

Weston Conservation Commission - Public Meeting Minutes
February 4, 2020
Approved: February 25, 2020

Members Present: Alison Barlow (arrived at 7:50 p.m.), Joseph Berman (8:05), Cynthia Chapra, Josh Feinblum, Rebecca Loveys (arrived at 7:30 pm), and Rees Tulloss
Members Absent: Ellen Freeman Roth
Conservation Staff: Michele Grzenda
Others Present: See Sign-in Sheet

7:30 p.m. Admin. Matters (these matters may happen any time during the evening)

1. Land Management Updates –
 - o Wellington Farm Conservation Area – (1) The agent is working with Town Counsel to draft a CR which WFTA will hold; (2) Field Edge Clearing will commence next month; (3) Weston Conservation Commission (WCC) will discuss proposed uses of the property at the next meeting
 - o Kiosk and trailhead sign Installation ongoing; WCC member Rees Tullos has installed new Kiosks at the following trailheads: Dickson Ridging Ring, Gun Club Lane, and College Pond.
 - o A presentation to discuss the draft Ecological Management Plan for the Case Estates will occur on March 17th.
2. The Commission accepted a \$100 donation from Anna Melone Pollock for the Melone Homestead.
3. Dumping issues at the WCC trailhead at end of Old Coach Road – Conservation Department staff (CDS) documented dumping of landscaping debris several times in 2019. Letters were sent to neighbors asking them to look out for and report vehicles that may be dumping and to remind their landscaper that dumping is prohibited. In September 2019 – CDS posted temporary “Area under Surveillance/Leave No Trace/No Dumping of Landscaping Debris” sign. However more leaf piles and newly dumped plants were observed in October 2019. WCC members and CDS visited on 2/4/20 and noted newly dumped soil/fill which appears to be similar in type to exposed dirt WCC observed 300 feet west where it appears the Town installed/replaced a fire hydrant. WCC suggested the CDS (1) meet with DPW to review the recently placed dirt and if it appears the dirt came from a town project, ask DPW to remove the dirt; (2) ask DPW if they have suggestions to reduce dumping at the end of town streets; (3) see if DPW can assist the WCC is spreading out the dumping pile so that it doesn’t look inviting to dump there; (4) See if DPW could spread some roadway gravel at the end of the road where a muddy puddle is forming; (5) review the recent roadway patch job and review the best management practices for protecting nearby catch basins when roadwork is being conducted. Other action items: CDS will re-visit the area in the spring and determine whether dumping is still a problem.

7:40 p.m. Request for Determination of Applicability – 6 Bass Pond Lane; Xiaowen Han (owner)

The owner proposes to expand an existing deck by 2-feet in their backyard. The work will occur within 25-feet of a pond. Four footings will be installed approximately 22-feet from the Pond Edge. Currently lawn exists within 3-5 feet from the pond edge. For mitigation, the owners will plant at 8 native shrubs along pond edge. Some Commission members and WCC staff conducted a site visit, and noted that most of the existing shrubs were native but that there were a few invasive buckthorn. The WCC recommended that the owner remove the invasive buckthorn shrubs by hand pulling. Motion by Josh Feinblum to issue a Negative Determination of Applicability; seconded by Cynthia Chapra; vote 5:0:0. The Following conditions apply: (1) prior to the issuance of a building permit, the contractor shall inform the Conservation Agent of the mythology used to install the footings. Specifically, no heavy equipment shall be bought into the backyard. Mitigation plantings shall be installed by hand, by May 30, 2020.

8:00 p.m. Request for Determination of Applicability – 49 Bemis Road; M. Pastrone (owner)

The Owner proposes to install a pole mounted solar array in the rear yard located within the 100-foot buffer zone and 200-foot riverfront area. The work proposed within the 100-foot buffer zone includes bolting up to 4 poles to

a rock outcrop and trenching electrical wiring from the solar array to the house (approx. 120 feet). Trenching will be achieved by use of a small backhoe and all components will be hand carried and assembled on-site. Additionally, the applicant proposes tree topping of 6 trees located within the 25-foot No Disturbance Zone in order to improve solar exposure to the solar array. The trees vary from 6 to 18-inch diameter. It was the WCC's opinion that the trees may be cut flush to the ground but that no ground disturbance shall occur. The WCC asks that the owner comply with the WCC's tree removal policy by planting 2 native shrubs in the approximate area where the trees are being topped. Motion by Rees Tulloss to issue a Negative Determination of Applicability; seconded by Cynthia Chapra; vote 5:0:0. Special Conditions include: (1) The utility trench shall be dug using the least invasive means possible; (2) After the utilities are installed, the trench shall be backfilled and the land stabilized with natural pine needles and/or natural leaf mulch; (3) By May 30, 2020, the owner shall plant two native shrubs near the edge of the wetland, per the WCC's tree removal policy (if the tree work hasn't commenced by then, the owner may wait until October 15, 2020 to plant).

