Weston Conservation Commission - Public Meeting Minutes January 24, 2017

Approved: February 28, 2017

Members Present: Laurie Bent (chair), Alison Barlow, George Bates, Joseph Berman, Cynthia

Chapra, and Rees Tulloss

Members absent: Roberta Pearle Lamb Conservation Staff: Michele Grzenda

Others Present: See attached sign-in sheet

7:00 p.m. Open Space & Rec. Plan Public Presentation; Emily Schadler; OSRP Facilitator Ms. Schadler updated the public regarding Weston's draft Open Space and Recreation plan. After a review of the public survey and overall chapters of the plan, Ms. Schadler discussed the overarching goals of the 7-year Action Plan. Ms. Julie Hyde, resident, commended Ms. Schadler and the Committee for all their hard work to produce the plan. Mr. Joe Berman asked how the action items relate to Recreational goals regarding utilization of ball fields and sports facilities. Ms. Schadler indicated that one of the plan's action items references the Recreational Field Master Plan. Ms. Laurie Bent asked where the 5 overarching goals came from and Ms. Schadler explained that they were derived from a combination of what was identified in the previous plan and the priorities of the Committee and the public. Ms. Nina Danforth asked what types of environmental challenges were identified in town. Ms. Schadler explained that issues such as climate change, invasive species, and forest pests were touched upon. She informed the public about the Climate Action tool available through UMass and stated that this tool was used to compile a portion of the Environmental Challenges section. Final comments on the draft are due by February 3, 2017. Once comments have been received, Ms. Schadler will revise the draft and send the final plan to the state for review and approval.

7:40 p.m. Discussion – 31 Holly Circle, Wagar Tajuddin (owner)

The owners discussed with the Commission their desire to expand their driveway which would impact Bank of an intermittent stream. Specifically, the owners would like to widen their driveway to help improve vehicular access into their garage. They also seek additional space in their driveway for more cars to park. The Commission indicated that Bank provides functions and values protectable under the Massachusetts Wetlands Protection Act and its implementing Regulations (WPA). The Commission explained that some Bank alteration may be permittable but that the applicant would need to hire a wetland scientist and file a detailed NOI with the Commission, accompanied by a surveyed plan demonstrating that there are no alternatives and showing how the proposed project complies with the WPA.

8:00 p.m. Notice of Intent: 126 Beaver Road; R. Campanelli, owner (not present); J. Lavoie, Jillson Co.

The Applicant has filed this Notice of Intent for the construction of a single-family home and the installation of associated infrastructure. A limited amount of site work, to include replacement septic construction, drainage installations, grading, and groundcover changes will be performed within the 200-foot Riverfront Area. The proposed Riverfront Area work constitutes a mix of new alteration, generally allowable minor activities, and/or exempt activities.

Specifically, the Applicant proposes to alter 4,760 s.f. of Riverfront Area for this project. This area of proposed work consists of 3,770 s.f. of lawn and 990 s.f. of natural vegetation (wooded). In addition to the above-referenced work, the applicant will be constructing an outfall, in riverfront area, to the infiltration basin in the backyard. A pipe will be dug by hand and the area will be restored to natural vegetation once the work is completed. The applicant has provided an extensive narrative and alternatives analysis.

Motion by George Bates to close the hearing and issue an Order of Conditions approving the project; seconded by Rees Tulloss; vote 6:0.0. Special condition: A site visit shall be scheduled between the contractor and the agent before any work associated with the Recharge Basin #2 overflow pipe installation is conducted.

8:15 p.m. Request for Minor Plan Change: 168 Beaver Road; J. Fuller

The Applicant proposes a change in the driveway footprint in relation to the construction of a single-family house. The Commission conducted a site visit and the 25-foot No Disturb Zone (NDZ) was not staked as requested at the last meeting. Mr. Lavoie indicated that it will be staked by 2/7. The commission will conduct another site visit. Motion by George Bates to continue the discussion until 7:30 p.m. on February 7; seconded by Joseph Berman; 6:0:0.

8:30 p.m. _ Cont. Notice of Intent – Eversource Maintenance Road The Applicant has requested a continuance. Motion by Joseph Berman to continue the hearing until

The Applicant has requested a continuance. Motion by Joseph Berman to continue the hearing until February 7, 2017 at 8:10 p.m.; seconded by Rees Tulloss; vote 6:0:0.

8:30 p.m. Cont. Abbreviated Notice of Resource Area Delineation (ANRAD) – 104 Boston Post Road; 104 Stony Brook, LLC.; Tim Williams; Allen And Major, Chip Nylan, attorney

This was a continued hearing on an ANRAD submitted by 104 Stony Brook, LLC asking the WCC to confirm the wetland resource area boundaries on or near the site as well as to make a determination whether the site qualifies as a Historic Mill Complex under the Rivers Protection Act, Wetlands Protection Act (WPA), and regulations promulgated under these Acts.

