

Weston Conservation Commission (WCC) - Public Meeting Minutes

May 24th, 2022

Approved: June 21st, 2022

Members Participating: Joe Berman (Chair), Rees Tullos, Cynthia Chapra, Alison Barlow

Members Absent: Ellen Freeman Roth, Becca Loveys, Josh Feinblum

Conservation Staff: Jordan McCarron

Notes: Pursuant to Chapter 22 of the Acts of 2022, which includes an extension of Governor Baker's March 12, 2020 Order Suspending Certain provisions of the Open Meeting Law, G.L. c. 30A, §18, this meeting was held via an online meeting platform (Zoom). No in-person attendance of members of the public was available.

Joe Berman (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:

Presentation: Cambridge School of Weston Invasive Plant Project- Cat Rock

Anne Menke, science teacher at Cambridge School of Weston, and students Mabel Crain and Paula Snyder, provided an overview of a proposal to map and remove select invasive plant species at Cat Rock Conservation Area as part of the students' community engagement curriculum.

The students will target garlic mustard along the main forest road in from Lexington Rd and a variety of invasive plants that are outcompeting sever cedar groves within the 80-Acre Field area at Cat Rock.

The project has the support of the Sustainable Weston Action Group (SWAG) and the Weston Forest and Trail Association (WFTA).

Rees Tulloss requested that the project be ongoing and engage future students from year to year, if possible. Alison Barlow commended the students on their presentation.

A motion to approve the Invasive Plant Management Project at Cat Rock Conservation Area proposed by the Cambridge School of Weston was made by Josh Feinblum; seconded by Ellen Freeman Roth. Roll call vote 5-0.

Cont. Notice of Intent: 120 Rockport Road, DEP 337-1439; B. Robinson

Brandon Robinson, Applicant, withdrew this Notice of Intent filing

Notice of Intent: 120 Rockport Road, DEP 337-1449; B. Robinson

Note: Josh Feinblum recused himself from the hearing due to an e-mail exchange between himself and Applicant which "a reasonable person, if they read it, could construe as creating a conflict for me."

Brandon Robinson, Applicant, provided a description of the project, which involves the construction of an approximately 2,800 sq. ft. single-family home, septic absorption system with reserve leach field, two (2) stormwater infiltration systems, driveway, landscaping and hardscaping, and associated site grading and utility connections. The entire project falls within the 100-foot Buffer Zone to a Bordering Vegetated Wetland (BVW) and a substantial portion of the project falls within the Commission's 25-foot No Disturb Zone.

The site sits at the southeast corner of Rockport Road and Driftwood Lane- the site is currently undeveloped with naturally occurring vegetative cover. Approximately 60% of the site contains upland forest habitat and approximately 40% of the site contains BVW with in Intermittent Stream that flows west through the BVW, exiting the site through a culvert under Driftwood Lane. The BVW was delineated in April and August 2021 by the Applicant's consultants, Robert Murphy and David Burke, reviewed by the Commission's consultant, Patrick Garner, and modified and finalized in agreement by all three consultants.

Mr. Robinson presented a nine-slide Power Point Presentation which highlighted the changes between the plans and documents submitted initially under DEP 337-1439 and those submitted under this new filing.

Other changes between the plans and documents submitted initially under DEP 337-1439 and those submitted under this filing highlighted by Mr. Robinson include:

- Stormwater Infiltration System #1: pulled completely out of the 25' NDZ
- Leach field size reduced
- Sediment forebay for foundation drain: pulled back to approximately 16-feet from BVW, invert added at elevation 217, and a planted swale added downgradient of the outlet at request of Commission's consultant, Patrick Garner. infiltration alternative also provided at the request of Mr. Garner.
- Use of 1:1 Rock Stabilized Slopes (RSS) vs. 2:1 vegetated slopes: Mr. Robinson proposed use of an 1:1 RSS at two locations behind the proposed patio and house and a 2:1 vegetated slope at all other locations within the proposed development envelope.
- The house footprint has been reduced in size, the driveway re-configured and reduced in size, and the entire development envelope pulled back to provide an approximately 10-foot-wide naturally vegetated strip between the proposed development and the BVW except in the vicinity of Wetland Flag 13, where the vegetated buffer appears to be reduced to approximately 7-feet.

