

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
JANUARY 5, 2023
APPROVED: APRIL 20, 2023**

Chair Don Ritchie called the meeting to order at 7:03pm, virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022, under MGL Chapter 131 §40 Wetland Protection Act and Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw

Members Present: Don Ritchie, Eve Wittenberg, Paul Willard, Jaye Waldron, Joanne Ward, Jim Burns (7:09pm), Mark Shaw and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent), Dan Wolfe (Ross Associates), Susan Tarrant, Margaret Nestler, Dan Wolfe (Ross Associates), John Lee (Harvard Conservation Trust), Daniel Tracey, Robin Calderwood, Molly Cuttler, Bob & Corrine Kody (Envision Homes), Alissa Weiss and Maya Minkin

Discuss the Climate Action Plan Natural Resources Priority Actions to Implement – Educate and advise residents on the management of private land near/in wetlands

Eve Wittenberg had previously provided a list of educational material from the MACC website that could be used as a way of educating the public on the management of private wetlands. Most of the material are guidebooks, with some being laminated guides. The Commission discussed the best way to disseminate this material to the general public and agreed having informational guides from both MACC and DEP linked on the Commission's page of the Town website would be best. The availability of this information will need to be publicized. Liz Allard suggested purchasing the laminated guides for sale to the general public such as the Commission has done in the past with trail guides. Ms. Wittenberg will further review the electronic resource library on the MACC website as well as the DEP website.

Discuss Deer Management Subcommittee

Eve Wittenberg stated she has concerns with the level of corporation between the Commission and the Deer Management Subcommittee (DMS), which appears to be obstructive on the part of DMS. Joanne Ward had similar concerns to Ms. Wittenberg, including concerns with how the personal information of the hunters is being stored. Ms. Ward noted in a previous discussion with DMS things being described as Personal Identifiable Information (PII) is not considered PII. Ms. Ward added there has been a great deal of disrespect toward the Conservation Agent. Don Ritchie agreed. John Iacomini stated there has been a lot of disrespect going both ways; he would be happy to work towards dissipating the animosity. Mr. Ritchie believes over the next year the Commission, along with DMS, can prepare a better layout of what is expected of each group. Jim Burns thinks it is probably worth reviewing the whole process and have an open discussion about the whole thing; is the program accomplishing what Commission had wanted to do? Mr. Burns continued by saying the last meeting was unfortunate as to how it unfolded; there needs to be an affirmation of how the whole program works. Jaye Waldron stated the need for personal information needs to be addressed: what is it necessary for, how can it be kept confidential, and what is required to be kept confidential. Ms. Wittenberg feels strongly that any information gathered by DMS needs to reside on a Town-owned database and not on a personal computer of a volunteer. Both Ms. Wittenberg and Ms. Ward agreed this matter needs to be addressed before next season.

Discuss Wetland Violation at 30 Cruft Lane

Mark Shaw, although not the property owner, but a relative of, explained what had occurred on the site, which included the addition of fill around an existing well house and the repair of ruts within the field created by a Fire Truck responding to a brush fire of the previous owners. Margaret Nestler, an abutter, explained what she observed, which was a dump truck amount of fill used in the wetlands or at the very edge of the wetlands around the abandon spring house. Ms. Nestler thought there was a 50' setback on fill within the Wetland Protection Bylaw and wondered why the activity was not reviewed by the

Commission or its Agent. Ms. Nestler was also concerned with a sitting Conservation Commissioner was not recusing themselves from this discussion. Mark admitted to doing some of the work.

Don Ritchie explained that as a Commissioner Mr. Shaw should know the work could not be done without a permit. Mr. Shaw stated “we are always pushing the boundaries on the Commission.” Eve Wittenberg asked if the work was permissible to be done. Mr. Ritchie stated not without consent of the Commission. Ms. Wittenberg addressed Mr. Shaw by stating with all due respect as members of the Commission we need to be cognizant of what we do ourselves and need to set a higher visual bar for ourselves. Ms. Nessler agreed that optics are very important and members should be role models for the Wetland Protection Act. Ms. Nessler noted the entire meadow is within the buffer zone; in addition, work on the site included pulling out trees and bushes. John Iacomini suggested tabling the discussion as no one on this Commission has any data related to these claims and allow for time for the owner to provide information. Susan Tarrant, 136 Oak Hill Road, was shocked at Mr. Shaw’s statement of “we are always pushing the boundaries on the Commission”. Ms. Tarrant has great respect for the Commission and what they do. Mr. Shaw stated he understands and appreciated the responsibilities he has as a commissioner.

