

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:00 pm, October 2, 2023, Second Floor Town Offices.

**Members Present:** Chair Molly Hawkins, David Parrott, Jack Haley, Haley McGraven 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.***
2. **Public Hearing: Notice of Intent (continued): 0 Middle Street, parcel R27-28, Artichoke River Woods, Applicant: Essex County Greenbelt, Re: Construction of a parking area and portion of trail, DEP# 078-0766 *Applicant requests a continuance to 10/16/2023***
3. **Public Meeting: Request for Determination of Applicability (continued): 16 Donovan Drive, Applicant: Daniel Chiango, Re: Construct at 24'x32' barn *Applicant requests a continuance to 10/16/2023***
4. **Public Meeting: Request for Determination of Applicability (RDA): 693 Main Street, Mill Pond, Applicant: Town of West Newbury, Re: Hand removal of water chestnut**

Ms. Greene reported that at Mill Pond after the heavy rains in August the area where the path around the pond straddles a wetland pool area to one side and the Mill Pond to the other, water overtopped the path into Mill Pond. Highway Superintendent Butch Hills put in gravel to stabilize the area but now Ms. Greene has found water chestnut, an invasive species, in Mill Pond. She saw perhaps four or five plants, which likely does not represent the entire population in the pond.

Ms. Greene said that European water chestnut, when established, can form large, thick mats covering a water surface, depleting oxygen as it decays. Mr. Parrott noted that the plants produce prolific seed pods that also cover the area. Hand pulling small populations can be effective, Ms. Greene said, since water chestnut pieces left in will not start new plants. Ms. Greene said that she did not know how the plant got into Mill Pond, but it seems to have been flushed into it by the rains.

At the request of the Town's invasive plant team, Rick Parker, Carol Decker and others, the Town has submitted an RDA to the Commission proposing to use kayaks or canoes to access the water chestnut and hand pull it. They propose to put the harvested material into buckets or baskets and take the material to the Department of Public Works area on Pipestave Hill where it will dry out, and then compost it. Because it will take several years to manage the water chestnut, the proposal is that the RDA last three years. Additionally, a "wanted poster" will be displayed at Mill Pond, inviting passersby to be on the lookout for the water chestnut. Mr. Parrott said that if he has time, he will use a drone to map water chestnut at Mill Pond.

Ms. Greene noted that if the water chestnut is accessed from the land, care should be taken not to destabilize the bank. She said that it would not be good if many people were walking up and down the bank, destabilizing the area and promoting erosion.

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue a negative determination of applicability with conditions that 1) the water chestnut must be removed by hand, preferably from a paddle-powered boat; 2) where water chestnut is harvested from the bank there shall be minimal foot traffic; 3) once harvested, the plant shall be removed from Mill Pond and disposed of in accordance with best management practices as described in the RDA.*

**5. Public Meeting: Request for Determination of Applicability: 0 Moulton Street, Map R17, 6A, Applicant: City of Newburyport, Re: Soil borings**

Consultant Engineer Aaron Weieneth and Newburyport water manager Thomas Cusick, Jr. appeared on behalf of the City of Newburyport, explaining that the City is preliminarily investigating site locations for a new pumping facility at the Indian Hill reservoir, which is in West Newbury and Newburyport. The City is examining locations on the east shore within Newburyport and in West Newbury on the west shore on land owned by the City. The plan is to conduct three soil borings to locate the bedrock and to understand the soils. This is in the buffer zone, said Mr. Weieneth, and the City believes that such boring in a buffer zone in order to develop designs is exempt from wetlands protection requirements under the rules in 10 CMR. Mr. Weieneth noted that this proposal had been presented to the Select Board.

In response to Ms. Hawkins, Mr. Weieneth said that the bore holes would be 6" or less in diameter. They will go down in 5' increments until bedrock is reached. This will take one day of drilling. Once drilling has been completed, the bore holes will be refilled, so few if any spoils are anticipated. Any spoil materials would be removed offsite. They expect the work to be done in 2 to 3 weeks.

In response to Ms. McCraven, Mr. Weieneth and Mr. Cusick said that the City would share the data results with West Newbury.