8:15 p.m. Deliberation and Discussion of Findings of Fact and Special Conditions - 95 Newton Street; Thanya Rajkopal (337-1373)

WCC Member, Alison Barlow, submitted a Certification Pursuant to G.L.c.39 Section 23D of Participation in a Session of an Adjudicatory Hearing Where the Undersigned Member Missed a Single Hearing Session (1/21/20): Dated February 4, 2020.

The WCC began deliberations on the Notice of Intent (NOI) filed by the landowner of 95 Newton Street, Thanya Rajkopal, who has requested a modification to the location of the buffer zone restoration areas which were required as part of an expired Order of Conditions (OOC) issued in 2015. The WCC found that the Applicant proposes work in the following Areas Subject to Protection and Regulation under 310 CMR 10.02(1): Bordering Vegetated Wetlands (BVW) and under 310 CMR 10.02(2)(b): Buffer Zone.

The WCC found that the "Restoration Plan", prepared by Stamski and McNary, is lacking sufficient details. The Proposed Restoration Area" Inset as shown and colored on Attachment 1, shows a portion of the required restoration area (per the 2015 OOC) behind the house (orange) which the Applicant wishes to keep as lawn. This proposal would allow the applicant to maintain a strip of lawn which varies slightly in width, but is at least 12-feet from the foundation. The WCC has agreed to an increase of lawn. However, in order to protect the nearby wetland resource area, and meet the desired intent of the former OOC, the WCC requires approximately 120 s.f. of this area to the south of the barn foundation to still be restored. This 120 s.f. area, as highlighted in Yellow on Attachment 1 and 2, was previously vegetated before 2015, was required to be restored in the 2015 OOC. By restoring this area with natural vegetation, the Applicant will still be allowed to maintain a strip of lawn within 12-feet of the barn foundation. It is the WCC's opinion that this is an acceptable distance for the Applicant to maintain "a safe buffer between vegetation and dwelling" (A desired outcome of the Applicant). Therefore, rather than approving the reduction of 635 square feet of restoration area, the WCC only authorizes the reduction of 515 s.f. of restored area.

The WCC finds that the Planting Plan is insufficient for proper native plant restoration of the Orange Hatched Portion of Area 1 shown on Attachment 2. The WCC requires an additional 8 native shrubs to be planted in the Orange Hatched Portion of Area 1. (for a total of 17 native shrubs in that area). The WCC requires that 20 native perennials and/or ground cover to be planted within the Orange Hatched Portion of Area 1 (for a total of 20 native perennial/groundcover in that area). The WCC requires that all selected native plants be identified as "Native" in Middlesex County in the book entitled "The Vascular Plants of Massachusetts: A County Checklist" and be appropriate for planting in location identified (buffer zone and wetland). The Commission requires that a native tree be added to restoration area between wetland flags 10 and 11.

In order to protect the interests of the Wetlands Protection Act and the requirements of the previous OOC, the Commission finds that Applicant shall comply with the Plant Management Plan, submitted on January 17, 2020 with a number of changes as described in the Findings of Fact.

Discussion ensued. Motion by Josh Feinblum to approve the restoration modification, require said restoration occur being in the spring of 2020, and that the restoration shall comply with the Findings of fact, General Conditions and special conditions detailed in the WCCs OOC. The motion was seconded by Cynthia Chapra; vote 5:0:0.

8:10 p.m. Request for Certificate of Compliance: 95 Newton Street – 337-1242

On January 7, 20220, the WCC received a Request for Certificate of Compliance for DEP File# 337-1242. The work associated with this OOC involved the construction of a Title V compliant septic system and required restoration of previous and unpermitted alteration of buffer zone and wetland resource areas. In reviewing the septic system installation, the proposed septic tanks were to be installed at least 25-feet from the wetland edge. The as-built plan shows that the original 4,000 tight tank, located 20 feet from the wetland edge was left in place and converted into a compartment septic tank. Since the tight tank was already existing in the 25 NDZ and the owner simply converted it to Septic tank component, this change does not appear to adversely impact the adjacent wetland resource area.

