

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:00 pm, November 20, 2023, Second Floor Town Offices.

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

**Members Absent:** Alejandra Chandler

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** *Applicant request a continuance to December 4, 2023.*

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**

*This matter was continued to December 4, 2023 pending a response from NHESP on the proposed change.*

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

*This matter was continued to December 4, 2023 pending a MESA checklist filing by the applicant with NHESP.*

5. **Certificate of Compliance Request: 13 Robin Road, DEP# 78-0764**

Ms. Greene said that this project was to replace a failed septic system at a property whose backyard is a wetland. Consistent with Commission policy to encourage such replacements in view of their environmental benefits, the Commission accepted the proposal with the condition that the plan including wetlands lines was to be used only for this septic project. Any additional construction or activity would require a new plan with a new delineation.

Ms. Greene said that the as built looked good as did the site, except that several hemlocks parallel to the leach field had been removed and this had not been in the proposed plan. She noted that some of the conditions, such as limitations on the use of pesticides and similar chemicals, are continuing and run with the land.

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to issue the certificate of compliance for the new septic system at 13 Robin Road.*

6. **Enforcement Order Update: 4 Norino Drive, Re: Status of restoration plantings due 11/15/2023, DEP# 78-740**

Ms. Greene noted that an enforcement order had been issued concerning unpermitted clearing in the conditioned 25' no disturb buffer zone, requiring remediation consisting of planting [24 native saplings and 18 shrubs](#). An insignificant change request approved for the property also allowed removal of a dead ash tree at the back of the property and trimming of a willow along the roadway with three additional plantings

proposed. Ms. Greene said that the restoration plantings had not been installed; the enforcement order ordered that the plantings be installed by November 15, 2023.

Contractor Joe Neipp said that after discussing this with wetlands consultant Tom Hughes, they decided not to do the planting until construction was complete. Mr. Neipp said that the area had become all grown in and new plantings would involve a disturbance and would need to be mowed around if they were to grow. In response to Ms. Hawkins, Mr. Neipp said that hopefully construction would be done and the plantings could be installed by the end of next summer.

Replying to the Commission's query why planting had not occurred by November 15, 2023 as ordered, Mr. Neipp said that house construction activities are not conducive to planting, the area had grown in, and he didn't see the point. When it was observed that construction had not begun until September, Mr. Neipp said that Mr. Hughes had taken forever to get him the plant list. When it was pointed out that the enforcement order was amended 7/10/2023 to incorporate the restoration plan with planting locations and a plant list, Mr. Neipp said that he was waiting for Mr. Hughes to identify the locations of the plantings. It was then noted that the enforcement order identified the location for the plantings. Mr. Neipp stressed that the area is all stabilized now and he cannot mow around new plantings and build a house at the same time.

Ms. Greene said that it took a year for the restoration plan to be provided and now the proposal is to push the restoration work out further. She recalled that the matter began as a violation letter, and an enforcement order was issued when Mr. Neipp sold the property. Mr. Neipp said he told the Commission that he would be the builder on this property and he would assume responsibility for the violation. Mr. Haley said that if the certificate of compliance was outstanding, the property owner would carry the responsibility in terms of an inability to transfer title.

Mr. Parrott noted that Mr. Neipp's concern about construction logistics is actually worsened by the fact that with the revised footprint for the foundation, only 5' of room is available in which to maneuver for the plantings in back. Ms. Hawkins noted that the remediation plan required a monitoring program which was to begin in the spring of 2024, and continue in the fall of 2024 and the spring of 2025. Without the plantings in place, that would need to be extended and the enforcement order would remain open for a longer period.

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to amend the enforcement order to set May 1, 2024 as the due date for installation of the plantings, with concomitant extensions of the monitoring schedule.*

**7. Insignificant Change Request: 4 Norino Drive, Re: Waterline trench in wetlands and buffer zone, DEP# 78-740**

Mr. Neipp said that he was making an insignificant change request to change the location of the water line to make it a straight line. This, he said several times, is the easiest route and it can be done all in one day in the springtime. In response to Ms. Hawkins' question why the approved water line route (which bends around to avoid the wetland) in the approved plan was no longer favored, Mr. Neipp said that there were issues with the location of the septic system and the water line as proposed would be under the driveway—so that if problems arose, the driveway would need to be dug up.

