

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:30 pm, June 20, 2023, Second Floor Town Offices.

Members Present: Chair Judy Mizner, Molly Hawkins, 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. **Review and sign as applicant for LAND Grant – Sawmill Brook/Austin Property**

Vanessa Johnson Hall appeared on behalf of Essex County Greenbelt and responded to some questions and typos Ms. Mizner identified with respect to a grant application to cover some costs of the recent Sawmill Brook open space acquisition.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the grant application.

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

Consultant Phil Yetman appeared on behalf of the applicants, noting that the site visit had gone well and that the Commission was satisfied with the wetlands line. Ms. Mizner said that conservation markers—pressure treated 8' long 4" x 4" posts (extending 4' above ground) with a conservation placard atop—were discussed at the site walk and should be placed opposite flags 13, 11, 9, 7 at the edge of the clearing. Mr. Yetman agreed. Ms. Greene noted that the applicants are removing invasive Japanese knotweed and suggested that they be required to submit an invasive plant management plan before doing more work in protected areas.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue an Order of Conditions for the proposed work with standard and special conditions, including requirements that the applicants will 1) install erosion controls consisting of a silt fence backed by a staked silt 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 conservation marker posts opposite flags 13, 11, 9 and 7 at the edge of the clearing; 4) leave the areas between the conservation posts and the wetlands undisturbed as natural buffer; 5) keep any stored materials at least 50' from the wetland and surrounded by erosion controls; 6) dispose of trash materials offsite; 7) refrain from applying fertilizers, pesticides, herbicides, insecticides or other chemicals in the natural vegetation area and minimize their use elsewhere except as may be permitted pursuant to an invasive plant control plan approved by the Commission which is to be submitted to the Commission for review prior to any work under the Order.

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

Mr. Duchemin was present as the applicant. Ms. Mizner noted that a site walk had been done and a new plan has been submitted to reflect changes to the wetland line requested at the site walk. Erosion controls will be installed at the edge of the road and at the rock wall.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue a Negative Determination of Applicability conditioned on the requirements that the applicant will 1) install erosion controls along the rhododendron line and at the stone wall, 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) keep any stockpiled materials, if located within 100' of the wetland, at

least 50' from the wetland and surrounded by erosion controls.

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

Health Agent Paul Sevigny appeared on behalf of the Town, noting that a site walk had occurred at the Town-owned Macy Pond where the beavers are in residence and a couple of stakes now mark the edge of the pond in 1972, when a survey had been undertaken. He said that some debris had been cleared and they were trying to lower the water level so that the pond's edge would be at the stakes. As noted, the plan is to have a contractor install a pond leveling device and a beaver deceiver to keep the beavers from this infrastructure. Mr. Sevigny said that he attempted to contact Mass. Fish & Wildlife with no success.

Abutter Sandra Raymond said that she also reached out to Fish & Wildlife and hopes to be in contact with them later in the week. Ms. Raymond reviewed her understanding of the area's history as a ski run and skating pond and her belief that the 1972 level is too high and not representative of the lower stream or pond level that prevailed after 1973. She provided a letter she received from Fish & Wildlife that referred to a 2001 emergency permit from Fish & Wildlife to remove a dam, which she believes refers to the concrete dam and not the beaver dam.

Ms. Mizner observed that the pond has been there for a long time. Ms. Greene said that she researched old Google maps and found the pond there consistently, though varying in size. She also referred to a 1950s photograph in the Town Office Building showing the pond. Mr. Sevigny said that he interprets the Fish & Wildlife letter as authorizing removal of the beaver dam—not the concrete dam. He also noted that in a subsequent application to the Board of Zoning Appeals, Ms. Raymond referenced the pond. Ms. Raymond said that was a colloquial reference.

Ms. Raymond acknowledged that the Town's proposal may help with the water level—but it would not put the levels back where she believes they should be. Also, she is concerned that the beavers might again build a lodge under her house and are damaging landscape plants. Mr. Sevigny restated the Town's objective to keep the pond 13' from Ms. Raymond's deck, where it was in 1972. It was also clarified that the Town's project can proceed separately from planned Mass. Department of Transportation work to stabilize the bank and sidewalk near the culvert.