In reviewing the required wetland resource area and buffer zone restoration work, the Applicant has failed to comply with many of the required restoration conditions. Over 1,000 s.f. of the area to be restored has been maintained as lawn. It appears that minimal (if any) invasive species control occurred with the area which were required to be restored. Many of the required plantings have died. Condition #38 stated: “Following two years of monitoring, the Restoration Specialist shall certify to the Commission that the area has been restored with at least 75% coverage of native vegetation and in compliance with the approved plan(s), documents, and this OOC. A certificate of compliance will not be issued until this condition has been met (some areas have not been restored, areas have not achieved 75% coverage of native vegetation, and is not in compliance with the approved plan(s), documents, and this OOC.).

Rather than complying with the restoration requirements of the OOC, the Applicant would like to modify the location of the restoration area and the invasive species control program. Therefore, the owner has filed a new Notice of Intent. The new NOI proposes to modify the location of the restoration area in order to maintain the area directly behind the dwelling as lawn, and to restore an area of equal 1:1 ratio size (635 s.f.) further away from the dwelling. Restoration includes native plantings & removal of invasive species.

On February 4, 2020, the WCC has agreed to a modification in the areas which were required to be restored in 337-1242. This new OOC 377-1369 details out a number of new required restoration actions. Therefore, the Commission will issue a full Certificate of Compliance on 337-1242 contingent upon:

1. the appeal period on the WCC’s version of the OOC337-1373 ending
2. the WCC’s version of OOC 337-1373 not being appealed
3. the WCC’s version of OOC 337-1373 shall be filed at the Registry of Deeds.
4. Documentation of said recording shall be submitted to the WCC

Motion by Cynthia Chapra that once items 1-4 above are completed, the WCC will issue the Certification of Compliance on 337-1242. The motion was seconded by Josh Feinblum; vote 5:0:0.

8:47 p.m. Deliberation and Discussion of Findings of Fact and Special Conditions - Notice of Intent: 0, 751 and 761 Boston Post Road, Weston BPR LLC (337-1369)

WCC Member, Alison Barlow, submitted a Certification Pursuant to G.L.c.39 Section 23D of Participation in a Session of an Adjudicatory Hearing Where the Undersigned Member Missed a Single Hearing Session (1/21/20): Dated February 4, 2020.

The WCC began deliberations on the Notice of Intent (NOI) filed by Weston BPR LLC.

The WCC found that work will be conducted in Bordering Land Subject to Flooding (BLSF) and that the Applicant has met the performance standards for work in BLSF. Compensatory Flood Storage will be provided for all flood storage volume that will be lost. Such compensatory volume shall have an unrestricted hydraulic

connection to the same waterway or water body. The WCC found that work will be conducted in BVW. The WCC allows the temporary alteration (& required restoration) of 127 s.f. of BVW in order to create functional CFS (CFS).

Work will be conducted in the Buffer Zone. The WCC allows the alteration of 2.8 acres of buffer zone (17% of the buffer zone located on the property). The WCC requires the Applicant to restore the 1,790 square feet of buffer zone downgradient of the retaining wall (as shown on the approved plan).

The Applicant has met the performance standards for work in Buffer Zone.

Joseph Berman, Chair, extensively reviewed a draft special condition. Discussion ensued regarding WCC's interest to see the undeveloped portions of the property be permanently protected. The Applicant has requested that WFTA accept a land donation and is awaiting their response. The WCC added a special condition that read: prior to the issuance of a Certificate of Compliance, A statement from the Applicant shall be submitted summarizing the status of the land protection efforts on the undeveloped portions of the property. The statement shall demonstrate that the Applicant has made a good faith effort to permanently protect the undeveloped portions.

The Chair read a statement into the record which has been attached to these minutes. Motion Rees Tulloss to approve the project with the findings and special conditions discussed and issue an OOC; seconded by Josh Feinblum; vote 5:0:0.

