

**HARVARD CONSERVATION COMMISSION
MINUTES OF MEETING
MARCH 3, 2016
APPROVED: JULY 21, 2016**

Chairman Paul Willard called the meeting to order at 7:03pm in the Hapgood Room at 7 Fairbank Street under MGL Chapter 131 §40 The Wetland Protection Act and The Code of the Town of Harvard Chapter 119 the Wetland Protection Bylaw

Members Present: Paul Willard, Don Ritchie, Charlie Gorss, Wendy Sisson, Jim Breslauer and Joanne Ward

Others Present: Liz Allard (LUB Admin), Karen & David Cruise, Ken Kasabian, Scott Smyers (Oxbow Assoc.), Pete Dumont, Tony Shaw and Dan Wolfe (Ross Assoc.)

Request to Extend Order of Conditions – Cruise, 12 Cove Road, DEP#177-556

David and Karen Cruise were present to discuss an extension for their Order for Conditions for 12 Cove Road. Mr. Cruise explained the Order of Conditions to install the four-bedroom septic system had been completed and a Certificate of Compliance obtained for that work. When they applied for the Order of Conditions to demo the existing structure and rebuild a new four-bedroom home, they intended on doing so soon after approval. Since that time the Town's Bylaw regulations have changed and do not allow of a structure within 75' of Bare Hill Pond. If the current Order of Conditions was to expire the Cruise's would need to comply with the setbacks as they are today; constraints on the property that may be difficult. Wendy Sisson remembers all of the work to permit the site and agreed that there is no concern with the wetland line changing as it is the edge of the pond. Jim Breslauer agreed, but stated that regulations and science can change and to have a permit that is valid for over ten years may be to long. Mr. Breslauer is afraid of setting a precedent. Mr. Cruise stated that Commission is forcing them to build in two years (the OOC had been extended for two years in 2015). After a brief discussion, members of the Commission were agreeable to another one year extension and if the project is then under way when it comes time to extend it could be extended to a reasonable time frame.

Jim Breslauer made a motion to extend the Order of Conditions, DEP#177-556, an addition year to February 23, 2018. Joanne Ward seconded the motion. The vote was unanimously in favor of the motion.

Approve Invoice

Liz Allard stated the following invoice have been received for inclusion on the next bill warrant:

- Harvard Press - \$40.00

Jim Breslauer made a motion to approve the above mentioned invoice for inclusion on the next bill warrant. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion.

Planning Board Request for Comments

Liz Allard explained to the members the two new applications before Planning Board; first is for Alexander at 284 Ayer Road for Site Plan Approval and the second is for STC Five at 47 Poor Farm Road for the renewal of a Special Permit. Neither of these locations includes resource areas within the limit of work. The Commission agreed they had no comments to offer to either of these applications.

Master Plan Steering Committee (MPSC) Update

Liz Allard stated that notice in regards to the public forum on March 24, 2016, was sent to the Commission members yesterday.

Land Stewardship Subcommittee (LSS) Update

Wendy Sisson stated the walk scheduled for April was planned to be on the Willard Land, however the trail is not complete as of yet, so the LSS is rethinking the location and may decide to conduct the walk on the Great Elms, William's Land and the new Brown Land owned by the Harvard Conservation Trust.

Update to the Gifts of Land

Liz Allard stated the transaction of the gift of land from Steven and Deborah Daman for 34.8 acres of land along Brown Road has been completed. Ms. Allard would like to present the Daman's with a certificate of appreciation at the Annual Town Meeting. The Commission agreed; Ms. Allard will work with the Town Administrator to make it happen.

Wendy Sisson received a quote for the removal of the structures at 100 Shaker Road in the amount of \$5,200.00. An additional proposal in the amount of \$10,000 had been received from the Robert Black Company. The Commission will need a written proposal for the \$5,200 quote before making a final decision

Continuation of a Notice of Intent Hearing - Kenneth Kasabian, Lot B Poor Farm Road (Map 9 Parcel 4.2.1), DEP#177-643, Harvard#0715-02. Opened at 7:32pm

Request for Determination of Applicability Hearing – Dennis Murphy, Jr., 55 West Bare Hill Road, Harvard#0216-01. Opened at 8:10pm

Request for a *De Minimus* Change to the Order of Conditions – Finn, 44 Peninsula Road, DEP#177-642, Harvard#0715-01

Dan Wolfe, of Ross Associates, was present to discuss the revised plans for the proposed new house at 44 Peninsula Road. Mr. Wolfe explained the applicant has received a new house design that will reduce the square footage of the proposed house. The new designed does raise the height of the foundation to allow for a walk-out basement. Mr. Wolfe explained the slab on grade previously proposed would require a large amount of fill; the new design removes that requirement. No other aspects of the plan, as approved previously by the Commission, have changed according to Mr. Wolfe, with the exception of the removal of two additional trees for the installation of the propane tank and tight tank.

