

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:00 pm, January 22, 2024, Second Floor Town Offices.

**Members Present:** Chair Molly Hawkins, David Parrott, George Preble, Jack Haley, and Conservation Agent Michelle Greene. Also present: Select Board chair Wendy Reed.

**Not present:** Haley McCraven

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**

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

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

Homeowner James Igoe had consulted with a certified arborist about trees needing removal on his riverfront property. Mr. Igoe said that 90% of the trees are ashes that succumbed to the emerald ash borer. The arborist provided a letter for the Commission that detailed a plan's location of the 54 dead ash trees and the plans to fell them with ropes and chainsaws. No debris will be left in the wetlands and there will be nothing to impede the flow of water. Piles of cut up trunk will be away from the wetland. A neighbor wants to take the limbs and branches. The stumps will be left at a height that will promote animal habitat.

Ms. Hawkins said that the Commission's role in acting on a request for a determination of applicability is to determine whether a project has impacts that would trigger the Wetlands Protection Act. She observed that with the details Mr. Igoe submitted, it appears that a negative determination is appropriate.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination regarding the proposal, with the conditions that 1) only the 54 dead ash trees as shown on the marked up plan presented to the Commission may be cut; 2) removal of trees in locations of rare or endangered species will be conducted in accordance with the letter concerning this matter from the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage); 3) where feasible in terms of safety and esthetics, tree stumps will be left standing at a height to provide habitat; 4) no heavy equipment will be used in the riverfront, wetlands, or buffer zone; 5) except that no trees will be left in the wetland, trees will be left in place cut up into smaller segments; 6) slash will be removed and disposed of lawfully offsite.*

4. **Public Hearing: Notice of Intent (continued): 125 River Road, Applicant: Michael Fusco, Re: Construction of a roadway, driveways, and associate grading, DEP# 78-07XX**

*The matter was continued to February 20.* Ms. Greene said that current weather conditions with frozen ground and snow cover make the ground conditions not favorable for wetlands delineation. She added that the peer review consultant has another standard municipal contract form requiring Commission sign off.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to authorize Ms. Greene to sign that agreement.*

**5. Insignificant Change Request: 10 Harrison Ave., DEP# 78-768, Re: Request to construct addition in buffer zone during time of year restriction**

Property owner Lee Stafford appeared before the Commission to request permission to start construction prior to the April 15 lifting of the winter work ban. He said that the terrain is flat and the work area will be enclosed with erosion controls. The work, digging a 4' foundation, would cause minimal disturbance, Mr. Stafford stated. Conditions contained in the Order of Conditions for this work include requirements that the Conservation Agent inspect the erosion controls 72 hours before work begins and excavation spoils will be quickly taken off site. In response to Mr. Haley, it was clarified that there are no deadlines for restoration since the area is all grass, but two conservation posts now located in wetlands will be moved to the wetlands border prior to the start of work.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve an insignificant change request allowing work to begin before the end of the winter work ban.*

**6. Request to Extend a final Order of Conditions: 152 Middle Street, FKA 14 Kimball Road Lot 1, DEP# 78-722**

Ms. Greene said that no more work is being done in the buffer zone at this property, so no extension of the Order of Conditions is required. She added that she advised the homeowners that now that the Order is expired, any work that may arise in a resource area or buffer zone can't proceed until a new filing is submitted to the Commission and the Commission makes a decision.

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

Ms. Greene explained that 154 Middle Street is the center lot of three that are under construction. One of the lots, 2 Kimball Road, which has no wetlands or buffer zone on the property, is contributing to significant runoff at 154 Middle Street. She said that heavy rains, land disturbance, and fill brought into 154 Middle Street have caused intense runoff into wetlands. She issued an enforcement order with cease-and-desist requirements pending submission and approval by the Commission of a drainage plan.

Consultant Thor Akerley presented a drainage plan. He said that 154 Middle Street was one of three lots in a subdivision permitted with an ANR. A notice of intent was submitted for the driveway and grading in the buffer but at that time the land being subdivided was a meadow whose surficial water flows were not recognized and not accounted for in the permitting process. The new plan contains modifications to deal with a 100-year storm taking into consideration the entire 114,000 square foot watershed. A swale is added as well as a catchment area with added large riprap and pipes have been made larger. He said that the modifications should be made as soon as possible (with a waiver of the winter work ban) given the substantial water flows.