Mr. Parrott asked whether access for the drilling equipment would cross resource areas, making the project not technically exempt from wetlands protections. Ms. Greene said that a mowed path with a gravel pull off is in this area and would be used for access, so this is not a particularly sensitive area, though the whole area is wet. She suggested that steel plates to protect the soil may be in order if the drilling equipment is brought in during particularly wet conditions.

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue a negative determination of applicability with conditions that 1) if conditions so require (upon consultation between the Conservation Agent and the City), the City will use steel plates to protect the crossing area when the drilling equipment is moved in and out, 2) holes will be refilled, 3) any spoils shall be disposed of lawfully offsite, and 4) that the agent be given 72-hour notice before work starts.*

**6. Public Meeting: Request for Determination of Applicability: River Road Right-of-Way in front of 89 River Road, Re: Culvert improvements *Continued***

**7. Request for Certificate of Compliance: 40 Maple Street, DEP# 78-743**

Ms. Greene explained that the property's former homeowner went through extensive processes at the Commission and the Planning Board to permit an addition to the home. Then without beginning any construction, the former homeowner moved away. The new homeowner does not want to do this project and wants to close out the open Order of Conditions—which will expire June 28, 2025 and which was never filed with Essex County Deeds. Thus, said Ms. Greene, the Certificate of Compliance would only be for the purpose of closing out the Order of Conditions. She noted that the Certificate of Compliance form contains a check box for work never done.

Ms. Greene said that the new homeowner could be required to record with Essex Deeds both the Order of Conditions and the Certificate of Compliance, but this would cost several hundred dollars for paperwork the new homeowner had nothing to do with. She said that unless something is done to make it clear that the Order of Conditions is closed out, the Conservation Commission records will be unclear about the status of the property. She said that a Certificate of Compliance provides a clean paper trail, along with the minutes which can be added to the Commission's file for the property.

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue a Certificate of Compliance for no work done at 40 Maple Street.*

**8. Request for Certificate of Compliance: 365 Main Street AKA Drakes Landing, DEP# 78-679**  
***Continued to October 16 meeting***

Ms. Greene offered a positive report of a site visit she conducted on the property. Prior Commission concerns have been resolved except that the applicant needs to provide the Commission with an updated plan showing perimeter drains.

**9. Request for Partial Certificate of Compliance: 10 Barberry Lane, FKA Lot 5, DEP# 78-275**

Ms. Greene explained that this small development had been permitted in the early 1990s, the Certificate of Compliance has never been issued and one of the items that appears to have prevented the issuance is the question of whether the stormwater management system had been installed correctly. There are notes in the file from the Commission requesting that the Planning Board not release escrow funds to the developer because of these unresolved stormwater management issues. Ms. Greene said that the unresolved issues are not apparent in Commission records but could relate to construction issues.

She said that 10 Barberry Lane is fully vegetated and stable with no stormwater structures, stormwater easements, wetlands, or wetland buffer zones on the property. She recommends issuance of the partial Certificate of Compliance. Ms. Greene also suggested that she might contact the homeowner's association to get the Certificate of Compliance for the Barberry Lane project completed, since this kind of issue will repeat with every sale of a property. She noted that approaching the homeowner's association this way worked for the Twig Rush development

*The Commission advised that Ms. Greene should pursue the matter with the Barberry Lane homeowner's association. Ms. Hawkins moved, Mr. Parrott seconded, and the Commission voted unanimously to issue a partial Certificate of Compliance for 10 Barberry Lane.*

**10. Request for Certificate of Compliance: 525 Main Street, DEP# 78-609**

Ms. Greene explained that this matter involves an Order of Conditions for a septic system put in two or three owners ago. The matter was closed out at the Board of Health with as-built plans. The Commission had imposed a condition requiring installation of permanent boundary markers to protect the resource area from encroachment. Meanwhile, in the course of changing ownership the fence on the property was relocated. Because of the new fence location, two of the post locations were reviewed in the field by Ms. Greene and the new owner and it was determined these posts should be located outside of the fenced in area to provide the protection to the wetlands that the posts were intended for.