Don Ritchie made a motion to allow the above mentioned change as *De Minimus*. Joanne Ward seconded the motion. The vote was unanimously in favor of the motion.

Notice of Intent Hearing – Wilfred Dumont, 187 Prospect Hill Road, Harvard#0216-02. Opened at 8:30pm

Update on Beaver Deceivers

Liz Allard had previously distributed information obtained from Beaver Solutions in regards to the installation of beaver deceivers in area around town in which there are issues with beavers. After a brief discussion, Don Ritchie made a motion to request the assessment of four sites within town by Beavers Solutions, Inc. Joanne Ward seconded the motion. The vote was unanimously in favor of the motion.

Update on ZBA Request for Comments – Sundeen, 35 Scott Road

Liz Allard stated the ZBA had received a site plan at its meeting last week that detailed the wetland line and the activity that has taken place in association with the installation of an in-ground swimming pool at 35 Scott Road. Fill, fencing and a newly constructed patio are all within the 100' wetland buffer zone. The ZBA denied the applicant's request to keep the pool in its current location, which is 10' too close to the side property boundary.

After a brief discussion the Commission agreed a letter shall be sent to the property owner requesting a filing with the Commission within 60 days or an Enforcement Order will be issued.

Update on Annual Town Meeting 2016 Warrant Articles

Liz Allard stated the Commission will want to establish a fee for the proposed Erosion Control bylaw before town meeting. The Commission agreed to discuss further at the next meeting.

As a follow-up to the removal of the warrant article for annual town meeting (ATM) requesting \$350,000, Paul Willard has learned that the Commission should have started with the Capital Planning and Improvement Committee. Mr. Willard stated he is willing to do that for next years ATM. In addition, it has been strongly suggested the Commission spend the existing fund before requesting additional funding.

The Commission discussed the options available to them for the purchase of the 24 acres of land available along Mass Ave. Wendy Sisson has taken a look at what is available for funding in both the Conservation fund and the Community Preservation Act (CPA) fund. Using the remaining funds in the CPA fund and supplementing the remainder with the Conservation fund seems to be the best option. With that said, Joanne Ward made a motion to allow Paul Willard to represent the Commission to negotiate on the purchase of 24 acres of land along Massachusetts Avenue. Mr. Willard is to work with the seller's representative to determine if they are willing to reduce the offer to \$250,000 now that the transaction can take place sooner than town meeting. If not, the offer of \$280,000 stands. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion.

Adjournment

Jim Breslauer made a motion at 9:37pm to adjourn the meeting. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion.

Respectfully submitted,

Liz Allard
Land Use Administrator/
Conservation Agent

Harvard Conservation Commission
Continuation of a Notice of Intent Hearing Meeting Minutes
Kenneth Kasabian. Lot B Poor Farm Road (Map 9 Parcel 4.2.1)
DEP#177-643, Harvard#0715-02
March 3, 2016

The public hearing was opened at 7:32pm by Chairman Paul Willard under the Massachusetts Wetland Protection Act, Ch. 131 §40 and the Harvard Wetland Protection Bylaw, Chapter 119 of the Code of the Town of Harvard in the Hapgood Room at 7 Fairbank Street

Members Present: Paul Willard, Don Ritchie, Charlie Gorss, Wendy Sisson, Jim Breslauer and Joanne Ward

Others Present: Liz Allard (LUB Admin), Ken Kasabian and Scott Smyers (Oxbow Assoc.),

This hearing was continued from February 4, 2016 for a Notice of Intent filed on behalf of Kenneth Kasabian for the construction of a single family dwelling with sections of the proposed driveway and grading for the septic system within the 100 wetland buffer zone on Lot B Poor Farm Road (Map 9 Parcel 4.2.1), Harvard.

