

Newton Conservation Commission Procedure: Response to Encroachment on Conservation Land

Approved: January 30, 2020

Preamble: Reasons to Protect the Integrity of Conservation Parcels

It is part of the Conservation Commission's mission and legal obligation to protect the land it holds in trust for the public in its natural state, free from intrusions and alterations. Encroachments (such as the extension of lawns, the erection of structures, and the dumping of yard waste and other debris) diminish the habitat and ecological value of an open space parcel and may cause a public parcel to appear to be under private ownership. Many parcels were donated to the Commission for conservation purposes, and the Commission is required to uphold the donor's intention. All parcels held for conservation purposes are protected under Article 97 of the Massachusetts Constitution. Encroachments onto Conservation land are violations of the state constitution and the City's land use policy.

Monitoring Conservation Commission property boundaries and rectifying cases of encroachment allows the Commission to return these public lands to their natural condition and thereby, provide and protect natural resource value such as, tranquil outdoor settings, wildlife habitat, and stormwater control.

The Conservation Commission's Procedure for Addressing Encroachments

1. Commission members and its agents will maintain and operate according to a professional code of conduct.
2. The Commission and/or its agents will make a preliminary determination of the parcel boundaries with well documented field and file information.
3. The Commission and/or its agents will inform abutting landowner(s) of possible encroachments, seek a joint site visit, and solicit pertinent boundary information from them.
4. The Commission and/or its agents will determine (in concert with abutting landowner(s), if possible) the boundary line (as well as possible) via a field visit and using all available information (e.g., surveyed plans, abutting landowner(s) information, as-built plans from the building inspector, wetland plans, etc.). A new survey may be required to determine the boundary. The Commission may ask that this be paid for by the abutting landowner(s) depending on the specifics of the encroachment.
5. Once the boundary has been adequately delineated, the Commission and/or its agents may post boundary signs on trees or stakes close to the boundary.
6. The Commission may require the abutting landowner(s) to appear before them to discuss the encroachment.
7. If an encroachment is confirmed, the Commission will determine how best to rectify the encroachment, taking into consideration the nature of the original land conditions and surrounding Conservation land.
 - a. If lawn or landscaping has been extended onto Conservation land, the Commission will likely require of the abutting landowner(s) that the encroaching lawn or landscaping area no longer be mowed/maintained and/or that the encroaching lawn or landscaping area be renaturalized as specified by the Commission.
 - b. If structures have been erected on Conservation land (fences, walls, play sets, sheds, etc.), the Commission will likely require that the encroaching structures be removed by the owner of such structures. In addition, the Commission may require this area be renaturalized and may require that the cost of restoration be borne by the abutting landowner(s).
 - c. If, in the estimation of the Conservation Commission, complete renaturalization of the area is not practical, a transitional landscaping plan may be presented by the abutting landowner to the Commission for potential approval. Should a transitional landscaping plan be approved, the cost of installation and maintenance of the restored/transitional area will likely fall on the abutting landowner(s) for a length of time to be determined during the Commission's review.
 - d. In the absence of cooperative development of a restoration plan, the Commission, as landowner (s), may develop and implement a restoration plan, seek reimbursement for said restoration, and/or seek further legal remedies.