

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:00 pm, February 5, 2024, Second Floor Town Offices.

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

**Not present:** None

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.**

Ms. Greene reported that the Select Board voted to withdraw the Notice of Intent (NOI) without prejudice.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to accept the withdrawal of the Whetstone Greenway project NOI without prejudice.*

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

*Ms. Greene said that the applicant asked that the matter be continued to the March 5, 2024, meeting.*

3. **Public Hearing: Notice of Intent (continued): 125 River Road, Applicant: Michael Fusco, Re: Construction of a roadway, driveways, and associate grading, DEP# 78-07XX Applicant requests a continuance to the 2/20/2024 meeting**

4. **Public Meeting: Request for Determination of Applicability (RDA): 196 Main Street, Applicant: Alison Hardy, Re: Construction of an addition to an existing single-family house**

Consultant Garrett Moynihan noted that the Commission had done a site visit. The proposed project involves an addition at the southwest corner and a porch within the 100' buffer. The work is estimated to be over 70' from the wetland. The erosion controls will include a silt fence with haybales along the property line. Materials will not be stored onsite, but rather will be trucked in or out from the roadway.

Ms. Hawkins noted that the current plan has more substantial erosion controls than initially proposed. In reply to her question about the construction start date, Mr. Moynihan said that they plan to get the building permits next week and hope to start in March.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to make a negative Determination of Applicability with special conditions requiring that the applicant 1) perform all work in conformance to the approved septic plans dated December 15, 2021 and the plans submitted for the current work with additional erosion controls, 2) install trenched staked haybale erosion controls and obtain inspection and approval of the Conservation Agent, 3) provide the agent 72 hours advance notice before commencement of work, 4) have no equipment outside of the erosion controls, 5) have no material stockpiled on site but rather truck it in or out as necessary, 6) loam and seed all disturbed areas after work has been completed, 7) upon stabilization, remove the erosion controls.*

5. **Public Hearing: Notice of Intent (NOI): 154 Middle Street, Applicant: Joseph & Margo Cooper, Re: Continue work on a single-family home and associated grading and utilities**

Consultant Thorsen Akerley said the Notice of Intent involves the remaining work at the site that was not completed before the previous Order of Condition, DEP # 78-721 expired. This remaining work includes construction of the driveway and grading work in the front of the house. The additional stormwater structures to manage the runoff at the site as discussed in connection with the enforcement orders for 154 Middle Street and 2 Kimball Road are also shown on the plan submitted with this new Notice of Intent. The applicants have not yet heard back from the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage).

Ms. Hawkins said that the initial letter from Natural Heritage has not expired, but because the initial Order of Conditions did expire and this is a new Notice of Intent filing, it would be prudent to wait to hear from Natural Heritage. Ms. Greene added that it would be cleaner to have the new letter from Natural Heritage so that if things change there would not be a need to amend the Order of Conditions correspondingly. Also, waiting would allow the Commission to incorporate the forthcoming operation and maintenance plan for the permanent stormwater system into its Order of Conditions.

*With Mr. Akerley's agreement the matter was continued to February 20, 2024.*

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

Mr. Akerley provided answers to questions the Commission had raised at its last meeting about the drainage plan to address significant storm water runoff issues. He said that the pipe invert elevation was set at an elevation a foot or two in the groundwater table because currently the driveway is at its existing lower level and until the driveway is elevated per the plan, the drainage pipe needs to be able to run under the driveway at the lower level. The applicants propose to raise the pipe well above groundwater once the driveway is brought up to its final higher elevation. This is the only way to convey the water in the interim, he said.

As to the question about slowing the water as it goes down the swale to the rip rap apron, Mr. Akerley said that the concern is that they don't have a very big swale. If the water is slowed down, it will likely overtop the swale. The concern, he said, is not about the water's velocity but whether it will be clean water. If the system is working properly, they believe this design will be adequate. He said that the system is designed to pick up the entire watershed and it is over designed. This should, he said, address channeling. He noted that there has been some channeling along the driveway because there is no infiltration trench yet along the driveway.

Also, Mr. Akerley noted, they have a lot of exposed soil at this time. Ms. Greene asked if they could cover the exposed soil. He said that there could be straw mulch or matting used before the area is planted and stabilized in the early spring.

Mr. Akerley said he is not aware of a timeline the applicants have in mind for getting the stormwater management components installed. He assumes that they are ready to go upon the Commission's approval. This depends on the Commission allowing work during the winter work ban. He said that the system should go in before there is another storm.

