

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, April 3, 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): Review and potential signing of Assignment and Assumption of Conservation Restriction to transfer Greenbelt's interest in Coffin Street Conservation Restriction to Town of West Newbury Conservation Commission, 2 parcels of land, Map 230 Lot 120 and Map 230 Lot 110**

Vanessa Johnson-Hall appeared for Greenbelt. She agreed to correct a minor typo Ms. Mizner discovered. Ms. Johnson-Hall summarized why additional documentation is needed in conjunction with the Coffin Street open space acquisition, explaining that the Town and Greenbelt co-acquired a conservation restriction (CR) and 3 properties are going to be transferred to Greenbelt as the Save Our Wetlands LLC is closed out. Greenbelt cannot hold both title to the land and hold the CR on the same property. Thus, the West Newbury Conservation Commission will become the sole holder of the CR. She noted also that 2 properties had been retained by some of the LLC members and it seems likely that these properties will also be transferred to open space status in the future.

Ms. Mizner said that she reviewed the stewardship agreement and determined that it imposed no obligation on Greenbelt to maintain trails. Mr. Parrott said that, nonetheless, it would be nice if Greenbelt did so.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve and sign the assignment of the CR from Greenbelt to the West Newbury Conservation Commission.

3. **Public Hearing: Notice of Intent: (continued): 8 Crescent Drive, Applicant: Kyle Nickerson, Re: replace and expand an existing deck and regrade, loam, and reseed an existing lawn, DEP# 078-0760**

Consultant Greg Hochmuth said that at yesterday's site visit a landscape debris pile was seen in the wetland. The plan was revised to include removal of the debris and to revegetate. Also, as a result of the site walk flag A3a was added and A3 was removed. Mr. Hochmuth suggested a conservation post in the middle of the access way between A3a & A4, in addition to the wire fence, to prevent incursions. In response to Mr. Haley, Mr. Hochmuth said that loam will be stockpiled for less than an hour between time of delivery and being spread. There would be erosion controls available just in case. He said that the homeowners may wait until next year for installation of loam and seeding, and if that is the case and only the deck is built, work would be limited to digging a few holes.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue an Order of Conditions, with standard conditions and special conditions that the applicant: 1) dispose of any spoils from the deck work offsite; 2) remove the landscaping debris from the wetland and dispose of the materials removed from the wetland offsite; 3) install a post with a conservation placard 10' from the wetland between flags A3a & A4 to mark a no disturb limit; 4) install erosion controls and

if work is for the deck only, install erosion controls only around the area of work; 5) obtain Conservation Agent approval of erosion controls before beginning work; 6) stockpile materials (such as loam) for no more than 24 hours, and surround with erosion controls if stockpiled for longer than 24 hours; 7) plant vegetation as shown on the revised plan dated April 3, 2023 during this growing season and monitor the plants' growth for 2 years, replacing plantings that do not survive.

4. Public Hearing: Notice of Intent (continued): 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- 0759

Consultant Mike DeRosa said that no questions were raised at the site walk yesterday and the client is ready to do the work this season. They will remove invasive plants in the next month and then plant native species. They will monitor the area for 2 years for both survival of the new plants and reemergence of invasive plants.

Ms. Mizner moved, Mr. Preble seconded, and the Commission voted unanimously to waive the requirement for engineered plans, allowing use of Google maps showing the wetlands line delineated.

Ms. Mizner moved, Mr. Preble seconded, and the Commission voted unanimously to issue an Order of Conditions for work to be done in accordance with the NOI, with special conditions that the applicant follow the planting and monitoring and reporting plan, install erosion control, and remove existing debris such as old landscape fabric from the wetland.

5. Public Hearing: Notice of Intent: 10 Pleasant Street, Applicant: Anna & Schyler Reilly, Re: Septic system replacement, patio improvements, installation of new driveway, DEP# 078-076

Mr. Hochmuth said that the house on this property is proposed to have a new septic system designed by Jim Scanlan. It is a challenging lot with wetlands and a high-water table. The new system will use a Waterloo biofilter that provides pretreatment and allows for a smaller septic footprint. Also, it is difficult to park at the property, so the applicant plans to pave a graveled area in front of the garage. They uncovered an existing patio covered with vegetation (largely invasive Japanese knotweed) and have a problematic tree that is compromising the patio. They would like to remove that tree and replace it with a more suitable one and repair the existing patio. The project received Board of Health approval and received no comments from DEP. Mr. Hochmuth will reach out to the person who delineated wetlands to obtain documentation underlying this work.

Ms. Greene said that there is a large amount of Japanese knotweed between the house and the patio. Mr. Hochmuth said that the applicants have been discussing this and will show the area to the Commission at the site walk. From there they might come up with an invasive species management plan.

The Commission continued the matter to April 18 and scheduled a site walk on April 12 at 6:30 pm.

6. Insignificant Change Request: 119 Middle Street, FKA 0 Middle Street Map R8 Lot E6, Applicant: Ross and Hannah Ross Courtemanche, Re: Change from block wall to boulder wall, DEP# 078-0741

Applicant Ross Courtemanche said that Jim Scanlon engineered plans for the seller. Those plans would use concrete blocks for a retaining wall. Mr. Courtemanche intends to use the same parameters but with boulders for the retaining wall for aesthetic reasons and has confirmed with Mr. Scanlon that the change in retaining wall material will not compromise the integrity of the wall.

Ms. Mizner moved, Mr. Preble seconded, and the Commission voted unanimously to approve an insignificant change request

based on the submission of details and the fact that there would be no change in location or other aspects of the work.

7. Preliminary Site Plan Review: 125 River Road, Applicant: Mike Fusco

Consultant William Buckley said that the property in question involves 2 properties at 125 and 171 River Road, with property lines revised to allow sufficient contiguous frontage for a 3-lot subdivision consisting of an existing home and two new ones. This has received positive feedback from the Planning Board and meets existing zoning requirements. Wetlands have been flagged and were determined to be larger in the field than shown on the state and town's GIS mapping. The applicants previously met with Ms. Greene to review a plan which proposed 1:1 wetland replication but have shifted the roadway slightly based on her feedback, reducing the square footage of wetlands to be filled and providing the room to replicate at a 2:1 ratio. The applicants are seeking preliminary feedback from the Commission.

Ms. Mizner said that the Commission usually requires 2:1 wetlands replication. Mr. Buckley said they have moved the roadway while maintaining the setbacks to have less impact on wetlands. They will abandon the current driveway so that there is just a single road-cut off River Road.

Ms. Mizner said that as a general rule when there is a wetland crossing the applicants should make a showing that there is no other place to put the driveway and follow the principles of avoiding, minimizing, and mitigating wetlands impacts. She said that depending on the engineered plans and the NOI the project looks permissible. Moving the driveway somewhat could reduce wetlands impacts. Mr. Haley noted that in looking at the plans wetlands were in the middle of 1 lot and homes and driveways were outside of the 100-foot buffer but a portion of a septic system was within the 100 foot buffer.

It was noted that review by the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) would be required because the area is eagle habitat.

8. Enforcement Order Ratification: 7 Worths Lane, Re: Unpermitted tree removal, brush clearing, and spreading of woodchips within the 200' riverfront resource area, 100' buffer zone, and mapped priority habitat

Ms. Greene said that she had been alerted that significant tree cutting occurred at 7 Worth's Lane. Mostly ash trees were removed and the understory, which may come back in, was clipped. The work occurred in protected river front, 100' buffer zone, and mapped Natural Heritage areas. She spoke with the home owners, Andrew and Nicole Simon, and issued an enforcement order requiring a restoration plan. The Simons were present at the meeting.

Ms. Mizner said that any work in these areas needs to be reviewed by the Commission before cutting occurs. The Simons said that they were unaware of this requirement and their real estate attorney and realtor did not identify any restrictions of this nature. They said that they have not yet gotten a consultant to help with a restoration plan.

Ms. Mizner said that the next step is to hire a consultant to prepare the restoration plan. The consultant will look at what vegetation has been taken away and prepare a plan for tree and shrub planting to be submitted to the Commission. This should be done by May 15th and no further work should occur at the site.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted 4-0-1 (Mr. Haley not present, having needed to leave the room briefly) to ratify the enforcement order dated March 23, 2023.

9. Enforcement Order Ratification: 35 River Road, Re: Unpermitted tree removal, brush clearing, and spreading of woodchips within the 200' riverfront resource area, 100' buffer zone, and mapped priority habitat

Ms. Greene said that work similar to that done at 7 Worth's Lane also took place at 35 River Road, with similar impacts except the trees were slightly bigger and slightly more of them were cut. Home owner Chris Campbell said that all of the trees were dead, broken or downed and presented an extreme hazard to safety. They were an eyesore, and it was a bad looking situation. The contractor left chippings on the ground although Mr. Campbell expected them to have been picked up. He said that nothing was killed and everything will grow back quickly.

Mr. Campbell said that he had no idea there were limitations on cutting. Walking along River Road, he sees homeowners cutting grass right at the riverside. Ms. Hawkins said that this can be confusing. There was, however, an order of conditions on the property, which did show up in the deed records. The Commission also noted that it is possible to get work permitted and that this is a priority habitat.

Ms. Greene said that she had issued an enforcement order requiring restoration.

Mr. Campbell said that he did not look for a wetlands consultant because he didn't kill anything. He said he does not believe he needs to do anything but if the chips are important, he will remove those. He said that they cut dead elm trees consistent with the town's desire to remove diseased trees to prevent further disease spreading. The Commission pointed out that it cannot know that no healthy trees were cut as it was not consulted before the work began.

The Commission noted that even dead trees have habitat value and that it would be helpful to get a consultant to take a look at the property to determine whether restoration is needed. It could be a wetlands scientist or an environmental consultant. The consultant will evaluate what vegetation has been removed and prepare a plan for tree and shrub planting to be submitted to the Commission. This should be done by May 15th and no further work should occur at the site.

Neighbor Craig Jablonski said that the work done improved the aesthetics of the neighborhood and he can attest that the trees were dead and it was an eyesore.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to ratify the enforcement order dated March 23, 2023.

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

Construction Manager Kyle Leone said that they hired engineering consultants Epsilon to find ways to mitigate silty runoff. He noted the need to stabilize the area that currently has large areas of open soil excavation. He noted that they now have capacity to store more than 200,000 gallons of water on site and Epsilon calculated that 161,000 gallons need to be contained. They have undertaken much work including maintaining catch basins, increasing berm size of the sediment basin, and installing more erosion controls at the site. They may need to use flocculants to settle the fine-grained sediment if pumping into weir tanks needs to occur. They completed work on the recommendations in consultant Mary Rimmer's March 24th report last week. Ms. Greene noted that, overall, the site is improving.

David Klinch of Epsilon repeated that Epsilon determined that 161,000 gallons need to be contained. In response to Mr. Haley, Mr. Klinch said that remedies are in six categories:

- Slowing down water runoff through site stabilization. There is still a large area of open soil but it is better contained.
- Conservatively calculating a need to store 161,000 gallons on site.
- Implementing pumping of ponded water to a flocculation block in a tank to remove sediment.
- Perimeter control through bolstering the silt fence.
- Catch basin protection and cleaning of pipes, etc.
- Continuous correction: monitoring how the program is working, and staying on top of it.

Mr. Klinch said that he has been touching base with Mary Rimmer and now many corrections are in place compared to 2 weeks ago. If pumping from the sediment basin into the weir tank needs to occur, water will be released to a discharge dissipator and then to bordering vegetated wetland and then to the stream.

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

Consultant Tom Hughes said that he did a lot of observation and finished the wetlands delineation. He is thinking that roughly 12 to 20 saplings should be planted. A good amount of vegetation is coming in. Some of the former tree canopy is now lying down and the cut trees that aren't in the wetland can become habitat. He did not see stumps in the wetland. It appears that trees were cut nearby and fell into the wetland. They may want to remove downed trees located on abutter's property. Some red maple and oak trees are coming in and some stumps are resprouting. That can be augmented with additional saplings. He advises using a light touch because cleaning out all that dead wood could do more harm.

The Commission scheduled a site walk on April 23 at 8 am.

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

Mr. Hughes said that he set 3 10 meter transects, flagging wetlands. In transect A, he saw 40% of yellow or sweet birch resprouting. Transect B was about the same with herbaceous cover. Transect C contained extensive bittersweet and about 10% herbaceous cover. He did not do a transect behind the house but noted some large trees were taken down in this area. Instead of planting trees back in this area that may become problematic that close to the house in the future, he suggested planting shrubs. He is focusing restoration on the 25' natural vegetation areas and would add some 24 saplings. There is less need for shrubs because they are already growing in. *Mr. Hughes will email written materials to Ms. Greene.*

The Commission scheduled a site walk on April 23 after the 8 am event.

13. 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 that she met with the Town Manager and the Harbor Master. They agree that someone should write a letter raising concerns about safety and navigation, which may be threatened if the houseboat comes loose from the riverbank or breaks apart and pieces get carried by the river. The Town Manager may reach out to Police Chief Dwyer to see about such a letter. The homeowner is in South Africa right now and

thus has not been responding to Ms. Greene.

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

Ms. Mizner said that she is waiting for a response from the Massachusetts Association of Conservation Commissions.

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

Ms. Mizner said that she has not yet had an opportunity to review the written materials.

16. Wetlands Bylaw Discussion:

No new developments.

17. Other Business:

Ms. Mizner said that the Commission had received a request for a letter of support for a Municipal Vulnerability Preparedness grant to study climate change vulnerability at River Road, which the members had received via email from the Climate Change Resiliency Committee.

Ms. Mizner moved, Mr. Haley seconded, and the Commission voted unanimously to send the letter of support.

18. Old Business:

19. Informal Discussion:

20. Community Input:

21. Approval of Minutes: February 22, 2023

22. Approval of Minutes: March 6, 2023

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the minutes of March 6, 2023, as revised.

23. Approval of Minutes: March 20, 2023

24. Correspondence:

25. DEP Comments:

26. Land Agent Update:

27. Commission Representative to Open Space Update:

It was reported that the Open Space Committee is very enthusiastic about shutting down vehicle access to the Riverbend area at Way to the River Road. Ultimately, the Town or Greenbelt would make such a decision, but the Committee can make recommendations.

Next Meeting: Tuesday April 18, 2023. Please note date change due to Monday holiday.

Adjournment 9:29 pm

Meeting Documents

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

Respectfully submitted