

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 7:00 pm, July 24, 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.**

No discussion

- 2. Public Hearing: Notice of Intent (continued): 13 Robin Road, Applicant: Stephen & Allyson Dalgard, Re: Replacement septic system, DEP# 078-0764**

Consultant Bob Grasso appeared before the Commission and noted that a site walk had been conducted. The replacement septic system is in a lawn area, no trees will be cleared, and silt sock erosion controls will be installed prior to construction. As the Commission requested, the plan was amended to include the notation that the wetlands delineation shown on the plan is good for this purpose only, and not for anything else that may be done on the property. The Board of Health approved the septic plan.

Ms. Hawkins reported that at the site walk the Commissioners found that a shed had been built in the resource area. On balance, the immediate gain achieved in fixing the septic system warrants approval. If, however, anything else is done requiring Commission approval, new wetlands flagging would be required and this issue would be addressed. Mr. Parrott agreed that replacement of failed septic systems is an important environmental benefit, which the Commission should encourage and expedite.

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to close the public hearing.

Ms. Hawkins moved, Mr. Haley seconded, to issue an Order of Conditions for work in conformance with the approved plan as amended, with standard and special conditions, requiring that the applicant will 1) install erosion controls as proposed, 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) not enter the wetlands for this work; 4) confine any stockpiled materials to areas within the erosion controls and outside the wetland.

Upon discussion, Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue an Order of Conditions with the conditions set forth above and additional conditions that the applicant shall 1) not install any additional impervious structures or materials in the wetlands or expand on any existing structure in the wetlands, 2) refrain from applying fertilizers, pesticides, herbicides, insecticides or other chemicals in the wetlands or 100' buffer zone, and 3) conduct only the authorized septic repair—and no other work—under the delineation and work boundary established pursuant to this Order of Conditions.

- 3. Public Meeting: Request for Determination of Applicability: 98 Indian Hill Street, Applicant: David Fowler, Re: Tree removal.**

Homeowner David Fowler appeared before the Commission, explaining that he has a number of dead and dying trees he would like to take down because they pose a hazard and/or are an eyesore. Ms. Greene reported that she walked the area with Mr. Fowler and said that he has substantially scaled back his initial

plan to remove 30-40 trees. Of particular concern is a large locust over 100' tall close to the house, garage and driveway that was not in the filed plan (which proposed removal of 13 trees) but is rotting and is a hazard according to the tree removal company. Ms. Greene noted that the public notice did not specify the number of trees to be removed, so that the Commission could, if it so decided, add authorization to remove the locust.

Ms. Hawkins confirmed with Mr. Fowler that 1) debris will be taken away, 2) access will be via an old circular drive that is now lawn, 3) trees will be cut to ground level or stumps will be left at around 6' high for habitat.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination of applicability for the plan to remove 14 trees (including the additional locust) on the conditions that the applicant 1) remove all debris out of the buffer zone and wetland, 2) leave the stumps cut flush to the ground or higher, 3) use the lawn as access for tree removal.

4. Public Meeting: Request for Determination of Applicability: 371 Main Street, Applicant: Nicholas Piraino, Re: Tree removal.

Homeowner Nick Piraino said he would like to remove 4 ash trees that are beyond saving. The biggest issue is a tree closest to the house whose bark has come off. He said that three other trees in the back are also dead or dying.

Ms. Hawkins confirmed with Mr. Piraino that 1) debris will be taken away, 2) access will be via a path from the municipal elder housing parking lot, 3) trees will be cut to ground level or stumps will be left at around 8' or higher for habitat.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination of applicability for the plan to remove 4 trees on the conditions that the applicant 1) remove all debris out of the buffer zone and wetland, 2) leave the stumps cut flush to the ground or higher, 3) use no heavy equipment in the wetland resource area.

5. Public Meeting: Request for Determination of Applicability: 26 Church Street, Applicant: Christopher Castro, Re: Barn Addition

Consultant Maureen Harold said that the applicant seeks to build an addition to an existing barn. The addition would be 92' from the wetland at its closest. The land is fairly flat and the limit of work would be the erosion control line which, to account for grading, would be 62' from the wetland. This would be for a dog kennel and dog boarding facility and any concrete or hard surface would be within the footprint of the addition shown on the plan. The applicant would continue to use the existing gravel driveway to the barn.

In response to Mr. Haley, Ms. Harold said that she did not know if additional utilities would be installed as part of this project. She said that the applicant has not yet applied for a building permit.

Citing the distance from the wetlands and the flatness of the lot, Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination of applicability for the project on the conditions that the applicant 1) install erosion controls as proposed, 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) stockpile materials within the erosion controls and outside of the buffer zone and wetlands.

Mr. Parrott asked what would happen if the plans change as the applicant goes through the building permit process. Ms. Greene said that she is in close coordination with the Building Inspector and would become aware of plan changes that might affect the Commission's determination when she reviews building permits for signoff in PermitLink.

6. Public Meeting: Notice of Intent: 45 Georgetown Road, Applicant: Gregory Bongo, Re: Construction of a garage and addition, DEP# 078-07XX

Consultant Kristan Farr appeared with homeowner Gregory Bongo. The applicant proposes to build a 22'x 32' garage, a retaining wall, and an 8' x 11' addition. The driveway would be redesigned as a new gravel drive to the garage and some grading would be done for drainage. The wetlands delineation was done in June 2023. This would be within the 100' buffer zone and the 200' river area for Beaver Brook, with some work in the riverfront area. Ms. Farr discussed which aspects would be new development vs. redevelopment.

The plan is to offer mitigation by managing (not eradicating) Japanese knotweed. Ms. Farr indicated that the noncompliant area to be mitigated is some 1,220 square feet. Ms. Greene said that in one place the applicant's submission indicates 350 square feet are currently non-compliant, which is a separate area than what is proposed for mitigation. It was not clear how the noncompliant area is referring to and this area was not shown on the plan.

The Commission advised that the mitigation plan needs to be specifically described and shown on the plan. Ms. Greene said that to issue a Certificate of Compliance, the Commission will need to compare what was authorized in the Order of Conditions (including the mitigation) against the as built project (also including mitigation). Ms. Greene suggested that the applicant look for more ways to provide meaningful mitigation. Mr. Parrott said that a more complete consideration and explanation of alternatives is also appropriate for the submission. For instance, could the driveway be minimized and/or could some of the proposed new construction be relocated away from the resource areas—and if not, why. Also, the plan to mitigate knotweed should be specifically described with reference to best management practices. Usually, said Ms. Greene, such proposals include a plan to plant native shrubs or other plants and include a 2-year monitoring plan to ensure that mitigation is actually accomplished.

Brian Colleran of Ecological Land Management (the Town's professional invasive plant contractor, present for agenda item #7) said that he is very familiar with knotweed. He said that with chemical control there is an expectation of three years of work to mitigate it. It requires excavation and sifting of soils to get it removed, since bits of the plant that are left will make more new plants. If it is ripped out by hand, the work needs to continue for as many years as the knotweed has already been there. Any replanting would need to be considered sacrificial cover until the knotweed is out. Knotweed that is merely mowed can be expected to redirect its energy to building up its roots. It is like an iceberg, Mr. Colleran said.

The project has not yet received a DEP number. *Thus the matter was continued to August 8th and a site visit was scheduled for August 2nd at 5 p.m.*

7. Public Hearing: Notice of Intent: 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

Resident Carol Decker, a member of the Open Space Committee and West Newbury Wild and Native, appearing along with Mr. Colleran, described the work proposed to be done on Town land to manage invasive plants professionally through mechanical and chemical means. The funding for this was approved at the spring Town Meeting. This is a one-year project with a goal of 90-95% kill of the invasives. Ms. Decker said that the intent is to provide native vegetative habitat and food for insects, upon which birds and other native species rely.