Scott Smyers, of Oxbow Associates, was present to represent the applicant. Mr. Smyers followed up on comments made at the previous hearing, including the requirement under the Town's zoning that no component of a septic system will be within 100' of a wetland. Mr. Smyers explained this provision pertains to State wetlands and not local wetlands. In regards to the requested waiver for the driveway within 75' of the wetland, Mr. Smyers stated the regulations state the Commission may issue a waiver if there is evidence of low impact to the wetlands. BSC Group, the outside consultant hired by the Commission, agreed the driveway could be constructed with low impact to the wetland. Other access into the site has been explored, but is not suitable. Mr. Smyers provided information from a member of the family that previous owned the property that the cart path was in existence prior to the Wetland Protection Act and had historically been used. The driveway has been relocated to avoid the revised wetland line. The isolated depression, that is jurisdictional under the Town's Wetland Protection Bylaw, will not be filled in as previously proposed. With the shift of the driveway there is no longer a need to conduct wetland replication. Mr. Smyers stated the application and associated plans are compliant with the local bylaw and State bylaw, as confirmed by BSC Group.

Wendy Sisson asked what constitutes a cart path. Mr. Smyers stated there are many definitions, but not one in within the regulations of the Wetland Protection Act. Ms. Sisson stated she has seen many cart paths that are woods roads that have endured over many years; gravel roads that turn into raised areas and have stone culverts. Ms. Sisson's feeling about this cart path is the former owner's daughter took the cart down there to pick blueberries, seasonally; to call it the kind of cart path that would be protected would be failure on the part of the Commission, because the use stated by the former owner's daughter is only a moment in time when the area would have been accessible.

Jim Breslauer found nothing within the Wetland Protection regulations about grandfathering, except for riverfront area. Mr. Smyers stated he has worked on projects many times where alterations have taken place 50 years ago, in which someone today cannot be responsible for.

Ms. Sisson also has taken into consideration the fact that the Board of Health (BOH) has not officially reviewed the plan. If the Commission were to approve it, the BOH may require changes to the over all plan. Paul Willard stated he cannot put his finger on what is wrong here and did not like the plan previously presented, nor does he like the current one.

Additional concerns of Ms. Sisson include the site itself; if the access lead to a raised upland and not a flat area her opinion would be more favorable. With the area being relatively flat it lies

within or close to the same elevation as the floodplain, making the entire area essential to the function as a wetland, the surrounding habitat, water quality and overall flood protection. Ms. Sisson is not saying the use is not allowed, but thinks as proposed it would have adverse effects to the wetland resource areas. The site should be left in a natural vegetated state.

Long standing members of the Commission have stated they observed skunk cabbage growing in the location of the cart path within the last twenty years or so. Ms. Sisson stated the Commission is not debating the wetland line, but last May when the area was observed was the driest month in years. Ms. Sisson stated members of the Commission have seen the site in years past in which it has been saturated; the site may look different this year in compared to other years. Ms. Sisson stated weather conditions are changing and storm events are more frequent, limiting this sites' ability to function as a floodplain area would not be in anyone's best interest. Mr. Willard agreed the plan was well engineered, but it is not a suitable site for development; he applauds Mr. Smyers attempts to mitigate the site, but he is not in favor of this project.

Mr. Smyers argued that the Commission needs to present specific reasons to deny this project.

With no further questions or comments, Jim Breslauer made a motion to close the hearing. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion.

After a brief discussion, Jim Breslauer made the following motion...

I move we deny the requested waiver and deny this proposal under both the Wetlands Protection Act and under the Harvard By-Law. The reasons for the denial are as follows:

The proposal is not in the interests of the Act and cannot be permitted under the Harvard Wetland Protection By-Law. The proponent has not established that the work in the buffer zone will protect the interests or will contribute to the protection of the interests of the Wetlands Protection Act; to wit the protection of ground water; to provide flood control; to the protection of wildlife habitat. See M.G.L c 131, §40, 310 C.M.R 10.03(1)

The 8.4 acre site abuts Bowers Brook and is low and flat and in the river's floodplain. As mapped by the National Flood Insurance program, the area of proposed building is not in a Zone AE that would preclude development due to flood hazard, but nearly the entire parcel, including the house site, is mapped as "other flood areas." While fill is proposed to raise the level of the house to 254', the existing elevation of the proposed house site at 252' is only inches above the 251.2' WFH elevation; it is not a raised island of upland within a large wetland system but an area unavoidably impacting and impacted by that surrounding wetland. It is noted that the site has been tested and delineated for this project during exceptionally dry periods according to State precipitation data and that Commission members have observed this site in wetter times with standing water.