Tim Williams of Allen & Major Associates, presented on behalf of the Applicant. Mr. Williams reviewed the additional information submitted by the Applicant the week prior to the hearing including a package prepared by Allen & Major Associates Inc., dated 1/16/17. Mr. Williams asserted that the former structures which had existed on 104 Boston Post Road were part of a historic mill complex as defined in the WPA. The Applicant summarized an excerpt regarding the existence of a mill on Stony Brook from Daniel Lamson's "History of Weston, 1630-1890," published in 1913. Mr. Williams showed a plan prepared by Allen & Major that combined the ANRAD plan underlaid with the 1901 plan entitled "Plan of Old County Road at Stony Brook, Weston." (Applicant's EX-1.) Mr. Williams indicated that the location of the former dwellings "line up pretty decently." Mr. Williams also stated that the three dwellings on the site "Can't be precisely located."

Mr. Williams reviewed the submitted plan (Applicant's EX-1) which shows a small portion of the former Abraham Bigelow House footprint situated within 200 feet of Stony Brook. Copies of Massachusetts Historical Commission Inventory data forms submitted to the Weston Conservation Commission (WCC) by the Applicant included information about the Sibley House and the Abraham Bigelow House. According to those data forms, the Abraham Bigelow House was built in 1735 and was destroyed by fire shortly after 1962, in 1963 or 1964.

Discussion ensued regarding the boulder retaining wall that can be seen where Stony Brook discharges into Stony Brook Reservoir. Mr. Williams stated that the boulder retaining wall was associated with the former mill's sluiceway. The documentation submitted by the Applicant showed that the mill was closed around 1885, immediately after the State Legislature granted the land to the City of Cambridge to create a drinking water reservoir.

The Applicant further stated that Mass Highway relocated the channel of Stony Brook in the 1960's to the location where it is today as part of the creation of Route 128. In light of the information that the Stony Brook Channel was relocated by Mass Highway in the 1960's, the Agent asked if the Applicant had any

data showing that the stone retaining wall was associated with the mills and that the wall was not constructed by Mass Highway during the channel relocation. Mr. Williams stated "I'm pretty sure those retaining walls were not constructed by Mass Highway." No further information about the stone retaining wall was provided. When asked by Mr. Berman whether any of the buildings existed in 1996, the Applicant indicated that none of the buildings existed in 1996; the only building remnant is a stone foundation from one of the mill buildings located close to the reservoir and not on the Applicant's property.

Discussion ensued regarding the definition of the term "Historic Mill Complex" in the statute and regulations. Mr. Williams claimed that the mill complex included 11 or 12 buildings.

It was Ms. Bent's opinion that the Applicant had submitted sufficient evidence to confirm that the Abraham Bigelow House was still in existence until the early 60's.

Richard Nylan, attorney for the applicant, summarized the packet his firm had submitted to the WCC on January 17, 2017. Mr. Nylan stated that the Rivers Protection Act Statute, enacted in 1996, included language exempting land now or formerly used in an historic mill complex. As authority for the Applicant's legal argument, Mr. Nylan cited a Recommended Final Decision known as "In the Matter of James M. Knott, Sr., 2002" (Knott, 2002 WL 541954) submitted to the Commissioner of the Department of Environmental Protection (DEP). In this case, the Administrative Law Judge (ALJ) went into a detailed discussion separating the statutory exemption and the regulatory exemption applicable to a "Historic Mill Complex." The ALJ treated the statute and the regulation as two separate exemptions. Mr. Nylan summarized the ALJ's position in Knott as follows: the Rivers Protection Act statute regulates land, whereas the regulations promulgated under the Rivers Protection Act regulate use. The Applicant believes one cannot harmonize the statute and regulations as they are different and inconsistent.

Mr. Berman asked the applicant to explain the inconsistencies between the statute and the regulations. Mr. Nylon explained that the statutory exemption is very simple: Riverfront Area shall not include land now or formerly an historic mill complex.

The Commission observed that the Knott case was settled out of court and was therefore of limited precedential value. Further, the Commissioner of DEP, in a subsequent case, In re Northpoint Realty Dev. Corp. d/b/a Northpoint Realty, "rejected the Recommended Final Decision [in Knott] as moot, but expressing the view that the regulatory exemption codifies the statutory one, which is to be narrowly construed under the general rules of statutory construction." (In re Northpoint Realty Dev. Corp. d/b/a Northpoint Realty, No. 90-751, 2003 WL 1875443, at 4.)

Mr. Nylan stated his view that the applicant had made the case that the land at 104 Boston Post Road meets the statutory exemption because the property is considered land now or formerly used as an historic mill complex. Mr. Nylan asked that the WCC apply the language of the statute and not the regulation and make a determination that there is no Riverfront Area at 104 Boston Post Road.