It was agreed that 1) the matter is continued to the July 10 meeting; 2) Ms. Greene and Mr. Sevigny will assess and measure water levels on Ms. Raymond's property, Ms. Raymond having given her permission for them to enter; 3) Ms. Raymond will continue to pursue the matter with Fish & Wildlife.

6. Public Meeting: Request for Determination of Applicability: Mill Pond, Withers, Cherry Hill, and Riverbend, Applicant: Town of West Newbury, Re: Townwide hand removal of invasive plants

Carol Decker of West Newbury Wild & Native and the Town Open Space Committee said that two interns will be working for the Town over the summer identifying invasive plants and, on 4 Town properties—Cherry Hill, Millpond, Withers, and Riverbend—removing invasives. Ms. Decker and Ms. Greene said that the plan is to have Ms. Greene work with the interns to identify the invasives and ensure that proper care is taken with regard to the wetlands.

Ms. Decker said that the work will include using an Extractigator to extirpate plants like multiflora rose and cut some invasives. The waste materials may be piled and burned by the Fire Department (which needs the

practice with brush fires), dried out and scattered on fields, or left in piles if not containing seeds or parts that would spread the plants (likely at Riverbend), or taken out in garbage bags.

In addition to Ms. Greene, Open Space Committee/ West Newbury Wild & Native Members Nancy Pau, Carol Decker, and Patricia Reeser will supervise this work. Also, all owners of the land, including Greenbelt, the Millpond Committee, and the Select Board have voted to approve this project, and Ms. Decker will provide records of this to the Commission. Ms. Decker added that a plan will be submitted regarding mowing at Cherry Hill to help native insects overwinter.

Ms. Mizner moved, Mr. Haley seconded, and the Commission voted unanimously to issue a Negative Determination of Applicability conditioned on the requirements that the applicant will 1) perform the work in accordance with the proposal in the Request for a Negative Determination; 2) refrain from working in areas near wetlands until the Conservation Agent has flagged the wetlands; 3) dispose of plant materials only by means approved by the Agent; 4) in accordance with requirements of the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage), undertake no work in priority habitat unless the work is under the supervision of a state-qualified botanist.

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

Ms. Chandler said that she and her family purchased the house at 13 Turkey Hill Road and moved in about 2 months ago. She identified several proposed projects she would like to pursue:

- She would like to mow an area that formerly had been kept as lawn or a field quarterly or twice a year to keep it as a meadow and restrain invasive plants
- Instead of installing a wooden fence, she would like to plant a row of native plants tight together to close off the meadow area—and the requisite conservation marker posts will still be installed
- She would like to replace the chain link fence which is in the wetland (which now has rusted and fallen down and is a safety/health hazard) with a replacement chain link fence in the exact same place—as a separator for the highway and a trail—but no higher than 5' tall with a 6" clearance from the ground for wildlife passage

The Commission advised that the usual practice is to allow mowing in wetland meadows once a year in September. For authorization to mow, Ms. Chandler would need to submit a proposal as an amendment to the Order of Conditions now in place for work at her property. She should submit a plan to the Commission for the proposal to plant native shrubs as a hedge in lieu of the permitted wooden fence. Replacement of the chain link fence can be done if no machinery is used in the protected area—all work there would need to be done by hand and the specifications for the work should be approved by the Conservation Agent first.

Ms. Mizner moved, Mr. Haley seconded, and the Commission voted unanimously to authorize the applicant to remove the old chain link fence and replace it with a new one in the same place provided that the applicant will 1) make the new fence 6" off the ground and no more than 5' high, 2) use no machinery in the wetlands, installing the fence there by hand, and 3) obtain the Agent's approval of the contractual specifications for this work prior to commencement of work.

8. Extension to Final Order of Conditions Request: 5 Sullivans Court, Applicant: Kevin Perry, Re: Request for 3-year extension, DEP# 078-0709

Kevin Perry appeared to request a 3-year extension of an Order of Conditions to install a dock. He said that the dock is partially completed, with a platform installed and astroturf at the riverbank removed. Work to be

done includes putting the dock in the water, particularly installing moorings. Mr. Perry stressed that he wants to have the mooring installed properly and has been researching and obtaining local knowledge of the river. This year's window for doing the work has passed and the objective is to do the work next year.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to grant a 3-year extension of the Order of Conditions.

