

Weston Conservation Commission - Public Meeting Minutes

Sept 22, 2020

Approved: 10/20/20

Members Participating Joseph Berman (Chair), Alison Barlow (arrived at 7:50pm), Cynthia Chapra, Josh Feinblum, Rebecca Loveys Rees Tulloss, Ellen Freeman Roth
Conservation Staff: Michele Grzenda

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, G.L. c. 30A, §18, and the Governor's March 15, 2020 Order concerning imposition on strict limitations on the number of people that may gather in one place, this Conservation Commission meeting was conducted via remote participation using Zoom.com. The Town provided access to such meeting via a link to call in. No in-person attendance of members of the public was permitted, but every effort was made to ensure that the public could adequately access the proceedings.

7:30 p.m. Opportunity for Public Comment

Jim Polando – Merriam Street – requested information regarding the previous permits related to 518 South Ave. The Chair suggested Mr. Polando bring this up during the hearing for this project later in the evening.

7:35p.m. 676 Wellesley Street; William and Nancy McFarland (owners) M. Sullivan, Sullivan Connors Engineering

The Applicant has filed this Notice of Intent for work associated with the installation of a replacement septic system at 676 Wellesley Street. A portion of the work lies within the 100-foot buffer zone to wetlands and Riverfront Area. The existing house is serviced by an on-site septic system consisting of a cesspool located to the rear of the house. The cesspool is approximately 30 feet from the edge of wetland and has been determined to be in failure. The proposed project consists of installation of a new septic system and leach field located in the front of the house. The new leach field has been set as far as practical from the wetland resources, and has provided a minimum 50-foot separation. The applicant has indicated that alternative septic system locations were reviewed, and the proposed location was selected based upon the in-field soil testing. Areas to the north of the house were not suitable due to the presence of shallow ledge. The overall design provides a significant improvement over the existing conditions by replacing a failed cesspool that was 30 feet of the wetland with a new compliant system with a leach field at 50 feet from the wetland along with greater separation to the groundwater table. In addition, the leaching field will be located within Riverfront area but meets the exemption in 10.58(6)(c)

At the site visit, the WCC observed a large pile of grass clippings dumped along the wetland edge and asked that it be removed offsite or relocated at least 25feet from the wetland edge. The commission requested that additional erosion controls encircle the area around the cesspool prior to work. Motion by Ellen Freeman Roth to close the hearing an issue an Order of Conditions approving the project; seconded by Cynthia Chapra; roll call vote: each member responded Aye.

7:45 p.m. Request for Determination of Applicability; 176 North Avenue; B. Asis & A. LeCompte

The Applicant filed this Request for Determination of Applicability for work associated with the installation of a replacement septic system within the 100-foot buffer zone of a wetland resource area at 176 North Avenue. The property slopes downward from the street towards the back of the property. An existing drain that runs along the east property line discharges in the backyard. The applicant has classified the area where the pipe daylights as being an intermittent stream, the resource area identified is Bank. This stream eventually discharges to the Cambridge water supply tributary.

The proposed work includes abandoning the existing septic system and replacing it with a new septic tank and Presby EnviroSeptic soil absorption system. The existing system will be pumped and then excavated or crushed in place. The final grades will be the same as existing. Approximately 300 SF of this work will encroach into the 100-foot buffer zone. All work is proposed within lawn area and any disturbed lawn areas shall be stabilized with loam and seed following construction.

Sedimentation and erosion control measures proposed include placement of silt sacs in catch basins located near the driveway entrance and installation of staked 9" diameter straw wattle along the downstream side of the proposed work to prevent water from eroding soils toward the rear of the lot and the intermittent stream. The straw wattle line also delineates the limit of work. Motion by Rees Tulloss to issue a Negative #3 Determination of Applicability; seconded by Cynthia Chapra; roll call vote: 6:0:1.

