

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
DECEMBER 7, 2023
APPROVED: DECEMBER 14, 2023**

Chair Eve Wittenberg called the meeting to order at 7:01pm, 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: Eve Wittenberg, Don Ritchie, Jaye Waldron, Jim Burns, Mark Shaw, and John Lee (Associate Member)

Others Present: Liz Allard (Conservation Agent), Wendy Sisson (Land Stewardship Subcommittee), Tim Kilhart (Department of Public Works), Mary Danielson (Tighe & Bond), April Locke (Tighe & Bond), Tom Mahanna (Tighe & Bond), Jonathan Bulger, Dan Wolfe (Ross Associates), Marty Green (Harvard Press), Stephen Morris, Justin Baer, Bruce Ringwall (GPR, Inc.), Brad Blower, William Gardner, Rick Sicard (Harvard Fire Department), Margret Warner, David Latham, Jeff Brown, and Pam Brown

Status Report Pine Hill Village, DEP#177-586

Liz Allard was on site with Jessie Panek earlier this week to provide her an overview of the project. Unit 11 is being framed and backfilled, with an additional foundations being installed with the final phase. The siltation barrier is in good working order.

Status Report 90 Warren Ave, DEP#177-719, Harvard#1122-02

Most of the activity on the site is focused on the dwelling itself. Gravel has been installed within the areas under the decks on the pond side of the dwelling, along with the retaining wall and stabilizing material. The installation of the bridge is scheduled for the spring. The siltation barrier remains in good working order.

Notice of Intent Hearing - Jonathan Bulger, 80 South Shaker Road, DEP#177-738, Harvard#1123-01.

Opened at 7:05pm

Continuation of a Notice of Intent Hearing – Travis Dery, 62 Old Littleton Road, DEP#177-729, Harvard#1023-01. Opened at 7:41pm

Discuss Memorial Bench and Tree Program

Wendy Sisson, chair of the Land Stewardship Subcommittee (LSS), explained the LSS has been discussing the topic of memorials, including planted trees, in recent months and recommends against them on Town conservation land. Jaye Waldron asked why not planted trees. Ms. Sisson stated plantings on conservation land should be done for management purposes, such as habitat restoration. Ms. Sisson stated the LSS is not against memorials, but they should be in appropriate places, such as the Reuben Reed land in the Town Center. When asked, John Lee explained Harvard Conservation Trust's policy for memorials. The discussion had been prompted by a request from the Town Administrator to have conservation lands included in a policy approved by the Select Board. With no determination from the Select Board yet on whether their policy will or will not allow memorials the Commission tabled this item.

Ratify Enforcement Order – 8 Willow Road

Don Ritchie made a motion to ratify the enforcement issued earlier this week by the Conservation Agent to 8 Willow Road for fill within a wetland resource area and its 100-foot buffer zone. Jim Burns seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Don Ritchie made a motion to send a letter to the property owners of 8 Willow Road instructing them to be in contact with the Conservation Agent by end of December to arrange a meeting with the Commission for the first meeting in January 2024. Jim Burns seconded. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Notice of Intent Hearing - Harvard Department of Public Works, along Depot Road, Harvard#1123-02.
Opened at 8:09pm

Approve Minutes

Don Ritchie made a motion to approve the minutes of September 14 and November 30, 2023 as amended. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Approve Invoice

There were no invoices for approval.

Update from Representatives/Liaisons

Deer Management Subcommittee – Total number of deer culled is now at nine for the season. There was an incident of vandalism of a trail camera on the Barrett Land. Eve Wittenberg has recommended that tags be used on that type of equipment to indicate that it is part of the Deer Management Program (DMP). Jaye Waldron wondered if that would bring additional unwanted attention to the DMP. It is unclear as whether this incident was intentional or random; Liz Allard will follow up with the Environmental Police. In either case, it was noted that trail cameras used for the purposes of the DMP should not be in an area where other users' of the land images are being captured by the trail cameras. Jaye Waldron suggested addition language on the existing DMP signage at the trailheads pertaining to trail cameras in use.

Community Preservation Committee – John Lee reported both requests for funding of the Commission have been approved for inclusion on the warrant for the spring town meeting.

Open Space Committee (OSC)– Liz Allard reported the Littleton Road County Project is progressing with the development of the plans necessary for the conservation restriction (CR), the submittal of the draft CR to the State and the engaging of a consultant to complete the associated baseline report. In addition, the OSC is working towards completing the Open Space and Recreation Plan by the beginning of 2024, with a public comment hearing prior to being submitted to the State for approval.