Mr. Robinson then provided an overview of the proposed Deed Restriction, offered as mitigation for the work proposed within the Commission's 25-foot No Disturb Zone, which would encompass and permanently protect approximately 60% of the property, including both BVW and adjacent upland habitat, contingent on the Commission issuing an Order of Conditions, or, if the DEP or any other party appeals, a Final Order of Conditions substantially the same as that approved by the Commission, is recorded and a Building Permit issued.

Patrick Garner, consultant to the Commission, provided a summary of his written peer review of the Notice of Intent submission:

- In general, the Notice of Intent application and supporting documents for this filing present an improvement over the initial proposal under DEP 337-1439.
- The proposed project is unlikely to create any direct impact to seven (7) of the eight (8) Interests of the Wetlands Protection Act (WPA): Protection of public and private water supply; Protection of ground water supply; Flood control; Storm damage prevention; Prevention of pollution, Protection of land containing shellfish; Protection of fisheries.
- Impact to the Protection of Wildlife Habitat is inconclusive and requires more information (see below).

Mr. Garner, in both his peer review submission and verbally at the hearing, expressed concern over the potential of the proposed 1:1 RSS retaining walls to inhibit passage of wildlife. Specifically, Mr. Garner noted the following:

- There is a “Potential Vernal Pool” mapped on MassGIS approximately 130-feet west of the property but within the same BVW complex. There remains ambiguity over whether this is an actual vernal pool and which species, if any, it supports.
- Angela Kearney submitted an e-mail to Jordan McCarron on 3/28/2022 as part of the hearing process for DEP 337-1439, which summarizes comments relayed to her by Matt Burne, a senior ecologist with the BSC Group Ecological Unit and a noted vernal pool specialist, on the potential efficacy of the proposed 1:1 RSS retaining walls to provide habitat and allow migration of species that might inhabit that wetland complex. Mr. Garner made the following points:
- Mr. Burne’s comments were theoretical and did not appear to be based on the actual conditions of the subject property.
- Mr. Burne did not submit any comments or written testimony directly to the Commission.
- The Potential Vernal Pool had not been investigated and thus the actual presence of vernal pool species, and which ones, remained unclear.

Following Mr. Robinson and Mr. Garner’s presentations, discussion between the Commission, the Applicant, and his attorney, Jamy Buchanan Madeja, focused on the following questions/issues:

1. Had the Applicant made every effort to avoid and minimize alteration within the 25-foot No Disturb Zone? The Commission’s 25-foot No Disturb Zone Policy states “The Commission will only allow work within the 25-foot NDZ if the Commission finds that the applicant has made every effort to avoid and minimize alteration within the NDZ.”

Mr. Robinson stated both verbally at the hearing and in his Project Narrative that the proposed single-family home was intended for he and his family, with necessary accommodations for a family member with limited mobility, and that he had reduced the size and scope of the design, and pulled back the Limit of Work from the edge of the BVW, to the maximum extent practicable.

Commissioner Rees Tulloss requested that Mr. Robinson seek a variance from the Zoning Board of Appeals to reduce setback distances on the property. If successful, this could allow Mr. Robinson more flexibility to pull the proposed house and site appurtenances further from the BVW.

Both Mr. Robinson and Ms. Buchanan Madeja posited that soils on the site limit the placement of the septic system to its current proposed location. More specifically, the steep topography of the site and requirements for grading off the septic leach field mean that moving the septic system closer to Rockport Road, and thus higher in elevation, would not significantly change the proximity of the required grading to the BVW and would have no impact on the required setback from the proposed house and stormwater infiltration systems; Mr. Garner agreed with this assessment.

Further, the cost, timeframe, and low success rate on undeveloped lots seeking variances before the Weston Zoning Board of Appeals would create a hardship for Mr. Robinson.

2. Lack of information on design specifications for the stormwater infiltration systems: Stormwater Infiltration System-1 was pulled back from the 25-foot No Disturb Zone compared to the original site plan submitted with Notice of Intent 337-1439. Mr. Robinson did not provide a drainage report with this submission, relying instead on the drainage report submitted with the previous Notice of Intent. Mr. Robinson had not received a Stormwater Major Project Permit from the Town’s Stormwater Permitting Authority and had yet to respond to comments or provide additional information as requested by the Town’s stormwater engineer, Richard Sweeney, at the time of this hearing. Mr. Tulloss questioned whether either or both proposed infiltration systems could be

reduced in size since the scope of the project had been reduced; Mr. Robinson indicated that this would not be possible but did not provide any evidence to substantiate this claim.