8:07 p.m. Request for Determination of Applicability; 21 Westerly, V. Deswal (owner); D. Burke (Wetland Scientist)

The Applicant filed this Request for Determination of Applicability for lawn expansion and fence installation within the 100-foot buffer zone of wetland resource areas at 21 Westerly Rd. in Weston, MA. Specifically, the Applicant has requested a determination to confirm whether the proposed work is subject to the WPA. The Commission issued a Notice of Violation on 7-23-20 for unpermitted cutting of vegetation in what was presumed to be a wetland since the Maps Online and a 2006 OOC showed the property being surrounded on 3 sides by wetlands. The WCC informed the owner if he wished to continue, he should hire a wetland scientist and file an application to confirm wetland boundaries. David Burke, the Applicant's wetland scientist, analyzed the site in August 2020. The extent of hydric soils and a small channel within the hydric soil's boundary aided in developing the wetlands delineation shown on the survey plan prepared by Meridian Associates dated 8-28-20. This wetland area is labeled with wetland flags # WF1 thru WF10.

The Applicant proposes to convert natural area to lawn within a portion of the 100-foot buffer zone. The area amounts to approximately 3,250 s.f. and is at least 50-feet from the wetland edge. The Applicant also proposes to install a six-foot-tall fence as shown on the plan. The fence will be installed at least 25-feet from the wetland edge. Post holes will be drilled by steel auger attached to a Dingo or track-style bobcat. Any excess material will be removed from the buffer zone. The applicant requested the removal of 3 trees within the buffer zone as reviewed during a site visit on 9-22-20. No construction or major grading is proposed. No activity is proposed within the 25' No Disturb Zone. Sedimentation and erosion control barriers in the form of 12" diameter straw wattle is proposed. These will be placed just outside the 25-foot NDZ just beyond the proposed fence installation. Motion by Cynthia Chapra to issue a Negative 3 Determination of Applicability; seconded by Rees Tulloss; roll call vote: each member responded Aye. This determination nullifies the notice of violation issued in July 2020.

8:23 p.m. Cont. Notice of Intent: 71 Concord Road; A. Mei

The Applicant has requested a continuance. Motion Ellen Freeman Roth to continue to October 6, 2020 at 8:10 p.m.; seconded by Cynthia Chapra; Roll Call Vote taken: unanimous.

8:25 p.m. Wetland Filing Application Opinion: 250 Boston Post Road By-Pass

The owner proposes to install a gate in the buffer zone. The work will occur approximately 50 feet from the wetland edge. The Commission opined that an RDA would be appropriate.

8:28 p.m. Approval 9/08/20 Con Com minutes

Motion by Josh Feinblum to approve the 9/08/20 minutes; seconded Ellen Freeman Roth; roll call vote: each member responded Aye.

8:30 p.m. - Land Management – the Agent updated the commission on the following topics

- Conservation Commission Budget Passed at Town Meeting and this included the new line item to begin working on fire road improvements within the Commission's trail network
- Land Maintenance RFQ issued; responses due October 13th.
- Case Estates Ecological Management Plan meeting occurring on October 27th
- Boardwalk improvement projects underway at College Pond Conservation Area and behind Town Hall
- Agent provided a Legacy Trail Update

8:30 p.m. Tree Removal Request: 98 Pine Street

The Owner has requested permission to remove a total of thirteen (13) trees from this parcel for a variety of reasons including safety issues, poor tree health and proximity to the upcoming construction of a house addition. Ten (10) of the trees to be removed are located within a resource area (land subject to flooding). Five (5) of these 10 trees are also located within the 25-foot No Disturbance Zone (NDZ). There are three additional trees that the applicant proposes to remove in the outer Riparian Zone, closer to the front of the lot. The applicant proposes to grind only two (2) of the thirteen (13) tree stumps. The stump for tree #4 is located outside of the NDZ and flood zone and required to be removed due to its close proximity to the proposed addition construction. Mitigation (replanting) is required. Motion by Rees Tulloss to administrability approve the submitted tree removal request; seconded by Cynthia Chapra; roll call vote: each member responded Aye.

8:40 p.m. Cont. Notice of Intent: 0, 518, and 540 South Ave; Hanover R.S. Limited Partnership

This was a continued public hearing on the Notice of Intent for the construction of a 5-story, multi-family residential building, which will include a courtyard, parking garage, and a separate on-site sanitary wastewater treatment system. Jonathan Buchman (Banner Construction) and Nate Cheal (Tetra-Tech), opened the presentation by summarizing the key points that came out of the technical discussion b/w the agent and Mr. Garner on August 26th and Mr. Garner's comment letter on September 18th. In addition, the Applicant's team submitted a letter on September 11th addressing comments from Mr. Horsley and the Conservation Commission. As a result of some of the Commission's concerns, the Applicant has reduced the amount of proposed activity occurring in the NDZ as follows: (1) the proposed emergency access road as far west as possible. As a result, there is a 286 s.f. reduction in NDZ work near wetland flag WF15-17A; and an additional 78 s.f. of reduction of work near WF# 13-11; (2) reduction of NDZ work associated with the level spreader work = 455 s.f. (all work associated with the level spreader has been moved out of the NDZ). The Applicant has also revised the Snow Storage Plan to relocate all snow storage outside of the buffer zone and away from drainage inlets.