Climate Initiative Committee – Eve Wittenberg stated work continues to include provisions that address climate change with the Wetland Protection Bylaw and Regulations. As for provisions that address invasive species, sites for commercial development will be addressed within the regulations pertaining the importing of material onto a site and the management of onsite invasives during the permitting process. Addressing invasive species on private property will be a goal for the 2025 cycle of MVP grants.

Notice of Intent Hearing - Baer Construction, 119 Clinton Shore Drive, Harvard#1123-03. Opened at 8:35pm

Notice of Intent Hearing - Harvard Fire Department, 266 Stow Rd, 21 Scott Rd, 2 Lancaster County Rd, 74 Poor Farm Rd, 3 Cliffside Dr., 5 Sholan Circle, 175 Littleton County Rd, 140 Old Littleton Rd, 199 Still River Rd, across from 183 Littleton Rd, and the Ann Lees Playing Field on Ann Lees Rd, DEP#177-708, Harvard#0821-04. Opened at 9:05pm

Adjournment

Jim Burns made a motion to adjourn the meeting at 9:34pm. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Respectfully submitted, Liz Allard, Conservation Agent

EXHIBITS & OTHER DOCUMENTS

- Conservation Commission Agenda, dated December 7, 2023
- Site Plan Jonathan Bulger #80 South Shaker Road Harvard, MA Job No.: 34365, Plan No.: L-14702, prepared by David E. Ross Associates, Inc., September, 2023
- Harvard- Devens Water System Interconnection Town of Harvard – Department of Public Works Presented by Mary Danielson, P.E., and Julia Novotny, Tighe & Bond, Inc, undated
- Harvard Fire Pond Repair Plan Pond No. 14, Harvard Fire Department, prepared by GPR, Inc., December 2016

**Harvard Conservation Commission
Notice of Intent Hearing Meeting Minutes
Jonathan Bulger, 80 South Shaker Road,
DEP#177-738, Harvard#1123-01
December 7, 2023**

The public hearing was opened at 7:05pm by Chair Eve Wittenberg 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: Eve Wittenberg, Don Ritchie, Jaye Waldron, Jim Burns, Mark Shaw, and John Lee (Associate Member)

Others Present: Liz Allard (Conservation Agent), Dan Wolfe (Ross Associates, Inc.) and Jonathan Bulger

This hearing is for a Notice of Intent filed on behalf of Jonathan Bulger for the clearing, grading, and filling to create an open space and useable yard area with portions of the fill within the 100' wetland buffer zone, 80 South Shaker Road, Harvard

Dan Wolfe, of Ross Associates, explained Jonathan Bulger wished to level-out an area to create a yard space for his children; he was unaware the Town had adopted an Erosion Control Bylaw, nor was he aware there is a wetland within 100-feet of the activity. Mr. Wolfe detailed the plan that shows the sloped area toward the right on the map being completed and stable. The area to the left has not been completed as a stop work was requested in July by the Conservation Agent. The proposal before the Commission is to finish grading the area and install rip rap like what is already been installed. With rip rap fill occurring within the 50-foot buffer a waiver has been requested; the plans propose plantings within an area adjacent to the fill. However, as noted at the site walk, the location of the proposed plantings do not serve much value; members agreed plantings would be more beneficial elsewhere and shifted them to the perimeter of the yard space at the top of the slope. In addition, Mr. Wolfe requested a waiver to the filing fee of \$3,500, as he felt the applicant had no nefarious intentions and has been cooperative throughout the process. Mr. Wolfe requested a 20% reduction of the fee as much of the work has already been completed.

Jaye Waldron stated it is very likely the Commission would not have approved the rip rap slope within the 50-foot wetland buffer zone had this work been properly permitted. Ms. Waldron stated to require the fill to be removed would create a great deal of disturbance, however she is concerned with a similar situation in which the Commission does not allow on an applicant to fill the 50-foot buffer zone, but does allow for it here. Mr. Wolfe stated Ms. Waldron made an excellent point pertaining the disturbance that would be created by removing the fill and reiterated that the activity was a sincere oversight by Mr. Bulger.

Mr. Wolfe stated, as discussed on site, the debris at the toe of the slope would be removed, the large log and brush pile needs to be cleared out, but an old pile of trees may serve a purpose for wildlife; perhaps a condition to keep some of that material on the site. Jim Burns thought it would be helpful to review the site after the remaining work is complete to determine what of the felled trees should remain for habitat, along with assuring the project is headed in the right direction, and allow for a better idea for remediation. Mr. Burns agrees that it is not worthwhile doing any remediation at the toe of the slope. Ms. Waldron suggested there be a permanent condition about leaf dumping over the slope as the wetland is within 24-feet of the bottom edge. Liz Allard suggested the "Protected Wetland" markers be installed. After briefly discussing, it was agreed markers would be installed in association with the proposed fence at the top of the slope.

