

**HARVARD CONSERVATION COMMISSION  
MINUTES OF MEETING  
SEPTEMBER 16, 2021  
APPROVED: NOVEMBER 4, 2021**

Chair Don Ritchie called the meeting to order at 7:01pm, virtually, pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021, under MGL Chapter 131 §40 Wetland Protection Act and Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw

**Members Present:** Don Ritchie, Paul Willard, Wendy Sisson, Jaye Waldron, Jim Burns and Eve Wittenberg (Associate Member)

**Others Present:** Liz Allard (Land Use Boards Administrator/Conservation Agent), Peter Dorward (Open Space Committee), Jim Lee (Open Space Committee), Dan Daly (Open Space Committee), Staci Donahue (Planning Board), Brian Cook (Planning Board/Open Space Committee), Jefferson Burson (Planning Board/Community Resiliency Working Group), Greg Brackett, April Locke, Rick Cavanan (Tighe & Bond), Gail McCarthy, Bruce Ringwall (GRP, Inc.), Lou Russo, Sarah Wagner, Thomas Revane, Brad Merkle and Justin Flanigan

**Open Space Committee Update & Community Preservation Committee Application FY2023**

Peter Dorward, Chair and Conservation Commission representative to the Open Space Committee (OSC), stated the OSC completed the following goals in 2020:

- Using the 2016 Open Space and Recreation Plan (“OSRP”) as a starting point, develop a process for prioritizing lands for open space preservation and recreational needs based on current and anticipated future demand.
- Develop a capital improvement plan for the protection and development of open space and recreation.

The goals for 2021 include:

- Using the Open Space prioritization model, create a plan recommending land for acquisition for open space and recreational use based on current and anticipated future demand.
- Finalize the capital improvement plan for the protection and development of open space and recreation.
- Work with Town boards to identify private/non-profit, State and Federal funding sources.
- Act as Town liaison with individuals and land protection advocacy groups working to protect open space or develop recreational facilities with the authority to apply for, negotiate, and with appropriate approvals direct Town funding for OS acquisition.

OSC has prioritized land for protection by identifying those that were critical for protection and those to monitor. Eight parcels are critical for protection, with the remaining under monitoring. New maps have been created detailing this information and can be viewed on the OSC page of the website.

OSC has approved two applications for funding through the Community Preservation Committee (CPC):

- Community Harvest Project (CHP) Orchard – Agricultural Preservation Restriction (APR)
- Still River Woods – Willard Lane

CHP has set a minimum goal of \$2.5 million to sustain orchard operations. The Massachusetts Department of Agricultural Resources has awarded \$1.239 million for the APR on 71 acres. The original CPC request from the Conservation Commission (ConCom) for this project was for \$500,000 over two years. The Town approved \$150,000 in CPC funds for the past two years. The OSC is seeking an additional \$100,000 in FY2023, with the remaining \$861,000 to be raised privately by Harvard Conservation Trust (HCT), Sudbury Valley Trustees and CHP.

Still River Woods is a 23-acre parcel abutting 200 acres of Conservation land and 65 areas of land protected with conservation restrictions. The ConCom was awarded \$100,000 in CPC funds in 2019, with an additional \$100,000 from the Capital Planning Investment Committee in 2019 as well. An \$80,000 Conservation Partnership grant was awarded to HCT but has since expired. An offer to purchase the property by HCT was declined by the owner. OSC is seeking an additional \$50,000 from CPC to close deal. OSC will reapply for State grants and HCT will privately raise remaining funds.

After briefly discussing both applications and determining additional information regarding Still River Woods would need to be discussed in executive session, Wendy Sisson made a motion to sponsor the Open Space Committee application for Community Harvest Project (CHP) – Agricultural Preservation Restriction in the amount of \$100,000. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

The Commission agreed to meet on September 27<sup>th</sup> to further discuss the Still River Woods Project.

**Request Determination of Applicability Hearing – Harvard Department of Public Works, Pond Road, Harvard#0921-01.** Opened at 7:39pm

**Proposed Chapter 125-58 Erosion Control Bylaw with Staci Donahue**

Staci Donahue, Vice Chair of the Planning Board (PB), was present to gain support of the Commission for the proposed Erosion Control Bylaw. Ms. Donahue explained the provision has been scaled down from its previous eleven pages to 4½ pages by moving the application process to the Planning Board's Procedural Regulations. In addition, the PB has tied agricultural use to the definition of agricultural used within the Wetland Protection Act (WPA), therefore agricultural activities that would either be exempt or require a filing with the Conservation Commission under WPA would be exempt from this provision of the Protective (Zoning) Bylaw. Additional clarification as to when a permit is required has also been provided. The PB feels this version is stronger than the previous versions and has addressed concerns raised at previous Town Meetings. Jaye Waldron made a motion to support the Planning Board's effort with the Erosion Control Bylaw. Wendy Sisson seconded the motion. The vote was unanimously in favor of the motion by roll call, Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye. (Paul Willard was not available at the time of this vote).

**Continuation of a Notice of Intent Hearing – Wheeler Realty Trust, 203 Ayer Road, Harvard#0721-02.** Opened at 7:49pm

**Request Determination of Applicability Hearing – Gail McCarty, 39 Jacob Gates Road, Harvard#0921-02.** Opened at 8:44pm

**Request to Amend Site Plan at 175 Littleton County Road, DEP#177-694**

The applicant and their contractor have asked to move the erosion and sedimentation barrier at the proposed house site to be twenty-five feet closer to the pond than as shown on the approved plan. This change will allow the contractor to move the large pile of boulders from the excavation out of the house construction site, as well as provide space for stock piling material, completing the necessary grading and constructing the retaining wall from the front of the wall rather than behind it. Upon completion of the retaining wall the area of disturbance will be tilled, loamed and seeded. This change moves the erosion control barrier from the 100-foot setback line to mostly the 75-foot setback line with some areas just past that but not into the 50-foot no disturb area. Paul Willard made a motion to allow for the amendment to the approved plan as *De Minimus*. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

### **Request to Amend Site Plan at 51½ Old Shirley Road, DEP#177-691**

The previously approved house location would require a significant cut into the top of the hill that is predominantly comprised of ledge. The revised plan would relocate the house to an area that would minimize the amount of earthwork required to prepare the lot for construction. In addition, it will reduce the amount of alteration within the 100' wetland buffer zone on the easterly side of the lot, by providing an additional 20' of separation between the proposed house and the wetland. Jim Burns made a motion to allow for the amendment to the approved plan as *De Minimus*. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; and Don Ritchie, aye.

### **Review Request for Determination of Applicability Requirements**

Wendy Sisson stated after going through the process of filing a Request for Determination of Applicability (RDA) she would like the Commission to review the process to determine if there are projects that could be handled by the Conservation Agent as opposed to requiring a filing with the Commission. The Commission could also revisit its requirements for an RDA under the Town's Wetland Protection Bylaw, as abutter notification is not required under the State's Wetland Protection Act and can be time consuming and expensive. Members will discuss this topic further at an upcoming meeting.

### **Land Stewardship Subcommittee Updates**

Wendy Sisson provided an update on ongoing invasive management of Bittersweet on the Powell and Williams land, along with Bare Hill Wildlife Sanctuary. Respectively the cost associated with this work will be \$950.00, \$1600.00 and \$650.00. In addition, 16 Black Locust adult trees will be treated with the slash method of applying herbicides and will be left to die in place at Shaker Reservoir; cost associated with this activity will be \$750.00. There are still available funds within the Community Preservation Act (CPA) Invasive Management account for these activities. Ms. Sisson also detailed the need to control invasives on the Haskell land, which consists mostly of multi-flora rose. The planting of native grasses will assist in controlling these invasive and will also be funded by the CPA funds.

Ms. Sisson stated the trail group in Bolton is seeking to upgrade a trail that was initially thought to be in Bolton, but has since learned parts are within Harvard. The Bolton trail group is trying to create a trail that is passable by horses, which is not typically done on Harvard trails. The Land Stewardship Subcommittee (LSS) felt there would be more disturbance to the wetlands than they would allow on any other Harvard trail. LSS agreed to upgrade the trail to make passable for foot traffic, but not on the scale Bolton is seeking. Members of the Commission wanted to review the site before providing their input. Jim Burns felt it was too much activity in a sensitive area.

### **Community Resiliency Working Group Town Resolution Support**

Jim Burns made a motion to support the Community Resiliency Working Group Town Resolution. Paul Willard seconded the motion. The vote was unanimously in favor of the motion by roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; Mark Shaw, aye; and Don Ritchie, aye.

### **Public Lands Preservation Act Update & Support Letter**

Wendy Sisson made a motion to submit a letter of support of the Public Lands Preservation Act to the appropriate State Representatives. Jim Burns seconded the motion. The vote was unanimously in favor of the motion by roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

### **Approve Minutes**

Minutes were unavailable this evening for approval

### **White Lane Conservation Land Encroachment**

Don Ritchie and Liz Allard met with the property owners, Eddie & Melinda Mitchell, of 20 White Lane to further review and discuss the encroachment on the White Lane conservation land. Mr. Ritchie stated it

was a difficult interaction and there was no agreement that the work that has been done is correct. Mr. Ritchie believes the Mitchell's are still encroaching onto the conservation land with the roadway and its grading. The roadway is creating runoff onto the conservation land; Mr. Mitchell has put down hay to prevent further runoff from occurring. The entire area, mostly on the Mitchell's property is heavily disturbed. In April 2020 the Mitchell's were asked to submit a plot plan; today Mr. Mitchell stated because that was not in writing he thought he did not need to do that; it was agreed that any communication between the Commission and the Mitchell's will be in writing moving forward.

A letter stating exactly what was discussed and agreed upon today will be sent to the Mitchell's with a specific deadline to comply. The members pondered whether or not this letter should come from Town Counsel. The Commission discussed what the appropriate actions should be to resolve this issue. Having the land surveyed and installing fencing between the two properties was recommended, however no one has the time to do the leg work to get it done. It was noted the Select Board should be made aware that addressing encroachment on Town-owned land is another thing the Commission is unable to complete. Mr. Ritchie will do some research of the deeds to assist in determining the extent of the encroachment. Wendy Sisson made a motion authorizing Don Ritchie to engage a surveyor to prepare a plan and have a fence installed along the property line at the expense of the Mitchell's. Jim Burns seconded the motion. The vote was unanimously in favor by roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

#### **The Commission's Position on the Stone land, Old Mill Road**

This item was passed over this evening.

#### **Pine Hill Village & Craftsman Village Update**

The August report from Nitsch Engineering has finally been received and has a number of recommendations for the developer. The fire cistern has been installed correctly. The Building Commissioner is ready to issue the Certificates of Occupancy (CO's) for the units within Pine Bank, however there is still a long list of items that need to be completed and/or submitted before all involved will sign-off on the issuance of the CO's.

#### **Adjournment**

Jim Burns made a motion to adjourn the meeting at 10:10pm. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,  
Land Use Administrator/  
Conservation Agent

#### **EXHIBITS & OTHER DOCUMENTS**

- Conservation Commission Agenda, dated September 16, 2021
- Sewage Disposal System, Flanigan Contracting, Old Shirley Road Harvard, MA Job No. 33789, prepared by David E. Ross Associates, Inc., 9/13/2021
- Site Plan Pond Road Watermain Improvement Department of Public Works Harvard, Massachusetts, Project No. H1776-009, prepared by Tighe & Bond, August 2021
- Commercial Development Wetland Alternation & Replication Plan, 203 Ayer Road Harvard, MA Job 211009A, prepared for Wheeler Realty Trust, prepared by GPR, Inc., 9/9/2021
- 39 Jacob Gates Road - Untitled Plan detailing new patio area at the back of the house

**Harvard Conservation Commission  
Request for Determination of Applicability Hearing  
Harvard Department of Public Works, Pond Road, Harvard#0921-01  
September 16, 2021**

The public hearing was opened at 7:39pm by Chair Don Ritchie under the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021.

**Members Present:** Don Ritchie, Paul Willard, Wendy Sisson, Jaye Waldron, Jim Burns and Eve Wittenberg (Associate Member)

**Others Present:** Liz Allard (Land Use Administrator/Conservation Agent) and Rick Cavanan (Tighe & Bond)

This hearing is for a Request for Determination of Applicability filed on behalf of the Harvard Department of Public Works for the replacement of an existing water main and installation of a new water main within 100' of a resource area along Pond Road, Harvard.

Rick Cavanan, of Tighe & Bond, was present to represent the Department of Public Works. Mr. Cavanan detailed the project to replace the existing watermain as part of the implementation of a chlorination system to the public water supply on Pond Road. Work will include saw cutting the roadway and trenching for the watermain. All disturbed areas will be within the roadway and the driveway to the wells. These areas will be returned to their existing conditions. On the matter of dewatering, Mr. Cavanan stated he would leave that to the contractor to determine how that is to be completed. The Commission will want to approve that activity prior to it taking place

Jim Burns made a motion to close the hearing and issue a Negative#3 Determination of Applicability with the condition should dewatering be necessary a plan shall be submitted to the Conservation Commission for approval prior to that activity. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns; aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard  
Land Use Administrator/  
Conservation Agent

**Harvard Conservation Commission  
Continuation of a Notice of Intent Hearing  
Wheeler Realty Trust, 203 Ayer Road,  
Harvard#0721-02, DEP#177-707  
September 16, 2021**

The public hearing was opened at 7:49pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021.

**Members Present:** Don Ritchie, Paul Willard, Wendy Sisson, Jaye Waldron, Jim Burns and Eve Wittenberg (Associate Member)

**Others Present:** Liz Allard (Land Use Administrator/Conservation Agent), Bruce Ringwall (GRP, Inc.), Lou Russo and Matt Marro

This hearing was continued from September 2, 2021 for a Notice of Intent filed on behalf of Wheeler Realty Trust for the filling of a freshwater wetland with proposed replication adjacent to an existing bordering vegetated wetland located on the site at 203 Ayer Road, Harvard.

Bruce Ringwall, of GPR, Inc., explained the revised plan detailing the entire wetland replication to be completed adjacent to the existing wetland along Ayer Road has been submitted to the Commission. Mr. Ringwall reiterated the applicant is seeking relief to the Wetland Protection Bylaw (WPB) setbacks on the future development of the site as part of providing replication in one area on the site. Don Ritchie asked for detail of said relief; Mr. Ringwall stated the 50' no disturbance of natural vegetation setback in particular. Jaye Waldron stated she did not recall that request from the previous hearings. Wendy Sisson stated she had suggested it at the last hearing, assuming the 50' no disturb zone would be amenable since it would not be an area of natural vegetation. However, the 75' no roadway, driveways or structures is not prudent to waive for the reasons it is in place. Eve Wittenberg cannot see a reasonable reason for the buffer zone setbacks to be waived. With relief being granted for the 1:1.5 wetland replication, Ms. Wittenberg is not seeing a justification to waive the setbacks. Mr. Ringwall argued his position on the matter. Both Mr. Ritchie and Ms. Waldron stated they would not be comfortable with allowing relief without knowing what the relief would be. Lou Russo, the applicant, attempted to make a case for the relief of the setbacks. Liz Allard asked what the potential setback from the wetland would a proposed structure need. Mr. Ringwall stated 25 feet. Ms. Allard asked if she was hearing Mr. Ringwall correctly, that the 50' no disturbance would not be achievable. Mr. Ringwall stated that was correct. Ms. Allard stated in recent years both the Department of Environmental Protection and Mass Association of Conservation Commissioners have presented significant evidence of the need to protect the 100' wetland buffer zones as well as the wetland themselves. Ms. Allard could be amenable to structures between the 50' and 75' buffer zone, but not the disturbance of natural vegetation within 0' - 50' buffer zone. Both Ms. Waldron and Ms. Wittenberg reiterated the Commission's position on this matter.

The Commission discussed the request to waive the fees as required under the WPB. After much debate, Paul Willard made a motion to waive the commercial and alteration or replication of wetland fees, reducing the total fee to \$6,106.75. Wendy Sisson seconded the motion. The vote was unanimously in favor of the motion by a roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

Wendy Sisson made a motion to close the hearing and issue an Order of Conditions with the special condition that no site work is to occur until an additional Order of Conditions is issued for the development of the property. Jaye Waldron seconded the motion. The vote was unanimously in favor of

the motion by a roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard  
Land Use Administrator/  
Conservation Agent

**Harvard Conservation Commission  
Request for Determination of Applicability Hearing  
Gail McCarthy, 39 Jacob Gates Road, Harvard#0921-02  
September 16, 2021**

The public hearing was opened at 8:44pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 20 of the Acts of 2021, An Act Relative to Extending Certain COVID-19 Measures Adopted During the State of Emergency and signed into law on June 16, 2021.

**Members Present:** Don Ritchie, Paul Willard, Wendy Sisson, Jaye Waldron, Jim Burns and Eve Wittenberg (Associate Member)

**Others Present:** Liz Allard (Land Use Administrator/Conservation Agent) and Gail McCarthy

This hearing is for a Request for Determination of Applicability filed by Gail McCarthy for the installation of a flagstone patio with fenced-in area within 100' of a resource area at 39 Jacob Gates Road, Harvard.

Gail McCarthy explained she is seeking to install a flagstone patio in an existing fenced in area behind her house. Access to the site for any equipment can be done from the existing driveway with little chance of being disruptive to the wetland resource area. Ms. McCarthy provided a better clarification of the site and the proposed activity.

Jim Burns made a motion to close the hearing and issue a Negative#3 Determination of Applicability with the conditions that activity shall not commence until the siltation barrier is inspected by the Conservation Agent or a member of the Conservation Commission and any equipment shall access the site from the driveway. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Paul Willard, aye; Wendy Sisson, aye; Jaye Waldron, aye; Jim Burns, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard  
Land Use Administrator/  
Conservation Agent