Mr. Neipp also lamented the Water Department's lack of precise information about the location and size of the water main at Norino Drive and repeatedly noted the Highway Department's poor stormwater management on Norino Drive, which is, in his view, the cause of the wet areas. He discussed his desire for a

drainage ditch along the roadside and his interest in doing the construction work for that.

The revised location of the water line, running through a few feet of wetland, was, Mr. Neipp said, less disruptive to the roadway and the site. Mr. Neipp also said that the Health Department might object to the water line's location because with the change to the footprint of the house and new location for the septic system, the water line would be close to the septic tanks. Mr. Neipp acknowledged that he has not discussed this issue with the Health Department.

Mr. Parrott noted that the location of the water line (and the remedial plantings) should have been considered when changing the design of the house and pouring the foundation. Ms. McCraven said that the force main will be under asphalt and may need repair in the future, making it unclear why the location under the driveway is such a problem. It was also observed that it is easier to work at a driveway than in a wetland. Mr. Neipp said that if such repairs for piping were needed, the pipe could be lined with no disturbance to the driveway.

Ms. Hawkins said that to do work in a wetland, an applicant must make a showing that there is no alternative. An alternative is already contained in the approved plan. Mr. Neipp said that a straight line is more logical. It was noted that it would be logical if it were not in a wetland. Mr. Parrott observed that a change is not insignificant if it causes new work in a wetland.

Mr. Neipp said that if this were his house, he would prefer the straight water line and noted that the utility area for receiving mechanical items as revised is not conducive to the current location of the water line. He clarified that the foundation is in but not the septic tanks. It was pointed out that Mr. Neipp is responsible for obtaining permits and the change in the building layout that was approved included no change to the water line or to the limit of work.

Mr. Neipp returned to the topic of the poor stormwater management on Norino Drive, which in his view caused the wet areas in the first place. Mr. Neipp said that he has discussed this with Highway Director Butch Hills who, said Mr. Neipp, agrees with Mr. Neipp that Norino Drive could be better engineered. Mr. Neipp would like Mr. Hills to write a letter to the Commission about this problem. Norino Drive neighbors, Mr. Neipp said, often complain of pooling water and ice on the road and would like him to fix it. Mr. Neipp said that Tom Hughes would never have considered the area in question a wetland and would not have flagged it—but another wetlands consultant did so before Mr. Neipp purchased the property and before Mr. Hughes was brought in.

Mr. Neipp again proposed that his revised water line location would be the easiest shot, looking at it from the perspective of a builder, homeowner, and the question of liability—and it would reduce the work here. Ms. Hawkins said that the new proposal may be easy but it is not insignificant in terms of wetlands protection, noting that an alternative is plainly available in the approved plan.

*Ms. Hawkins moved not to approve the insignificant change request because the proposed impacts were not insignificant.*

Mr. Neipp asked for a definition of insignificant.

*Mr. Parrott seconded Ms. Hawkins' motion and the Commission voted unanimously to deny the insignificant change request.*

The Commission explained that an insignificant change usually occurs in the buffer zone—an example being

the insignificant change request granted for Mr. Neipp's removal of a tree in the buffer zone at 4 Norino Drive. Under the Wetlands Protection Act, a change with an adverse impact to a wetland is not insignificant.

Mr. Neipp said that the work in question would not in any event occur until springtime and then Mr. Hughes can return to address this. The Commission advised that Mr. Neipp could file a new notice of intent or seek to amend the order of conditions to change the location of the water line. Mr. Parrott said that a strong case would need to be made that there is no alternative and any new submittal to the Commission should contain details about the water line's location and installation.

**8. 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 recused herself as an abutter and moved from the Commission table.

Ms. Greene reported that Mr. Dennis, the owner of 333 Main Street sent an email saying that he did not intend to comply with the enforcement order's requirement that he stabilize the unpermitted trench he built several months ago by November 20, 2023 as ordered. He is doing other things, this is not a priority, the weather has not been suitable for this work, the tenants moved out, and he has appealed the matter to the superior court.

