

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, January 31, 2023, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, George Preble, David Parrott, Jack Haley, and Conservation Agent Michelle Greene. Select Board member Wendy Reed was also present.

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. **Certificate of Compliance Request (continued): Cottages at Drakes Landing, Daley Drive, F/K/A 365 Main Steet, DEP# 078-0679 Applicant requests a continuance**
3. **Request for Determination of Applicability: 2 Georgetown Rd, Applicant: Wendy Willis, Re: Replacement of an existing septic system.**

Consultant Jim Scanlan appeared on behalf of homeowner Wendy Willis. He said that the property in question, located at the corner of Georgetown Road and Ash Street, is a 3 bedroom dwelling whose septic system is in failure. A resource area was identified across Georgetown Road about a foot behind the stone wall, but was not flagged because it is a separate property. The new septic system will include a Waterloo biofilter and a bottomless sand filter. In response to Mr. Haley, Mr. Scanlan said this system was chosen because the property was used as paddocks and this septic system would take up the least space for leach fields.

A portion of the sand filter will be in the 100' buffer (80' at the closest) and some grading will occur about 68' from the wetland. The grade of the worksite is below the grade of Georgetown Road, so the road along with the stone wall should prevent silt from this project from entering the wetland, which is a large cultivated field. The applicant will install erosion controls to protect the down slope at the roadside swale. Mr. Scanlan clarified that the filing is a Request for Determination of Applicability—not a Notice of Intent.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue a Negative Determination of Applicability, conditioned upon the applicant 1) installing erosion controls as described in the plan, which must be inspected and approved by the Conservation Agent prior to the beginning of work; 2) providing the Agent 72 hours' prior notice before commencing work; and 3) appropriately disposing of materials not used in the project off site.

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

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

No update

6. Violation Update: 24 Main Street – PRSD, Re: Siltation into intermittent stream, DEP# 078-0701

Ms. Greene provided an update. Issues persisted with sediment from the construction area entering the intermittent stream that flows into the Merrimack River. The contractor, WT Rich, did take some actions to mitigate the problem, but when Ms. Greene visited the site on January 26th sediment was still flowing into the stream. The perimeter drain was still emitting sediment, sheet flows were carrying sediment under the perimeter erosion control into the stream, and a second discharge point emitting sediment-laden water into the stream was located. The contractor was aware of the problems but had not taken proactive steps to deal with them.

Ms. Greene said she conferred with Ms. Mizner, the Town Manager, and the Department of Environmental Protection's (DEP's) local enforcement contact, and determined that an enforcement order (not including a cease-and-desist order) needed to be issued to the Pentucket Regional School District and WT Rich to set up deadlines for remedying the sediment and erosion issues. Ms. Greene noted that wetlands consultant Mary Rimmer of Rimmer Environmental Consulting would be hired by those responsible for the project. Once Ms. Rimmer has a contract, she should be able to assist in determining whether the sediment has been so voluminous as to require a cleanup of the stream and in assessing what steps need to be taken to prevent sediment releases from the site.

The enforcement order requires that to address these problems revised plans (including engineered plans to deal with the perimeter drain issue and an updated Stormwater Management Plan, plus the report from the wetlands scientist reviewing the impacted areas) shall be provided to the Commission by February 28, 2023 for review at its March 6, 2023 meeting and that the site must have no more releases into the stream. An attachment to the order documented the conditions that have been violated and contained requirements for remedial steps. In response to Mr. Haley, Ms. Greene said that testing the sediment for pollutants would not be productive because so much oil and other pollutants would be in the ambient environment.

Ms. Greene concluded that even though the problems have been ongoing, and the contractor says that he knows of the problems, she repeatedly appears on the scene to find new issues with no additional remediation having taken place. Nonetheless, the construction supervisor was surprised and unhappy that an enforcement order was issued.

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

In response to Mr. Parrott, Ms. Greene said that the next step if problems persist notwithstanding the enforcement order would be to contact DEP or to issue a cease-and-desist order, which could cost the project money and, therefore, might produce a greater effort to resolve the problem. She noted

that even though the area is very wet and the issues of sediment in the stream continue, the engineers and others seem unconcerned, saying that once the grade is built up, drainage issues will just go away.