In response to questions about how long the interim drainage system will remain in place once the construction is finished, Mr. Akerley said that it will probably stay. The homeowners potentially could

convert the area back to a meadow. He noted that grass lawn will not suffice. He added that it is likely that most components of the system will stay forever.

The applicants have not yet submitted an operations and maintenance plan but that should be submitted this week. The property owners will need to make sure that the rip rap apron remains in good shape, the pipe stays clean, and the filter fabric is kept in good condition. Mr. Akerley indicated he can have an operations and maintenance plan available by the Commission's next meeting on February 20<sup>th</sup>.

*Ms. Hawkins moved, and Mr. Haley seconded the motion to approve the drainage plan and to lift the cease-and-desist order only for work related to installing the stormwater system as shown on the drainage plan. Ms. Hawkins moved, and Mr. Preble seconded, to amend the motion to include a deadline of March 1 for installation of the drainage system. The Commission voted unanimously in favor of the amended motion.*

Ms. Greene noted that she received a cleanup plan for the wetlands on site and across the street today. The Commission will review this and discuss it at its upcoming meeting on February 20<sup>th</sup>.

**7. 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**

The components of the drainage plan that extend on to 2 Kimball Road were discussed in agenda item #6, above.

*Ms. Hawkins moved, and Mr. Haley seconded the motion to approve the drainage plan and to lift the cease-and-desist order only for work related to installing the stormwater system as shown on the drainage plan. Ms. Hawkins moved, and Mr. Preble seconded, to amend the motion to include a deadline of March 1 for installation of the drainage system. The Commission voted unanimously in favor of the amended motion*

**8. Insignificant Change Request: 0 Middle Street, Parcel R27-28, Artichoke River Woods, Re: Request to for tree removal during time of year restriction, DEP# 78-766**

Mike Carbone appeared on behalf of Essex County Greenbelt to discuss tree cutting in preparation for the parking lot to be installed at the Artichoke River Woods open space area. Mr. Carbone said that Greenbelt is hoping to do tree clearing before construction usually is allowed to resume on April 15<sup>th</sup>. The plan would be to remove the trees now and leave the stumps in the ground until April 15<sup>th</sup> and the pull the stumps. This would take advantage of the frozen ground. They would use a low-pressure track vehicle to move the logs away to the road. The tree count is 15-20 trees. This would make the site ready to go when the winter ban is lifted. The work should take about two days.

Mr. Parrott raised a concern that with the warmer wet weather, the ground may be soft. Mr. Carbone said Greenbelt is open to using steel plates or construction access matting if necessary. Ms. Greene will do a site visit.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve the insignificant change request.*

**9. Request for Certificate of Compliance: 131 River Road, DEP# 78-710**

Ms. Greene said that this site looks good. The area is stable and the Order of Conditions contained no requirements for posts and placards or any ongoing conditions. The Order of Conditions was ambiguous about tree cutting but it appears that tree removal was limited to what was needed to be cleared for the septic

field.

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

**10. Request for Certificate of Compliance: 13 Turkey Hill Road, DEP# 78-750**

Ms. Greene said that the as-built plan comports with the approved plan and the site looks good. Erosion controls have been removed and the post and rail fence with placards has been put in as a wetland demarcation as required in the Order of Conditions. The post and rail fence does not extend to a metal fence at the road way. Unfortunately, the effectiveness of this fence to prevent encroachment into the wetlands may now be reduced however, the developer constructed the post and rail fence as it was approved on the plan and entirely within the bounds of the property. Ms. Greene recommends issuing the Certificate of Compliance.

At the site visit for the Certificate of Compliance request, homeowner Alejandra Chandler asked if she could mow an area of land that runs parallel to the roadway and a fence she installed. The fence is shown on the as-built plan and both the fence and area proposed to be mowed are within the town's right of way and the buffer zone of wetlands. The concern is that mowing would expand from the buffer zone and into the wetlands.

The Commission determined that it cannot grant permission to mow on land that does not belong to the homeowner. She would have to get permission from the property owner. Ms. Greene will advise Ms. Chandler to contact the Highways Superintendent to discuss this further.

*Ms. Hawkins moved, Ms. McCraven seconded, and the Commission voted unanimously to issue the Certificate of Compliance.*

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

Ms. Greene gave an update, saying that consultant Greg Hochmuth is working to make sure those involved are aware that the clock is ticking for restoration actions.

**12. Enforcement Order Update: 24-26 Bridge Street, Re: Unpermitted culvert replacement**

Ms. Greene reported that the property owners filed a NOI on February 1 and this will be on the agenda for the next Commission meeting.

