

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place:** 7:00 pm, August 21, 2023, Second Floor Town Offices.

**Members Present:** Chair Molly Hawkins, David Parrott, George Preble, Jack Haley, Haley McCraven, 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): Cherry Hill Conservation Land, Field at corner of Middle Street; Indian Hill Street, Riverbend; Tupelo Trail, Applicant: Town of West Newbury, Re: Professional chemical and mechanical removal of invasive plant species, DEP# 078-07XX**

Because they are waiting for a DEP number, the applicants requested a continuance.

3. **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**

Greenbelt was not present and requested a continuance as they wait for the grantees of the CR to approve the project.

4. **Violation: 152 Middle St., Re: erosion and sedimentation into wetlands, DEP# 078-0722**

Homeowners Maggie and Gordon Kent were present as were builder Sam and Roxanne Costello. Ms. Greene explained that several lots had been created as 152-154 Middle Street and 2 Kimball Road. The lots are in various stages of homebuilding for different owners with different builders. All used Williams & Sparages as wetlands/engineering consultants. The Middle Street lots were subject to Commission permitting and affected wetlands are in front of 154 Middle Street, 150 Middle Street (not under construction), and across Middle Street. The 152 Middle Street lot is under active construction and encountered problems during the major rainstorms on August 8 August 18, and even during the less intense rain on August 10. Ms. Greene said that the parties have been very responsive to concerns she raised; she wanted to alert the Commission to the situation involving silty stormwater and erosion occurring on the lots in this area, which are interconnected in terms of stormwater and wetlands impacts.

Mr. Kent and Mr. Costello said that the property at 152 Middle Street is 50-60% through construction. When the problems arose, they hand-cleaned sediment out of the wetlands at 150 Middle Street, met with the environmental engineers, had a site walk with Ms. Greene, and agreed to implementing mitigating factors such as additional erosion controls. Mr. Costello stressed the unexpected and unprecedented nature of the flash flooding on August 18, saying that there is no way to anticipate these things: last summer experienced drought. They also intend to expedite installation of a retaining wall (which was part of the original plan). They do have a stockpile of additional materials that can be used to mitigate any additional problems. They said that mitigation measures identified at the site walk are about halfway done and will be completed before the rain predicted for the weekend. They said that the goal is to stabilize the site and they are waiting for more information from Williams & Sparages.

*The Commission decided to not take any additional action at this time as the site so far has been responsive to mitigating the erosion and sedimentation issues.*

**5. Violation: 2 Kimball Rd., Re: erosion and sedimentation into wetlands**

Ms. Greene said that the parties involved with 2 Kimball Road could not be present tonight but would be participating in a Zoom conference tomorrow. She noted that this property raises some difficult issues relating to limits on the Town's ability to manage serious stormwater runoff issues. Because the property itself has no legally proximate wetlands or buffer areas that require Commission permissions, it is not subject to an open Order of Conditions (including the winter work ban)—though it is subject to requirements from NHESP to protect Blanding's turtles. Yet the property is a source of runoff that is causing silty discharges into wetlands at 154 Middle Street and across the street. She said that so much water has been coming from 2 Kimball that it has blown out 2 sections of erosion controls at 154 Middle with enough velocity to carry stone from 154 Middle's construction driveway into the wetlands on this property. Also, 2 Kimball was not subject to the new stormwater bylaws as all permits were in hand prior to the effective date of the stormwater bylaw. Zoning and building permit requirements apply only to final conditions. Also, if runoff from the property affects the roadway in winter (so that, for instance, the road becomes icy) there is no preemptive mechanism to prevent this—DPW would just need to apply salt or sand. In an enforcement order is issued, the entire lot for 2 Kimball would come under Commission jurisdiction because activities on the property are having adverse impacts on wetlands.

Ms. Greene said that if there are significant and consistent violations of wetlands protections, the next step is an enforcement order with a requirement to cease and desist construction. She is concerned that problems are arising even with ordinary rain events.

Mr. Haley noted that it is helpful that one environmental engineering consultant—Williams & Sparages—is consulting for all of the new homesites. Mr. Parrott said that it is good that the parties have been responsive and have been working on the issue, but expressed concern about having the issues at 2 Kimball actually fixed. Ms. Greene said that a Commission enforcement action can require that 2 Kimball obtain a hydrological assessment to remedy the problems.

Ms. McCraven asked what would happen if in the future 2 Kimball produced significant runoff but without sediment. Ms. Greene said that the Commission's concern is the performance standard requiring that no sediment goes into protected areas. If runoff damages adjacent lots with no sediment discharge into wetlands, it would become a civil issue among neighbors. Mr. Parrott noted that even with sediment-free runoff, a landowner cannot concentrate and direct water into a wetland.

Ms. Greene repeated that she wants the Commission to be aware of this situation and said that she is concerned about consequences of having exposed ground this winter.

*The Commission decided to not take any additional action at this time as the site so far has been responsive to attempting to mitigate the runoff issues.*

**6. Enforcement Order (issuance/ratification): 13 Turkey Hill Road, Re: Unpermitted clearing in buffer zone**

Ms. Greene reported that prior to current homeowner Alejandra Chandler (not present at this meeting) purchasing the home, a developer received an Order of Conditions and razed and rebuilt the house on this

property. About half of the property is wetlands and it is surrounded by Greenbelt land. The developer is still doing some work and has an open Order of Conditions (with clear limits on the area of work), and Ms. Chandler has moved in. When Ms. Chandler asked Ms. Greene about cutting bittersweet that was overhanging onto her property, Ms. Greene said that would be allowable.

Ms. Chandler then clearcut an approximately 30' x 15' swath of land (including Greenbelt land), leaving disturbed open soil up to the wetland boundary—which Ms. Greene did not authorize. Given that there were track marks, said Ms. Greene, it appears that the clearing was done by machine. Ms. Chandler's reason for the clearing is that the area had been overcome with bittersweet and downed trees. The developer does not want to be held responsible for the homeowner's actions. Ms. Greene proposed dealing with Ms. Chandler's actions separately from the Order of Conditions applicable to the builder.

Ms. Greene has attempted to reach out to Dave Rimmer of Greenbelt, who according to Ms. Chandler, did not want to allow remedial planting on the Greenbelt land, possibly because of potential liability issues. Ms. Greene will attempt to reach him again—and the Commission suggested that at a minimum a heavy seed mix needs to be immediately applied to deal with the raw earth adjacent to the wetland.

Ms. Greene has drafted an enforcement order and has told Ms. Chandler that she needs to have a surveyor mark the boundaries of her property where the cutting occurred, and that Ms. Chandler is not authorized to put in the fencing she has proposed until the property lines are established.

Commission members expressed concern about delay in addressing the situation. Mr. Haley asked if salt hay could be broadcast to cover the bare earth and Mr. Parrott said that waiting two weeks to start to mitigate the problem raises issues about detriment to the wetlands. Ms. Greene noted that the usual timeframe for requesting a remediation plan was about a month.

*It was generally agreed that Ms. Greene would talk with Greenbelt's David Rimmer the next day and she will issue the enforcement order she has drafted once she has a better understanding of Greenbelt's position with work on their property.*

Ms. Greene also noted that since Ms. Chandler was recently appointed to the Conservation Commission, a disclosure notice needs to be filed with the Town Clerk saying that Ms. Chandler is a member of the Commission and subject to a Commission enforcement order.

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

Ms. Greene reported that the Pentucket high school/ middle school site did not do well during Friday's rainstorm. Very silty runoff went into the stream. She said that she will investigate the efficacy of the designs for the riprap to slow, filter, and dissipate water and will send an email to the responsible parties before the storms forecast for this weekend, asking whether this was designed for a 50-, 100- or what year storm. In response to the Commission's questions, she noted that areas which had been hydroseeded had not yet grown in and there were gullies and erosion. There is also a large amount of silt near a catch basin on the roadway that crosses the stream that had not been cleaned away.

Commission members and Ms. Greene expressed concern that stormwater infiltrates into the silty layer below the astroturf, which has no roots to stabilize the soil. This raises a question about release of silt from under the field over the long term. Ms. Greene will also ask about that.

**8. Enforcement Order Update: 15 Norino Drive, Colin Hodgson, Reinhild Hodgson, and Shirene Hodgson Re: Placement of a houseboat and dock along the Merrimac River without a permit with impacts to the 200' riverfront resource area, bordering vegetated wetland, inland bank, and rare species habitat**

Ms. Greene had no updates, noting that the Salisbury Harbormaster was provided a letter to review and comment on but was waiting to hear from the environmental police. *The Commission generally determined that this had become a public safety issue (with the hazard that the houseboat may break apart and go down the river) and thus this will no longer be a permanent matter on the Commission agenda.*

**9. Other Business:**

8/18/2023 Stormwater damage

Ms. Greene catalogued stormwater issues related to the heavy rains and flooding caused by the storm that left about 4" of rain in the morning of August 18.