9. Certificate of Compliance Request: 64 South Street DEP# 078-0732

Consultant Jim Scanlan said that the required plantings had not been installed in the correct location originally, but that was fixed last fall and the required plantings appear to be thriving this spring. Additionally, some vegetation is coming up through the woodchips, which are sticking to the slope and have not migrated into the wetlands. Ms. Greene said that the site is coming along well: the septic system was installed as proposed and the area is well vegetated

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue a Certificate of Compliance based on information provided by the applicant and the Conservation Agent.

10. Certificate of Compliance Request: 47 Coffin Street DEP# 078-0566

Ms. Greene explained that the Commission had recorded an Order of Conditions that omitted the applicant's name, and later recorded a second substantially identical Order of Conditions that corrected the omission. A Certificate of Compliance was issued, but only for the second Order of Conditions. The proposal is to issue another Certificate of Compliance to close out the first Order of Conditions.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to issue the second Certificate of Compliance.

11. Insignificant Change Request: 154 Middle Street, FKA Lot 2 Kimball Road, DEP# 078-0721, Re: Installation of an under-driveway culvert and outlet protection

Mr. Yetman said that the applicants would like approval of a minor modification to install a 12" PVC pipe under the driveway with outlet protection to help manage stormwater by slowing it so it will infiltrate into the ground. Ms. Greene noted that Natural Heritage has sent a letter saying that this is fine provided that the turtle protection plan is still in place. It was unclear whether the culvert pipe had already been installed at the driveway, making this an after-the-fact modification.

Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to accept the under-driveway work as minor modifications with the requirement that the turtle protection system and all other requirements in the Order of Conditions remain in effect.

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

Ms. Greene said that the applicant is now asking to change the requirement that they install conservation markers, making it every 100' rather than every 20' as is in the Order of Conditions.

The Commission advised that the applicant should come into the Commission with a plan to discuss this.

13. Violation Update: 21 Montclair Road, Re: Clearing trees within 100' buffer zone without a permit
Ms. Greene reported that consultant Tom Hughes had emailed to request a continuance, saying that he will be present at the meeting on July 10th.

14. 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 had emailed to request a continuance, saying that he will be present at the meeting on July 10th.

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

Applicants have sought an extension.

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

Applicants have sought an extension.

17. 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 update

18. Enforcement Order Update: 13 Meetinghouse Hill Road, Re: Restoration plan 1st progress report
Ms. Greene said that the required plants are now in place, subject to monitoring requirements approved in the restoration plan. The plants should be flagged to allow this monitoring. Overall, she said, the property looks good.

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

Ms. Mizner said that she received a response from MACC to the effect that under the state Open Meeting Law site visits need not be posted because the statute excludes onsite inspections so long as the Commission does not deliberate during the inspection. Ms. Mizner said that it is not so simple because the definition of deliberation includes written or oral communications among a quorum of members of the public body. She said that not many reported cases address this issue and she will ask MACC again about this.

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

No update

21. Wetlands Bylaw Discussion:

No update.

22. Other Business:

Training: Ms. Mizner expressed interest in attending MACC training about the new Department of Environmental Protection handbook.

Ash Street animal protection: Ms. Greene reported that townspeople are very concerned about wildlife being run over at the unpaved portion of Ash Street that runs through the Crane Neck Wildlife Management Area. This has been in the newspaper and raised before the Select Board. Ms. Greene has reached out to Mass. Fish & Wildlife, which owns the land on both side of the dirt road, about this to see if they can provide any guidance on how the town should proceed when addressing this.

23. Old Business:

None

24. Informal Discussion:

None

25. Community Input:

None

26. Approval of Minutes: May 3, 2023

Deferred

27. Approval of Minutes: May 15, 2023

Deferred

28. Approval of Minutes: June 5, 2023

Deferred

29. Correspondence:

None

30. DEP Comments:

None

31. Land Agent Update:

None

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

No update.

33. Next Meeting:

Monday July 10, 2023. Please note that in July 2023 the Commission will meet on the 2nd and 4th Monday

Adjournment 9:39 pm

Meeting Documents

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

Respectfully submitted