Jim Burns made a motion to waive 147-12 Setbacks: No disturb zone in which there shall be undisturbed natural vegetation, 50-foot setback. Mark Shaw seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Mark Shaw made a motion to reduce the fees under the Wetland Protection Bylaw from \$3500 to \$2700 as the activity was not a major disturbance in the upland area and the applicant has put forth good faith effort to resolve the matter. Jim Burns seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Jaye Waldron made a motion to close the hearing and issue an Order of Conditions to complete the installation of the rip rap along the slope, with additional remediation to be discussed after that installation, and wetland signage be installed in association with the proposed fence. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

**Harvard Conservation Commission
Continuation of a Notice of Intent Hearing Meeting Minutes
Travis Dery, 62 Old Littleton Road,
DEP#177-729, Harvard#1023-01
December 7, 2023**

The public hearing was opened at 7:41pm by Chair Eve Wittenberg 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: Eve Wittenberg, Don Ritchie, Jaye Waldron, Jim Burns, Mark Shaw, and John Lee (Associate Member)

Others Present: Liz Allard (Conservation Agent)

This hearing was continued from November 16, 2023 for a Notice of Intent filed by Travis Dery for the installation of a pool within the 100' wetland buffer zone at 62 Old Littleton Road, Harvard.

At the request of the applicant's representative, Jim Burns made a motion to continue the hearing to January 4, 2024 at 7:05pm. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

**Harvard Conservation Commission
Notice of Intent Hearing Meeting Minutes
Harvard Department of Public Works, along Depot Road, Harvard#1123-02
December 7, 2023**

The public hearing was opened at 8:09pm by Chair Eve Wittenberg 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: Eve Wittenberg, Don Ritchie, Jaye Waldron, Jim Burns, Mark Shaw, and John Lee (Associate Member)

Others Present: Liz Allard (Conservation Agent), Tim Kilhart (Department of Public Works Director), Mary Danielson (Tighe & Bond), Mary Danielson (Tighe & Bond), April Locke (Tighe & Bond), Tom Mahanna (Tighe & Bond),

This hearing is a Notice of Intent filed on behalf of Harvard Department of Public Works, , for the installation of a new water main approximately 8,900 linear feet long with portions within the 100' wetland buffer zone along Depot Road, Harvard

Julia Novotny, of Tighe & Bond, stated the application before the Commission is for the Construction of approximately 8,900 linear feet of ductile iron water main that will originate at the corner of Ayer and Depot Roads, which will tie into a proposed pump station at the end of Depot Road and continue through a forested parcel and Red Tail Golf Course. Proposed activities include work within the roadway limits of Depot Road, the crossing of the railroad tracks, and the construction of a meter building with booster pumps located within Devens. Culvert crossings are proposed for several locations including Bowers Brook and an unnamed tributary. Protective measures during construction include the use of the appropriate siltation barriers, the use of catch basin inserts, and surrounding stockpiles with sediment controls and covering with tarp as necessary. All disturbed areas will be restored to pre-construction conditions, with previously vegetated areas being loamed and seeded. The roadway as well will be restored to pre-construction condition. Wetland resource areas include riverfront area (RA) associated with Bowers Brook and the unnamed tributary. There will be approximately 7,000 square feet of impacts to the RA. With the work limited to the roadway there no anticipated adverse impacts to the resource area. Temporary impacts to the buffer zones to the banks and bordering vegetated wetlands with the 100-foot buffer is approximately 30,800 square feet; within the 75-foot buffer 29,500 square feet.

The multiple culvert crossings will be achieved through open-cut trench installation above or below these crossings depending on existing conditions to avoid impacts to jurisdictional wetland resource areas. The proposed construction schedule spans both the 2024 and 2025 construction seasons, with work beginning in June of next year.

With no Department of Environmental Protection file number, Jaye Waldron made a motion to continue the hearing to January 4, 2024 at 7:35pm. Jim Burns seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

**Harvard Conservation Commission
Notice of Intent Hearing Meeting Minutes
Baer Construction, 119 Clinton Shore Drive, Harvard#1123-03
December 7, 2023**

The public hearing was opened at 8:35pm by Chair Eve Wittenberg 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: Eve Wittenberg, Don Ritchie, Jaye Waldron, Jim Burns, Mark Shaw, and John Lee (Associate Member)

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

This hearing is for a Notice of Intent filed on behalf of Baer Construction, for the removal and replacement of an existing deck within the 200' buffer zone of Bare Hill Pond at 119 Clinton Shore Drive, Harvard.

Bruce Ringwall, of GPR, Inc, explained the proposed deck will be replace the existing deck within the same footprint, including the stairs associated with the deck. In addition, new footings will be installed. The Harvard erosion control barrier is shown on the plan. Due to limited access to the area, all work will be done by hand. There were no questions from the Commission members.

With no Department of Environmental Protection file number, Jim Burns made a motion to continue the hearing to December 14, 2023 at 8:05pm. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent

Harvard Conservation Commission
Continuation of a Notice of Intent Hearing Meeting Minutes
Harvard Fire Department, 266 Stow Rd, 21 Scott Rd, 2 Lancaster County Rd,
74 Poor Farm Rd, 3 Cliffside Dr., 5 Sholan Circle, 175 Littleton County Rd,
140 Old Littleton Rd, 199 Still River Rd, across from 183 Littleton Rd,
and the Ann Lees Playing Field on Ann Lees Rd,
DEP#177-704, Harvard#0821-04
December 7, 2023

The public hearing was opened at 9:05pm by Chair Eve Wittenberg 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: Eve Wittenberg, Don Ritchie, Jaye Waldron, Jim Burns, Mark Shaw, and John Lee (Associate Member)

Others Present: Liz Allard (Conservation Agent), Fire Chief Rick Sicard, David Latham, Margret Warner, Jeff Brown, and Pam Brown

This hearing is for a Notice of Intent filed by the Harvard Fire Department, for the dredging of existing fire ponds and the replacement of appliances associated with those ponds within the wetland resource area and the 200' wetland buffer zones at the following locations: 266 Stow Rd, 21 Scott Rd, 2 Lancaster County Rd, 74 Poor Farm Rd, 3 Cliffside Dr., 5 Sholan Circle, 175 Littleton County Rd, 140 Old Littleton Rd, 199 Still River Rd, across from 183 Littleton Rd, and the Ann Lees Playing Field on Ann Lees Rd, Harvard.

Liz Allard reminded the members that the Order of Conditions had never been issued as comments received from the Department of Environmental Protection (DEP) needed to be resolved first. With a lag in the process of obtaining the necessary answers, the company hired to complete the project agreed to assist in moving this process forward; this included the hiring of Beals + Thomas (B+T) to complete the necessary 401 Water Quality application with the DEP. Ms. Allard has spoken with the representative from B+T who stated their proposal includes filing a new Notice of Intent. The Commission has two options, ask the Fire Department to withdraw the current application and re-file under a new Notice of Intent, or a revised Notice of intent is submitted to DEP under current application. The first option would require the re-notification of the abutters, along with new legal notices. Ms. Allard explained the re-opening of this hearing this evening included the notification of close to 300 abutters, along with the publishing of the appropriate legal notice. After a brief discussion the members agreed it made sense to continue this hearing to allow for a revised application to be submitted to DEP under the existing application.

Pam Brown, an abutter to the fire pond at 183 Littleton Road, wondered why that pond was no longer part of this application. Chief Sicard explained that pond was the worst of all the ponds assessed, having 265 cubic yards of material to be removed; the cost to reclaim this pond would be equivalent to cost to dredge seven additional ponds. Ms. Brown stated the Commission had an agreement with the owner of 184 Littleton Road that the land would be donated as open space, but that has not occurred; what is the status. Ms. Allard explained the donation had not occurred and that it was not binding as the Commission could not require as a condition with an Order of Conditions for the development of a lot along Pinnacle Road. It is an unfortunate situation that the owners received what they need to develop the lot, but did not hold up their end of the deal. Ms. Allard stated there are several factors that contributed to this, however, she was not comfortable discussing them in a public meeting.

David Latham, of 140 Old Littleton Road, expressed concern for the construction of a 200-foot access road to the fire pond on his property; he wondered if the road is needed across his pasture. Chief Sicard explained the Town has a right-of-way to access the dry hydrant and there is no intent to create an access road. The only intent is to dredge the fire pond to its original size. After reviewing the proposed plan, it appears the access road shown on the plan is for the temporary use during the actual dredging. This will be made clear during the permitting process.

With no further questions or comments this evening, Don Ritchie made a motion to continue the hearing to January 18, 2024 at 7:05pm. Jim Burns seconded the motion. The vote was unanimously in favor of the motion by a roll call, Don Ritchie, aye; Jaye Waldron, aye; Jim Burns, aye; and Mark Shaw, aye.

Respectfully submitted,

Liz Allard,
Conservation Agent