After discussing next steps, Paul Willard made a motion to contact Tony Shaw, owner of the property, to inform him that no additional work is to take place on the site until the Commission has an opportunity to review the site and arrange said site visit with Mr. Shaw. Eve Wittenberg seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Eve Wittenberg, aye; Paul Willard, aye; and Don Ritchie, aye.

Continuation of a Notice of Intent Hearing – Mary Maxwell, 90 Warren Avenue, Harvard#1122-02.

Opened at 7:41pm

Request for a Certificate of Compliance – 94 Ayer Road, DEP#177-667

Mark Shaw made a motion to approve the Certificate of Compliance for 94 Ayer Road, DEP#177-667. Jaye Waldron seconded. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; Eve Wittenberg, aye; and Don Ritchie, aye. Paul Willard was not available at the time of this vote.

Approve Minutes

Joanne Ward made a motion to accept the minutes of September 1, 2022 as amended. Eve Wittenberg seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye. Paul Willard was not available at the time of this vote.

Review Ann Lees Field Memorandum of Understanding (MOU)

Eve Wittenberg had revised condition#3 of the MOU as discussed at the previous meeting. Members present were in agreement with the language. Bob O’Shea, chair of the Parks & Recreation Commission, will be invited to the next meeting as part of the annual review within the MOU and to further discuss the revisions made by the Conservation Commission.

Pine Hill Village Update & Request to Clear trees in Phase 3

Liz Allard shared the update from the developer, Peter Cricones. Ms. Allard stated the responses concern her as to whether or not things are not being constructed in the proper manner. Mr. Cricones has requested to clear the trees in the area of Phase 3. Ms. Allard has reminded Mr. Cricones that he is required to provide an update of the construction sequence to assist the Commission in making a determination. At this time Ms. Allard would recommend against the request until outstanding issues within the Phase 1 are resolved.

Adjournment

Eve Wittenberg made a motion to adjourn the meeting at 8:41 pm. Paul Willard seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; Eve Wittenberg, aye; Paul Willard, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,
Land Use Administrator/
Conservation Agent

EXHIBITS & OTHER DOCUMENTS

- Conservation Commission Agenda, dated January 5, 2023
- Sewage Disposal System Mary Maxwell 90 Warren Avenue Harvard, MA Job No.: 33970, Plan No.: L-14604, prepared by David E. Ross Associates, Inc., 01/03/2023
- Ann Lees Field Memorandum of Understanding, Updated 12-29

Harvard Conservation Commission
Continuation of a Notice of Intent Hearing
Mary Maxwell, 90 Warren Avenue, Harvard#1122-02
January 5, 2023

The public hearing was opened at 7:41pm 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 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022.

Members Present: Don Ritchie, Eve Wittenberg, Paul Willard, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw and John Iacomini (Associate Member)

Others Present: Liz Allard (Conservation Agent), Dan Wolfe (Ross Associates), Bob & Corrine Kody (Envision Homes), Alissa Weiss and Maya Minkin

This hearing was continued from December 15, 2022 for a Notice of Intent filed on behalf of Mary Maxwell the demolition of an existing cottage and the reconstruction of a new single-family home, driveway, bridge, wells and septic system with portions within the 100' wetland buffer zone and the 200' of Bare Hill at 90 Warren Avenue, Harvard

Dan Wolfe, of Ross Associates, explained the request made by the Commission at the previous meeting to shift the house out of the 50-foot wetland buffer zone creates a grading issue, alters the existing contours and would require retaining walls. With some members concerned with the setbacks being maintained a revised plan shows an increase of disturbance within the buffer zones. This revised plan shows the house shifted toward Bare Hill Pond (BHP) would increase the fill and disturbance within the 50-foot wetland buffer zone by 274 square feet on the left side of the proposed driveway to the house from the bridge. There would also be an increase in the overall fill and disturbance within the 100-foot wetland buffer zone by 2,298 square feet. The overall increase in fill and disturbance within the 200-foot buffer zone to BHP would be 3,667 square feet.

