

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:00 pm, December 4, 2023, Second Floor Town Offices.

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

**Members Absent:** Haley McCraven, Alejandra Chandler

### Open Session 7:00 PM

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

*At the applicant's request, this was continued to January 2, 2024.*

3. **Public Meeting: Request for Determination of Applicability (continued): 18 Norino Drive, Applicant: David Miller, Re: Change from helical mooring anchors to permanent anchor pins and eco-mooring blocks for dock**

*At the applicant's request, this was continued to December 18, 2023, awaiting a letter from Natural Heritage*

4. **Public Meeting: Request for Determination of Applicability (continued): 56 Church Street, Applicant: James Igoe, Re: Tree removal**

*At the applicant's request, this was continued to December 18, 2023, awaiting a letter from Natural Heritage*

5. **Public Meeting: Request for Determination of Applicability: 430 Middle Street, Applicant: John Enos, Re: Tree removal**

Ms. Hawkins noted that the Commission had conducted a site visit last week and invited applicant John Enos to explain his plan. Mr. Enos said that he has a 5.8-acre property at 430 Middle Street that has a 350-foot-long driveway. The area to the side of the driveway is mostly forested, but many trees are on the ground and some are dying or diseased. In the interest of better health for the wooded area, Mr. Enos would like to remove the trees lying on the ground and to take out some 10 standing trees. He said there would be no construction and no heavy machinery used. The shrubbery would not be touched. The work area in question is partially in a buffer zone and work would take place 40-50' from the wetland at the closest.

Ms. Hawkins asked Mr. Enos to consider leaving some of the stumps at higher levels—10' or so if no hazard is involved. This would provide habitat for birds and insects. In response to Mr. Parrott, Ms. Hawkins said that the transition to wetland is clear: there is distinct topography and the vegetation in the area changes to shrubs.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination of applicability with conditions requiring the applicant to: 1) limit cutting to 10 trees outside of the 50' line of the buffer zone as shown on the plan dated 1/22/2021; 2) place no debris in wetland resource area; 3) consider eliminating hazards but where feasible leave stumps at 6-10' high to provide habitat; 4) leave all stumps remain in place; 5) use no heavy equipment in the*

*buffer zone or resource area.*

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

Ms. Greene said that Commission has not received the Epsilon report about clean up required upon completion of the Pentucket school. She has heard that the report was shared with the school and design team and is lengthy but requires less clean up than expected.

**7. Enforcement Order Update: 0 Baileys Lane, Parcel R13-82A, Long Hill Orchards, Re: Filled wetlands**

Ms. Greene noted that a site visit has yet to occur because the planned date fell through and consultant Greg Hochmuth asked for an enforcement order amendment to extend the due date for a restoration plan to December 18, 2023.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to amend the Enforcement Order to extend the restoration plan due date to December 18, 2023. Ms. Greene will alert the Commission members to any scheduling of a site visit at this property.*

**8. Enforcement Order Update: 13 Turkey Hill Road, Re: Planting update for unpermitted clearing in 100' buffer zone of wetlands**

Ms. Greene reported that she received photos on November 30 showing that plants were planted, the area in question was seeded and salt marsh hay mulch was installed. This is satisfactory for now and the matter can be revisited in the spring when the first growing report is received.

**9. Discussion: Wetlands Protection Bylaw**

Ms. Greene sent the draft bylaw out via email blast and to prior commenters and posted it on the website. She said that comments have come in that in some cases reflect a misunderstanding of the state requirements that in any event govern what the Commission can do.

Mr. Parrott said that the Commission should be clear about the difference from the prior proposal; Ms. Greene said that she is working on an updated slide show. She will include a map showing the many towns in Essex County that have wetlands bylaws—often far more strict than West Newbury's proposal. Handouts with the state requirements will also be available.

KP Law will have feedback by December 14<sup>th</sup> and will have an ongoing advisory role.

As selling points, the Commission discussed the benefits of protecting wetlands, which act like a sponge—an important factor for those who own wells, among other things. Mr. Haley noted the problems with lack of an enforcement mechanism, particularly with respect to buffer zones. Ms. Hawkins made the point that the bylaw promotes equity, particularly for individual homeowners who may not have the sophisticated consultants that developers hire. The consultants often find ways to enable developers to do things that might not occur to less sophisticated homeowners. Also, it should be noted that the flat, dry upland areas have already been developed, so that now developers are looking to build out lands with more complex or difficult terrain, including steep slopes and wetlands.

**10. Discussion: Public info session on Wetlands Protection Bylaw 12/6/2023**

Ms. Greene said that the session about the bylaw will be in the first-floor hearing room and will be recorded.

**11. Discussion: Schedule site visit ahead of 12/18/2023 meeting**

Ms. Greene said that at the next meeting three Notice of Intent filings will be on the agenda. Two proposed home additions—one at 124 Batchelor Street, and one at 10 Harrison Avenue—should be relatively easy to review in the field.