Phasing and erosion controls were discussed which includes (1) installing of construction fence; installation of compost filter tube; installation of construction exit; then the commencement of earthwork (tree removal); stockpile zones would be identified. As construction begins, concrete washout areas and drain inlet protections would be installed. Since the project disturbs over 1-acre of land a National Pollution Discharge Elimination System (NPDES) general construction permit will be required prior to construction. The NPDES permit will identify construction period erosion controls, inspection requirements, and inspection logs.

In Mr. Garner's comment letter, he opined that the stormwater management system complies with MA Stormwater Standards. However, Mr. Garner raised concerns over the possible impacts to the wetland as a result of a leaching field being 50-feet from the wetland edge. The applicant objects to the Commission's claim that they have jurisdiction over their 25-foot No Disturb Zone (NDZ). It is the Applicant's opinion that the NDZ discussion should occur at the ZBA hearing since this is a 40B project. Notwithstanding that, the applicant has tried to minimize impacts in the NDZ.

The fire department submitted a letter indicating that the width of the access road should be 16-foot wide. The Fire Dept. are open to surface options. The applicants' team would prefer one surface (porous pavement). Joe Berman, Chair, expressed concern over a 16-foot wide access so close to the wetlands. It's the applicant's position that DEP will allow the installation of pavement to the wetland edge but that they are trying to minimize work while keeping the 16-foot wide access road in the project.

Another objection to Mr. Garner's memo is that it was the applicant's opinion that the proposed wastewater disposal location 50-feet from the wetland edge complies with WPA and that it's the Commission's responsibility to overcome that presumption. Mr. Garner raised concerns about the potential impacts of the wastewater discharge on that wetland. It was Mr. Garner's opinion that an increase in water volume may impact the wetlands and the chemistry of the water may be altered as a result of the wastewater treatment plant. It is the applicant's opinion that the WCC's jurisdiction does not include assessing potential impacts from the effluent discharge that leaves the leaching field, it is under the jurisdiction of the DEP Groundwater Discharge Permit.

Vern Kakoza prepared the groundwater discharge permit application. Mr. Cheal showed a graph indicated the groundwater elevation, the groundwater mound as a result of the increase wastewater, a 10-year storm and a seasonal high ground water.

The applicant reminded that the WCC approved the wastewater treatment systems associated with 751 BPR and Rivers School in the past. The Chair indicated that each project is unique.

Mr. Garner, the Commission's peer review consultant summarized his peer review. The two main issues that remain are as follows:

- (1) The fire chief consented to a reduction from 16-feet to 14-feet in the first 280 linear feet of emergency access road to reduce impacts in close proximity to the wetland. reduction of 16-feet to 14-feet for the first 280 feet.
- (2) Mr. Garner opined that there is no attempt to offer information that offers info on the potential effect on the wetland itself – both flora and fauna; no matter how clean this wastewater may be; the project may be releasing up to 38,000 gallons per day. It's a considerable change to the system itself; wants and analysis by their scientist of the potential effect and quantify them. Potentially changing the duration of flow within the intermittent stream; these issues have not been examined. 60x more than the SFH in Weston. 751 Boston Post Road Wastewater Treatment Plant is not analogous as all treatment areas were at least 100-feet from the wetland.
- (3) Mr. Garner is comfortable with the Applicant's mounding analysis and believe the calculations are conservative and agree there is not likely to be any breakout that directly affects the wetland. However, it is Mr. Garner's opinion that there will be an increase of seasonal high groundwater. Adding 38,000 gallons a day to the buffer zone is inevitably going to increase groundwater.

The applicant's team is willing to investigate these items and supply the Commission with additional data demonstrating there will be no adverse impact on the wetland.