Ms. Greene noted that the water table is quite high where the catch basin is proposed, and asked whether the basin will fill with groundwater, defeating the purpose of collecting upstream water. The catch basin is closer to the wetland, so if it does not function properly, it could funnel more water and materials into the wetland. Mr. Haley clarified that the Commission is concerned that if the void of the basin fills with groundwater, it may not function to catch stormwater. Mr. Akerley said that it is about 30" to the water table at that spot, and he did not know the answer to the Commission's question.

Ms. Hawkins said that the Commission needs an answer to this question before it can make a determination about the new drainage plan. Ms. Greene said that perhaps a tiered approach could be considered so that

different levels of containment could catch water and slow it down before it hits the basin close to the wetland. In response to Mr. Haley, Ms. Greene said that no settlement or retention system is planned because the soil at this location does not have notable fines and the riprap should help catch any fines.

*It was agreed that Mr. Akerley would return to the Commission on February 5 with a revised plan, along with a restoration plan to remove materials from the wetlands and a timeline for work. Mr. Akerley said that no maintenance plan had been established for the drainage system, but this would be a reasonable thing for the Commission to request.*

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve an insignificant change request allowing work to begin before the end of the winter work ban.*

*Ms. Hawkins moved, Mr. Preble(?) seconded, and the Commission voted unanimously to ratify the Enforcement Order to address the new drainage pattern into the wetland.*

**8. Request to Extend a final Order of Conditions: 154 Middle Street, FKA 14 Kimball Road Lot 2, DEP# 78-721**

Ms. Hawkins said that the Order of Conditions for this property expired yesterday. The state's wetlands regulations provide the applicants must file a request for an extension 30 days before the expiration date. Mr. Akerley said that the homeowners had been unaware—the property was permitted in 2021, but construction did not begin until the fall of 2023.

Ms. Greene said that the Commission could try to authorize an extension, but since the Department of Environmental Protection has clear regulations on how to request an extension to an Order of Conditions and does not have a process to reinstate an expired Order or extend an expired Order doing so could put the applicants in danger of doing work without a valid permit. The rationale for the strict timeframe is that wetlands lines change. Consideration could be given to filing a new RDA rather than a new Notice of Intent for the remaining work, but the work remaining to be done includes considerable use of fill being brought in to raise the septic field, making an RDA inapplicable. The letter from Natural Heritage lasts for 5 years, so is not at issue, although additional action could be subject to Natural Heritage review.

Under these circumstances, a new NOI would be required, with publication of notice, notice to abutters, and new submissions to the Commission. Mr. Akerley suggested that the Commission might make this less onerous by using the same wetlands delineation as was used for the Order of Conditions that just expired. Ms. Hawkins noted that this was so close to the date of expiration, it was unlikely that a new delineation would have been required if the extension had been timely filed.

*It was agreed that no new delineation would be required and that Ms. Greene would try to assist in expediting addresses for notices to abutters, and fast tracking the NOI. Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to deny the request for an extension of the expired Order of Conditions.*

**9. Insignificant Change Request: 154 Middle Street, FKA 14 Kimball Road Lot 2, DEP# 78-721, Re: Request to install utility pole and underground utility trench in buffer zone during time of year restriction**

Ms. Hawkins observed that before the Commission could consider a utility trench at this property it needs to know that the drainage plan for this property is working. Mr. Akerley said that the primary concern is that the process for National Grid to install a pole takes a very long time. Ms. Greene pointed out that the new NOI

can include the trench, while the pole installation alone is exempt from Wetlands Protection Act requirements in this case. *Ms. Greene will send Mr. Akerley an email explaining that the pole is exempt, so that the applicants can proceed with National Grid.*

**10. Enforcement Order Ratification: 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 said that the watershed coming from behind 2 Kimball Road (which itself needed no Order of Conditions) is a contributing factor to the drainage issues on the subdivided lot implicating 154 Middle Street. For that reason, an enforcement order was issued for this property as well.

Mr. Akerley said that the drainage plan encompasses 2 Kimball Road also. The Commission expressed concern that the proposed plan for a small system might narrow the effort to catch the water. *Mr. Akerley will discuss this with the engineers. Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to ratify the enforcement order.*

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

Consultant Greg Hochmuth said a draft restoration plan had been presented to the Commission. The Commission needs to determine a timeline and trajectory for full restoration, presumably with progress reports and inspections along the way. Connor Lincoln, the contractor whose materials need to be removed, was hoping for a year in which to do the work.