Ms. Greene recommended granting the Certificate of Compliance with ongoing conditions from the Order of

Conditions that the marker posts be maintained with no disturbance beyond it and that the landowner refrain from applying pesticides, herbicides, insecticides, or other chemicals in the natural vegetation area and to apply fertilizers sparingly.

*Ms. Hawkins moved, Ms. McCraven seconded, and the Commission voted unanimously to issue the Certificate of Compliance with ongoing conditions that the marker posts be maintained with no disturbance beyond it and that the landowner refrain from applying pesticides, herbicides, insecticides, or other chemicals in the natural vegetation area and to apply fertilizers sparingly.*

**11. Enforcement Order Update: 333 Main Street, Re: Unpermitted excavation of a trench within the 100' buffer zone of the bank of an intermittent stream.**

*Ms. Hawkins, an abutter, recused herself and left the Commission table as Mr. Parrott became acting Chair.*

Nathan Dennis, whose company ND General Constructions owns 333 Main Street, subject to the enforcement order requiring him to fill and revegetate the unpermitted trench, said he wanted to address the enforcement order. He said that nothing has been done in terms of filling in the trench although he has had many discussions about this and intends to comply or work with the Commission but the specifics have created a hurdle. He said that he is working with wetlands consultant Tom Hughes and has developed an RDA concerning proposed work on his property at 333 Main Street to address the problems with a failed culvert undergrounding an intermittent stream at 335 Main Street. Mr. Dennis said that he brought the RDA with him to the meeting and suggested that the Commission could act on it now.

Mr. Dennis discussed the procedures with the RDA and the enforcement order, suggesting that amending the enforcement order now would be a quicker resolution (allowing work before the October 15 winter work ban) and perhaps the Commission could order work to be done to stabilize stormwater issues at 335 Main Street.

Ms. Greene said that the RDA has not yet been filed with the Commission and was not on the agenda and thus cannot be acted upon at this meeting but can be on the agenda for the upcoming October 16 meeting. She also noted that the RDA and enforcement order, while related, are procedurally separate. The RDA may permit certain work to go ahead, while the enforcement order requires restoration of the trench. She added that no work at 335 Main Street is before the Commission and the Commission cannot use an enforcement order concerning 333 Main Street to require action on 335 Main Street.

Mr. Dennis said that the trench at 333 Main Street is not within a 100' buffer zone. He said that the failed culvert was not conveying an underground stream but rather was a stormwater management device. Ms. Greene said that the culvert was carrying an underground stream at least until it meets the Department of Transportation stormwater system at Main Street. Mr. Dennis added that he obtained a demolition permit at 333 Main Street without having to make a submission to the Commission. It was explained that if the ground is not disturbed (as with demolition or installing a new roof, etc.), Commission approval is not required. Mr. Dennis also noted that the owners at 335 Main Street demolished a barn and constructed a new one in 2020 without making a submission to the Commission. Ms. Greene said that may have been an oversight, that delineations are good only for 3 years, and that in the case at hand the Commission reviewed aerial maps and determined that the trench work was within the 100' buffer zone of the bank of the intermittent stream where it is above ground at 335 Main Street. Mr. Dennis said that they have agreed to disagree about the jurisdictional question.

Mr. Dennis said that if the Commission leaves the enforcement order in place, he will appeal and the trench will remain in place and more delays will occur as he pursues the RDA. If the RDA results in a negative determination, then if he removes the trench, it would go back in later and that would involve even more disturbance. And in these scenarios, nobody wins, he noted. Mr. Dennis asked that the compliance date for the enforcement order's requirement that the trench be remediated be extended to November 15.

*After further discussion it was generally agreed that Mr. Dennis will work with Ms. Greene file to the RDA as soon as possible for consideration at the October 16<sup>th</sup> meeting. The Commission scheduled a site visit for October 11<sup>th</sup> at 5 pm.*

*Mr. Parrott moved, Ms. McCraven seconded, and the Commission voted 3-0-1 (Ms. Hawkins recused) to extend the enforcement order's compliance deadline to October 16, the date the RDA is anticipated to be reviewed by the Commission.*

**12. Enforcement Order Update: 13 Turkey Hill Road, Re: Review restoration plan for unpermitted clearing in 100' buffer zone of wetlands**

Ms. Greene expressed disappointment that homeowner Alejandra Chandler did not appear before the Commission at this meeting to explain her proposed remediation—which had been pending for well over a month and whose deadline for submission, under the enforcement order, was today.