Mr. Berman opined that if every rock retaining wall which existed in 1996 allowed an Applicant to apply for this broad exemption, the exemption would swallow the statute. Mr. Berman expressed the opinion that the exemptions to the Rivers Protection Act should be narrowly construed.

Mr. Williams stated that approximately 17,000 square feet of property is within the Riverfront Area. Approximately 1,700 square feet of the area within 200-feet of Stony Brook is previously developed. However, the Applicant is not asking the WCC to determine the applicability of redevelopment standards under 310 CMR 10.58(5) since the Applicant believes that the Historic Mill Complex exemption applies.

In addition, the Applicant requested that the commission opine on wetland delineation and on the accuracy of the BVW flags and Bank Flags.

Mr. David Calhoun spoke on behalf of the Applicant and indicated that the Applicant had spoken with the Weston Historical Commission about the project. He stated that the only issue the Historical Commission raised was a request that the Sibley House remain on the property.

Ms. Bent opened the hearing to public comments. Mr. Sean McHenry from the City of Cambridge legal department submitted a letter to the WCC. He stated that Cambridge is a direct abutter. Mr. McHenry urged the Commission to disregard the Applicant's assertion that the Commission should not apply the WPA regulations. It is Cambridge's opinion that the intent of the regulation was to exempt only the footprint of associated mill buildings that were still in existence as of 1996. The applicant's broad interpretation of the statute and regulations would potentially endanger the City's water supply. It was Mr. McHenry's opinion that the regulation codifies the statutory exemption.

Ms. Jamie O'Connell, City of Cambridge, opined that in order for any portion of the property to qualify for the historic mill complex as defined in 310 CMR 10.04 the sluiceway as well as the buildings in question must have been present as of 1996.

Ms. Beth Parker, resident, asked the applicant why they wish to have this exemption applied. The Applicant stated that the exemption would afford the developer to build a financially viable building and to construct a fire access around the building. Ms. Phyllis Halpern, resident and Co-Chair of the Historical Commission, took exception to the comments that the applicant made regarding the Historical Commission. The Historical Commission did not opine on any matters except for the discussion as to the potential relocation of the Sibley House.

Motion by Ms. Bent to close the hearing; seconded by Ms. Cynthia Chapra; vote 6:0:0. The Commission will begin deliberations on February 7, 2017 at 8:30 p.m.

10:00 p.m. Admin. Matters –

- 1. Approval of 1/10/17 Con Com minutes; motion by Mr. George Bates to approve as amended; seconded by Ms. Chapra; vote 6:0:0.
- 2. Mr. Bates filed a certification in accordance with Chapter 39 section 23D that he had examined all the evidence and testimony received at the 1/10/17 public hearing related to 104 Boston Post Road, which he had missed.
- 3. Signing of bills and documents
 - Partial Cert. of Compliance 314 Glen Road
 - Cert. of Compliance 33 Colchester Road
 - Extension of OOC: 845 Boston Post Road
- 4. 41 Ripley Lane and First Parish Church Proposal The Agent and Mr. Bates summarized the agreement Mr. Harrity (Weston Board of Selectmen) is working on with the First Parish Church (FPC). Motion by Mr. Berman to approve in principal the agreement between the WCC, the Town of Weston, and FPC to (1) sell the parcel at 41 Ripley Lane; (2) create a trail easement behind 343 Boston Post Road (FPC Property), to be paid for by Weston Forest and Trail Association, (3) FPC and WCC will split the proceeds of the sale; and (4) that the WCC proceeds will be placed in a Conservation Fund under the Care and Control of the WCC. The motion was seconded by George Bates; vote 6:0:0.
- 5. Trail Support for Newton Mr. Ted Chapman, Newton Resident, requested the WCC vote to support in principle, a trails grant that the City of Newton is applying for. Specifically, the trail's project would help fulfill the Mass DCR's long-term plan to extend of the Charles River Trail,

which currently ends in Lyons Park in Auburndale, to reach the Riverside MBTA station and a 1-mile rail corridor through Newton Lower Falls to Wellesley Hills to meet the Blue Heron trail. This 1600 foot trail segment to be studied begins in Newton Lower Falls on a spur of Clearwater St., transverses a gas line right of way on land owned by the City of Newton, crosses two bridges on an abandoned railbed that transverses both I-95/128 and the connector road to reach the Riverside MBTA station. Pedestrian access across these bridges would provide direct access to the transportation hub at Riverside station, a regional path system along one of the most beautiful sections of the Charles River, a portion of which exists in Weston, MA, and link Newton's dense minority-occupied neighborhoods to the regional park system, increasing environmental justice. Motion by Mr. Rees Tulloss to support Newton's grant application; seconded by Joseph Berman; vote 6:0:0.

6. Case Estates Parcel 6 Land Protection Discussions. Motion by Mr. Bates to include parcel 6 in the Commission's Case Estate's land protection article at town meeting; seconded by Mr. Berman; vote 6:0:0

Meeting adjourned at 10:34 p.m.