

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:00 pm, December 18, 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:** 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.*

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

*Applicant requests a continuance to January 2, 2024.*

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

David Miller, the property owner, joined the meeting on speaker phone. Ms. Hawkins noted that the state's Division of Fisheries & Wildlife Natural Heritage & Endangered Species Program (Natural Heritage) had issued a letter finding no takings of endangered or threatened species resulting from Mr. Miller's proposal to change his dock mooring system because of the discovery of ledge at the river bottom. She also noted that the Commission had already reviewed and discussed the proposal, determining that it had no significant impacts.

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to issue a negative determination of applicability with special conditions requiring that the applicant 1) use a pin system for the 2 moorings closest to the bank and then 2 eco-mooring blocks for the float, as proposed in the RDA, 2) make no changes to the approved flexible mooring rods, 3) conduct no further work other than that already approved, and 4) maintain compliance with all conditions in the original Order of Conditions and Natural Heritage letter for the project, as amended, which remain in effect.*

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

*Ms. Greene said that this matter is awaiting a letter from Natural Heritage and will be continued to January 2, 2024.*

5. **Public Hearing: Notice of Intent: 10 Harrison Avenue, Applicant: Lee & Jeanne Strafford, Re: Construction of an addition to an existing single-family home, DEP# 78-07XX**

Consultant Matt Steinel stated that at the site walk, an area directly behind the garage came into question as a potential resource area. As a result, the plans have been revised to adjust the delineation in that area with a new flag 9A. The new plan shows the original and revised delineations.

Mr. Steinel said that the project is a simple one: an addition to the back of a home with no additional bedroom. He described proposed erosion controls tight to the work area and said that materials would be stockpiled temporarily in the front. The project is awaiting a DEP number at this time.

Ms. Hawkins noted that at the site walk it was observed that the do not disturb wetlands markers were located within the resource area. She asked how that came to be and whether the updated plan should note the discrepancy.

Mr. Steinel said that there is no question that the posts are inside the wetland. Wetlands lines tend to expand and contract over time. Rather than incur the cost of a surveyor solely for the purpose of the plan, he suggested that if the Commission would like to have the posts moved, it would be more cost effective just to do that. Mr. Haley received confirmation that the posts were properly located when installed as part of a septic upgrade, but the wetlands have moved. The homeowner, Lee Strafford, said that he does not mow in the wetland area. He added that since Harrison Avenue was widened and a berm was changed, he has water in the basement in rainstorms. He hopes that will be fixed.

Ms. Hawkins noted that the project will increase the property's impermeable areas. Mr. Steinel said that the home has gutters running into the ground and the new addition will also have gutters.

*Because no DEP number has yet been issued, the matter was continued to January 2, 2024.*

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

Mr. Haley, an abutter, recused himself and moved from the Commission table to the audience.

Consultant Dennis Griecci described a subdivision to be called Eagle's Nest that will be comprised of a private road and 2 building lots with private wells and septic systems. The property is in the Merrimack riverfront area and has two wetlands. The road will cross wetlands and over 2,000 square feet of wetlands replication is planned, to be located in 3 areas. To manage stormwater, there will be drywells for the roofs and crushed stone infiltration for the roadway.

Mr. Griecci explained that the 2 smaller replication areas were proposed to create a natural connection to the existing wetlands and are farther from the built area and thus less likely to be disturbed. In response to Ms. Greene, he said that the plans show no replication for temporary wetlands impacts, but they could. The temporary wetlands impacts are shown in the chart showing square footage of wetlands impacts.

Mr. Griecci said that Natural Heritage sent a no takings letter but the project has yet to receive a DEP number. Ms. Hawkins said that due to the size and number of wetlands impacts and mitigation areas, the Commission has considered obtaining peer review to confirm the wetlands delineations and advise on restoration plans. A site walk could take place after the peer review is complete. Mr. Griecci noted that the Planning Board is using Meridian to review the plans for zoning purposes.

*Ms. Hawkins moved, Mr. Parrott seconded, and the Commission voted unanimously to send this matter out for peer review. The matter, which will be before the Planning Board on January 2, 2024, was continued.*

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

Consultant Greg Hochmuth described a restoration plan filed with the Commission today concerning filled wetlands. He said that wetlands filling began around 2014 or so and then more material and construction equipment came in. He used aerial maps from 2001 to identify where the wetlands once were and it appears

that about 16,000 square feet were filled

The restoration plan shows the current aerial photo with the planned restored wetlands. All piles will be removed from the wetland and buffer zone. The road, which had been there, will stay. Grading will be done to restore all that was there—and the wetland may be larger than what is shown on the plan, so there will need to be an agreed-upon delineation. Once the dumped material has been removed and grading completed, they can add soil amendments as needed and replant the area. Mr. Hochmuth also described erosion controls. He said that the work would be overseen by a wetlands scientist and after completion, the area would be monitored for 3 years, with hand removal of invasive plants. He proposed that instead of using wetlands marker posts alone, that boulders could be interspersed to make the wetlands line visible on aerial maps.