The third—construction of a roadway for a proposed 2-lot subdivision at 125 River Road—is more extensive and complex, with multiple wetlands, proposed wetlands filling, proposed wetlands crossing, and proposed wetlands replication. This matter, said Ms. Greene, may be a case where it would make sense for the Commission to use a consultant to do a peer review of the wetlands delineation. In her experience, once a delineation is in place for a more complex or involved project, subsequent changes or expansion may crop up and the commission later wished for a more precise or thorough delineation that would better address the new situation—but its hands were tied after the commission approved the initial delineation.

Ms. Greene said that using the peer review now would set a precedent for doing so with even larger projects that are expected to come before the Commission. The peer review is done at the applicant's expense, per the policy already adopted by the commission under G.L. Ch. 44 §53G. Mr. Preble recommended using the peer review for 125 River Road.

Mr. Parrott suggested that the Commission should identify a clear threshold for the need for peer review. Suggestions included a certain number of linear feet of wetlands lines or perhaps involvement of more than one lot. Ms. Greene noted that the project at 87 Crane Neck Street for a driveway crossing a stream to a barn was complex and substantial and took a good deal of time to confirm the wetlands delineation even though only one lot was involved. Mr. Haley noted that the experts doing the peer review could also advise the Commission about means of mitigation. Ms. Greene agreed, noting that the consultant could also advise about stormwater issues and wetlands mitigation. She also explained that the Commission can still do a site walk, likely after the consultant's report is available.

*Ms. Greene will 1) forward to Commission members the existing policy about use of consultants and 2) let the 125 River Road applicants know that the Commission will likely move to send the project to peer review when they open the public hearing for the Notice of Intent. It was agreed that the site visit for the projects at Bachelor Street and Harrison Avenue would take place on Monday, December 11, starting at 11:30 am at Harrison Avenue.*

**12. Approval of Minutes: November 7, 2023**

*Deferred*

**13. Approval of Minutes: November 20, 2023**

*Deferred*

**14. Land Agent Updates:**

Ms. Greene said that the purchase and sale agreement between Greenbelt and Evergreen Farm has been signed. She also said that the Open Space Committee and herself have developed a checklist for new trails and a meeting with stakeholders is tentatively planned about this on December 13, 2023 at 7 pm.

**15. Conservation Agent Updates:**

*None*

**16. Commission Representative to Open Space Update:**

Ms. Greene reported that the Sawmill Brook conservation project met funding goals, and the closing will be December 15, 2023.

**17. Commission Representative to Community Preservation Committee Update:**

Mr. Haley reported that the Community Preservation Committee expects to hold a meeting in December concerning a Parks and Recreation project.

**18. DEP Comments:**

Ms. Greene said that DEP is seeking comments on a draft policy for salt marsh restoration. *Ms. Greene will circulate this to the Commission members.*

**19. Other Business: Save the date – MVP Grant Community Virtual Education Event on Sea Level Rise and Climate Projections via Zoom, December 7, 2023 6-7:30 PM via Zoom**

Ms. Greene and Ms. Grammer described two events the Climate Change Resiliency Committee is planning this week as part of the MVP action grant looking at River Road and neighboring streets.

Ms. Greene also provided the Commissioners a signature page for the modification to the 4 Norino Drive enforcement order, granting extensions of time. This modification was made at the November 20, 2023 meeting however, the signature page was not signed at that time.

**20. Informal Discussion:**

Regarding the beached houseboat at 15 Norino Drive, Ms. Greene said that this is again receiving attention. The Town Manager, Harbormaster (shared with Salisbury), Police Chief and Ms. Greene have worked together on a letter to be sent that will require compliance with Harbormaster regulations, which impose a \$100/day fine for an abandoned derelict vessel. The letter will order removal of the houseboat and offer to help relocate it.

**21. Upcoming Meetings:**

December 6, 2023 @ 6:00 PM – Public info session on Wetlands Protection Bylaw

December 11, 2023 @ 7:00 PM – Administrative Business, Wetlands Protection Bylaw

December 18, 2023 @ 7:00 PM – Regular Business, Public Hearings & Public Meetings

At 8:06 p.m. Ms. Hawkins recused herself as an abutter to ND General Construction Inc. and Nathan Dennis and left the meeting. Vice Chair Preble then became Acting Chair and said that he would entertain a motion to go into executive session 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. 2377 CV 01085. He declared that discussing the matter in an open meeting may have a detrimental effect on the litigating position of the Board. *Mr. Haley so moved, Mr. Parrott seconded, and the Commission voted unanimously to go into executive session.*

\* \* \*

*At 8:21 p.m. Mr. Preble moved, Mr. Haley seconded, and the Commission voted unanimously to close the executive session and return to public session.*

**Adjournment** 8:22 pm

### **Meeting Documents**

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

Respectfully submitted