3. Proposed Deed Restriction: Mr. Robinson's proposed deed restriction was still being negotiated at the time of this hearing between Ms. Buchanan Madeja and the Commission's attorney, Katherine Klein, KP Law. At issue was Paragraph 16, which made the proposed Restriction contingent on the Commission issuing an Order of Conditions, or, if the DEP or any other party appealed, a Final Order of Conditions substantially the same as that approved by the Commission, being recorded and a Building Permit issued.

Ms. Buchanan Madeja explained that the language was intended to incentivize the Commission to approve the project and thus keep local control over its conditioning, cautioning the Commission that if it denied the project, the DEP would likely issue a Superseding Order of Conditions and the Commission would lose control as the issuing authority.

Mr. Berman explained that the Commission would issue its decision based on the evidence presented and the Wetlands Protection Act and its regulations and would not factor the proposed Deed Restriction into its decision making.

4. Non-compliance with the Commission's 25-foot No Disturb Policy: Mr. Robinson requested a waiver from this policy, claiming Exemption A: *the work is proposed in an area of the NDZ that was altered prior to the adoption of Weston's 25-foot NDZ policy in 1998, or was legally permitted to be altered* and Exemption B: *no reasonable conditions or alternatives exist that would allow the proposed activity to proceed in compliance with the Wetlands Protection Act (WPA) and this policy, and permitting the work will further an overriding public interest or prevent an unconstitutional taking of private property without just compensation.*

The Commission did not grant a waiver from this policy at the hearing and there was little to no discussion on whether this project qualified for either exemption.

Public comments on the project were limited to one immediate abutter, Brendan O' Donohoe, 26 Driftwood Lane, who implored the Commission to uphold its 25-foot No Disturb Zone Policy.

The public hearing concluded with an agreement between the Commission, Mr. Robinson and Ms. Buchanan Madeja that the Commission should proceed with a motion to close the hearing and issue an Order of Conditions.

A motion to close the Notice of Intent hearing and issue an Order of Conditions for 120 Rockport Road, DEP 337-1449 was made by Joe Berman; seconded by Rees Tulloss. Roll call vote 2-2.

Notice of Intent: 164 Orchard Avenue, DEP 337-1450; K. Goldie

Robert Gemma, MetroWest Engineering, provided an overview of the project, which involves the construction of an addition to the existing house, new detached garage, pool house, pool, tennis pavilion and renovation of the existing tennis court, a replacement sewage disposal system, driveways and supporting utilities. The work will be completed in two phases. Phase IA included the renovation and expansion of the main dwelling and is presently under construction.

This application is for Phase 1B which includes construction of a replacement garage, replacement pool, a renovated tennis court and pavilion building, and outdoor living space with associated hardscape. Phase 1B also includes the installation of a stormwater management system to mitigate project impacts. Phase 1B adds 8,568 square feet of impervious area compared to the pre-construction condition. While work is

proposed within the 100-foot Buffer Zone to a Bordering Vegetated Wetland, no work is proposed within 50-feet of the resource area. Work proposed within the Buffer Zone is limited to hardscape associated with outdoor living space, site grading and landscaping, and construction of a bio-retention area (rain garden) for stormwater control.

Rees Tulloss asked for confirmation on whether the bio-retention area (rain garden) could accommodate overflow; Mr. Gemma indicated that site plans included a riprap spillway for overflow.

A motion to close the Notice of Intent hearing and issue an Order of Conditions for 164 Orchard Avenue, DEP 337-1450 was made by Rees Tulloss; seconded by Josh Feinblum. Roll call vote 5-0.

Request for Determination of Applicability: 11 Briar Lane, DOA 2022-009; D. Gilbane

Vito Colona, Connorstone Engineering, provided an overview of the project, which involves the installation of an in-ground pool and patio in the rear yard, removal of an existing propane tank, additional landscaping, and the required perimeter pool fencing. The proposed pool would be located approximately 78 feet from Bordering Vegetated Wetland.