- 290 Middle St. had sediment in the wetland and now is working on erosion control.
- 87 Main St. had a landslide at the back of one of the new residences, covering the bulkhead and ripping out an air conditioning condenser. The homeowner, who purchased this as his first home and moved in only a couple of weeks ago, was very distressed and came to the Conservation Agent for help—which she explained that she could not give because she is not an engineer and the matter is not within Conservation Commission purview. Because there is a one-year warranty on the home, the developer is involved. She advised the homeowner to find a lawyer and an engineer to pursue this. Construction at the slope had met applicable code. The wetlands below the property were not adversely impacted.
- 335 Main St. was adversely impacted when an intermittent stream coming from the large wetlands behind Drakes Landing (which stream had long ago been largely placed underground with culverts) caused the culvert under the driveway to this property to fail. This has created a huge depression under the driveway. The homeowner wants the Town to “manage the wetland” to cure the problem. Ms. Greene advised that the Town does not do this and recommended that the homeowner find an engineer and file a Notice of Intent to address these problems.
- 333 Main St. had 6 feet of water in the basement resulting from the situation with the stream causing trouble at 335 Main Street. As required by the Building Inspector, the tenants were moved out. The property owner proposed a number of remedies such as having the Town manage the wetlands, requiring that the Drakes Landing development address the issue, mandating a solution from 335 Main Street, and issuing an emergency certificate permitting him to construct a berm to wall out water flows onto his property. Ms. Greene noted that only the Building Inspector or Health Agent could make a safety/ public health emergency finding allowing the issuance of an emergency certificate, and they declined to do so in this case. Ms. Hawkins noted that as an abutter, she would be unable to participate as a Commission member in any Commission proceedings concerning this matter.
- Approx. 334 Main St. A culvert across the street from 333-335 Main Street has been eroding away within 2 feet of the water main. Main Street is a matter for Mass DOT, which apparently needs to find a contractor to address this. Ms. Greene said that she has made it clear that she will issue an emergency certificate promptly—she wants it known that any delay in dealing with this issue is not caused by the Conservation Commission.
- River Rd. Ms. Greene reported that many problems occurred requiring shoring up of River Road and the Highway Department has been taking care of them with emergency certificates from the Conservation Commission. Mr. Preble said that in walking along River Road, he has found some

additional spots where holes have formed under the road—which have not yet been addressed.

- Mill Pond experienced heavy runoff at the road leading into the area, causing erosion on the dirt road. Also, the dike beyond the picnic and dog wading area was overtopped, causing erosion and deposition of materials into the pond. It is not clear how the materials might be removed from the pond.
- Approx. 36 Coffin St. It was reported that at the stream adjacent to this property the culvert was overtopped, causing a section of the road to come out in chunks. This is now undergoing repairs.

#### Fee schedule effective date

*Noting that in most cases, the new fee schedule reduces fees, the Commission determined that the new fee schedule will apply after August 14, 2023, the meeting date when the new schedule was adopted.*

#### **10. Informal Discussion:**

None.

#### **11. Approval of Minutes: May 3, 2023**

Deferred.

#### **12. Approval of Minutes: July 24, 2023**

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

#### **13. Approval of Minutes: July 27, 2023**

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

#### **14. Approval of Minutes: August 8, 2023**

Deferred.

#### **15. Approval of Minutes: August 14, 2023**

Deferred.

#### **16. DEP Comments:**

None.

#### **17. Land Agent Update:**

Ms. Greene reported that the invasive plants interns' last day was Thursday and she will be submitting a warrant article for interns or seasonal land stewards in FY 25.

#### **18. Commission Representative to Open Space Update:**

Mr. Parrott noted that the Committee is interested in deferring work on the new Open Space Plan. The Conservation Commission is interested in participating in the plan's development and Ms. Greene said that in other towns the Conservation Commission is usually involved. She also noted that compliance with MBTA Community requirements is increasingly important as more grant opportunities—including the Land Grant for acquiring open space—are now contingent on compliance.

#### **19. Commission Representative to Community Preservation Committee Update:**

Mr. Haley reported that the CPC recently considered and approved an eligibility application for portions of the property at 114 Ash Street. Some acreage would be acquired by Mass Wildlife & Fisheries and another

portion (which would not have public access) would be privately owned with a conservation restriction held by Greenbelt with a portion of the funding coming from CPA funds. Negotiations are underway and the matter should be resolved in time for fall town meeting.

**20. Upcoming Meetings: September 6, 2023 @ 7:00 PM, regular business. Meeting date is a Wednesday due to Monday holiday**

**September 11, 2023 @ 7:00 PM, administrative business / bylaw**

**September 18, 2023 @ 7:00 PM, regular business**

**Adjournment 8:34 pm**

### **Meeting Documents**

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

Respectfully submitted