

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 4:30 pm, July 27, 2023, Second Floor Town Offices.

Members Present: Chair Molly Hawkins, David Parrott, George Preble, Jack Haley (joining shortly after the meeting began) and Conservation Agent Michelle Greene. Also present for agenda item #1 Select Board Chair Wendy Reed and Town Manager Angus Jennings.

1. Discussion: With representative from West Newbury Select Board

Wendy Reed said she had discussed issues of interest in Conservation Commission administration in an email sent to Commission members. She stressed that the transition to a full time Conservation Agent is a significant change and investment for the Town, which wants to make sure it works. The Conservation Agent is now viewed more on the level of the Health Agent and Town Planner, who serve as a resource not only to their boards but also the Town overall.

Reporting Mr. Parrott said that it has been resolved that the Conservation Agent reports to the Town Manager—and asked if that was also true of the Commissioners. Mr. Jennings said that typically the Select Board chooses and appoints commission members. Because of the way the Conservation Commission Act is written, towns with a town manager have the town manager as appointing authority for Conservation Commission members. He said that as a practical matter, he presents potential Commission members to the Select Board for their approval. Mr. Jennings said that the Conservation Commission is in charge of itself, accountable for carrying out the mandate of the Wetlands Protection Act.

Revolving fund Mr. Parrott said that a concern and opportunity is presented by the Commission's revolving account that is funded by filing fees. He and others noted that money is accumulating without clear means of spending it. Mr. Parrott said that perhaps some of the revolving fund could support the Agent's salary. Ms. Greene expressed concern about trying to do detailed accounting of what activities go into which funding source. She said that Merrimac, which does not have budget capacity to pay the full Agent salary, sets a salary figure of say \$25K, and budgets \$20K, with \$5K to come out of the revolving fund. Ms. Reed said it was unclear why West Newbury would adopt this kind of approach when it has the money to pay the full salary.

Ms. Greene noted that the Massachusetts Informational Guideline Release (IGR) on Wetlands Protection Funds sets very specific purposes for which the revolving fund money can be spent, including administrative support, outreach and education and certain other activities furthering Wetlands Protection Act implementation. Ms. Greene said that she supports using the revolving fund for education and outreach, which is part of the Commission's statutory responsibility. She also noted that she understands that since the funds can be used for enforcement, the revolving fund has been a kind of insurance policy in case a very problematic enforcement matter arises and consultants are needed. She noted that the Commission already has in place a policy providing that for complex projects, it can order an applicant to pay for a consultant for the Commission, so the revolving fund would not need to be used for complex applications to the Commission.

Ms. Reed said that when she last looked, the revolving fund was accruing an additional \$7-8K per year. This raises the question whether the fees could be lower. Ms. Hawkins said that the Commission is reviewing the fee schedule and may make it more like those used in neighboring towns. It was observed that some amounts in the revolving fund should be maintained in case of a lean year or problematic enforcement issue.

Digitizing records Mr. Jennings asked if the funds could be spent on digitizing records. For instance, if records such as an Order of Conditions were digitized and online (perhaps coordinated with GIS in MIMAP) for a given property, property owners and buyers could better understand applicable requirements. Ms. Greene said that this is available through the Registry of Deeds, which homeowners could use. Mr. Jennings also asked about putting ANRAD data into a GIS shape file to import these lines onto MIMAP. Which could be done with help of the Merrimac Valley Planning Council. Ms. Greene noted that an ANRAD is good only for three years and only one ANRAD has come up during her tenure in West Newbury. Ms. Greene said that some digitization is worth doing—she has been working with the Building Inspector and is coordinating via the online Permitlink system. She uploads Commission information onto Permitlink when a building permit in wetlands or buffer zone is filed for. Mr. Jennings asked about hiring a contractor to set up a list of orders, noting expiration dates and other pertinent data so residents could know to renew. Ms. Greene said that she is starting with this, notifying residents about the winter work ban, and reminding them to request their Certificate of Compliance if their work is complete or if the Order is expired and no work was ever started.

Site walks Ms. Reed asked where the Commission stands on site walks. Mr. Parrott said that the Commission is trying to accelerate the process. The Commission now plans to do the site walk before a hearing opens, making it possible to address a simple matter in only one meeting if a MA DEP file number has been issued. Also, minor projects, like removal of dead ash trees in the buffer zone, will not necessitate a Commission site walk but rather can be reviewed on site by the Agent.