She noted that she had discussed the applicable remediation requirements with Ms. Chandler in detail extensively. Ms. Greene said that she was not prepared to present Ms. Chandler's proposal, which is incomplete, on behalf of Ms. Chandler. Ms. Greene observed that most people dealing with such an enforcement order consult a wetlands scientist (as did Ms. Chandler when considering seeking Commission approval of modifications to the Order of Conditions for mowing in the wetland), but Ms. Chandler did not do so with respect to this enforcement order.

Ms. Hawkins and Mr. Parrott noted that the remediation plan submitted to the Commission does not specify how many new plants would be installed, where the new plants would be installed, or what kind of seed mix would be used or where it would be used on the disturbed property. This lack of detail, said Ms. Hawkins, makes it impossible for the Commission to determine whether the remediation plan has been properly executed. Ms. Greene said that Ms. Chandler only recently installed erosion controls (which she had also discussed extensively with Ms. Chandler) and the erosion controls do not extend fully along the disturbed area. Mr. Haley expressed concern that winter is approaching and the window for restoration is closing.

*The Commission advised that Ms. Chandler needs to provide a plan of plantings for restoration of the resource area, including details of the quantities, locations, and species of plants to be installed. This will need to be monitored for compliance through the fall of 2025. Ms. Greene will so inform Ms. Chandler and ask that Ms. Chandler appear in person at the October 16, 2023 Commission meeting.*

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

Ms. Greene recounted that the Commission had amended the enforcement order to include a cease and desist order for all work remaining on the school construction project other than long-specified erosion controls and other measures to bring the project into compliance with the Order of Conditions requiring no silty discharges into the intermittent stream on the construction site. She held a site visit with the contractors and architect and others on September 21 and found that significant work had been done to address the deficiencies, although certain erosion controls required bolstering. She lifted the cease-and-desist order on

September 30.

Ms. Greene said that serious design issues remain unresolved. She pointed out that at the location where the bypass pipe had been removed, the seep at the toe of the slope turned into a 6” hole that discharges silty water in the rain—which has now grown into a 12” hole. When she again stressed the need for an investigation into subsurface hydrologic conditions, the reply was to ask if she wanted the contractors to crawl into the hole to look around.

The second unresolved area of concern is the baseball field discharge apron area, which is functioning as a catch basin in the rain and collects considerable sediment, and then is breached, with silty water flowing into the stream. The response to this concern was to insist that it is an apron—not a catch basin.

Ms. Greene also noted that the new parking lot recently developed a sink hole, possibly relating to poor performance or construction of the stormwater management system.

Ms. Greene noted that the problems with poor design for stormwater management are persisting and apparently will persist after construction is completed—in violation of continuing performance standards in the Order of Conditions. She inquired whether the Commission should send a letter to important stakeholders making them aware of these persistent, unresolved issues.

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to draft a letter to be sent to important stakeholders including the School Building Committee to give an alert about design problems expected to have adverse future impacts and to recommend that escrow be withheld and the contractors not released until these issues are satisfactorily resolved.*

**14. Discussion: 0 Baileys Lane, Long Hill Orchard, Process to review request for Certificate of approval to construct dwelling on land subject to Agricultural Preservation Restriction co-held by the Conservation Commission and Select Board**

Ms. Greene introduced the Commission—which has not yet received the documents concerning this matter—to a pending request by Long Hill Orchard, which is under an APR (except for the parcel with the farmstand and existing house) to build a new house on part of the land by Baileys Lane that is subject to the APR.

Mr. Parrott noted that he lives nearby but is not an abutter. He believes he has no need for recusal, but wanted to disclose this in the minutes. He will also inform the Town Clerk.

Ms. Greene said that this involves a separate permission from the Massachusetts Department of Agricultural Resources (MDAR), as well as from the Town, through the Select Board and this Commission as grantees of the APR, and is something the Town is not familiar with—and so legal consultations have occurred. Ms. Greene noted that MDAR, which is stretched thin, has indicated that they turned down a request from Long Hill Farm to construct a house in January 2023 (no request was made to the town for this filing) and in their reviews of the property have observed what they believe are activities which do not sufficiently relate to agricultural projects and there is some question about activities on the property such as a compost project that may not be in accordance with the APR.

As concerns the proposed house, the APR requires that it house the immediate family of the farmer who are involved in day-to-day operations of the farm or house workers on the farm, as in the case of a dairy farm

where the livestock require constant care. It is not clear that the current proposal meets these requirements of the APR.

Ms. Greene said that she, the Commission Chair, the Select Board, the Town Manager and MDAR will be conducting a site visit of the area proposed for the new home and the areas where questioned activities are taking place. The question that will be posed to the Commission is whether it would approve the home.

*Ms. Greene will send the Commission members a copy of the APR and the request to build the home. She also advised that the Commission members can look on Google maps to see the progression of activities on the Long Hill Orchard properties.*

**15. Discussion: Wetlands Revolving Account expenditure – soil auger for Chair**

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to approve a \$292.84 expenditure from the revolving account to purchase a soil augur used during site visits by the Commission chair.*

**16. Approval of Minutes: August 8, 2023**

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to approve the minutes of August 8, 2023, as amended.*

**17. Approval of Minutes: September 6, 2023**

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to approve the minutes of September 6 2023, as amended.*

**18. Approval of Minutes: September 11, 2023**

*Ms. Hawkins moved, Ms. McCraven seconded, and the Commission voted 3-0-1 (Mr. Haley, not present at the meeting, abstaining) to approve the minutes of September 6 2023, as amended.*

**19. Approval of Minutes: September 18, 2023**

*Deferred.*

**20. Land Agent Update:**

Ms. Greene said that the professional work to manage invasive plants on Town land is underway. An email blast was sent notifying townspeople and signs have been put up noting that some plants may be treated with herbicides. She said that the reaction seems positive so far.

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

Mr. Parrott and Ms. Greene said that the Open Space Committee held a productive meeting in which the Committee determined to develop a checklist (with Ms. Greene providing a draft) to review proposed trails to be used for the public, with items such as who gets the permits and constructs the trails, etc. The Committee will meet to review this at their regularly scheduled October 18<sup>th</sup> meeting and then on October 26 a meeting with stakeholders such as homeowners' associations and Essex County Greenbelt will be held.

**22. Commission Representative to Community Preservation Committee (CPC) Update:**

Mr. Haley reported that the CPC met on September 20<sup>th</sup> and approved the expenditure of \$175K to purchase a conservation restriction for property at 114 Ash Street. The matter is now before the Select Board and if they approve, it will be before Town meeting this fall.

**23. DEP Comments:**

Ms. Greene noted that DEP is offering free online training and information on these trainings have been emailed to the Commission.

**24. Other Business:**

Ms. Greene noted that the Select Board had recently appointed Ms. McCraven as a full member and Ms. Chandler as an associate member of the Commission.

Ms. Greene reported that work on restoration at 21 Montclair is beginning.

She also said that it is time to sign up for the MACC conference. Ms. Greene will take member's registration forms and submit them and manage reimbursement.

**25. Informal Discussion:**

Mr. Haley raised the idea of using the revolving account to compensate Ms. Grammer for taking the Commission minutes, which the Commission and Ms. Greene favored. Ms. Grammer said that she would prefer not to be paid, but feels that she is not needed to take minutes at the Commission meetings addressing administrative and bylaw matters. *It was agreed that Ms. Grammer will inquire with the director of the Council on Aging about the tax abatement work program.*

**26. Upcoming Meetings:** October 10, 2023, @ 7:30 PM Admin business/bylaw;  
October 16, 2023, @ 7:00 PM Regular business;  
November 6, 2023 @ 7:00 PM Regular business.

**Adjournment** 9:03 pm

**Meeting Documents**

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

Respectfully submitted