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

Ms. Greene said that she has continued to alert affected parties such as the school and the Town Manager about drainage issues at this site. Plans may be underway to investigate the large pipe in question with a camera and they are reviewing applicable documents concerning the designers' consideration of the watershed that enters the stormwater system on the school site.

**14. Enforcement Order Ratification: 0 Middle Street, Lower Artichoke Spillway, Re: Siltation into Artichoke River, DEP# 78-749**

Ms. Greene said that she issued an enforcement order because when driving by the spillway, she saw a silt plume associated with the applicant's dumping of rocks to form a base for temporary sandbags to protect the reservoir in storm conditions. The pile of stone being used had loose dirty materials that created the plume

when dumped. The enforcement order sought a stone cleaning plan for the purpose of preventing silt flowing downstream to habitat for rare species.

Jon-Eric White, an engineer for the City of Newburyport, said that it is unfortunate that this occurred. The pre-construction site visit went well and they proceeded with the erosion controls. He wasn't there on Monday when the incident occurred. He said they think the flow picked up since the pre-construction site visit and there was too much flow for anyone to manage. They are in a rush to get things done because they want the system in place before any more storms come. He said that when he got there, silt was going over the top of the spillway and the amount of silt overwhelmed the downstream turbidity curtain.

Mr. White summarized Newburyport's plan:

1. Work in the water will only occur when water is not spilling over the spillway. As of right now, the City is planning to perform the work within the next 2 weeks based on current dry-weather forecasts without the need for any siphons.
2. Stone will not be dumped into the water but rather it will be dumped onto dry stone closer to the ramp (which is a higher elevation) and then slowly pushed into the water. This will prevent silty splash over onto the spillway and downstream.
3. The water level shall be low enough such that the displacement of water from the installation of the stone will not result in water spilling over the spillway.
4. The turbidity curtains, both upstream and down, will remain in place for as long as necessary after completion of the Work to assure that settlement is complete.
5. The elevation of the stone foundation will now be 4"-6" lower than the top of the spillway so that when the reservoir's water level is raised after normal rainfall events, the water going over will not resuspend any silt attached to the top layer of rock and/or in the voids of that top layer. It's the water's velocity at the water surface that is of most concern.
6. At the end of the placement of the rock, the Contractor will make passes over the rock with heavy equipment in an attempt to shake loose any silt adhering to the stone so it can fall into the voids.
7. The existing stone pile is acceptable for use, providing all of the above conditions are met.
8. The City's recent calculations show that more stone is needed to complete the job. The Contractor shall use this newer stone before using the existing stockpile. The newer stone must be large stone only, no gravel and nothing smaller than 4". If the supplier cannot wash it, that is acceptable, providing all of the above conditions are met. However, it is preferred that all stone being purchased be washed.
9. The Project shall be shut down immediately upon any non-compliant condition and the Conservation Commissions shall be notified immediately.

Based on the new plan that the stone foundation will be 4"-6" below the top of the spillway and therefore

potentially underwater, Ms. Greene raised concerns about dirt and material in the tracks of equipment being washed into the spillway when the major phase two tree removal occurs. She asked if the turbidity curtain would be in place for that work. It was agreed that the turbidity curtain would be needed for that work.

Mr. White said that consultant Tracy Adamski has a status report ready to go to DEP.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to ratify the enforcement order, as amended to include the plan to resume work, as submitted and lift the cease-and-desist order.*

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

Ms. Greene said that the bylaw has been submitted for inclusion on the spring town meeting warrant and now goes to the Select Board and Finance Committee for review.

#### **16. Discussion (continued): Request to seek amendment of trail easement and associated plans and documents to relocate trail at Ocean Meadows, Moody Lane**

Ms. Hawkins noted that this issue had been discussed at the last meeting and the parties are considering options to keep access to a loop trail open to the public.

Martha Sanders and Deb Hamilton were present on behalf of Essex County Trails Association (ECTA). Paul Kelly, an abutter whose land is subject to an ECTA trail easement, was also present. Ms. Sanders discussed the potential options Town staff had identified. She said that a primary concern with option 2 is the steep shoulder bank and restricted views when crossing Rt. 113. The particular concern is for horseback riders. Another issue is that this trail would be very close to homes in Ocean Meadows and thus may not be appealing to that community.

Ms. Sanders reviewed the history of the trail system noting that it has been 19 years in the making. She said the trail would be a benefit and asset to the town. Ms. Sanders and Mr. Kelly offered differing views of the various aspects of the history of this situation.

