

Weston Conservation Commission (WCC) - Public Meeting Minutes

March 28th, 2023

Approved: April 11th, 2023

Members Participating: Joe Berman (Chair), Rees Tullos, Glenn Butcher, Alison Barlow, Ellen Freeman Roth

Members Absent: Josh Feinblum, Joe Berman joined at 8:00 pm

Conservation Staff: Jordan McCarron, Joshua Baker

Notes: Pursuant to *An Act Relative to Extending Certain State of Emergency Accommodations*, signed by Governor Baker on July 16th, 2022, which extends the expiration of the remote meeting provisions pertaining to the Open Meeting Law to March 31, 2023, this extension allows public bodies to continue holding meetings remotely without a quorum of the public body physically present at a meeting location, and to provide "adequate, alternative" access to remote meetings. No in-person attendance of members of the public was available.

Rees Tullos, acting Chair, opened the meeting at 7:30 PM with an opportunity for public comment.

Hearing none, the following hearings and meetings were taken up in order:

Cont. Request for Determination of Applicability: 502 Glen Road, DOA 2023-005; E. Callow

The applicant has filed this Request for Determination of Applicability for the replacement of an existing septic system with a new septic tank, leaching field, and associated infrastructure. A portion of the proposed work falls within the 200-foot Riverfront Area associated with Bogle Brook.

A motion to close the hearing and issue a Negative Determination for 502 Glen Road, DOA 2023-005, was made by Ellen Freeman Roth; seconded by Glenn Butcher. Roll call vote 4-0.

Wetland Bylaw Presentation:

Glenn Butcher, Commissioner, provided a presentation on the Commission's proposed wetlands protection bylaw explaining how the bylaw would enable the Commission to codify its longstanding 25-foot No Disturb Zone policy as well as extend protections offered under the existing state Wetlands Protection Act (WPA) to vernal pool habitat and isolated vegetated wetlands, neither of which is protected under the WPA. A local bylaw would also give the Commission the authority to issue fines for non-compliance, a maneuver not currently available to the Commission under the WPA. The bylaw would need a simple majority vote at Town Meeting as well as approval by the state before it would take effect. Regulations proposed under the bylaw would be subject to review and approval or disapproval by the Select Board.

Mr. Butcher pointed out that the proposed bylaw would honor all exemptions included under the WPA, would utilize existing WPA forms and application procedures, would not require additional fees beyond what the WPA requires, and would not necessitate any additional conservation department staff.

Following the presentation, Mario Algana, a Weston resident and developer, asked how a resident with one of the proposed new jurisdictional areas- vernal pool habitat and/or isolated vegetated wetlands- would interact with the Conservation Commission if the bylaw was approved. Jordan McCarron, Conservation Administrator, responded, explaining that most, if not all, of the isolated wetlands and vernal pool habitat in Weston has already been identified and mapped by consultants and wetlands professionals. Under the WPA, conservation staff typically work with those residences to provide some level of protection through an administrative review process, and in most cases, those residences are willing to work amicably to protect

the inner 25-foot Buffer Zone. Under the proposed Bylaw, Mr. McCarron explained that those residences would have to comply with a set of formalized performance standards, similar to what residents currently experience under the WPA, and that depending on the scope of the project, a full wetlands permit may be required. Mr. McCarron emphasized that he and his staff are more than willing to guide applicants through this process.

Terry Eastman, Weston resident, went on to comment that her experience with the Commission has been beyond satisfactory and praised the Commission and its staff for being professional, approachable, and more than willing to work with the residents of the town to meet their needs while also protected the Town's wetlands.

Notice of Intent: 53 Chiltern Road, DEP 337-1466; M. Kaplan

Bill Doyle, C1.0 Civil Engineering and Real Estate Development, provided an overview of the project which includes a two-phase plan to demolish and reconstruct the existing single-family home and then to use ledge crushed from the housing project to re-grade and extend the backyard. Resource Areas on site include an on-site Isolated Land Subject to Flooding (ILSF). ILSF areas do not have a Buffer Zone under the state Wetlands Protection Act, and all proposed activities will lie outside of the Commission's 25-foot No Disturb Zone (NDZ). The Commission did express some concern over the proposed tree removal upgradient of the 25-foot NDZ. Aaron Peabody, project architect, confirmed that all removed trees will be mitigated with plantings around (but not in) the ILSF to augment any potential vernal pool habitat in the area.

Randall Richard, 45 Chiltern Road, provided public comment and requested contact with the design team to voice concerns regarding stormwater management towards the front of the residence.

A motion to close the hearing and issue an Order of Conditions for 53 Chiltern Road, DEP 337-1466, was made by Alison Barlow; seconded by Glenn Butcher. Roll call vote 5-0.

Discussion: 0 Hemlock

The owner of 0 Hemlock Road (Parcel 23-43-90), Richard Barno, has requested permission from the Conservation Commission, per Section 4.23 of the Planning Board Rules and Regulations, to construct a subdivision road on the subject parcel. The Commission owns the abutting property, (Parcel 23-43-20), commonly referred to as the Sears Land. The topic was first brought before the Commission on 2/14/2023 and was continued to this meeting.

