

## West Newbury Conservation Commission Meeting Minutes

**Meeting date & place: 7:30 pm, December 5, 2022, Second Floor Town Offices.**

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

At 7:00 pm, the Commission determined to go into Executive Session, citing M.G.L. Ch 30A sec. 21(a)6. Proceedings were conducted in closed session because an open meeting might have a detrimental effect upon the negotiation of a potential real estate acquisition.

Executive Session--- MGL Ch. 30A §21(a) 6: To consider the purchase, exchange, lease or value of real property if the chair declares that an open meeting may have a detrimental effect on the negotiating position of the public body.

The Commission determined to go out of Executive Session at 7:33 p.m., and proceeded with the open meeting.

**1. Public Hearing: Notice of Intent (continued): Town Wide, Applicant: West Newbury DPW, Re: Hazard tree management, DEP# 078-0717 *Applicant requests a continuance.***

**2. Public Hearing: Notice of Intent: 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 provided an update, saying that the project is being redesigned and a site walk is needed now that the wetlands have been reflagged in the field. The site walk will be posted as an event on the town calendar as it is on public property and Town officials will be present.

*The Commission scheduled a site walk for 8 am on December 11, and will meet at the cul de sac at Sullivan's Court.*

**3. Certificate of Compliance Request: Cottages at Drakes Landing, Daley Drive, F/K/A 365 Main Steet, DEP# 078-0679**

Consultant Denis Hamel of GM2 said that the project was pretty much complete, and when asked by Ms. Greene if he wished to discuss discrepancies among the approved plan, the as-built plan, and the actual status of the development, he suggested that Ms. Greene could tell him what she found. Ms. Greene said that she and commissioners Parrott, Preble, and Haley visited the site this morning and found outstanding issues, which she listed.

*Ms. Hawkins recused herself from this matter as she is an abutter to the property.*

### Propane tanks

Ms. Greene noted that the approved plan made no mention of underground propane tanks, but some were seen at the site. Mr. Hamel said that a number of propane tanks, including banks of them, are included on the as-built plan. The developer initially planned to install natural gas heat, but this became infeasible due to the National Grid strike during construction and propane was used instead. He said that the propane tanks were located outside of the buffer zone.

### Relocation of units and stone patios

Ms. Greene said that some units had been moved and some had stone patios that were not on the approved plan. Mr. Hamel said that the Planning Board had indicated that the developer could place units as they went along and some may have been shifted a few feet either way, which was all part of the Planning Board process.

Ms. Greene noted that some of this was occurring in the buffer zone and the patios were not on the approved plan. *Mr. Hamel will check to see if the size of the footprint had changed.*

### Stormwater management

#### Holes in drainage structures / pipe orifices

Those on the site walk said that pipe orifices extending upward in drainage structures (apparently at higher elevations to manage larger storms raising water levels) had random-appearing after-market holes cut in them at lower levels. It appeared that the holes were at odds with the higher elevations of the orifices.

Mr. Hamel said that the orifices were at the intended elevations. Although he did not review the functioning of every orifice, he believed their functioning would be close to that approved. He noted that he was involved in design but not construction. This could have been done through the Planning Board process.

Commissioners Haley and Parrott again observed that the holes appeared to be random and at odds with the higher elevation at the top of the orifice pipes.

In response to Ms. Greene's query whether he had calculations of the stormwater management impacts of the after-market holes, Mr. Hamel said that this would be very specific to each basin. Each basin needs to meet several levels of design storms. He said that they did collect all of the data and compared it to the design plan. The after-market holes should not radically affect performance, the largest deviations being about by 1".

After further discussion, Mr. Hamel said that he had not gone out to the site to look at each completed drainage system, but they looked OK during construction. In reviewing the application for the Certificate of Compliance, he had looked only at the data given to him and did not physically check the site himself. He had been involved in the initial design, but then another of his co-workers, who has since left, had taken over.