Ms. Hawkins inquired about chemical use. Mr. Colleran said that best management practices will be used. He and Ms. Decker said that without using herbicides, it is likely that the Town will lose ground and thus crucial habitat—it is important to get ahead of the issue. Residents Richard Baker and Leisa Mingo asked about the impact of herbicides on drinking wells and reservoir. Mr. Colleran said that the active agent, glyphosate, binds quickly to the soil and then breaks down very quickly. The team will closely monitor the weather and the wind and apply the chemicals very specifically. He said that unlike the case in farming, the purpose here is for the environment. Commercial products such as Roundup have additional chemicals (such as something to make the glyphosate stick) that may be more harmful than the glyphosate. He uses glyphosate and a least-impactful mineral oil.

Mr. Colleran and Ms. Decker asked about debris from woody shrubs that are removed. They could be left to decay and provide habitat by the side of the trail (and not in resource areas) or additional time and expense could be devoted to chipping them and hauling them away—taking away from resources available to mitigate the invasives. Ms. Hawkins observed that leaving the debris by the trailside would make no real ecological difference.

The project has not yet received a DEP file number and is awaiting a response from the state’s Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage). *Thus, the matter was continued to August 8th.*

8. Request for Certificate of Compliance: 132 Crane Neck Street, DEP# 078-0753

Ms. Greene said that she saw the site and recommends granting the Certificate of Compliance. The project involved a septic replacement and the site is now well vegetated.

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

9. Request for Certificate of Compliance: 528 Main Street, DEP# 078-752

Ms. Greene said that at this site, the grass has not fully grown over the new septic system. She said that the posts and placards are in place. The applicant has now covered the work area with loam and hydroseeded it, so that it is now a case of waiting for the grass to grow, *so no action was taken at this time.*

10. Insignificant Change Request: 22-24 Main Street – PRSD, Re: Amount and location of conservation boundary posts and placards, DEP# 078-0701

Ms. Greene said that the applicant did submit its updated plan in line with the discussion at the prior Commission meeting, so that conservation posts would be installed at 100’ intervals except near the golfcart path, where they would be placed more closely together. Mr. Haley noted the applicant agreed to remove the words “approximately” on the spacing plan notations however it still remained on one of the three included notations.

Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to approve the insignificant change request, with the condition that the applicant shall remove the word “approximately.”

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

Ms. Greene said that silty discharges are continuing. The engineers’ hydrology report was superficial. She has sent detailed and exhaustive questions about the situation and hopes to hear back.

12. 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

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

No update.

14. Discussion: Request for Conservation Commission representative for Mill Pond tree removal discussion

Ms. Greene said that last winter a resident complained that downed trees were in and hanging into the water at Mill Pond, raising concerns about aesthetics and safety hazards. Ms. Greene noted that the Mill Pond Conservation Restriction provides that no motorized vessels may be used and the only vegetation to be removed is invasive plant material. She also said that the trees in the water can provide habitat. Ms. Greene said that the Mill Pond Committee is planning to hold one collaborative meeting with committees involved in Mill Pond and that a representative from the Commission has been asked to attend. Ms.

Hawkins, who is also on the Tree Committee, volunteered to attend.

15. Discussion: Local filing fees

Mr. Parrott and others agreed that the Commission’s list of filing fees is unclear and counterintuitive. He noted that it appears that if an applicant impacts two protected areas—a bordering vegetated wetland (BVW) plus a riverfront area, a discounted rate applies compared to just impacting a BVW. Ms. Greene said that neighboring towns have different fee schedules and that the state’s fees are based on activities as opposed to locations. She noted that West Newbury’s fees were revised in 2010 but the records do not show what they had been before.