Landscaping and limited work for installation of the pool fence would occur within the 25 to 50-foot buffer. Sedimentation and erosion controls proposed include erosion barriers along the limit of work associated with the pool installation (10-inch straw wattles with silt fence) and a stabilized construction entrance.

Site plans for the project indicate that the pool fence will cross over a 20-foot Town Drain Easement; Mr. Colona confirmed that he had received confirmation from the Department of Public Works that this would not be an issue.

A motion to issue a Negative 3 Determination for 11 Briar Lane, DOA 2022-009 was made by Rees Tulloss; seconded by Ellen Freeman Roth. Roll call vote 5-0.

Tree Removal Request: 118 Pine Street; H. Dong

A motion to approve the removal of 15 trees within the Buffer Zone and Resource Areas at 118 Pine Street per the Commission's Tree Removal Policy and mitigation requirements was made by Rees Tulloss; seconded by Josh Feinblum. Roll call vote 5-0.

Presentation: Native Plantings at Sunset Corner

Barbara Fullerton, Weston Plant Pollinator Alliance, provided an overview of and requested approval to remove invasive plants and install a native plant demonstration garden at Sunset Corner in the Highland Town Forest.

The Sunset Corner hillside was sprayed with glyphosate in August of 2019. The intention was to remove the overgrowth of vegetation that had not been pruned since the death of George Bates. Currently there are some trees sprouting from stumps scattered over the hillside, but hardly any other vegetation growing in the soil. There is a lot of tree debris remaining from previous pruning of branches.

A small number of blueberry bushes continue to grow along the central stone path to the top of the hill. On close examination the soil is very dry and compacted with very little organic matter present. Soil testing showed a pH of 5.5 in the area about 2-3 feet off the pathway. Nitrogen was depleted, Phosphorus was deficient and Potassium was adequate.

Our plan is to start with a small central area and expand to a larger area, depending on the results. There will be several small test sites in which the existing soil will be dug up and better soil put down. We will try planting on one site white clover that is low growing with shallow roots. The clover has nitrogen-fixing

roots that should increase the nitrogen in the soil. On another site we will try some milkweed plants with very deep taproots. On a third site we will try a native Rudbekia that commonly grows in disturbed areas.

Adding biochar to the soil at the test sites should help the growing plants retain more water, absorb more nutrients into the roots from the added soil, and improve the microbiome.

Since the slope of the hill may allow a lot of stormwater runoff when there are heavy rains, we will place some cross-bars on the low side of each site to lower the risk of the seeds/plants getting washed down the hill.

A motion to approve the invasive plant removal and replanting plan for Sunset Corner as presented by the Weston Plant Pollinator Alliance (WPPA) conditional on a sketch and narrative provided by Barbara Fullerton and subject to annual reports to the Commission for three years was made by Ellen Freeman Roth; seconded by Josh Feinblum. Roll call vote 5-0.

Cont. Notice of Intent: 355 Highland Street, DEP 337-1435; N. Keramaris

Jason Lavoie, WSP, provided an overview of changes to this project on behalf of the Applicant, first presented to the Commission on January 4th, 2022 and continued to March 1st, April 12th, May 10th, and now May 24th.

The project involves removal of the existing dwelling and construction of a new single-family dwelling and its appurtenances. Proposed work within 100' of a BVW includes grading associated with the construction of the proposed dwelling, construction of a portion of steps with retaining walls, construction of a subsurface drainage structure and associated drain lines, construction of a fence, and tree clearing as well as invasives removal and replanting.

A siltation barrier (12-inch filter mitt and silt fence) is proposed along the downstream limit of work line to prevent indirect alteration of the resource area during construction. No work is proposed within the Weston Conservation Commission's 25-Foot No-Disturb Zone. This lot abuts land owned by the Weston Forest and Trails Association.

Mr. Lavoie noted that the original proposal called for approximately 8,000 sq. ft. of land disturbance within the Buffer Zone; the updated proposal reduces that number to 3,800 sq. ft.

Robert Nahigian, 365 Highland Street, requested information on the total tree removal along his shared boundary with the subject property. Mr. Lavoie indicated that the total tree removal numbers had been reduced since the original proposal but could not give exact numbers.