#### Riprap, incorrect elevations

Ms. Greene said that a large section of riprap had been installed at one of the drainage systems, but this was neither on the approved plan nor the as-built plan. Mr. Haley noted that the elevations did not appear to be correct and evidence of past puddling was seen on the pavement. Ms. Greene said that the consultant/monitor had specifically identified this in one of his reports.

Mr. Hamel said that this was put in late in the game. Problems occurred with a sediment forebay when things were messy out there, and they added some riprap to deal with erosion. This should have been shown on the as-built plan, he said, but maybe it was missed.

In response to Ms. Greene's points that riprap instead of grass is now permanent and the elevation is incorrect, Mr. Hamel said he did not see that entire area. He said, however, that water will run through the riprap. Mr. Haley said, no, it does not appear to be doing that, and Mr. Hamel replied that they can take a look at that.

Ms. Greene said that in another area where riprap was used, in the area where storm water had been running down Daley Drive to Main Street, a containment area is now all filled in and vegetation and soil are higher than the roadway, causing puddling. This area, she said, needs to be cleaned out.

#### Conservation posts

Ms. Greene said that the as-built plans should show the 25' buffer. She added that at the site, conservation posts at the 25' buffer are not installed where they were supposed to be. She offered to email Mr. Hamel the locations. She noted that some of the posts that were installed were located far closer to the wetland than they should be.

#### Foundation drains & gutters

Ms. Greene said that foundation drains were on the approved plan, but none were shown on the as-built plan. She said that at the site, they were not able to determine that all the drains were going to the correct spot. Unit 33, for instance, appeared to have a deviation.

Mr. Hamel said that he remembered them doing something about this, but will find out from the contractor.

Mr. Haley noted that at the site, the Commission members observed some roof gutters to be connected to buried drains but could not determine if some of the gutters are tied in to foundation drains. Mr. Hamel said that he recalled discussing this with developer Chip Hall and Mr. Hall said he did not want to use gutters. Ms. Greene said that notwithstanding, gutters have in fact been installed and the Commission cannot determine where that water is going.

Mr. Hamel said that perhaps the homeowners installed gutters. Ms. Greene said that the as-built plan is supposed to reflect actual conditions as built at the site. Mr. Hamel said that runoff from the roof would not make much difference. Ms. Greene repeated that as-built plans must be accurate.

#### Wetlands replication

When Ms. Greene raised the matter of wetlands replication, Mr. Hamel said that wetlands replication was a different issue and asked whether the Town hadn't already approved that. Ms. Greene said that not all of the required plantings were there. Mr. Hamel said that deer browse or drought could have killed some plants. His memory of this is vague, he said, based on hearsay. He added that the important thing is that it is a functioning wetland—it is still a wetland—and it has whatever plants mother nature decided on. The Commission noted that the plants were specifically required to promote biodiversity.

Ms. Greene noted further that stakes are still left from erosion controls and should be removed.

#### Trail locations

Ms. Greene said that in certain areas the trail locations deviate from the approved plans, but this is not a concern because the trails are more distant from wetlands.

#### Focal point

Ms. Greene said that the area behind the Carr Post/Sailors & Soldiers Memorial is supposed to be a specially designed and planted focal area to manage stormwater, but is just grass. It needs to have the specified plantings. Mr. Hamel said that they cannot plant now. He said that he has designed such focal points: they

have special soils above a grate with a gravel layer and are superior to rain gardens. This requires maintenance of mulch layers and annual inspection of filters. He said the focal points he did in New Hampshire were enormously successful.

Ongoing issues including Home Owners Association

Ms. Greene said that on the site walk, the Commission observed dumping of yard waste behind the homes. She said that this will need to be cleaned up before the Certificate of Compliance can be issued. Mr. Hamel suggested that the Commission talk with the Home Owners Association (HOA).

Karin Iorio, 33 Daley Drive, chairperson of the HOA (participating by phone), said that she just became aware of this and will have the management company send out a notice to homeowners about the dumping.

Ms. Greene said that the developer and then the HOA had been required to submit many stormwater reports, but the Commission has received none from Chip Hall or from the HOA. Mr. Hamel said that the HOA has been responsible for them since May when Mr. Hall turned over the development to the HOA.

Ms. Iorio said that they know the HOA is supposed to be doing monitoring and submitting stormwater reports but has been waiting for a final report of cleanup of drains and detention basins from developer Chip Hall. Mr. Hamel said that the final clean out was done on September 26, 2022. When it was noted that neither the Commission nor the HOA has that report, Mr. Hamel explained that this was a complicated site.

Ms. Iorio clarified that only the catch basins were cleaned out—not other stormwater structures. The HOA has been trying to get the report, as has been the Planning Board. She said the problem is where Mr. Hall's Cottage Advisors stops and the HOA takes over. Mr. Hamel said that once the catch basins were cleaned out, the other structures should be fine. The other structures, he said, are less important.

Ms. Mizner advised that these issues need to be addressed, and with Mr. Hamel's agreement, *the matter was continued*. Mr. Hamel said he would go out to look at the site—he had not been there for two or so years.

**4. Violation Update: 4 Norino Drive, Re: Clearing within the 25' no disturb buffer and clearing past the limit of work, DEP# 078-0740**

*No update.*

**5. Violation Update: 21 Montclair Road, Re: Clearing trees within 100' buffer zone without a permit**

*No update*

**6. 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**

*No update*

**7. Discussion:**

Ms. Greene said that the draft new job description from the Collins Center of the Conservation Agent position had just been received. Only Ms. Mizner, among Ms. Greene and the Commission members, had a chance to review this.

Ms. Mizner expressed concern that the job description said that the Town Manager would provide administrative supervision while policy direction would come from the Commission. She said that the statute says that the Commission hires the Conservation Agent and suggested that, therefore, it should do the supervising. She will request an opportunity to discuss this with the Town Manager and also request the legal opinion the Town reportedly received. Mr. Parrott said that the Conservation Agent is now responsible for additional tasks and may do work for the Open Space Committee—not under Commission supervision.

Ms. Greene said that it is important to note that this job description applies to conditions when she started in May—not to any future additional tasks that may be added. *The Commission discussed the idea of making the Conservation Agent position a full time job and supported the concept.* Ms. Greene urged that if this comes to be, some flexibility and recognition of the Agent's professional judgment be allowed, so that rigid hours/week time allotment and recordkeeping not be required. Ms. Mizner questioned why the Open Space Committee—and not the Conservation Commission—was consulted about making the Agent's position a full time job. It was noted that the Commission could, in its budget request, ask for full time hours for the Agent.

**8. Other Business:**

**9. Wetlands Bylaw Discussion:**

**10. Old Business:**

Ms. Greene reported that Rob Johnson, the developer at 87 Main Street was paving the driveways with finish coat going on the common driveway and lots 1 and 2 and a binder coat going on lot 3 to allow time to settle before paving the finish coat in the spring. Ms. Greene said that she will reach out to the Planning Board to let them know that paving is planned so they can have their consultant review the common driveway once it is paved.

**11. Informal Discussion:**

**12. Community Input:**

**13. Approval of Minutes:** August 15, 2022  
*Deferred*

**14. Approval of Minutes:** September 8, 2022  
*Deferred*

**15. Approval of Minutes:** October 17, 2022

Ms. Greene explained that these minutes had an ambiguous description of the wetlands at the site of one of the septic projects and was proposed to be corrected. *Ms. Mizner moved, Ms. Hawkins seconded, and the Commission voted unanimously to approve the minutes of October 17, 2022 as further amended.*

**16. Approval of Minutes:** November 21, 2022

*Ms. Mizner moved, Mr. Parrott seconded, and the Commission voted unanimously to approve the minutes of November 21, 2022 as amended.*

17. **Correspondence:**

18. **DEP Comments:**

19. **Land Agent Update:**

20. **Next Meeting:** December 19, 2022

**Adjournment** 8:57 pm

**Meeting Documents**

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

Respectfully submitted