Impacts to the resource area that cannot be mitigated by design or engineering are:

- 1) ~240' of driveway abutting the wetland line.
- 2) Potential pollution of groundwater from runoff that cannot be effectively managed because of insufficient depth to groundwater on the whole building site.
- 3) Insufficient upland area for human activities associated with a house of this size. It would be impossible to enforce a 50' no-disturb zone and protect the resource area from incursions.

Other general concerns include the importance of this area as part of the riparian buffer and its roles in maintaining flood protection, water quality and high value wildlife habitat. The Nashua River Watershed Association has advised the Commission, through a program funded by the Commonwealth, to protect sites exactly like this. The State (NHESP) has also designated a large abutting area (including the western corner of the parcel) as Estimated and Priority Habitat.

Substantial work, most significantly the driveway, is proposed in areas that violate the setback requirements of Section 147-17 of the Harvard Wetlands Protection Bylaw. The Bylaw requires driveways to be kept 75' from wetlands and that a 50' "no disturb" zone is maintained at the edge of all wetlands to retain existing vegetation and soils. The proponent has requested a waiver of those provisions. The proponent's waiver request and the evidence supplied at the hearings establishes that the project cannot be accomplished with any other design, but neither the waiver nor the evidence establishes that there will be minimal adverse impact on the interests of the By-Law.

The proponent has argued that the proposed driveway incursion into the setback requirements should be grandfathered. No legal authority under either the Wetlands Protection Act or the By-law for this proposition has been offered. The proposed driveway area for over the first 200' is well within the 50' no disturb zone and consists in significant part of wetlands filled with wood chips. The proponent's proposition that this area has historically not been a wetland is not credible as hydric soil was found within the proposed driveway. Two Commission members remember seeing skunk cabbage, an obligate species, growing in the area designated as the driveway within the past 20 years. The proponent's statements about the historic existence of a cart path is not credible. Though it may have been used seasonally as a path to access blueberry bushes on horseback or with a small cart, a path used intermittently without enduring features like a raised gravel base or stone culverts is very different than a modern driveway. The proponent has not offered any evidence that it was more than an occasionally used path before he purchased the land.

Don Ritchie seconded the motion. The vote was in favor of the motion by a vote of 4-0. Voting members were Jim Breslauer, Don Ritchie, Wendy Sisson and Joanne Ward.

Respectfully submitted,

Liz Allard
Land Use Administrator/
Conservation Agent

**Harvard Conservation Commission
Request for Determination of Applicability Hearing Meeting Minutes
Dennis Murphy, Jr. , 55 West Bare Hill Road, Harvard#0216-01
March 3, 2016**

The public hearing was opened at 8:10pm by Chairman Paul Willard under the Massachusetts Wetland Protection Act, Ch. 131 §40 and the Harvard Wetland Protection Bylaw, Chapter 119 of the Code of the Town of Harvard in the Hapgood Room at 7 Fairbank Street

Members Present: Paul Willard, Don Ritchie, Charlie Gorss, Wendy Sisson, Jim Breslauer and Joanne Ward

Others Present: Liz Allard (LUB Admin) and Dan Wolfe (Ross Assoc.)

This hearing is for a Request for Determination of Applicability filed on behalf of Dennis Murphy, Jr. for the addition of a screened in porch within the 100' wetland buffer zone at 55 West Bare Hill Road, Harvard.

Dan Wolfe, of Ross Associates, explained the applicant would like to convert an existing patio into a four-season sunroom. Mr. Wolfe noted the structure is not a screened porch as detailed in the Request for Determination of Applicability. The proposed structure will be more than 75' from wetland resource area and located in an already disturbed area. The site has a series of three retaining walls that reduce any impact to wetland down below. Existing material that will be removed will be taken out of buffer zone and used on elsewhere on-site or removed completely. The work will require the use of a mini-excavator and there is no anticipated disturbance to the existing vegetation. The concrete foundation will be pumped from the driveway.