*The Commission requested that Ms. Greene inform Mr. Dennis that he should comply with the enforcement order unless and until a different outcome is obtained in court.*

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

Ms. Greene reported that no update from Ms. Chandler has been received. Ms. Chandler had agreed at the last meeting to plant the few small plants she did receive from Amazon. Ms. Chandler promised to send photos of the plantings but that has not happened and no update on the status of plantings or seeding the area has been provided to Ms. Greene.

Ms. Greene and the Commission also noted that Ms. Chandler has rarely attended Commission meetings in her former capacity as a member and now in her capacity as associate member. Ordinarily she provides no notice when she fails to attend. This, it was felt, is contrary to the purpose of an associate member as a person who stays up to date on Commission activities and can step in to make a quorum. Another concern is Ms. Chandler's failure to notify the Town Clerk of her conflict arising from her wetlands violation.

*The Commission generally agreed that it is important to have functional membership and Ms. Greene will reach out to the Select Board Chair and to the Town Manager to determine if the Town has expectations about attendance and their views of this situation. Also, Ms. Greene will again reach out to determine if the remedial planting has occurred.*

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

Ms. Greene reported that she has received no further information and is awaiting a report from Epsilon Associates about the extent of cleanup needed in the stream and wetlands at the site.

**11. Discussion: Request for permission to hunt on parcel R25-17, one of the Riverbend parcels**

Ms. Greene explained that the Commission has received a request to hunt on a property that is Commission

owned. She noted that the bylaws require that permission be obtained from the landowner, which may be Commission but often is the Town and thus a question for the Select Board.

Ms. McCraven disclosed that her husband used an online portal to request permission to hunt on Thanksgiving on a different parcel and has not heard anything. The group did not see this as causing any conflict.

The Commission discussed the advantages of hunters reducing excess populations of deer and disadvantages of safety issues in heavily used trail areas. Also discussed were the problems associated with wounded animals entering other properties.

*It was agreed that Ms. Greene will reach out to the Town manager expressing interest in finding a fair and considered policy that aligns with the Select Board's views. It was also agreed that she will respond to the person making the inquiry, saying that the Commission is seeking to develop a policy about this.*

## **12. Discussion: Wetlands Protection Bylaw**

A nearly final draft of the bylaw was circulated. Mr. Parrott offered feedback, expressing concern that exemptions stated in the draft bylaw should not be weakened or revoked by subsequent Commission regulations, performance standards, or design specifications. *It was generally agreed that parties using an exemption must obtain confirmation from the Agent or the Commission and that the provision could reference state regulatory requirements.*

Ms. Greene then discussed certain clarifications she identified.

*The Commission advised that Ms. Greene should make this draft public, post it on the website, and circulate it to persons known to be interested in the bylaw—and seek feedback.*

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

Ms. Greene is hoping to have a redline version identifying how the proposed bylaws relate to the Wetlands Protection Act. The information session will start at 6 pm.

## **14. Discussion: Scheduling December / January Administrative Business Meetings**

A meeting will be held on December 11 at 7 pm to consider feedback on the bylaw and to work on standard conditions.

## **15. Approval of Minutes: October 16, 2023**

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

## **16. Approval of Minutes: November 6, 2023**

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted 4-0-1 (Ms. McCraven, not present at that meeting, abstaining) to approve the minutes as amended.*

## **17. Approval of Minutes: November 7, 2023**

*Deferred.*

## **18. Land Agent Updates:**

*None.*

**19. Conservation Agent Updates:**

Ms. Greene said that she has heard reports that certain people are skeptical about the proposed bylaw.

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

The Open Space Committee is working on developing a date for its next meeting.

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

Mr. Haley reported that the Committee had no meeting in November but will meet in December to address a Park and Recreation proposal.

**22. DEP Comments:**

*None.*

**23. Other Business:**

The Commission discussed possible meeting dates for two site walks.

**24. Informal Discussion:**

*None.*

**25. Upcoming Meetings: December 4, 2023 @ 7:00 PM – Regular Business (Public meetings & hearings) December 6, 2023 @ 6:00 PM – Public info session on Wetlands Protection Bylaw**

Ms. Greene noted that she will be unavailable on January 16. That meeting was moved to January 22.

**Adjournment** 9:15 pm

**Meeting Documents**

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

Respectfully submitted