The Commission generally agreed to flatten out and simplify the schedule, and will take this up at the meeting on July 27. Ms. Greene will prepare some real-life examples and include fee schedules used by the state and other towns. Commission members noted that a related question is the buildup of funds in the revolving fund into which fees are paid.

16. Discussion: Site visit policy

Ms. Greene and Ms. Hawkins said that there is interest in trying to streamline the time between opening a hearing and closing it. Ms. Hawkins proposed paying closer attention as proposals are filed—what submissions are coming that may require a site visit. Ideally, the site visit could occur before the first meeting opening a hearing.

The Commission agreed to rely on Ms. Greene to screen and identify new filings that might warrant a site walk. It also

decided:

- *Site visits will be routinely scheduled for 5 p.m. on the Wednesday before an item first appears on the Commission agenda—with potential adjustment according to availability of daylight.*
- *In view of MACC’s recent statement that site visits by a quorum of Commissioners is allowed if no deliberation takes place, the Commission’s site visits may, on a case-by-case basis, include a quorum consistent with this position.*

Mr. Parrott noted that he has the capability to generate a digital representation of applicant’s sites using a camera-equipped drone and he could share this with the Commission to supplement or reduce the need for all commissioners to participate in the physical site walks. Ms. Greene and others noted potential privacy concerns and suggested raising this concept with the Town Manager and Select Board before pursuing it.

17. Discussion: Scheduling an additional August meeting for administrative business

Ms. Greene said that the Commission will be meeting with Select Board representative(s) and possibly the Town Manager on Thursday to discuss administrative items. She said that if a Wetlands Bylaw were to be included at Fall Town Meeting, the Commission would need to submit a placeholder by September 1 with final language on September 25, for the October 23 Town Meeting.

The Commission determined to meet on August 8 and 24 at 7 p.m., and to meet with the Select Board on August 7 to discuss the invasive species management interns and administrative items concerning the Commission.

18. Wetlands Bylaw Discussion:

The Commission agreed to review Ms. Hawkins’ most recent draft and discuss it at the next Commission meeting.

19. Other Business:

Select Board Items Ms. Greene noted that the Select Board is looking at two candidates for the Commission, one for membership, another for an associate member spot.

Also, the Commission has received a survey the Select Board sent to Town boards and commissions. Some items are routine; others, such as five-year goals, take more thought. The Select Board expects the work of boards and commissions to be consistent with Town priorities. Ms. Greene said that this could be an opportunity to refine the Commission’s mission statement.

Tree Warden & Tree Removal Mr. Haley and Ms. Greene said that the question of environmental protection restrictions on the Tree Warden’s removal of trees along the roadways came up at the Community Preservation Committee meeting. Removal of hazardous trees along roadways have an exemption from filing in the regulations of the Wetlands Protection Act but trees that are in priority habitat (a common occurrence in West Newbury) have no such exemption under the Massachusetts Endangered Species Act. Natural Heritage made this clear when the Department of Public Works proposed a blanket permit for tree removal, which was then withdrawn. Ms. Greene said that she and the Town Manager are working with DPW to make sure this is clear.

Ash Street Swamp Ms. Greene reported that she and others had a site visit at Ash Street’s unpaved length going through the swamp, which has been an area of concern because of roadkill, speeding, and excessive weight trucks. Ms. Greene said that there is a history of Natural Heritage communications about this road way.

20. Informal Discussion:

None

21. Approval of Minutes: May 3, 2023

Deferred

22. Approval of Minutes: May 15, 2023

Deferred

23. Approval of Minutes: June 5, 2023

Deferred

24. Approval of Minutes: June 20, 2023

Deferred

25. Approval of Minutes: July 10, 2023

Deferred

26. Correspondence:

None

27. DEP Comments:

None

28. Land Agent Update:

Interns working away. They will be presenting to the Select Board on the 7th.

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

No update.

30. Next Meeting: July 27, 2023, at 4:30 pm

Adjournment 10:07 pm

Meeting Documents

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

Respectfully submitted