

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
MAY 18, 2023
APPROVED: JULY 20, 2023**

Chair Don Ritchie called the meeting to order at 7:00pm, virtually, pursuant to Chapter 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023, 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, Jaye Waldron, Joanne Ward, Jim Burns (arrived 7:16pm), and Mark Shaw

Others Present: Liz Allard (Conservation Agent), Bruce Ringwall (GRP, Inc.), Grant MacLean (Chestnut Tree & Landscape), Jim Lee (Harvard Conservation Trust), Peter Dorward (Open Space Committee), John Lee (Harvard Conservation Trust), Margaret Nessler, Tony Shaw, Tom Cotton (Deer Management Subcommittee), Dan Wolfe (Ross Associates), Bob Douglas (Deer Management Subcommittee), and Stacey Minihane (Beals & Thomas)

Executive Session with Open Space Committee pursuant to Massachusetts General Law Chapter 30A, Section 21(a)(6) to consider the purchase, exchange, lease, or value of real property because a public discussion of this matter could have detrimental effects on the negotiating position only to return to the open session of the public meeting

On a motion made by Eve Wittenberg and seconded by Joanne Ward the Conservation went into executive session with the chair of the Open Space Committee and members of the Harvard Conservation Trust and to discuss the purchase, exchange, lease, or value of real property because a public discussion of this matter could have detrimental effects on the negotiating position, only to return to the open session of the public meeting. The vote was unanimously in favor of the motion by a roll call, Eve Wittenberg; aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; and Don Ritchie, aye.

At the end of the executive session a motion was made by Joanne Ward and seconded by Eve Wittenberg to return to the open session of the public meeting. The vote was unanimously in favor of the motion by a roll call, Eve Wittenberg; aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; and Don Ritchie, aye

Open Space Committee (OSC) Action Items

• **Review Littleton County Road Land Project Draft Conservation Restriction**

Peter Dorward, chair of the OSC, would like to have the conservation restriction (CR) for the above mentioned property reviewed by Town Counsel as soon as possible as the State is slow in getting them approved and the timeframe for the MVP grant is short. Mr. Dorward was requesting the CR be submitted to the State for review before knowing if the MVP grant will be awarded. If done in this order the legal expenses will not be reimbursed by the MVP grant. Mr. Dorward explained Gaining Ground, in Concord, will be using the fields to grow food for the food insecure, which will need associated buildings, therefore there is a building envelope on the plan. The Commission agreed with the concept but was interested in knowing the cost associated with Town Counsel reviewing the CR. Liz Allard will obtain a quote from Town Counsel.

• **Approve Allocation of Funds for Legal Review of Above-Mentioned Conservation Restriction**

As noted above, Liz Allard will obtain a quote from Town Counsel.

• **Approve Allocation of Funds for Community Harvest Project Agricultural Preservation Restriction**

Joanne Ward made a motion to approve the \$400,000 invoice from the Mass Department of Agriculture for the purchase of an Agricultural Preservation Restriction from Community Harvest Project on Prospect Hill Road. Jaye Waldron seconded the motion. The vote was unanimously in favor of the

motion by a roll call, Eve Wittenberg, abstained; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; Jim Burns, aye; and Don Ritchie, aye.

Request for Determination of Applicability Hearing –Carol J. Greenough Trust, 55 Warren Avenue, Harvard#0523-01. Opened at 7:33pm

Approve Minutes

Jaye Waldron made a motion to approve the minutes of May 4, 2023 as amended. Eve Wittenberg seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Approve Invoices

There were no invoices this evening for approval.

ZBA Request for Comments – 32 Mass Avenue

The Commission has no comments pertaining to this application.

Planning Board Request for Comments – 247 Littleton County Road

The Commission has no comments pertaining to this application.

Harvard Conservation Trust Request to use the William’s Land for Stargazing Event

This event has been relocated, therefore there is no need for the approval of the Commission.

Trail Ridge Unit 12C Request to Remove a Tree within the Conservation Restriction Area

Liz Allard provided the Commission with an overview of a recent request to remove a tree behind unit 12C at Trail Ridge. This tree along with others previously requested for removal is at the top of a very steep embankment created by the construction of the units along that side of Trail Ridge Way. Ms. Allard would suggest for safety reasons the Commission grant the removal of this tree within the area of the conservation restriction, but not allow the removal of any additional trees until the homeowners’ association provides the Commission with a plan to stabilize the embankment that is continuously eroding.

Eve Wittenberg made a motion to permit the removal of the tree behind unit 12C Trail Ridge Way, with the stipulation that any additional requests to remove trees from the Conservation Restriction area will not be allowed until the Trail Ridge Homeowners’ Associations provides a plan to stabilize the embankment. Joanne Ward seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Notice of Intent Hearing – Shaw Properties, LLC, 30 Cruft Lane, DEP#177-725, Harvard#0523-02.

Opened at 7:45pm

Continuation of a Notice of Intent Hearing – Yvonne Chern, 203 Ayer Road, DEP#177-711,

Harvard#0322-01. Opened at 8:18pm.

Continuation of a Notice of Intent Hearing – Luciano Manganello, 175 Littleton County Road, DEP#177-

724, Harvard#0423-01. Opened at 8:58pm

Update of Enforcement Order – 175 Littleton County Road

Bruce Ringwall, of GPR, Inc, stated the \$900.00 fine associated with the Enforcement Order (EO) will be paid tomorrow. Mr. Ringwall requested an extension to the 30-day requirement to remove the stonewalls from the 75-foot wetland buffer zone, explaining that coordinating the removal may take longer than the 30-day time period within the EO. Jim Burns made a motion to extend 30-day timeframe to remove the stonewalls within the 75’ wetland buffer zone as required by the Enforcement Order dated

April 13, 2023. Eve Wittenberg made a friendly amendment requiring no work may begin on the new stonewalls until the existing stonewalls are removed. Mr. Ringwall noted the intent is to use as much of the existing walls as possible. Ms. Wittenberg withdrew her amendment and seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Comments on the Draft Harvard Housing Production Plan

Liz Allard has reviewed the Plan and found there to be no action to be taken by the Commission. Ms. Allard suggested as residents of the Town the members review and provide any comments they may have to the Municipal Affordable Housing Trust.

Review Deer Management Annual Process and Procedures

Eve Wittenberg stated she had suggested previously the Commission put into writing what the expectations and procedures are to avoid confusion in the future, however due to the lateness of the evening the Commission may want to discuss at the next meeting. Mr. Ritchie stated he has spoken with Bob Douglas, Chair of the Deer Management Subcommittee (DMS), who has stated DMS will be providing information on how the hunters are vetted and qualified. Ms. Wittenberg stated she has some issues as to how information is communicated back and forth between the Commission and DMS and how DMS responds to request for information. Ms. Wittenberg wants to elucidate the Commissions expectation that the DMS respond to the Conservation Agent when they are asked for information or clarification and that it is very clear DMS is not an autonomous body that operates outside the jurisdiction of the Commission. Mr. Ritchie stated he would relate that to Mr. Douglas. It was noted Mr. Douglas was in attendance. It was explained the intent this evening or at a subsequent meeting was to allow the Commission an opportunity to discuss and finalize a draft of the proposed Procedures and Policies and then share it with DMS, allowing them an opportunity to discuss amongst themselves, provide comment and then come together to discuss. Ms. Wittenberg will prepare a draft for the Commission to review and make additions for discussion at the next meeting.

Update on Enforcement Order – 320 Ayer Road

Liz Allard suggested the wetland delineation be put on a plan for the Commission to decide on the remediation. Jaye Waldron asked how the wetland flags were determined. Ms. Allard stated she would assume by both vegetation and soil based on where the flags have been placed on the site. Eve Wittenberg agreed. In regards to the removal of material, Ms. Wittenberg would like to have the area within 100-foot wetland buffer zone be left in place. Ms. Allard clarified that the Commission did not provide the plan being used by Grant MacLean that indicates the buffer zone, so she would have concerns affirming what is within the 100-foot wetland buffer zone.

Eve Wittenberg made a motion to revise the Enforcement Order to require a wetland delineation plan within 60-days and there is to be no activity within 100' of the wetland based on the wetland line on the Site Plan Grant MacLean has. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Select Board Annual Appointment Recommendations – John Iacomini

Ms. Allard stated she has not heard back yet from John Iacomini as to whether he is still interested in being re-appointed as the Associate Member of the Conservation Commission.

Discuss Unauthorized Trail on Rodriguez Land (Map 13 Parcels 3.2 & 4)

With the recent site walk of this site attended by only two members of the Commission and the need for the Land Stewardship Subcommittee (LSS) to review the site, Liz Allard suggested to postpone this discussion until August to allow for other members and the LSS to review the site. The Commission agreed.

Pine Hill Village Status Update

Liz Allard and Don Ritchie reviewed the site to ensure compliance with the Order of Conditions (OOC) for the ZBA to release the Certificates of Occupancy for the units within the Sunrise and Tucks Way neighborhoods. The site is in general is compliant with the OOC. The erosion control barrier within the Phase 3 will need to be reinstalled before clearing is to commence.

Adjournment

Eve Wittenberg made a motion to adjourn the meeting at 9:52pm. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Eve Wittenberg; aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

EXHIBITS & OTHER DOCUMENTS

- Conservation Commission Agenda, dated May 18, 2023
- Sewage Disposal Plan 55 Warren Avenue Harvard, Massachusetts, Job No.: 27038, Plan No.: L-9945, prepared by David E. Ross Associates, Inc., March 2006
- Site Plan Shaw Properties, LLC #30 Cruft Lane, Harvard MA, Job No.: 34293, Plan No.: L-14644, prepared by David E. Ross Associates, Inc., May 2023
- Residential Development Notice of Intent (Enforcement Order) Site Plan 175 Littleton County Road Harvard, MA prepared for Luciano Manganella, Job 181080, prepared by GPR, Inc., 5/18/23
- Commercial Development 203 Ayer Road Harvard, MA L-1.01 Planting Plan, prepared by Fisher Design Group, March 1, 2023
- Photos from Trail Ridge

Harvard Conservation Commission
Request for Determination of Applicability Hearing Meeting Minutes
Carol J. Greenough Trust, 55 Warren Avenue, Harvard#0523-01.
May 18, 2023

The public hearing was opened at 7:33pm 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 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023.

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, and Mark Shaw

Others Present: Liz Allard (Conservation Agent) and Dan Wolfe (Ross Associates)

This hearing is for a Request for Determination of Applicability filed on behalf of Carol J. Greenough Trust for the replanting of the area to restore it back to its natural setting within the 100' wetland buffer zone 55 Warren Avenue, Harvard

Dan Wolfe, of Ross Associates, explained the last will and testament of Carol Greenough outlined her wish to transplant trees from her nursery around the site to return it to its natural conditions. Additional nursery stock will also be brought in and planted on the property. The Commission had no questions or comments.

Jim Burns motion to close the hearing and issue a Negative #2 Determination. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

Harvard Conservation Commission
Notice of Intent Hearing Meeting Minutes
Shaw Properties, LLC, 30 Cruft Lane, DEP#177-725, Harvard#0523-02
May 18, 2023

The public hearing was opened at 7:45pm 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 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023.

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, and Mark Shaw

Others Present: Liz Allard (Conservation Agent), Tony Shaw, Dan Wolfe (Ross Associates), Margaret Nessler

This hearing is for a Notice of Intent filed on behalf of Shaw Properties, LLC for the remediation/restoration of two small areas of land within wetland resource areas after enforcement at 30 Cruft Lane, Harvard.

Dan Wolfe, of Ross Associates, explained the delay in submitting this application as required by the Enforcement Order is solely on him and not the applicant. Mr. Wolfe detailed the plan with a siltation barrier around the well house. Vegetation in that area has started to take hold again. The ruts within the field caused by the fire truck have been filled in and the area seeded, which is also starting to grow. Eve Wittenberg asked if the fill that was used around the well house is comparable to what would naturally be that area, a wetland resource. Mr. Wolfe stated turtles will love the sandy gravel mix put in around the well house to allow maintenance; he also agreed the material would not naturally be found in that location, but neither would a well house.

Margaret Nessler, the former owner of the property for twenty years, stated it is not a well but a spring house that was abandoned in the Fall of 2021 because it was impossible to maintain because of changing hydrology and the water did not meet the standards as potable water. The Board of Health (BOH) considers it a non-traditional water source.

Tony Shaw, the current owner, explained the spring house is a viable source of water to be used for the house on the property should the water pass the BOH requirements. BOH has recommended against using the spring well as a potable water source. Should approval be granted by the BOH there would be very minor work to connect to the house.

Jaye Waldron wondered if the Commission and/or the BOH could permit a well within a wetland resource area. Jim Burns noted the viability to use this well as potable water is not within the Commission's purview. Ms. Nessler explained the restrictions on the property under the conservation restriction include enough area within the buildable area to locate a well.

Ms. Wittenberg stated the question before the Commission this evening is should the material used to fill in around the spring house remain. Ms. Waldron suggested there be no additional activity around the well house until the BOH makes its decision. Ms. Wittenberg suggested the material be removed and replaced with organic material. Mr. Wolfe thought removal would create more disturbance to an area in which vegetation is thriving.

After discussing potential conditions, including the ability to mow the wet meadow, Eve Wittenberg made a motion to close the hearing and issue an Order of Conditions with the condition of annual mowing of the wetland meadow to be allowed twice after August 15th, and the addition of protected wetland markers along the 50-foot wetland buffer zone line from the edge of the wet meadow. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, abstained; Mark Shaw, abstained; Jaye Waldron, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Mr. Shaw made a request to reduce the filing fee as it was doubled due to the issuance of an Enforcement Order. There was no response from the Commission members.

Respectfully submitted,

Liz Allard,
Conservation Agent

Harvard Conservation Commission
Continuation of a Notice of Intent Hearing
Yvonne Chern, 203 Ayer Road, DEP#177-711, Harvard#0322-01
May 18, 2023

The public hearing was opened at 8:18pm 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 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023.

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns and Mark Shaw

Others Present: Liz Allard (Conservation Agent), Bruce Ringwall and Stacey Minihane (Beals & Thomas)

This hearing was continued from May 4, 2023 for a Notice of Intent filed on behalf of Yvonne Chern for the construction of commercial structures with associated parking, grading and drainage within the 100' wetland buffer zone at 203 Ayer Road, Harvard

Stacy Minihane, of Beals and Thomas (B&T), the peer review consultant for the Commission, stated most of the comments made by B&T have been addressed, those outstanding are minor. B&T now understands the replication was permitted under a separate Order of Conditions (OOC). Comments on the fill and replication have been included within the plan set. The two main comments relate to invasive plants on the site. B&T would suggest remediation of the invasive plants should be expanded to include other invasives beyond the Japanese Knotweed. B&T does not recommend the reuse of soil on the site due to the potential seed stock to include invasive plant seeds. When asked, Ms. Minihane stated it would be up to the Commission as to how often a wetland scientist should be on site during the replication. Bruce Ringwall, of GPR, Inc., stated there is every intention to have their wetland scientist on site. Mr. Ringwall stated soil has been stockpiled for years on the site that does not have invasives/seed bank therefore he would like to be able to continue to use that material as it will have an additional 5-feet of material covered over it. Ms. Minihane suggested the wetland scientist be on site when the major milestones are to be conducted; Mr. Ringwall agreed. Don Ritchie asked about test pits for the determination of the water levels. Mr. Ringwall stated these tests pits will be conducted and he is currently working with the Planning Board on the conditions under the Special Permit pertaining to the test holes with results being provided to them, which can be shared with Commission.

Ms. Minihane mentioned the comments raised by the Department of Environmental Protection pertaining to hydrological connection of the isolated wetland and it being jurisdictional under the standards of the Army Corps of Engineers regulations, which have been resolved. As for the size of the replication area, B&T is seeking confirmation the replication area size is equal to or greater than the original areas. Mr. Ritchie stated the Commission agreed to a 1:1 replication under the previous OOC. Mr. Ringwall stated when re-designed to comply with the Commission's setbacks the replication was reduced by 120-feet in error; a revised plan will replace that 120-feet toward the field; Mr. Ringwall apologized for this error. Ms. Minihane encouraged the bond requirements as stated within the Wetland Protection Bylaw Regulations. Mr. Ringwall stated his client would like to move forward without a bond based on the proven track record of both the developer and engineering firm. Liz Allard stated the Wetland Protection Bylaw Regulations requires the bond. Ms. Wittenberg stated unless there is a clear justification as why that should be waived the bond should be required. Ms. Minihane stated the seed mix to be used within the area in which the riprap apron is being pulled back from the buffer zone should be provided to the Commission. Mr. Ringwall stated it is on the planting plan as part of the replication area. Final statement

from Ms. Minihane was that B&T has confirmed there is no discharge to the existing stormwater basin on the adjacent property.

Ms. Allard requested a narrative of the changes be submitted with the revised plan; Mr. Ringwall agreed. Ms. Allard will include a condition pertaining to the seed stock in the material brought onto the site. In addition, the Commission may want to consider hiring a site monitor for this project as it is a substantial project for the Town of Harvard. The necessary waiver to the 50-foot no disturb zone was discussed.

Jim Burns made a motion to continue the hearing to June 1, 2023 at 8:00pm. Eve Wittenberg seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

Harvard Conservation Commission
Continuation of Notice of Intent Hearing Meeting Minutes
Luciano Manganella, 175 Littleton County Road, DEP#177-724, Harvard#0423-01
May 18, 2023

The public hearing was opened at 8:58pm 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 2 of the Acts of 2023, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on March 29, 2023.

Members Present: Don Ritchie, Eve Wittenberg, Jaye Waldron, Joanne Ward, Jim Burns, and Mark Shaw

Others Present: Liz Allard (Conservation Agent) and Bruce Ringwall (GRP, Inc.)

This hearing was continued from May 4, 2023 for a Notice of Intent filed on behalf of Luciano Manganella for the installation of two stonewalls at the driveway entrance after the issuance of an Enforcement Order at 175 Littleton County Road, Harvard.

Bruce Ringwall, of GRP, Inc., detailed the revised plan, the stonewalls were well constructed and are not easy to take down or apart, therefore they will be relocated outside the 100-foot wetland buffer zone as shown on the plan. When asked, Mr. Ringwall explained the area where the existing walls will be removed will be loamed and seeded beyond the gravel shoulders.

With no further questions, Joanne Ward made a motion to issue an order of conditions and close the hearing. Eve Wittenberg seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent