of the site. Substantial runoff was observed sheeting across the football field, across recently loamed areas, and then across the driveway and into the wetlands.

The Commission discussed the impressive, destructive nature of today's storm and expressed sentiments that flooding is getting worse year-over-year. We're pushing the capacities of 100-year storm mitigations.

Ms. Hawkins expressed concern about the artificial turf baseball field sinking or being eroded. She was worried that the town might be on the hook if a failure happens in a few years and has the sense that engineers have not done sufficient investigation.

Mr. Haley expressed frustration that it seems that the Commission has run out of anything else it can do improve the situation. Ms. Greene agreed that the only additional option the Conservation Commission has at this point would be to issue a cease-and-desist for all work other than engineering studies and stabilization efforts. However, she is not sure that there is much else left for sitework at this point. She also considered that the Commission could order the contractors hire a third-party environmental monitor for site inspections or the Commission could hire one with revolving account funds, but more reports won't change anything as the Commission has already observed what happens at the site when it rains. MA DEP is the only authority able to issue fines, but that's not really a win, either. Mr. Haley questioned if the Commission might be giving the school deferential treatment but Ms. Greene stated that the Commission is handling it similarly to how it handled the issues at 87 Main Street.

The Commission expressed deep concern and struggled with trying to consider if there was anything else they could do to help resolve the issues at the site. The Commission agreed that a solid subsurface engineering report might be a positive step. Ms. Hawkins suggested that since the engineers have yet to evidence that they really understand the drainage of the field, and band aids are not proving to be sufficient, pushing for better engineering might help give a better path forward.

As a hindsight, the Commission felt that requiring a third-party technical review of the entire site plan before approval might have been wise and noted this sentiment for future large project reviews.

**7. 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 Updates*

**8. Discussion (continued): Local filing fees**

Ms. Greene presented a draft of a new filing fee schedule which the Commission reviewed. There was discussion of the categorization of trail creation, with the consideration of the potential for larger projects that might need bridges or boardwalks. The Commission settled including trail-related activities as a Category 1 fee, as proposed in the draft.

**9. Discussion: Wetlands revolving account expenditure for conservation plaques**

*Ms. Hawkins moved, Mr. Preble seconded and the motion passed unanimously to expend funds from the wetlands revolving account to replenish the stockpile of conservation plaques.*

The Commission also discussed that other potential uses of funds from the revolving account are required to be in furtherance of the administration and enforcement of the Wetlands Protection Act as laid out in the state's IGR on wetlands revolving accounts. Ms. Greene reached out to MSMCP to hear what other Commissions are spending on from their revolving accounts. Most Commissions try to keep \$50-60k in savings for "insurance". This money can be used by the Commission to hire consultants or contractors to restore sites if projects go afoul and immediate stabilization or restoration is needed. MACC membership is one allowable purchase. An agent vehicle is also a common expenditure.

The commission discussed the possible purchase of a weather station and a GNSS device as items that would help Ms. Greene in her duties and could be spent from the revolving account.

**10. Other Business:**

None.

**11. Informal Discussion:**

There was a brief discussion of the standard Conservation Commission meeting schedule. Ms. Greene offered to provide a schedule of surrounding community Conservation Commission meeting dates for discussion at a future meeting.

**12. Approval of Minutes: May 3, 2023**

*Deferred*

**13. Approval of Minutes: July 24, 2023**

*Deferred*

**14. Approval of Minutes: July 27, 2023**

*Deferred*

**15. DEP Comments:**

None

**16. Land Agent Update:**

None

**17. Commission Representative to Open Space Update:**

None.

**18. Next Meeting:** Monday August 14, 2023 at 7:00 PM (administrative business, wetlands bylaw),  
Monday August 21, 2023 at 7:00 PM (regular business, public hearings and meetings)

*Ms. Hawkins moved to adjourn the meeting at approximately 9:45 PM. Mr. Preble seconded the motion and it passed unanimously.*

**Meeting Documents**

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

Respectfully submitted