Ms. Greene also reported that, although this is not a Wetlands Protection Act issue, while at the site she witnessed a backhoe operator depositing large amounts of mud into the underground stormwater infiltration system located beneath the parking lot. This raises questions about the long-term efficacy of the stormwater management system at the site. It is not clear who is supervising this.

Ms. Greene will raise this with the Town Planner. Also, Ms. Greene will write up a summary for Ms. Reed and Ms. Reed will raise these issues at the School Building Committee Meeting.

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

Ms. Greene reported that she phoned the homeowner, who did not get back to her. When driving in Amesbury, she noted that the houseboat is still there. *Ms. Greene will make another call.*

8. Discussion: Discussion with Select Board member Wendy Reed Re: Full time conservation agent; wetlands bylaw

Ms. Reed said that the process of making Ms. Greene a full-time employee with additional Land Agent responsibilities as well as Conservation Agent duties did not go as smoothly as it could have, particularly in terms of lack of consultation with the Commission. Ms. Greene's primary responsibility will continue to be Wetlands Protection work and other matters with the Commission. She will also work on Open Space Committee tasks and other issues dealing with invasive species, land management, etc. not within the Commission's purview.

The Commission has direct responsibility for policy concerning Commission matters, and the Town Manager has responsibility for administrative matters. Ms. Reed said that ultimately, the position reports to the Town Manager. Ms. Reed will share the recently-released legal opinion about this with Ms. Mizner.

Ms. Greene stressed that she has no interest in continuing in a position where her hours and priorities in working in multiple areas are strictly divided, monitored, and second-guessed by different parties, as had occurred when she was working for 2 different towns. Ms. Reed noted that Ms. Greene is a professional and well able to identify priorities and the most efficient ways to get the work done.

9. Discussion: Attorney General determination regarding site visits

The Commission discussed an Attorney General determination that concluded that site visits where a Commission quorum is present must be publicly noticed with minutes taken and available for public participation if any questions or discussions occur concerning Commission-jurisdictional issues. A variety of approaches were discussed:

- If the site visit involves a subdivision or a public project like water main replacements, the

matter could be treated as a public meeting, with permission for the public to access the site obtained from the land owner

- A number of Commission members fewer than a quorum could attend a site walk and report back at a Commission meeting—and other members desiring to do a site visit might do that separately
- Ms. Reed, expressing concern about requiring Sunday morning work by the Conservation Agent, noted that most commissions rely on their Conservation Agent to do the site walks during normal weekday hours and then report back at Commission meetings.

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

Ms. Reed said that the intent was to standardize job descriptions for town employees across various departments. Ms. Mizner repeated her concern about the Town Manager supervising the Conservation Agent as may concern policy matters. *Ms. Greene will mark up the document and circulate her comments to the Commission.*

11. Discussion (continued): Review and discuss FY24 ConCom budget, due 1/24/2023

Ms. Greene noted that she had circulated a draft budget among the Commissioners. After some discussion of expenses, the Commission approved the budget. *Ms. Greene will send the budget to the Town Manager.*

12. Discussion: FY21 Annual Report (7/1/2021 – 6/30/2022), due 2/9/2023

Ms. Mizner will draft the Annual Report for the Commission.

13. Wetlands Bylaw Discussion:

Ms. Reed said that the warrant is closing and if the Commission wants to pursue a bylaw, it should submit a placeholder. *Ms. Greene will draft a placeholder.* Ms. Mizner said that she is still working on revising the prior draft, and will try to circulate a new version before the Commission meeting on February 6.

Ms. Greene said that in her experience working in Merrimac and Amesbury, which do have bylaws, expansive bylaws can be a major time sink, requiring a large amount of meeting time attempting to interpret how the bylaws apply to very minor activities. She strongly suggested scaling back to highlight the additional protections the Commission finds necessary. The 25' no disturb area could be an example. Mr. Parrott suggested reducing the complexity but not the effectiveness. Ms. Mizner noted that the Attorney General has legal requirements when approving town bylaws.