Wetlands bylaw Ms. Reed said that the Select Board is interested in moving forward with the bylaw, which would help with Water Department matters and give an advantage in 40B matters. She noted that two members of the Select Board had not opposed the concept but felt that the most recent effort was too rushed and lacked needed public input.

After discussing the timing to meet the deadlines for Fall Town Meeting with public engagement, it was agreed that the Commission will work to have a new bylaw for the Annual Town Meeting in spring of 2024.

Ms. Greene expressed frustration that the multiple outreach efforts made for the bylaw proposal prior to the most recent one seemed to attract interest only of those who were strongly opposed. She noted that the Commission had provided a PowerPoint presentation to the Select Board, put materials on the Commission website, held a separate public hearing about the bylaw with PowerPoint presentation, and engaged in other outreach efforts. She asked how it could be done differently or better. Ms. Reed replied that she was not sure. Perhaps the Commission could use the Planning Board's MBTA model for outreach.

It was observed that a major challenge with the prior version was the legalese in the bylaw proposal. Ms. Hawkins said that Concord met and finally overcame serious opposition to its wetlands bylaw, and she is now using the ultimately successful Concord version as a template. It has a totally different feel, she said, in that it says what you can do as well as what you cannot do. Concord had hired a consultant to accomplish this. She observed that a lot could be done to increase citizens' confidence that private rights would not be eliminated. Ms. Greene said that Merrimac's 6-page bare bones bylaw works well and Merrimac fleshed out its bylaw with more lengthy and detailed regulations.

Ms. Reed suggested that Ms. Greene could make a presentation for the Town departments and boards—and Ms. Greene supported that idea. She noted that her very basic wetlands 101 presentation at the Sage Center

was successful and could be repeated. She added that some citizen frustration cannot be avoided because of the way the governing statutes operate. If residents ask her if they need to file with the Commission in order to cut poison ivy at their mailbox in an area subject to the Act's jurisdiction, she has to say yes because of the way the law is written, even though without prior permitting observance of this work would likely not rise to an enforcement action. There could also be a presentation at the Library. Another idea Ms. Reed offered would be to invite the most vocal opponents to a Commission meeting to get their feedback.

Mr. Parrott said that it may be a good idea to have an annotated version of the draft bylaw that explains what is being done and why and what differs from the Wetlands Protection Act. Ms. Reed said that maybe a table would be useful. Ms. Greene noted that the prior outreach effort included all of that with examples of projects and how they would be permitted differently under the Wetlands Protection Act and proposed bylaw.

Ms. Hawkins raised the idea of including a map showing where known wetlands are. Ms. Greene expressed serious concern that the wetland mapping the state has done (and the link to that is on the Commission website) is very inadequate and incomplete. Residents are likely to rely on the map and complain that they were misled, even if the map is replete with disclaimers, which the current state mapping is. Ms. Hawkins proposed another way of informing residents, such as a statement of a rough percentage of wetlands in West Newbury, and Ms. Greene cautioned that even that is likely to change. It may be better to just explain that as a feature of its geology and the nature of its soils, wetlands predominate throughout the Town—and are very site specific.

It was noted that if the Commission does engage in an education program, there may be an opportunity for mailings with general information about wetlands rules and the Commission's responsibility. Ms. Greene suggested topics such as if someone buys a property subject to an Order of Conditions, and having property 200' from the riverfront. She also noted that the Town could use an existing "Living with Wetlands" brochure. The Clerk's Office is working on information packets for residents and Ms. Greene will pursue this.

Select Board Support In response to Ms. Reed's question about what the Select Board could do to support the Commission's work, Ms. Greene listed help and support with the bylaw, support of the Commission's mission, and help with education about wetlands protection requirements. Mr. Jennings noted that after questions were raised at the Community Preservation Committee, he spoke with the Tree Warden and explained that the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program does not exempt hazard trees that are located in priority habitat areas, and trees in such areas require prior review before removal.

Mr. Haley added that feedback and communication from the Select Board would be helpful, including when the Select Board hears from residents about Commission activities. He noted that he did not learn about personnel changes the Select Board made in Commission membership until he appeared at a meeting and the membership had changed.

2. Discussion (continued): Local filing fees

Ms. Greene had provided the Commission the current West Newbury fee schedule, examples of fee schedules from other towns and the state, and some real-life examples where the fee schedules apply (sometimes ambiguously). Mr. Parrott discussed the amount of work needed for different submissions as a measure of the fee level. Ms. Greene said that in practice, it is difficult to say. One might assume that work in

a buffer zone would impose few burdens on the Commission, but the development at 87 Main Street was only in the buffer zone and required many hours of her time. She said that riverfront projects have more considerations because of different statutory regimes that require consideration of the history of a lot.

After reviewing and discussing West Newbury's current lengthy resource area-based fee schedule as compared to the state's simpler project-based schedule as well as other towns, the Commission generally agreed that Ms. Greene will draft a revised fee schedule for review at the next meeting, with elements including

- *Use the state's simpler categories and approach of charging more for projects that have a higher likelihood to impact resource areas rather than charging by the resource area a project proposes work in,*
- *Drop the septic repair fee to a flat \$100,*
- *Continue charging \$100 for requests for determination of applicability,*
- *Eliminate the \$50 charge for requesting a Certificate of Compliance requested prior to the expiration of an Order of Conditions,*
- *Use Merrimac's per linear foot and maximum and minimum charges for an ANRAD*

The Commission also generally agreed to rely of the Conservation Agent's judgment to approve an insignificant change request without requiring the request to be heard at a meeting if she deems it minor enough to not warrant an Amendment to an Order. After making such a determination, the Conservation Agent will so inform the Commission by email before the next meeting, and if it deems it necessary, the Commission may redefine the future policy.

3. Discussion (continued): Boards, Committees Commissions Survey

Ms. Greene and the Commission reviewed and discussed the questions contained in the Survey from the Select Board. Ms. Greene will populate the survey with the responses of the Commission and send to the Select Board.

4. Wetlands Bylaw Discussion:

Ms. Greene and the Commission reviewed and discussed the revised draft bylaws Ms. Hawkins had developed and circulated. The Commission will work on the bylaw and regulations throughout the remainder of the year with plans to include the bylaw on the Spring 2024 Town Meeting Warrant. Due to the volume of items the Commission has had on their agendas, the Commission decided it would add a third monthly meeting date each month. This additional meeting will likely be remote or hybrid (Zoom) and will be for working on the bylaw and regulations and taking up any additional administrative business before the Commission. The Commission hopes this will create a better process allowing them the time needed to draft the bylaw and regulations and offer an easier to attend shorter meeting for the public to engage with the Commission about the bylaw and regulations.

5. Other Business: None

6. Informal Discussion:

Ms. Greene informed the Commission that abutter Sandra Raymond at 27 Main Street appealed the Commission's Order of Conditions for the town's proposed pond leveler device in Macey Pond, DEP# 78-763. Ms. Greene explained that the next steps will likely be MA DEP reaching out to the applicant, appellant, and Conservation Commission for any additional information they wish to provide and then MA DEP may schedule a site visit. MA DEP may issue a superseding Order of Conditions to approve of the project. If this is done, MA DEP will have jurisdiction over the project and ensuring that its conditions are followed. At project completion, the applicant would request the Certificate of Compliance from MA DEP rather than the Commission. A decision by MA DEP is appealable to the courts.

Commission membership Ms. Greene reported that the Select Board appointed Alejandra Chandler as the new Commission member. Ms. Chandler has an environmental work background and was an alternate member of the Merrimac Conservation Commission. The Select Board will consider appointed a new associate member, Haley McCraven, who has a business background and is interested in environmental issues, at their next meeting.

7. Approval of Minutes: May 3, 2023: Deferred

8. Approval of Minutes: May 15, 2023:

Ms. Hawkins moved, Mr. Haley seconded the motion, and the motion passed unanimously to approved the minutes as amended.

9. Approval of Minutes: June 5, 2023

Ms. Hawkins moved, Mr. Preble seconded the motion, and the motion passed unanimously to approved the minutes as amended.

10. Approval of Minutes: June 20, 2023

Ms. Hawkins moved, Mr. Preble seconded the motion, and the motion passed to approved the minutes as amended 3-0-1 with Mr. Parrott abstaining as he was not present at the meeting.

11. Approval of Minutes: July 10, 2023

Ms. Hawkins moved, Mr. Haley seconded the motion, and the motion passed unanimously to approved the minutes as amended.

12. Correspondence:

None

13. Next Meeting: August 8, 2023, at 7:00 pm. Please note this meeting is on Tuesday.

Adjournment

Mr. Preble motioned, Ms. Hawkins seconded the motion, and the motion to adjourn passed unanimously at 7:30 PM.

Meeting Documents

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

Respectfully submitted