Mr. Hochmuth said he discussed the timeline for restoration with Connor Lincoln, whose construction equipment and other materials need to be removed from the wetlands in question. He agreed to target restoration planting for the fall of 2024 with an inspection on September 1, 2024 to make sure this is on track.

At this point it is not clear where the materials to be removed would go. Some is planned to be crushed and used to repair the existing farm road and they may be able to find another location on the farm out of wetlands and buffers to store the materials. Mr. Hochmuth said that this question may involve consultation with other Town committees and entities. Ms. Greene said that the Massachusetts Department of Agricultural Resources (MDAR) is on the email chain for this matter and will be monitoring this for requirements applicable to the property under the Agricultural Preservation Restriction (APR) held by MDAR and the town through the Conservation Commission and Select Board.

At Ms. Hawkins' suggestion, Mr. Hochmuth said that monthly progress reports will be provided to the Commission detailing the volume of material being removed from the wetlands and buffer zone. Ms. Hawkins also noted that topsoil had been removed in one area, which should be brought up to grade. Mr. Hochmuth said that anything in the buffer zone will be loamed and seeded.

*The matter was continued to January 2, 2024.*

#### **8. Violation: 101 Bachelor Street, Re: Tree removal in the 200' Riverfront Resource area**

Ms. Greene said that she accompanied the Building Inspector to this site and noted that the presence of a perennial stream makes the entire property in the 200' protected area. She sent a violation letter concerning unauthorized removal of several trees at the edge of the lawn. She said that the area is stable and the trunks were cut flush to the ground.

Property owner Mark Bilodeau said that the trees he cut were dead and threatening the house. He described the property, which he acquired as a foreclosure, as presenting several difficulties. They cannot locate the existing septic system, which needs replacement, and he would like to build a retaining wall to protect the house from flooding. Mr. Bilodeau offered to replant some trees. The Commission pointed out that until necessary work is complete for the perc tests and septic replacement, trees should not be planted because they may need to be removed to accommodate the construction work.

The Commission stressed repeatedly that anything that is done that disturbs the soil at this property or removes vegetation requires a filing with and permission from the Commission because the entire property is in a protected riverfront area. Work on the septic system or a retaining wall would require a Notice of Intent

submission to the Commission. Mr. Parrott added that if a flooding emergency arises, Mr. Bilodeau can use sandbags to protect the house.

*The Commission determined to let the violation letter stand in the files without taking additional action at this time.*

#### **9. Enforcement Order Ratification: 24-26 Bridge Street, Re: Unpermitted culvert replacement**

Ms. Greene said that she issued an enforcement order concerning the unauthorized replacement of an under-driveway culvert brought to her attention by the Water Superintendent. She found landscapers on the scene doing excavating and dewatering work to replace a culvert that had collapsed under a driveway. She determined that the best course was to issue the enforcement order and allow completion of the work to get the fill pile out of the wetland and the area surrounding the wetlands stabilized.

Ms. Greene explained to the homeowners Myfanwy Collins and Linda MacDonald that the work in question does need to be permitted and an engineer needs to be involved because the culvert and its stormwater drainage may impact the neighbors and may not be successful if it is not properly designed. Now it is a question of reverse engineering to ensure that the culvert is the right size and nature for the site. She noted that the new culvert appears smaller than the one it replaced. Ms. Collins and Ms. MacDonald said that the new culvert performed well in today's heavy rains.

Ms. Collins and Ms. MacDonald said that the driveway had collapsed, causing an emergency in terms of access to the property. They contacted the Department of Public Works (DPW) and the Highway Superintendent came out with a crew and filled in the hole. They had assumed that this was a problem for the Town but it turned out that this was on the homeowners' property. Having worked with DPW, they did not realize they needed to contact the Commission. Ms. Greene noted that there could have been better communication about this within the Town office building.

*Ms. Greene will help Ms. Collins and Ms. MacDonald with a list of consultants and assistance with a Notice of Intent filing concerning the culvert.*

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

Ms. Greene said that she visited the school building site during today's heavy rainstorm. She said that the problem areas near the stream were not doing well. The apron intended to slow and disperse water was overflowing discharging sediment into the stream, and the water came from many little trickles, with no single identifiable source. The hole at the toe of the slope that the contractors call an animal burrow was emitting large amounts of water. She concluded that the area is not stable and not in compliance with the enforcement order that remains in effect and orders no more discharges. Mr. Haley said that the check dams in the unstable area are nowhere near ready to be removed given this serious water flow.