Mr. Parrott noted that unlike the Town's easement with Ocean Meadow (which very specifically identifies the location of the trail easement on a surveyed plan), ECTA's easement with the abutting homeowners seems more abstract.

Ms. Sanders said that ECTA had granted linking homeowner Daniel Lord permission to erect a fence with a gate for a trail location on his property. The fence was erected with a gate that does not match up with the Ocean Meadow trail. Mr. Lord has declined ECTA's request to move this gate as he has already agreed to move a different gate along his property line with Mr. Kelly. This situation resulted in ECTA's request to the Town to seek an amendment of its easement with Ocean Meadow to allow this easement to align to the gate's current location in the fence.

Ms. Hawkins said that Ocean Meadow is doing what it was asked to with its easement and requesting the relocation is a very big ask of them. It might be easier for ECTA to ask Mr. Lord to move his gate again. Mr. Parrott asked whether Mr. Lord's gate defeated the purpose of ECTA's trail easement on his property and whether that was something ECTA might pursue under the terms of its easement.

Ms. Greene noted that amending the Ocean Meadow trail easement whether for option 1 or option 2 will

take a large amount of Town staff and Conservation Commission time. The adjusted easement location will need to be surveyed and a new plan showing the easement will need to be created and recorded. The trail easement itself will need to be amended to reflect the new trail easement location and new plan and be recorded. The Conservation Restriction between Ocean Meadow and the Town may also need to be amended as it refers to the current recorded trail easement. The Planning Board would need to modify the special permit granted for Ocean Meadow and Mr. Kelly is an interested party as an abutter to the modified special permit.

The Commission also raised the concern that with ECTA's indefinite trail locations, new property owners might come in and build new fences blocking access after the Town had done extensive work trying to forge a new trail arrangement with Ocean Meadow and then invested in infrastructure to make the crossing of Main Street safer. Ms. Sanders said that the ECTA easements are flexible. She said that the trail easement with Mr. Kelly was upheld in Land Court. Ms. Sanders stated, "We've been looking at it from our perspective. I don't blame you for thinking just move the gate."

After considerable further discussion, *it was agreed that the next step would be to try to get all the parties together to discuss this. Ms. Greene will attempt to organize a meeting among Mr. Lord, Mr. Kelly, Ocean Meadow, ECTA, West Newbury's Select Board, the Town Manager, and Ms. Greene.*

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

*Deferred*

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

*Deferred*

**19. Approval of Minutes:** January 2, 2024

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted to approve the minutes of January 2, 4-0-1 (Mr. Haley, not present at the meeting, abstaining.)*

**20. Approval of Minutes:** January 8, 2024

*Deferred*

**21. Approval of Minutes:** January 22, 2024 Haley out

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted to approve the minutes of January 22, 4-0-1 (Ms. McCraven, not present at the meeting, abstaining.)*

**22. Land Agent: Ag land survey**

Ms. Greene reported that the Town and Greenbelt signed on to a program offered by The Massachusetts USDA Natural Resources Conservation Service (NRCS) and American Farmland Trust in which they will review soil mapping and land use in the municipality via the Soil Survey maps and aerial imagery to identify areas with soil type and land use that can be designated as "farmland of local importance". The designation can increase the potential for federally funded farmland preservation in West Newbury. This will take place at no cost to the Town.

**23. Conservation Agent:**

No additional Commission members plan to attend the upcoming MACC conference, so Ms. Greene will

send in registration materials for those who expressed interest.

**24. Commission Representative to Open Space:**

*Ms. Greene said that work on the trails checklist is ongoing.*

**25. Commission Representative to Community Preservation Committee: Update on CPA funding proposals from Conservation Commission**

Mr. Haley reported that CPA funds cannot be used for maintenance, making it questionable whether that funding source could be used to replace the Indian River bridge. Other new bridges could be eligible. Ms. Reed expressed interest in improving river access at the Greenbelt land on the river trail near Way to the River Road.

Ms. Hawkins said she had a lively discussion with someone who took the position that parking for the Sawmill Brook open space area should not be located at Poorhouse Lane, but rather by a spur trail from Archelaus Street. Ms. Greene said that alternative has as much wetlands and involves a steep slope off the roadway.

**26. Other Business:**

**27. Informal Discussion:**

**28. Upcoming Meetings:** February 12, 2024, Administrative business, work on bylaw and regulations.  
February 20, 2024, Regular business, public hearings and meetings. Please note meeting is on a Tuesday due to Monday holiday.

*29. Because there was no update from Town counsel, no executive session was held.*

**Adjournment** 9:34 pm

**Meeting Documents**

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

Respectfully submitted