Ms. Greene also noted that some jurisdictions have fees associated with an enforcement order. She noted that issuing and collecting fines can be very administratively burdensome.

14. Other Business:

Newburyport's pumping of water from a "low lying area" into the Indian Hill Reservoir. Ms. Greene said that the Town issued an email blast informing residents that Newburyport would be using a temporary diesel pump at the Indian Hill Reservoir to move water out of a wet low lying area into the

reservoir. West Newbury's Water Department was not aware of this. Apparently, this is taking place on private land in West Newbury whose drainage may be impacted by the reservoir.

Ms. Greene said that she reached out to Newburyport and was told that the Newburyport water department did not want to refer to the pumped-out area as a wetland, and this is what has always been done, except that the old pump broke and a new temporary replacement is being used. Ms. Greene finally reached Newburyport Water Treatment Superintendent Tom Cusick, who said that this system dates back to the 1980s, when, after the embankment for the reservoir was built, complaints came in from abutting property owners about backed up water. Ms. Greene said that she has not found any filings with the Commission about this. Mr. Cusick indicated that this is routine maintenance of equipment for water supplies. *Ms. Greene will reach out to Mr. Cusick again to follow up and to see if Newburyport has documents associated with initial installation of the pumping system.*

Mr. Parrott asked what the Commission would do if an ordinary person were pumping water out of a low lying area into a water body. Usually, a violation letter would be issued. *The Commission generally agreed that this matter should be pursued. Ms. Greene will follow up, and will also discuss this with the Health Agent.*

Runoff and sediment at 290 Middle Road Ms. Greene said that runoff and sediment occurred at 290 Middle Street, with a fallen tree and a waterfall running down the steep driveway. Developer John Gorman was very responsive and installed more erosion controls and check dams. This may, however, be an issue over time.

Poorhouse Lane open space acquisition Ms. Reed said that concern was expressed at the Community Preservation Committee about the appraised value that Greenbelt identified for this property. Ms. Reed is following up with the appraiser to determine if wetlands were taken into account. It was noted that the Commission asked about this when considering the acquisition proposal on December 5, 2022, and Ms. Johnson-Hall of Greenbelt said that costs of accommodating wetlands protections were considered in the appraisal. Ms. Reed said that wetlands were not included in the appraiser's report shared with the Select Board, and the Town is considering hiring its own appraiser. Ms. Greene said that when she walked the property with Ms. Johnson-Hall she noted the seemingly large area of wetlands that would need to be filled to develop Poorhouse Lane and asked Ms. Johnson-Hall if the appraiser had considered the costs that would likely be incurred to permit this including the need for a filing with MEPA, the need for a 401 water quality certificate, and the requirement to replicate filled wetlands on site at a 2:1 ratio. Ms. Johnson-Hall seemed unfamiliar with this and asked for more information. *Ms. Greene will forward this information to Ms. Reed.*

15. Old Business:

16. Informal Discussion:

17. Community Input:

18. Approval of Minutes: August 15, 2022

Deferred

19. Approval of Minutes: September 8, 2022

Deferred

20. Approval of Minutes: December 5, 2022

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the minutes as amended.

Executive session minutes

Ms. Mizner moved, Mr. Preble seconded, and the Commission voted unanimously to approve the Executive Session minutes as amended.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to make Executive Session minutes as amended publicly available.

21. Approval of Minutes: December 19, 2022

Ms. Mizner moved, Mr. Preble seconded, and the Commission voted unanimously to approve the minutes as amended.

22. Approval of Minutes: January 9, 2022

Ms. Mizner moved, Mr. Preble seconded, and the Commission voted unanimously to approve the minutes as amended.

23. Correspondence:

None.

24. DEP Comments:

None

25. Land Agent Update:

None

26. Commission Representative to Open Space Update:

Ms. Greene provided an update from the Open Space Committee meeting, saying that the Committee discussed kiosks for trails expanding the work for interns, and support for the open space land acquisition.

Next Meeting: February 6, 2023. The second February meeting was scheduled for Wednesday Feb 22. May 1st is election night and the meeting set on that date will be rescheduled.

Adjournment 9:37 pm

Meeting Documents

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

Respectfully submitted