Mr. Lavoie indicated that the Planning Board would start its review of the project in early June and suggested the Commission should continue its review of the project after that process has started.

A motion to continue the Notice of Intent hearing for 355 Highland Street, DEP 337-1435, to June 21st, at 7:30 p.m. by request of the applicant was made by Josh Feinblum; seconded by Ellen Freeman Roth. Roll call vote 5-0.

Cont. Notice of Intent: 141 Cherry Brook Rd, DEP File 337-1447; S. Hsu

Note: Alison Barlow left the meeting at 10:02 pm and did not participate in this hearing.

Kevin O' Leary, Jillson Company, provided an overview of the project and the changes to the design since the Applicant's last appearance before the Commission on 5/10/22. The project involves construction of a driveway, addition to the existing residence and new sewage disposal system. Grading and vegetation removal associated with these improvements falls within the 100-foot Buffer Zone to a Bordering Vegetated Wetland.

Mr. O' Leary indicated that a proposed stone infiltration trench at the toe of slope within the Buffer Zone was intended to pick up additional surface flow from the property and was included at the request of Richard Sweeney, Weston Stormwater Engineer.

Jamie O' Connell, Cambridge Water Department (CWD), participated in the hearing and discussed the extent of the clearing and the proposed revegetation/restoration for that area.

Ms. O' Connell requested that the clearing be minimized to the extent practicable and that the revegetation/restoration minimize turf lawn in order to protect the Interests of the Wetlands Protection Act most important to the CWD- Protection of public water supply and Protection of groundwater supply.

Joe Berman directed Mr. O Leary to revise his revegetation/restoration plan, including an invasive plant management plan for Japanese Knotweed on the site and a mowing plan for the proposed "wildlife meadow mix" seeding, in consultation with Ms. O' Connell and to return to the Commission with a more detailed plan.

A motion to continue the Notice of Intent hearing for 141 Cherry Brook Rd, DEP 337-1447 to June 7th, 2022 at 9:15 p.m. by request of the Applicant was made by Josh Feinblum; seconded by Ellen Freeman Roth. Roll call vote 4-0.

The following Administrative Matters were taken up at various points throughout the meeting:

Approval of Con Com minutes: 5/10/22

A motion to approve the 5/10/22 minutes was made by Josh Feinblum; seconded by Rees Tulloss. Roll call vote 5-0.

Request for Certificate of Compliance – 48 Black Oak Rd, DEP 337-1360

A motion to issue a Certificate of Compliance for 48 Black Oak Road, DEP 337-1360 was made by Josh Feinblum; seconded by Rees Tulloss. Roll call vote 4-0 (*Alison Barlow did not participate*).

Request for Certificate of Compliance – 660 Wellesley Street, DEP 337-1260

A motion to issue a Certificate of Compliance for 660 Wellesley Street, DEP 337-1260 was made by Ellen Freeman Roth; seconded by Josh Feinblum. Roll call vote 4-0 (*Alison Barlow did not participate*).

Request for Certificate of Compliance – 128 Rockport Rd, DEP 337-1420

A motion to issue a Certificate of Compliance for 128 Rockport Road, DEP 337-1420 was made by Rees Tulloss; seconded by Ellen Freeman Roth. Roll call vote 4-0 (*Alison Barlow did not participate*).

Approval: Rolling Lane and Hickory Road Drainage Work under DPW OOC, DEP 337-1122

A motion to approve drainage work along Hickory Road and Rolling Lane within the Right-of-Ways per the DPW General Operations and Maintenance OOC, DEP File 337-1122, Section A(6)(a), which allows for “replacing/repairing existing drainage pipes in paved or gravel areas” with notification to and approval by the Commission, was made by Josh Feinblum; seconded by Ellen Freeman Roth. Roll call vote 5-0.

Approval: 55 Ridgeway Road Replanting Plan

The Commission granted Jordan McCarron, Conservation Administrator, authority to administratively approve native plantings within close proximity to an intermittent street, consistent with that which was permitted under DEP 337-1110. Only hand work is permitted and the Applicant, Sean Rush, will contact Mr. McCarron for inspection of erosion and sedimentation controls prior to any work.