9:30 p.m. Signing of bills and documents

- OOC – 95 Newton Street (337-1373)
- OOC – Modera Weston (337-1369)
- Determination of Applicability: 6 Bass Pond Lane
- Determination of Applicability: 49 Bemis

9:35 p.m. Other Admin. Matters

- 10 Baldwin Circle – The homeowner would like to remove (and pay for) a large and dead pine tree that is on Conservation Land. The contractor, Bartlett Tree Experts, will oversee all work. All equipment will remain on the driveway, and a +/- 20-foot stub will remain. The fallen tree will be left on Conservation Land. The Commission approved this request.
- The WCS have been working with the Animal Control Office to revise the Dog Regulations Bylaw (Article XX) with the hopes of bringing the amendments to May Town Meeting. Once revisions are finalized, the WCS will bring the matter to a future WCC meeting for discussion. Rees Tulloss and Josh Feinblum suggested the ACO contact the dog walking APP WAGS and alert them to the Commercial Dog Walking Permit requirements of Weston.

Next Con Com Meeting will be Feb. 25, 2020.

Statement Read by Joseph Berman, Chair, during the 751 Boston Post Road NOI Hearing

I am going to take a moment of personal privilege as the chair of this commission to make a few remarks on this application. At the conclusion of my remarks, which I will ask Michele to append to the minutes so that they become an official part of the record, I will call for a vote.

I will vote yes on this application with the conditions we have discussed or will be discussing because I believe that my oath as a commissioner requires me to do so. I am obligated to comply with the commonwealth's Wetlands Protection Act. Because this application, as conditioned, complies with the technical requirements of the act, I must vote yes. However, I do so with reluctance.

As an initial matter, chapter 40B of our state laws is a deeply flawed statute. Ostensibly intended to create more affordable housing, its primary beneficiaries are not people in need of housing, but real estate developers. We all support affordable housing. I certainly do. I recognize that there is a housing crisis in Massachusetts. But chapter 40B is the wrong answer. It's a sledgehammer to a problem that calls for the precision of a scalpel. Under the guise of creating more affordable housing, the statute empowers developers to design projects that are totally inappropriate to a locale. This project is a perfect example. While barely meeting the minimum threshold for affordable housing units, the developer will construct a huge luxury development, complete with a pool and high-end amenities. A few token affordable units are simply the price of building a luxury complex. Worse, chapter 40B is premised on an antiquated model where we look at housing and transportation on a town by town basis rather than a regional approach. At a time when smart growth is gaining momentum in land use planning, the 40B laws allow for land alteration that contradict this. The project is not located near public transportation, and it's not even close to our town center. It will exacerbate a car dependent culture. It will add congestion and pollution. And I am not saying this as a NIMBY. The project is not in my backyard. My family and I rarely travel on this part of Route 20. It will have almost no impact on me. But at a time when we face an existential crisis caused by global warming, it is reckless, to the point of being almost criminal, to build this type of development in this location. Chapter 40B, whose only true beneficiaries appear to be real estate developers, needs to be substantially amended or repealed.

But my primary concern is with the land itself. Our jurisdiction under the Wetlands Protection Act is extremely limited. Because the project complies with the performance standards for work in jurisdictional areas, we must allow it to proceed. We cannot halt or limit a project where the destruction occurs outside the wetlands. The statute needs to recognize that such widespread destruction WILL have an impact. This project will require the obliteration of hundreds of trees, perhaps over 1000, this at a time when we all recognize the importance of trees to fighting climate change. Hills will be bulldozed. Hiking trails will be blocked. Views will be impaired. Wildlife will be impacted. Who knows how many tons of carbon will be spewed into the air during construction. Make no mistake, the land will be irrevocably altered and not for the better. I can only imagine what our late colleague, George Bates, who spent decades and so much time and effort on preserving the woods of Weston, would think about this destruction. But the project is on private land and it is the prerogative of the sellers, who have held the land in their family for generations, to do with it what they want. And it is the prerogative of the developers to maximize their profits.

So here we are. Everyone looks out for themselves. Unfortunately, the state legislature gave commissions like ours few tools to protect the common good, the common WEALTH. It is time to strengthen the Wetlands Protection Act and the regulations. Among other problems, we need to recognize that the destruction of so many trees will have an impact on the wetlands and on the environment and to build that recognition into the law. But until the statute and regulations are amended, we are locked into approving environmental desecration that benefits no one other than the owner and developer.

So I will vote yes, as I believe I am required by the statute to do. But it is a sad day for Weston and more importantly a sad day for the environment.