Ms. Hawkins said that the plan looks like a logical way to approach this, but is concerned about timely progress, not just to achieve restoration but also to be least disruptive to neighbors of the property. Guidelines for planting as part of restoration say that spring or fall should be targeted, and if in fall, nothing should be planted later than November.

Mr. Hochmuth suggested starting to remove materials from the wetlands area in the spring with the idea of planting in the fall, and if it becomes too late, planting in the following spring. Ms. Greene asked if that is realistic, given that the contractor needs to keep working to fund this effort. Mr. Hochmuth said that Mr. Lincoln is aware the materials have to go and believes a year is realistic. Part of the problem is that they do not really know all that is there. The one-year timeline includes work to process the existing materials for use on the existing farm road.

*It was generally agreed that the work could start immediately with a target to remove the piles of material by September 30 with monthly updates of progress made sent to the Commission. If the September 30 date is not met, the parties can explain to the Commission. The goal is to do planting in October. There would be reports on progress and reviews by the Commission, and then after planting, reports at the end of the growing season for 3 years following planting.*

Mr. Haley asked about reports of continued dumping at the site. Mr. Hochmuth said that a landscaper had been dumping leaves, but this problem was shared with Mr. Lincoln and the Adams (the property owners) and it is Mr. Hochmuth's understanding that this has been stopped. They have also put the fellow storing cars on the property on notice that the cars need to be moved, but that, said Mr. Hochmuth, may best be addressed as a separate issue. Mr. Hochmuth said that the Adams' proposal to build another house on the land has been put on hold pending resolution of the restoration of the property.

Mr. Parrott said that it will be important to keep on track for September 30 and that he would like the Commission to be able to measure the amount of material being removed with visual inspections. Mr. Hochmuth said that the Commission may want to get a schedule for this work with a rough expected timeline, and monthly inspections until the Commission is satisfied. It was noted that they may want to start hauling materials out in the winter, when construction trucking may be more available.

*It was agreed that a schedule of work would be submitted (as part of an amended restoration plan) to the Commission by February 12 in time for the Commission's February 20 meeting. Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted unanimously to amend the enforcement order to include the restoration plan, as amended consistent with the discussion above, including the requirement for submission of a work schedule.*

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

Ms. Greene said that the property owners were to have filed an after-the-fact NOI by today, but need more time for this. *The matter was continued to the February 5 meeting.*

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

Ms. Greene was on site on January 11. The area looked OK, she reported. She noted that there remain ongoing issues at the toe of the slope near the intermittent stream, where water flows from holes in the slope. PRSD contractors insist that the holes are preexisting conditions attributable to animal burrows. It appears, however, that water may be draining under the field toward the stream. Ms. Greene advised the contractors that they need to address this before coming to the Commission for a certificate of compliance. She said that they may do a dye test to determine if their theory that the large hole at the toe of the slope is just conveying surface flow that enters through the smaller holes on the slope, but it is unclear how much appetite there is for that. Ultimately, this could be a long-term issue for the Town if it is not resolved.

**14. Discussion: Wetlands Protection Bylaw**

Ms. Greene noted that the warrant articles for spring town meeting are due by February 2 and some additional revisions will be made to the wetlands bylaw.

**15. Discussion: Request to seek amendment of trail easement and associated plans and documents to relocate trail at Ocean Meadows, Moody Lane**

Ms. Greene explained that the Planning Board permitted the Ocean Meadows project as an Open Space Residential Development (OSRD), which allowed more dense construction provided that open space requirements were met, including land permanently protected under a conservation restriction and the creation of a trail easement for a public access trail. Consequently, the Commission became a grantee of the trail easement at Ocean Meadows. Essex County Trails Association (ECTA) holds trail easements on the abutting Daniel Lord (not present at the meeting) and Paul O. Kelley (present at the meeting) properties. The trails on the Lord and Kelly properties provide a link for a large trail loop in town connecting the Ocean Meadow trail down Way to the River (street) to the Riverbend Trails which connect to the Mill Pond and Dunn Field trails. Ms. Greene clarified that the Commission has control only over the trail easement at Ocean Meadows,

At the lot line with Ocean Meadows, Mr. Lord erected a fence. Although there is a gate in this fence, it is approximately 50-feet to the west of where the Ocean Meadow trail easement meets the fence. Now the trail subject to the Commission's easement at Ocean Meadow dead ends at the fence and has become overgrown.