Pertaining to the comments received from the Department of Environmental Protection (DEP), Mr. Wolfe explained the force main will be installed within a conduit attached to the underside of the bridge and not through the wetland. In addition, DEP has commented on impacts to wetland vegetation which may result from crossing installation or continued shading qualify as wetland impact per the definitions of "Alter" contained in 310 CMR 10.04. Mr. Wolfe had provided a memo from a wetland scientist detailing the vegetation in the area near the north edge of the bridge, as well as the bridge will be located in area of ledge with little or no vegetation.

Eve Wittenberg stated she appreciates the deep thought and effort put forth to address the concerns raised at the previous meeting and the detail that has been provided of the differences in the two plans. Ms. Wittenberg understands this is not the first time the Commission has seen a proposal to construct a larger house on this site, however it is her first time being involved in the redevelopment of the site, therefore her insight is based on the plan presented for the Ms. Maxwell. Mr. Wolfe stated this house is slightly larger than those previously approved by the Commission, however there is an additional design factor with this house as it needs to be handicapped-accessible, and needs to include a garage. Mr. Wolfe stated as it relates to zoning the house is conforming.

Jaye Waldron understands that house conforms to zoning, however the setting is not good for the structure. Ms. Waldron added just because it can be done does not mean it should as it pertains to wetlands. Ms. Waldron is less concerned with the steep slope on the BHP side of the house and more concerned with protecting the wetland between the house and the driveway side of the house.

Jim Burns was uncomfortable with making a judgement on the size of the house. Mr. Burns prefers the original plan and sees the revised plan as being more detrimental to the wetland due to the additional earthwork that would be necessary. Mark Shaw also preferred the original plan, as the revised plan required a lot of fill and retaining walls to achieve. Mr. Shaw added the original plan would save a lot of work, effort, and trucking of fill.

Mr. Wolfe stated the applicant's family is in the business of bridge installation, therefore they have a better understanding of the work involved to install the bridge, unlike the former applicants who had no idea how the bridge was going to be properly installed. Mr. Wolfe further stated the family is very environmentally responsible. Maya Minkin, a family member, stated the design of the house lacks flexibility due to an ALS diagnosis of a family member, which requires not only a wheelchair, but a companion apparatus as well. Ms. Minkin wanted to acknowledge the need for the increased size of the house due to the need for medical assistance. Paul Willard stated Mr. Wolfe has provided an alternative that clearly shows more disruption to the wetlands.

Jim Burns made a motion to approve the waivers requested to allow for the disturbance of natural vegetation within the 50-foot wetland buffer zone. Paul Willard seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye. Jaye Waldron abstained.

Paul Willard made a motion to approve the waiver requested to allow for the driveway and bridge within the 75-foot wetland buffer zone. Jim Burns seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye. Jaye Waldron abstained.

Mark Shaw made a motion to reduce the filing fee by 20%. Paul Willard seconded the motion. Vote was 4-2 in favor of the motion by a roll call vote: Jim Burns, aye; Jaye Waldron, nay; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, nay.

Ms. Wittenberg asked for a rationale for the waiver to be entered into the minutes to provide reference for future fee waiver requests. Mr. Shaw explained that he considered the applicant to be "upstanding" and likely to "follow through with their plans." He went on to say that the 20% reduction was based on the total fee being "quite steep" and that a percentage is a "cleaner way to adjust than a flat number because it allows everything to be there." Ms. Ward explained her support for the waiver based on the extensive investment of time, effort, and thought by the applicant to address the unique issues of the property. Ms. Waldron expressed disagreement with the basis of an applicant being a "good person" or "upstanding" for granting a waiver, and also noted that while a percentage reduction was reasonable the amount of the percentage (20%) was arbitrary.

Paul Willard made a motion to close the hearing and issue an Order of Conditions to include a construction sequence be provided and approved by the Commission. Eve Wittenberg seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent