

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
MAY 4, 2023
APPROVED: MAY 18, 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 7:13pm) and Mark Shaw

Others Present: Liz Allard (Conservation Agent), Todd Helwig (Mirick O'Connell), Bruce Ringwall (GRP, Inc.) and Grant MacLean (Chestnut Tree & Landscape)

Review Parks & Recreation Commission Request to withdraw water from pond on Ann Lees field

Mark Shaw made a motion to allow the Parks & Recreation Commission to pump water out of the pond on the Ann Lees land to water a designated area of grass between the bases and the outfield for one-hour up to four times a week until July 10, 2023. Eve Wittenberg made a friendly amendment, that was accepted by Mark Shaw, to cease watering in the event of a Level 2 or higher drought advisory issued by the State. 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.

Update on Enforcement Order – 320 Ayer Road

With the Commission's receipt of the assessments from the Licensed Site Professional and a Professional Wetland Scientist a site walk was scheduled for Monday May 15th at 5:15pm.

Schedule Site Visit for Unauthorized Trail on Rodriguez Land (Map 13 Parcels 3.2 & 4)

This visit was scheduled for Monday May 15th at 6:00pm.

Draft Impact Report (DEIR) for Proposed Research/Industrial Park at 1414 Massachusetts Avenue, Boxborough

Joanne Ward provided an overview of the proposed project and the presentation made to the Boxborough Planning Board, which was a largely attended event. Ms. Ward has drafted a comment letter for submittal to the State as part of the Massachusetts Environmental Policy Act review process. Jaye Waldron made a motion to send the letter with any suggested amendments to MEPA. 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.

Pine Hill Village Status Update

Peter Cricones has submitted a request to the Zoning Board of Appeals for Certificates of Occupancy for the units within the Sunrise and Tucks Way neighborhoods. Liz Allard and Don Ritchie will review the site on Monday, May 8th for compliance with the Order of Conditions.

Continuation of a Notice of Intent Hearing – Maxwell Bridges, 43 Brown Road, Harvard#0323-03.

Opened at 7:26pm

Request to add washed sand at 111 Clinton Shore Drive

Mark Shaw made a motion to allow Garry Baer to add 2 -3 yards of washed sand to his beach at 111 Clinton Shore Drive to assist with erosion. Jim Burns 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 – Luciano Manganella, 175 Littleton County Road, Harvard#0423-01. Opened at 7:30pm

Continuation of a Notice of Intent Hearing – Yvonne Chern, 203 Ayer Road, DEP#177-711, Harvard#0322-01. Opened at 8:18pm.

Approve Minutes

Jaye Waldron made a motion to approve the minutes of January 19, 2023 as amended. Jim Burns 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

Eve Wittenberg made a motion to approve the following invoices:

- Bare Hill Pond Homeowners Association, \$200.00
- Moore's Lumber, \$70.13

Mark Shaw 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 – Janet Waldron, Jim Burns, Mark Shaw and John Iacomini

Don Ritchie made a motion to recommend to the Select Board the reappointment of Jaye Waldron to the Commission for a three-year term. 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, abstained; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Don Ritchie made a motion to recommend to the Select Board the reappointment of Jim Burns to the Commission for a three-year term. Joanne Ward seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, abstained; Mark Shaw, aye; Jaye Waldron, aye; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Don Ritchie made a motion to recommend to the Select Board the reappointment of Mark Shaw to the Commission for a three-year term. Jim Burns seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, abstained; Jaye Waldron, abstained; Joanne Ward, aye; Eve Wittenberg, aye; and Don Ritchie, aye.

Adjournment

Eve Wittenberg made a motion to adjourn the meeting at 8:31pm. 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; Eve Wittenberg, aye; Paul Willard, aye and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

EXHIBITS & OTHER DOCUMENTS

- Conservation Commission Agenda, dated May 4, 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, April 2023

Harvard Conservation Commission
Continuation of a Notice of Intent Hearing Meeting Minutes
Maxwell Bridges, 43 Brown Road, Harvard#0323-03,
May 4, 2023

The public hearing was opened at 7:25pm 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)

This hearing was continued from April 20, 2023 for a Notice of Intent filed on behalf of Maxwell Bridges for upgrade of a sewage disposal system for an existing, single-family home within the 100' buffer zone 43 Brown Road, Harvard

With the Department of Environmental Protection file number received with no comments, Joanne Ward made a motion to close the hearing and issue a standard Order of Conditions. Mark Shaw 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
Luciano Manganella, 175 Littleton County Road, Harvard#0423-01
May 4, 2023

The public hearing was opened at 8:00pm 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), Todd Helwig (Mirick O'Connell), and Bruce Ringwall (GRP, Inc.)

This hearing is 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

Attorney Todd Helwig, of Mirick O'Connell, was present to represent the applicant. Attorney Helwig stated Mr. Manganella thought he was in his right to install the wall as part of the overall project. Attorney Helwig reviewed the funds spent to date by Mr. Manganella on this matter, including the fine, application fees, attorney fees and cost associated with engineering. Attorney Helwig requested the enforcement order requiring the removal of the stonewall within the 75' buffer zone be rescinded and the Commission issue an Order of Conditions.

Don Ritchie stated his issue with Mr. Manganella is he seems to ignore what he is told to do; this is not the first issue the Commission has had with Mr. Manganella; there is a complete neglect of going along with the requirements. Eve Wittenberg stated there are two issues, the first is the behavior of the applicant; the second is the established operating procedures of the Commission. Ms. Wittenberg explained the stance of the Commission as it pertains to the issuance of waivers under the Wetland Protection Bylaw; in her opinion those criteria are not being met in this case and the wall does not serve a purpose in an area that was disturbed due to the activity on site.

Bruce Ringwall shared the plan and detailed the two stonewalls at the entrance of the driveway with the wall on the north side of the driveway being entirely within the 75' wetland buffer zone and a portion of the stonewall on the south side of the driveway within the 75' buffer zone. Mr. Ringwall also detailed a boulder retaining wall that is within the 75' to 100' buffer zone to the east of the previously mentioned stonewalls.

Eve Wittenberg made a motion to deny the request for a waiver for a structure within the 75' wetland buffer zone. Jaye Waldron seconded the motion.

Attorney Helwig continued present his client's case by explaining there are two things before the Commission, those being repealing the enforcement order and issuing an Order of Conditions. Attorney Helwig asked what harm is being done by the existence of the walls. Eve Wittenberg stated the bylaw that prohibits the wall within 75' of a wetland resource area, so it is not a question of what is the harm it's a question of whether or not the Commission chooses to grant a waiver.

Due to what was an assumed error in the previous motion and with the approval of the Chair, Eve Wittenberg rescinded her original motion. She then made a motion to deny the request for a waiver to the 75' setback within the Bylaw. Jaye Waldron seconded the motion. Attorney Helwig wanted to be clear before the Commission imposes significant harm; Don Ritchie interrupted and asked what he meant by significant harm. Attorney Helwig said what he is referring to is the cost of the walls and its removal

versus the alternative which is to grant relief and issue an Order Conditions as there is no environmental impact here; when you weigh the harm to the applicant versus the things you are protecting what's going on.

Jim Burns stated if this came before the Commission he was reasonably sure to would not have been approved, particularly something of this nature. Ms. Wittenberg stated the Commission does not need to justify what the harm may be as the Bylaw sets out the setbacks and the Commission's job is to apply those rules. Helwig stated should his client appeal the Commission's decision the cost incurred by the applicant should be weighed against versus what the Commission is protecting.

Jaye Waldron stated she is concerned with argument that the cost of an applicant should allow one to violate the Bylaw; what is to stop anyone else from doing the same thing?

The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Mark Shaw, nay; Jaye Waldron, aye; Joanne Ward, aye; and Eve Wittenberg, aye.

Mr. Ringwall explained the additional wall outside the 75' buffer but within 200' of the pond and wished this to part of this Notice of Intent. A discussion ensued on how to deal with additional wall. Liz Allard had previously discussed the wall with Mr. Ringwall and had suggested it be included on the as-built plan as it was a wall necessary to retain the grade and is considered a field change. Further clarification was discussed as to what would be allowed now that the waiver was denied, which would be the portion of the wall on the south side of the driveway that is outside the 75' wetland buffer zone. After discussing the portion of the wall and how it was measured, Attorney Helwig asked to continue the hearing to allow the applicant to further determine how to locate the walls outside of the setback. A discussion of the requirements under the Enforcement Order and how to proceed was had.

Jim Burns made a motion to continue the hearing to May 18, 2023 at 8:00pm. 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.

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 4, 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)

This hearing was continued from March 2, 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

At the request of the applicant's representative, Jim Burns made a motion to continue the hearing to May 18, 2023 at 8:30pm. 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.

Respectfully submitted,

Liz Allard,
Conservation Agent