

West Newbury Conservation Commission Meeting Minutes

Meeting date & place: 6:00 pm, March 4, 2024, Second Floor Town Offices.

Members Present: Chair Molly Hawkins, David Parrott, George Preble, Haley McCraven, and Conservation Agent Michelle Greene.

Not present: Jack Haley; and for the first executive session, Molly Hawkins, who was recused as an abutter.

Acting Chair George Preble declared that discussing strategy relating to pending litigation may have a detrimental effect on the Commission's litigating position and entertained a motion to enter executive session. Mr. Parrott so moved, Ms. McCraven seconded, and by 3-0-0 roll call vote (Ms. Hawkins, recused, not participating) the Commission entered executive session at 6:06 pm.

Executive Session: 6:00 PM

1. Pursuant to G.L. c. 30A, §21(a)(3): To discuss strategy relating to pending litigation known as ND General Construction Inc. and Nathaniel Dennis v. Town of West Newbury Conservation Commission, Essex County Superior Court, Docket No. 2377CV01085, if the Chair declares that discussing the matter in an open meeting may have a detrimental effect on the litigating position of the Board. A vote regarding whether to go into executive session is expected; and votes may occur during the executive session.

In open session, acting Chair George Preble declared that discussing strategy relating to acquisition of rights to real property may have a detrimental effect of the Commission's negotiating position and entertained a motion to enter executive session. Ms. McCraven so moved, Mr. Parrott seconded, and by 3-0-0 roll call vote (Ms. Hawkins, not yet returned from her recusal, not voting) the Commission entered executive session at 6:34 pm.

2. Pursuant to G.L. c. 30A, §21(a)(6): To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body (review of draft Conservation Restriction (CR) for property at 114 Ash Street, "Evergreen Farm", so-called). A vote regarding whether to go into executive session is expected; and votes may occur during the executive session.

Ms. Hawkins moved to close the executive session and move to open session, Mr. Preble seconded, and by unanimous roll call vote the Commission so voted at 7:00 pm.

Open Session 7:00 PM

1. **Presentation and Discussion: Ash Street parcels deeded to the Conservation Commission, Parcel R6-4A and Parcel R6-3**

Town Assessor Christian Kuhn appeared via zoom. He said that he was contacted by Massachusetts Fish and Wildlife in December 2023. Apparently, they had done an audit of the property they owned and discovered that some parcels in West Newbury were not correctly listed as being owned by MA Fish and Wildlife. Of the three parcels, two on Ash Street had been transferred to the Conservation Commission. A third parcel is still under review. In the acquisition of land for the Parker River Wildlife Refuge, some properties were turned back to their original owners and in some instances the owners did not request a return of the property or pay back the government for the taking. This land remained under government ownership. Nonetheless some landowners kept the money yet acted as if the parcels were still theirs and resold the property which was subsequently given to the Town.

Mr. Kuhn said that he would like to act sooner than later to return these two properties. Mr. Preble inquired whether there were any other options in dealing with the property. Ms. Greene said that at the end of the day the property presumably would remain protected open space. She inquired if the land transfer documents could contain language ensuring that the parcels are preserved as open space with no buildings or other such uses. She also noted that it would be worthwhile to find out if the Town expended money to purchase these parcels and what should happen if that were the case. Mr. Kuhn said that that question may be answered in the minutes of town meetings.

Mr. Kuhn said he will be making a list of questions for KP Law. Ms. Greene will contribute some additional questions, including those relating to preserving the open space on the properties.

2. Public Meeting: Request for Determination of Applicability (continued): 16 Donovan Drive, Applicant: Daniel Chiango, Re: Construct a 24'x32' barn

Ms. Greene reported that the applicant has asked to withdraw the application without prejudice.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to withdraw this item from its agenda without prejudice.

3. Public Hearing: Notice of Intent (continued): 125 River Road, Applicant: Michael Fusco, Re: Construction of a roadway, driveways, and associate grading, DEP# 78-0770 *This matter has been continued to 3/18/2024 by request of the applicant.*

Ms. Greene said that Mass DEP notified the applicant that this subdivision will need to obtain a water quality certification.

4. Public Hearing: Notice of Intent (continued): 24-26 Bridge Street, Applicant: Myfanwy Collins, Re: After-the-fact permitting for an under driveway culvert replacement, DEP# 78-7XX

This item still awaits a DEP number. *The matter was continued to March 18.*

5. Public Meeting: Request for Determination of Applicability: 37 Coffin Street, Applicant: Joseph Neipp, Re: Construction of a garage and driveway

Property owner Joe Neipp and consultant Tom Hughes appeared before the Commission to present the project which is construction of a 24' x 26' garage and creation of a new driveway to service the garage. Mr. Hughes explained the wetlands line to the Commission and noted that after a site visit with Mr. Geene, he has eliminated wetlands flag 6, which was in a disturbed area, which thus pulls the wetlands line out in this area. He also explained that the line which passes under a brush pile which is partially in the wetlands is a best guess line and that it is his recommendation that after the brush pile is removed, he and Ms. Greene look at this area and determine if an additional wetlands flag is needed here and update the plan as needed

In regards to the brush pile, Mr. Hughes suggested that the Commission allow Mr. Neipp to burn it in place as it would probably result in less impacts than attempting to remove the pile from the wetlands. After this there would be no more brush piles or burning allowed in the wetlands.

Ms. Hawkins advised Mr. Neipp that it appears that construction of the new driveway may impact a stone wall and could require the removal of a street tree and indicated this work needs to be discussed with the Planning Board to determine if additional permitting under the Scenic Road bylaw is needed.

Ms. Greene confirmed with Mr. Neipp that any stockpiled materials will be located away from the wetlands and within the erosion control. Ms. Hawkins suggested that the erosion control should consist of staked, trenched, silt fence backed by straw wattles due to the slope at the site. The erosion control line was also adjusted to shorten it while still ensuring it would protect the wetlands.

Ms. Hawkins moved to issue a Negative Determination of Applicability subject to the below conditions, Mr. Preble seconded the motion and the motion passed unanimously.

Special conditions:

- All work shall conform to the following approved plans and documents: "Zoning Plan 37 Coffin Street", with mark up for existing and proposed driveway with a final revised date of 2/29/2024, a copy of which is attached herewith.*
- Erosion control shall consist of trenched, staked, wattle backed silt fence and shall be installed by the applicant as shown on the above referenced plan and shall be inspected and approved by the WNCC prior to any other work under this Order.*
- Notice of at least 72 hours shall be given to the WNCC prior to the commencement of any site work.*
- Immediately after removal of the brush pile, for which removal by burning in place is approved, located between wetland flags WF-A8 and WF-A9 on the above referenced plan, the applicant shall contact a wetlands scientist and the Conservation Agent for a review of this area. The review shall be completed to determine if the wetlands line is correct in this area and to place additional wetlands flags if needed and to determine if further removal of ash or materials in this area is needed to restore the wetland. Any ash or material to be removed shall be done by hand to avoid impacts to the resource area.*
- The area of the wetlands where the brush pile was removed shall be reviewed by a wetlands scientist and the Conservation Agent by October 1, 2024 to determine if any restoration plantings are needed in this area. If restoration plantings are needed, a planting plan shall immediately be submitted to the West Newbury Conservation Commission for their review and approval with plantings to be planted no later than November 1, 2024.*
- All materials shall be brought in and out of the site through either the existing or proposed driveway.*
- Any spoils or materials excavated or removed from the site during the course of work shall either be disposed of outside any wetland resource area or buffer zone or shall be disposed of lawfully offsite.*
- Any stockpiled materials shall be located within the limits of the erosion control as shown on the above referenced plan and as far from the wetland resource area as possible.*

6. Public Meeting: Request for Determination of Applicability: 137 River Road, Applicant: Joe Rosenfield, Re: Tree removal

Consultant Kevin McHugh said that the new owners are doing remodeling and are trying to open up the house to sunlight to address excessive shade that caused rotting. He said that he knows that many trees have been marked for removal. In response to Ms. McCraven, he said that these are the homeowners—not a developer. Mr. Parrott noted that the trees slated for removal are on the north side, which does not get much sun or have many shade issues. Mr. McHugh said that some trees are so close to the house that even on the north side, they overhang and shade the house.

In response to Ms. Greene's question about how the applicants will remove trees and save others on the heavily wooded steep site, Mr. McHugh said that they will have to climb the trees to take them down and drag them out. The Commission also discussed concerns with stabilization of the steep slope. Mr. McHugh was interested to learn what plantings would be recommended. Ms. Greene said that she cannot think of native plants that would be successful in these conditions. She advised that the best course would be to leave trees that are already established. Ms. Hawkins said that leaving leaf litter would also help. Mr. McHugh noted that the applicants have already cleaned out the site.

Mr. Preble said that a concern is that the roots of the cut trees should remain. After some discussion Mr. McHugh agreed that the trees could be cut flush to the ground—not below the ground and then filled in with soil.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination of applicability with special conditions requiring that the applicants 1) limit tree removal to 50 trees as shown on the marked-up map, "Figure 7 Tree Removal – 137 River Road, West Newbury, MA 01985" dated 2/16/2024; 2) where possible, cut trees a height that eliminates any hazard but leaves leads (trunks) 6 to 10-feet or taller in place to provide habitat (although where required for aesthetic and safety purposes, trees may be cut flush with the ground); 3) remove all slash, branches, and wood chips from the site by hand and dispose of them lawfully off site; 4) leave tree stumps and roots in place (not to be pulled or removed in any other manner).

7. Request for Certificate of Compliance: 210 Main Street, DEP# 78-460

Ms. Greene said that this involves a septic replacement done 20 years ago. The homeowners closed out with the Board of Health but not the Commission. She said that the Board of Health had an as built plan that can be used for the Commission's purposes. The lot is not too steep and is well vegetated and there has been no encroachment on the wetland.

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

8. Request for Extension to Final Order of Conditions: 519 Main Street, "Deer Run", Applicant: Michael Crow, Deer Run Land Development, DEP# 78-723

Mr. Parrott, an abutter, recused himself and left the Commission table.

Developer Mike Crowe said that he is requesting a routine extension for two years. For various reasons the project got off to a delayed start. Most of the work has been completed and it is all in good shape with good vegetation. Ms. Greene said that the site has been stabilized and this was the only development to avoid issues in the past year of extreme rains. The ponds and detention basins are working. Thus Ms. Greene recommended a grant of the extension for the Order of Conditions.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted 3-0-0 (Mr. Parrott, recused, not voting) to grant a two year extension of time.

Mr. Parrott rejoined the discussion.

9. Insignificant Change Request: 0 Middle Street, Parcel R27-31, "Lower Artichoke Spillway", Re: Time of year restriction waiver, DEP# 78-749

Newburyport engineer Jon-Eric White appeared before the Commission to obtain a waiver of the winter work ban to allow already-authorized tree removal. He said that Newburyport received a letter from the Army Corps of Engineers saying that because of the presence of the endangered northern long eared bat no work may be done between April 1st and October 1st. This is incompatible with the Commission's winter work ban that runs from October 15th to April 15th.

Mr. White elaborated that the purpose for this phase of tree cutting is to allow borings. The boring is a separate piece of work that will be proposed before the Commission at a later date, in connection with other work at the dam. At this point the tree removal will be limited and done for the purpose of facilitating access for the boring equipment.

Ms. Hawkins said that the Commission would be fine with reduced tree removal and asked about the method for cutting the trees. Mr. White said that the trees would be cut at ground level so that the boring machine can drive through. He was unsure how the cut trees would be removed. Ms. Greene noted that the Commission had not gotten into the details of tree removal methods when it permitted the tree removal in the Order of Conditions. She noted that it is mud season and the turbidity curtain should remain in place until this work is done. Erosion controls should be installed before tree cutting begins. Ms. Greene will visit the site before work begins and will visit again if there is a need for more stabilization. Mr. White said that the city could put seed on the area where trees have been cut. Mr. White will provide the Commission more information about tree removal methods when he hears from the tree removal person.

Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve the insignificant change request to allow work during the winter work ban, subject to the conditions just discussed.

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

Ms. Greene said that she learned that the drainage pipes under the baseball field had been cameraed in 2020-21 and noted that it might be well for this to be done again.

11. Enforcement Order Update: 154 Middle Street, FKA 14 Kimball Road Lot 2, DEP# 78-721, Re: Continuing discharge of material into wetlands

12. Enforcement Order Update: 2 Kimball Road, FKA 156 Middle Street, FKA 14 Kimball Road, Lot 3 Re: Continuing runoff issues contributing to discharge of material into wetlands

Ms. Greene reported that the additional stormwater management systems were installed last Friday and erosion controls have been bolstered. She said there would be stormwater monitoring and we will see how it works.

13. Discussion: Wetlands Protection Bylaw

Ms. Greene said that she will circulate draft regulations this coming Wednesday or Thursday. The Commission has scheduled a business meeting to work on these regulations. The Town Manager would like the Commission to hold another information session about the proposed bylaw. That can occur at the April 9th meeting.

14. Approval of Minutes: December 6, 2023

Deferred

15. Approval of Minutes: December 11, 2023

Deferred

16. Approval of Minutes: January 8, 2024

Deferred

17. Approval of Minutes: February 5, 2024

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

18. Approval of Minutes: February 12, 2024

Deferred

19. Approval of Minutes: February 20, 2024

Deferred

20. Land Agent:

Ms. Greene reported that the Fire Department burned brush at the field at Cherry Hill. As an interesting data point, left standing were many one-foot-high autumn olive whips. The Invasive Plant Working Group will meet and discuss how to remove the autumn olives.

21. Conservation Agent:

The Climate Change MVP grant project will hold a citizens science event on March 13 at 1:30 pm when high tides will occur.

22. Commission Representative to Open Space:

Mr. Parrott reported that the Open Space Committee had an in-person meeting. The Committee did not favor CPC funding for the Sawmill Brook footbridge, nor did the Mill Pond Committee. Thus CPC Chair Wendy Reed will be tabling the project.

Parking for the Sawmill Brook area is required for state funding and by the land management plan, so that will go forward.

23. Commission Representative to Community Preservation Committee:

Mr. Haley was not present.

24. Other Business:

Ms. Greene reported that 1) a pending land item will involve a parcel owned by John McGrath; 2) there will be a stakeholder conversation among interested parties concerning the Ocean Meadow/ECTA trails; 3) upcoming matters involving tree removal at Brake Hill and a septic replacement at Steward Street will need site walks. *Monday March 11 at 4 pm was set as the site walk time.*

25. Informal Discussion:

- 26. Upcoming Meetings:** March 11, 2024 – Administrative business, work on wetlands bylaw & regulations
March 18, 2024 - Regular business public hearings & meetings

Adjournment 8:40 pm

Meeting Documents

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

Respectfully submitted