Ms. Greene said that the Epsilon report has just one paragraph concerning cleanup of the stream, addressing removal of temporary erosion controls that had been placed in the stream in the section near the baseball field. She said that the focus now will be on doing the cleanup the right way in consultation with wetlands scientists. She noted that it is regrettable that this project deposited so much sediment in the Merrimack River.

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

The Commission discussed the square footage that would make a body of water fall under the bylaw's definition of a pond. Currently the draft sets the threshold at 1,000 square feet while the state sets it at 10,000 square feet. In response to Mr. Parrott's inquiry, Ms. Greene explained that in and of itself, a body of water is not a protected under the Wetlands Protection Act and it's the resource area values that a resource area such as a bank or land under water provides that are protected. Without the reduced threshold size for ponds in the bylaw, any pond that is under 10,000 square feet and is not bordered by wetlands would not have protections for its bank or land under water as the definition of a bank requires it to border a "lake, pond, reservoir, river" etc. She stressed the resource values of habitat at ponds. Ms. Hawkins said that she reviewed MIMAP and has found 5,000 square foot ponds in the woods in West Newbury.

*The Commission generally agreed to change the threshold from 1,000 to 5,000 square feet.*

**12. Review & Sign: Acceptance of Deed document Sawmill Brook - Lot #2A and Lot 2B, Archelaus Hill Place and Poor House Lane, West Newbury, Massachusetts**

*The Commission signed acceptance of the deed for this property, which will be under Commission care and control.*

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

*Deferred*

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

*Ms. Hawkins moved, Mr. Preble seconded, and the Commission voted unanimously to approve the minutes of November 20, as amended.*

**15. Approval of Public Minutes: December 4, 2023**

*Ms. Hawkins moved, Mr. Haley seconded, and the Commission voted 4-0-1 to approve the minutes of the regular session of the December 4 meeting, as amended. Ms. McCraven, not present at the meeting, abstained.*

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

*Deferred*

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

*Deferred*

**18. Land Agent Updates:**

Ms. Greene reported that a productive meeting concerning a standard checklist for trail development with stakeholders interested in installing new trails was had on December 13<sup>th</sup>. She noted that the Building Inspector, who is responsible for ADA compliance, offered some comments which will be incorporated.

Ms. Hawkins noted the problem with the Whetstone trail project, which has been on the Commission agenda and continued for a long time now because funding for the Whetstone trail has not materialized. The Town asked the developer to contribute only \$10K, when the cost of an ADA compliant trail is \$100K. She asked if there could be a better way for the Town to manage this issue at the outset when dealing with developers and obtaining funding for trails. Ms. Greene said that the Building Inspector has already developed such information. *Ms. Greene will forward this to the Commission members.*

Ms. Hawkins also noted that the question of prioritizing new trails as opposed to improving those already in

place should be considered. Many trails at Mill Pond should have better crossings over wet areas.

**19. Conservation Agent Updates:**

*It was generally agreed that Ms. Greene will prepare a draft budget and submit it to the Commission, as she has done before.* Mr. Haley asked if the Commission could acquire a tripod for use to show plans at Commission meetings. *Ms. Greene said that could be done now.* Ms. Greene also noted that she needs administrative help in doing things that must be done but do not require her skill set. She gave as an example preparing certified mail, which is time consuming but must be accomplished within certain deadlines and thus cannot be delegated to the already-overcommitted Town staff currently available.

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

*See trails checklist update.*

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

Mr. Haley said that a meeting is scheduled for December 21<sup>st</sup>.

**22. DEP Comments:**

Ms. Greene said that DEP is doing in person training about wetlands delineation and she was thinking that the backyard [I have no idea what or where this is] would be a good site for this. *The Commission supported recommending the wetlands at the back of Action Cove Park and the ballfields and Ms. Greene will check with the Town Manager and Select Board about making the recommendation.*

**23. Other Business:**

Ms. Greene reported that today's major storms presented problems at some spots in Town. Silty discharge was running from 4 Norino Drive, where construction workers had driven over erosion controls and the silt fence was blown out. In response to Ms. Greene, contractor Joe Neipp said he would get to it. A silt fence breach occurred at 154 Middle Street and they will have to do cleanup. Runoff from 152 Middle Street caused issues at 150 Middle Street. Some sediment entered the wetland at the corner of the driveway at 290 Middle Street. 333 and 335 Main Street had a lot of water but the runoff was mostly clear. *See also item #10 for a discussion of PRSD during the rain event.*

**24. Informal Discussion:**

*None*

**25. Upcoming Meetings:**

January 2, 2024 – Regular business, public hearings and meetings. Please note date is a Tuesday. *Mr. Haley will not be present at this meeting.*

January 8, 2024 – Administrative business, work on wetlands bylaw

January 22, 2024 – Regular business, public hearings and meetings. Please note date is 4<sup>th</sup> Monday.

**Adjournment** 9:15 pm

**Meeting Documents**

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

Respectfully submitted