Carol Lloyd of ECTA said that ECTA obtained a land court judgment saying its easements on the Lord and Kelly properties are valid. ECTA has asked Mr. Lord to move the gate at the Ocean Meadow property line to align with the trail at Ocean Meadow but Mr. Lord has refused to move it. Because of this, ECTA would like the Commission to address this by getting Ocean Meadows to agree to a revision in the trail easement the Commission holds. Ms. Greene said that she has been having discussion with members of the Ocean Meadows Board of Trustees but the Board has been reluctant to indicate that it would support a request to relocate the trail easement citing concerns about potential liability to the Board.

Mr. Kelly, stated that he is not in favor of the proposal to move the Ocean Meadow trail. He recounted the history of his voluntary offer of an easement at a suitable location on this property and expressed frustration that ECTA cost him thousands of dollars taking him to land court over the easement they hold. The proposed relocation of the Ocean Meadows trail 50-feet west would locate the trail adjacent to the middle of his backyard, near his swimming pool, and cited concerns over his privacy. Ms. Lloyd said there would be no significant impact because of the existing fencing that runs along the Kelly property line. Mr. Kelly said that nobody wants the trail.

*The matter was continued to February 5.*

**16. Approval of Minutes: December 4, 2023 executive session minutes**

*Mr. Parrott moved, Mr. Preble seconded, and the Commission voted 3-0-0 to approve the minutes as amended (Ms. Hawkins, recused, not participating).*

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

*Deferred.*

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

*Deferred.*

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

*Deferred.*

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

*Deferred.*

**21. Land Agent:**

Ms. Greene reported that the checklist for new trails is almost finished.

**22. Conservation Agent:**

Ms. Greene said that the weather station has arrived and will be installed as weather permits.

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

Ms. Greene said that the Committee will be meeting this week.

**24. Commission Representative to Community Preservation Committee (CPC): CPA funding proposals from Conservation Commission**

Mr. Haley said that the CPC was meeting on January 24 to consider cemetery cleanup, pickle ball feasibility,

and a trail on the newly acquired Sawmill Brook property. Mr. Haley, who was not present at the last meeting, was told that at that meeting, the Commission decided that the Whetstone trail was not a major Commission priority to propose for use of CPC funding, but that trail work with greater connection to wetlands such as in the Riverbend or Way to the River areas, were under consideration. Mr. Haley noted the CPC's objective to have CPC members representing other committees come forward with proposals for use of CPC funds.

**25. DEP Comments: DEP Comments:** MA DEP proposed updates to regulations:

- a. **Wetlands Protection Act regulations 310 CMR 10.00** (see link below for more info and public comment process):

<https://www.mass.gov/regulations/310-CMR-1000-wetlands-protection-act-regulations#proposed-amendments-public-comment>

- b. **401 Water Quality Certification regulations 314 CMR 9.00** (see link below for more info and public comment process):

<https://www.mass.gov/regulations/314-CMR-9-401-water-quality-certification#proposed-amendments-public-comment>

- c. **Waterways (Chapter 91) regulations 310 CMR 9.00** (see link below for more info and public comment process):

<https://www.mass.gov/regulations/310-CMR-900-the-massachusetts-waterways-regulation#proposed-amendments-public-comment>

**26. Other Business:**

Ms. Greene announced that March 2 is the date for the upcoming MAAC Conference and that Commission members who want to attend should let her know.

Ms. Greene described a comprehensive wetlands course available in person or on Zoom lasting 10 weeks. *Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to authorize \$300 to be spent from the operating account for Mr. Haley to attend.*

Ms. Greene said that a forum about West Newbury's housing needs would take place on January 25.

**27. Informal Discussion:**

Ms. Greene reported that Newburyport's planned work moving a large pile of stones at the Artichoke spillway had been postponed due to weather. It may be done later in the week.

**28. Upcoming Meetings:** February 5, 2024 Regular business, public hearings and 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.

**Adjournment** 9:20 pm

**Meeting Documents**

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

Respectfully submitted