

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, June 5, 2023, Second Floor Town Offices.

Members Present: Acting Chair 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. **Public Meeting: Request for Determination of Applicability: 1 Farm Lane, Applicant: Scott Blackburn, Re: Replacement of an existing septic system**

Consultant Aleksandr Chongris appeared on behalf of the applicant and noted that the site walk with the Commission had resulted in no significant changes to the plan. Almost all activity aside from that involved with removal of the existing septic system will occur beyond the 100' buffer. The Board of Health has approved the proposed septic replacement.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination of applicability provided that the applicant will 1) remove brush piles in the wetland, 2) refrain from dumping anything in the wetland, 3) install erosion controls, which must be inspected and approved by the Conservation Agent prior to the beginning of work; 4) provide the Agent 72 hours' prior notice before commencing work; 5) send the Agent a digital copy of the plans.

3. **Public Hearing: Notice of Intent: 46 Bridge Street, Applicant: Daniel & Tiffany Healey, Re: Construction of a garage and addition with associated grading, DEP# 078-0762**

Consultant John Tilton said that the applicant is proposing an addition to the house and a garage on a 3.2 acre lot that includes the house, a barn, and a horse property. A wetland at the edge of the property involves an intermittent stream. The closest the work would come to the wetland is 38'. All the work would be in an area that had been disturbed previously.

The Commission scheduled a site walk for June 11 at 8 a.m. for about an hour and continued the matter until its June 20th meeting. The applicant will stake the proposed work area.

4. **Public Meeting: Request for Determination of Applicability: 198 Middle Street, Applicant: Brian Duchemin, Re: Construction of an addition to an existing single-family home**

Mr. Duchemin said that he is proposing an 18' x 24' room addition located within 100' of wetlands that are on a neighbor's property. Consultant Bill Manuel has marked the wetlands. Mr. Duchemin said that it is hard to say if grading will be needed, but if so, it will be minimal. The addition would be built into a hill. The area is all lawn with a rock wall, shrubs, and trees separating the neighbor's property and thus the wetland. In response to Ms. Greene, he said that no access road would be needed for the construction because there is an existing drive to the barn.

The Commission scheduled a site walk for June 11 at 9 a.m. and continued the matter until its June 20th meeting.

5. **Public Hearing: Notice of Intent: 0 Main Street, Parcel R-2, 35, Applicant: Town of West Newbury, Re: Installation of a pond leveler and spillway guard, DEP# 078-0XXX**

Paul Sevigny, the Town Health Agent, appeared on behalf of the Town. He said that this proposal responds to beaver issues at the Town-owned Macy Pond located across from the Pentucket School campus on Main

Street. He said that Sandra Raymond, the owner at 27 Main Street, had reached out and in February during trapping season a couple of beavers were removed but others remained. The Massachusetts Department of Transportation (DOT) had cleaned out the culvert at the pond and then returned and excavated, removing some of the stabilizing rocks. DOT will be returning to repair and restabilize the bank.

Mr. Sevigny said that the Town is proposing to install two items to address the situation: 1) a pond leveler to the dam at Macy Pond and 2) a spillway guard structure so that the beavers cannot refill the culvert. The proposal is to lower the pond by 16", evaluate the situation, then perhaps achieve a level 12" below the current level. Best Way Wildlife would maintain these structures under a maintenance contract between the company and the Town would be able to coordinate a more rapid response to abutters than DOT.

Sandra Raymond said that she has lived at 27 Main Street for 46 years. Her house had been built in 1973. She stated that, the pond level was the streambeds. She showed photos and described the history of the pond as having been constructed by Mr. Macy as the runout area for a downhill ski trail on Brake Hill and for ice skating. She said that the area's natural state was not a dam, but rather the convergence of two streams. She showed google maps over the years with vegetation in the area in earlier years now removed by the beavers. She said that the beaver lodge is now not merely in the dam and culvert, but under the sidewalk at Route 113. She also noted that DOT does not reliably clean and maintain the culvert at Macy's Pond.

Ms. Raymond said that in 2001, the pond flooded across 113. In 2005 the situation became acute, and the beaver lodge was located under her slab foundation. She could hear the beavers at night. According to Ms. Raymond, the matter was brought before the Conservation Commission in 2005. Ms. Raymond asserted that it was agreed that the appropriate water level would be the stream bed (see DEP File #78-498). At that time, she said, Massachusetts Fish & Wildlife came out and told her that she could shoot the beavers, which remains an option.