Joe Berman, Chair, opened the discussion with a short history and overview of the issue. The Applicant, Mr. Barno, has requested a written statement from the Conservation Commission allowing the Planning Board to grant a waiver from the "buffer area" regulation referenced in Section 4.23 of the Planning Board's regulations. In exchange, he and his attorney, Jonathan White, have offered a public trail easement over the subject parcel, 0 Hemlock Road, that would allow public access from Hemlock Road into the Town's Sears Land Conservation Area. Robin Stein, acting Town Counsel to the Commission, read the Planning Board Section 4.23 buffer waiver requirement into record.

Mr. Berman then opened the meeting to public comment.

Joseph Wilson, 12 Hemlock Road, pointed out that the applicant also needed a "buffer area" waiver on his side of 0 Hemlock Road, which he would not grant, and asked for clarification on whether his refusal to grant a waiver would deem the Commission's permission unnecessary. Johnathan White, Mr. Barno's attorney, indicated that the Applicant had an alternate plan that did not require a waiver from Mr. Wilson.

Alan Simmons, 11 Hemlock Road, seconded Mr. Wilson's assertion that since the Applicant would not be able to acquire a waiver from Mr. Wilson, the Commission should not consider Mr. Barno's request.

Kristin Barbieri, 23 Stony Brook Road, cautioned the Commission to ensure that any trail easement offered by Mr. Barno is explicit in the Town's rights to access it, and is in perpetuity, relaying the Weston Forest and Trail Association's (WFTA) experience in defending other easements in Weston and as well her personal experience with Mr. Barno. Ms. Barbieri went on to add that she was uncomfortable with the implied quid pro quo of the Commission waiving setback rights in exchange for a trail easement and suggested the Commission take no action.

Reese Tulloss, Commissioner, expressed his own hesitation regarding the implied quid pro quo, especially considering the contentious atmosphere of the topic at hand, and suggested that the Commission treat the offer of a trail easement and the waiver request as separate, distinct, issues.

Alison Barlow, Commissioner, questioned whether or not the Commission needed to take a position on the issue, citing both the desire to be a steward of the Sears Land but to also not actively prevent a homeowner from building their privately-owned lot outside of the Commission's usual jurisdiction. Katie Klein and Ms. Stein, both acting legal counsels of the Commission, agreed between themselves that not taking a stance would still result in an effective 'no' since no waiver would be granted. Mr. Tullos voiced in tandem that he views his duty as a Commissioner to protect the land and not proactively give up rights assigned to the land. Glenn Butcher, Commissioner, then weighed in, stating that there would be no substantial improvement to access to the Conservation Land that would be impacted by the waiver and so no action should be taken to waive the property's setback rights.

A motion that the Conservation Commission provide Richard Barno with a written statement that the requirement in Section 4.23 of the Weston Planning Board's Rules and Regulations that 'proposed subdivision streets shall be designed so that the right-of-way lines are no closer to an abutting owners lot line than the distance of the minimum setback from the street sideline less the minimum setback from a lot line' may be waived as it pertains to the Conservation Commission's lot located at Hemlock Road, Lot 23-43-20, commonly referred to as the Sears Land was made by Joe Berman; seconded by Glenn Butcher. Roll call vote 0-5.

The following Administration Matters were discussed throughout the meeting.

Approval of 3/14/2023 Conservation Commission meeting minutes:

A motion was made to approve the minutes of the 3/14/2023 Conservation Commission meeting by Joe Berman; seconded by Glenn Butcher. Roll call vote 5-0.

Request for Certificate of Compliance: 40 Cart Path Road; 337-1399:

A motion was made to issue a Certificate of Compliance for 40 Cart Path Road, DEP# 337-1399, by Joe Berman; seconded by Ellen Freeman Roth. Roll call vote 5-0.

Approval: Amendment to Burchard Park Memorandum of Understanding:

A motion was made to approve Amendment No. 2 to the Agreement for Management of Recreation Areas of the College Conservation Area, which approves the siting of pickleball courts within Burchard Park, and then to further authorize the Chair of the Commission to execute Amendment No. 2 on behalf of the Commission was made by Joe Berman; seconded by Glenn Butcher. Roll call vote 5-0.

Jordan McCarron provided the following Land Management updates:

- For the 3/18 Stewardship Saturday, 13 volunteers showed up to aid at the Chestnut Street Conservation Land; building two new boardwalks and performed maintenance repairs to existing bog bridge structures
- WIPAG will be running free invasive species workshops for four or five Tuesdays this spring with each workshop day focusing on a different common invasive and maintenance techniques.
- Weston Landscape & Tree awarded contract for the Case Estates Stone Wall repair and vegetation maintenance; work to commence in April.
- Alison Barlow reminded the Commission that the High School senior intern program is launching soon, and suggested that Mr. McCarron consider applying for an intern for the Conservation Department.

The meeting adjourned at 9:08 pm.