After a brief discussion, Wendy Sisson made a motion to close the hearing and issue a Negative #2 Determination. Jim Breslauer seconded the motion. The vote was unanimously in favor of the motion.

Respectfully submitted,

Liz Allard
Land Use Administrator/
Conservation Agent

**Harvard Conservation Commission
Notice of Intent Hearing Meeting Minutes
Wilfred Dumont, 187 Prospect Hill Road, Harvard#0216-02
March 3, 2016**

The public hearing was opened at 8:30pm by Chairman Paul Willard under the Massachusetts Wetland Protection Act, Ch. 131 §40 and the Harvard Wetland Protection Bylaw, Chapter 119 of the Code of the Town of Harvard in the Hapgood Room at 7 Fairbank Street

Members Present: Paul Willard, Don Ritchie, Charlie Gorss, Wendy Sisson, Jim Breslauer and Joanne Ward

Others Present: Liz Allard (LUB Admin), Pete Dumont and Tony Shaw

This hearing is for a Notice of Intent filed on behalf of Wilfred Dumont for the installation of a sewage septic system within the 100' wetland buffer zone at 187 Prospect Hill Road, Harvard.

During the Commission's site walk members questioned whether or not the grading could be replaced with a retaining wall to reduce the slope down to the wetland resource area. Information provided by the Town Sanitarian, Ira Grossman, indicated it could not. Wendy Sisson suggested the planting of low growing woody plants along the slope of the grading to help with reducing runoff and nutrients from entering the vernal pool.

Tony Shaw, a direct abutter, expressed concern with activity so close to the vernal pool. The Commission stated they too are concerned, but with a limited suitable location for a septic system this is the best that can be done on the site. Mr. Shaw stated he would prefer the proposed grading remain, rather than a retaining wall.

With no file number provided by the Department of Environmental Protection as of yet, Jim Breslauer made a motion to continue the hearing to March 17, 2016 in the Hapgood Room at 7 Fairbank Street at 7:45pm. Joanne Ward seconded the motion. The Vote was unanimously in favor of the motion.

Respectfully submitted,

Liz Allard
Land Use Administrator/
Conservation Agent

DOCUMENTS & OTHER EXHIBITS

Continuation of a Notice of Intent Hearing - Kenneth Kasabian, Lot B Poor Farm Road (Map 9 Parcel 4.2.1), DEP#177-643, Harvard#0715-02

- Notice of Intent Plan for Poor Farm Road, Harvard, Massachusetts 01451, Map 9, Block 4, Lot 2.1, prepared for Kenneth Kasabian, 97 Poor Farm Road, Harvard, Massachusetts, 01451, prepared by Hancock Associates, 315 Elm Street, Marlborough, MA, Layout/Grading & Utilities Plan, Notes & Detail Sheet, DWG: 18509NI.dwg, Project No. 18509, dated 2/2/16
- Flood Insurance Rate Map, Panel 0314E, dated July 4, 2011

Notice of Intent Hearing – Wilfred Dumont, 187 Prospect Hill Road, Harvard#0216-02

- Sewage Disposal system, designed for Wilfred Dumont and Janet Teresko, 187 Prospect Hill Road, prepared by David E. Ross Associates, Inc., Job No. 31060, Plan No. L-12767, dated JAN. 2016

Request for Determination of Applicability Hearing – Dennis Murphy, Jr., 55 West Bare Hill Road, Harvard#0216-01

- Site Plan, prepared for Dennis Murphy, 55 West Bare Hill Road, Harvard, MA, Job No. 24564, Plan No. L-12814, prepared by David E. Ross Associates, Inc., dated February, 2016

Request for a *De Minimus* Change to the Order of Conditions – Finn, 44 Peninsula Road, DEP#177-642, Harvard#0715-01

- Letter from David E. Ross Associates, Inc., prepared by Daniel B. Wolfe, Re: Request for Approval of Minor Changes, John Finn, 44 Peninsula Road, Harvard, DEP File # 177-0642, Project No. 30122, dated February 16, 2016
- Site Plan, designed for John Finn, 44 Peninsula Road, Harvard, MA, prepared by David E. Ross Associates, Inc., Job No. 30122, Plan No. L-12643, dated 2/15/16