In Ms. Raymond's opinion the Town's proposal did not suffice because the water level would be too high and by permanently raising the water level, the Town would be taking her property as the deed identifies the pond edge as the boundary line. Mr. Sevigny said that the Commission, working with Ms. Raymond, could determine the appropriate water level.

Ms. Raymond said that although she supports wildlife, she suggests that the Town should remove the beavers. Mr. Sevigny said that state law restricts beaver removal, outside of the regular trapping season. The Board of Health can issue an emergency trapping permit if it is determined that there is an emergency threatening public health and safety. Ms. Hawkins noted that if some beavers are removed, others will replace them. Ms. Raymond said that the problem has recurred about every 18 years after beaver removal, and she expects that cycle to continue. Ms. Hawkins said that beavers will move on when their habitat or food supply is depleted. Ms. Raymond decried the beavers' insatiable consumption of her landscaping. Within the space of one night, they destroyed her native shrubs, trees, and plantings, denuding her yard and the surrounding area.

The Commission scheduled a site walk for June 11 at 9:30 or 9:45 a.m. and continued the matter until its June 20th meeting. Ms. Raymond will 1) contact Fish & Wildlife about the situation (and Mr. Sevigny and Ms. Greene would attend a meeting with Ms. Raymond and Fish & Wildlife if one is set up by Ms. Raymond) and 2) try to find documentation establishing that the Commission agreed in 2005 that the appropriate water level was the stream bed.

6. Public Meeting: Request for Determination of Applicability: 0 Turkey Hill Road, Parcel R-19, 2, Quaker Cemetery, Applicant: Town of West Newbury

Elisa Grammer appeared before the Commission representing the Historical Commission. Ms. Grammer explained that the town has moved to care for the two cemeteries located on town owned land which are this one and the Almshouse Cemetery near Mill Pond. In 2010 the Quaker Cemetery was restored without Conservation Commission approval but is now very overgrown with invasive plants such as Asiatic bittersweet and multiflora rose. A historic cemetery survey is being conducted and it seems some gravestones may be missing from the cemetery so it is important to get the cemetery cleaned up. Prior to his departure, former DPW Director Wayne Amaral developed a plan to have a contractor cut and remove heavy materials such as fallen trees and limbs and trees and limbs in danger of falling, and then cut the overgrowth and invasives, all under Historical Commission supervision. Getting the Determination from the Commission is step one before hiring a contractor. The plan is that the work will be done when the ground is frozen to limit ground disturbance. A small lightweight excavator may be needed on the trail to help remove the heavy debris from the site. Limiting ground disturbance is important due to the site being a cemetery. Any trees or brush to be removed will be cut flush with the ground leaving roots in place.

Ms. Greene inquired how the removed invasive plants will be disposed of and Ms. Grammer will work with Ms. Greene to determine BMPs for this. Ms. Greene suggested that the town's summer invasive plant interns could assist the work by mapping and flagging the invasive plants for removal from the site.

Ms. moved to issue a Negative Determination with the conditions that 1) BMPs be developed and followed for the removal and disposal of invasive plants to prevent introducing invasives to new areas; 2) No ground disturbance may occur during the work; 3) The construction schedule/ management plan submitted as part of the RDA shall be followed. Mr. Parrott seconded the motion and the motion passed unanimously.

7. Request for Certificate of Compliance: 5 Hickory Lane, DEP# 078-0356

Ms. Greene said that the property had an addition and porch built in 1983 and permitted by the Commission but never got a Certificate of Compliance. In 2002, the current owner replaced a failed septic system with Commission approval and obtained a Certificate of Compliance for that project. Ms. Greene said that the engineered septic plan showed the outline of the addition and porch and when she inspected the property it was stabilized and vegetated. She recommended issuing the Certificate of Compliance.

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

8. Insignificant Change Request: 13 Turkey Hill Road, DEP# 078-0750, Re: Replacement of existing chain link fence in wetlands

Ms. Greene said that the applicant, who had been expected but did not join the meeting, was consulting with an expert who was reviewing aerial photos to determine if the wetland had been continuously mowed as lawn. Apparently, the wetland contains an existing chain link fence, which the applicant would like to replace.

The matter was continued to the Commission's June 20th meeting.

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

Ms. Greene said that the building contractor said that there was no seepage or discharge during the recent

rains. Apparently while excavating they hit water, and a video showed a curious water seep bubbling up. They are still looking into this, they said.

10. Violation Update: 21 Montclair Road, Re: Clearing trees within 100' buffer zone without a permit
Consultant Tom Hughes would like to schedule an evening site walk with as many Commissioners as possible to confirm revegetation of the area. Ms. Greene said that this should be acceptable under open meeting requirements if the Commissioners do not ask questions or discuss the matter at the site walk.

The Commission scheduled a site walk for June 8th at 7:30 p.m.

11. 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 would like to schedule an evening site walk with as many Commissioners as possible to confirm revegetation of the area. Ms. Greene said that this should be acceptable under open meeting requirements if the Commissioners do not ask questions or discuss the matter at the site walk.

The Commission scheduled a site walk for June 8th at 7:00 p.m.

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

A restoration plan had been due by May 15 but the consultant requested a continuance to the next meeting.

Ms. Greene will reach out to the consultant.

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

A restoration plan had been due by May 15 but the consultant requested a continuance to the next meeting.

Ms. Greene will reach out to the consultant.

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 said that she sent another email to the Harbormaster in Salisbury about this issue and received a call from a concerned resident.

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

No update

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

No update

17. Wetlands Bylaw Discussion:

Ms. Hawkins and Ms. Greene noted that nothing has been happening with respect to the Commission's agreed actions to develop simplified, bullet-style bylaws and conduct outreach with townspeople. Ms.

Hawkins offered to work on the revisions. Mr. Parrott said that the Commission should develop a simple easy to read explanation of what changes the bylaw would institute and why. Ms. Greene suggested providing draft regulations along with the bylaw so that townspeople would have greater clarity about what the Commission is proposing. Ms. Greene said that she believes the deadline for identifying fall town meeting articles is in July.

Ms. Hawkins said that she will target providing a draft of revisions before July 7.

18. Other Business:

Ms. Greene reported that the owners of 525 Main Street are in the midst of selling their house and through a title search just learned that their property is subject to an open Order of Conditions (requiring installation of 8 4x4 wetlands markers) concerning a septic replacement in 2014 just before the current owners bought the house. Ms. Greene informed the 525 Main Street owners, Jesse and Stacy Combs, of the need to obtain a surveyor to locate where the wetland markers need to be replaced, to install the markers, and to have the surveyor develop an as built plan showing the markers, which plan would be submitted to the Commission for consideration of the request to issue a Certificate of Compliance. She had sent an email updating the Combs' realtor late in the day.

Mr. Combs arrived at the end of the Commission meeting, having mistakenly sat through the Select Board meeting on the floor below. He said that when he moved in almost 9 years ago, a title search did not reveal the open Order of Conditions. He just now learned of it and the Main Street house is supposed to close on June 28 and they are to close on a new house on the 29th. He asked what could be done in these circumstances.

Ms. Hawkins said that these circumstances do arise when one homeowner does work with requirements for wetlands protections but then fails to follow through with all conditions and obtain a Certificate of Compliance. The obligations in the Order of Conditions run with the land and are filed with the deeds. To issue the Certificate of Compliance, the Commission needs to see that the work has been completed properly. It is important to stop the cycle of homeowners not following through on establishing compliance with the Order of Conditions, and shifting the issue to the next homeowners. She said that one approach that is used is to set up an escrow account through which the seller will cover costs of obtaining a Certificate of Compliance. Costs in this case would include the surveyor identifying the location of the posts, installation of the posts, locating and installing pin flags for the wetlands line shown on the 2014 plan, and preparation and submission of the as-built plan and Certificate of Compliance Request. Ms. Greene offered to talk with the realtors in the transaction, talk with the buyers if they contact her, and answer further questions from Mr. Combs or others involved in the transaction.

Mr. Combs asked whether the Town should be accountable for this circumstance. Mr. Haley noted that the lawyer who did the title search upon the Combs' purchase of the house should have caught this.

19. Old Business:

None

20. Informal Discussion:

None

21. Community Input:

None

22. Approval of Minutes: February 22, 2023

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

23. Approval of Minutes: March 20, 2023

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

24. Approval of Minutes: April 3, 2023

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

25. Approval of Minutes: April 18, 2023

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

26. Approval of Minutes: May 3, 2023

Deferred

27. Approval of Minutes: May 15, 2023

Deferred

28. Correspondence:

29. DEP Comments:

30. Land Agent Update:

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

Ms. Greene reported that the Town has received two responses from entities interested in providing professional invasive plant management. The Open Space Committee and invasive plant working group will review these responses, and the party chosen will then apply to the Commission for a Notice of Intent to work within buffer zones of wetlands.

32. Next Meeting: June 20, 2023, please note meeting date is Tuesday due to Monday holiday. Need to determine date for first July meeting

The Commission determined to meet on the 10th and 24th of July instead of during the first week of the month.

Adjournment 9:50 pm

Meeting Documents

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

Respectfully submitted