The chair called on attorney, Mr. Hill, hired by a resident group opposed to the project. Mr. Horsley filed a rebuttal letter earlier today. The key take-aways is that the developer's hydrogeological assessment is incomplete. The mounding analysis is also incomplete. A porous pavement driveway crosses over the infiltration system. The applicant is taking credit for the porous pavement but the applicant did not account for that infiltration in the mounding analysis. It is Mr. Hill's opinion that the regulations provide for a presumption and that presumption is rebuttable when evidence is provided to the commission that that project will adversely impact the wetland system. Mr. Horsley has provided evidence in his two letters that shows the elevation of the water level will increase in the wetland. Mr. Hill believes that this is in violation of the MA Stormwater Standards. Mr. Hill has asked for the inputs and variables used in the

applicant's Mod Flow assessment. Mr. Hill would like to peer review the Mod-flow analysis, and the applicant has offered to provide that data. Lastly, Mr. Chessia of Chessia Consulting has provided a 16-page letter expressing concerns over stormwater management as designed and wastewater setbacks. It is Mr. Hill's opinion that a presumption in the Wetlands Protection Act is rebuttable. This project is unusual as it is siting a large leaching field 50-feet from the wetland edge and is releasing a high dose of effluent flowing toward the wetland.

John Chessia, provided a summary of his letter provided to the Commission today which included (1) Wastewater leaching area should be a minimum of 100-feet from wetlands, based on the State waste water treatment guidelines (last revised 2018); (2) concerns over some of the stormwater infrastructure setbacks. Specifically, in order to take credit for infiltration with porous pavement, it needs to be at least 50-feet away from the wetland edge. Much of the proposed porous pavement access road is within 25-feet of the wetland edge; (3) the proposed porous pavement is right over the leaching area and therefore, the applicant is not allowed to take credit for infiltration in that scenario under the stormwater standards; (4) In regards to the design of the infiltration basins, the soil test data provided was inadequate as the testing did not extend to the depth of the proposed infiltration systems. Therefore, additional soil tests are required per the stormwater management standards; (5) concerns about the proposed infiltration system deigned under a building. It is his opinion that this may not be permittable under the stormwater standards. In addition, there is no practicable way of maintaining stormwater infrastructure under a building.

It was noted that DEP has approved the hydrology report but has not issued a groundwater discharge permit yet. It is possible that DEP may be unaware that there is a wetland 50-feet away. Mr. Hill inquired whether the town engineering dept. can review the stormwater management design.

Questions regarding the interpretation of the Fire department's letter ensued. The Agent will get clarification from the fire chief as to their required minimum width.

Josh Feinblum requested that the Commission consider hiring another peer review firm to assess some of these specific technical concerns raised by the resident group. Mr. Ward indicated that the Applicant will agree to pay for another peer reviewer under 53G to assess these technical concerns. Mr. Ward requested the Commission choose 3 companies and run those names by the Applicant. The Chair suggested that the agent put out a request for quotes (RFQ) due before the next meeting and then the commission can review those quotes in open meeting on October 6th.

The Applicant will review the comments submitted by Mr. Garner and the resident's group and provide responses. The material can then be provided to the outside consultant for an assessment.

An Outside Consultant should assess the possible impacts of the wetland function and values – as it relates to changes in water chemistry nutrients and groundwater level and should be an engineer with expertise in stormwater management standards and wastewater treatment plant design. The Agent will prepare a request for

Mr. Hill requested that the Applicant provide the Mod-Flow data to the commission and to the public. Mr. Ward agreed to do so.

The Chair opened up the meeting to Pubic Comments. Jim Polando 242 Merriam Street, requested the Agent produce the old permits related to the 518 south Ave. and place them on the Google Drive. Mr. Polando expressed concerns about the amount of stormwater and effluent being added to the wetland area. Lastly, he expressed concerns over the change of canopy cover and how that will interfere with the stormwater assessment.

Luke Legere – Gregor and Legere, attorney representing a resident group. Mr. Legere expressed concern that the amount of the development proposed on this small site will have a significant impact on the wetland resource areas. Concerns over wastewater discharge and stormwater were expressed. The group looks forward to seeing a third party hired and provided additional professional opinion.

Dianna Chaplin, Love Lane, wondered if the local Board of Health is involved. The Agent believes that this project will not go in front of local Board of Health but rather be reviewed at DEP through the Groundwater Discharge Permit.

Mr. Nadar Michael, Boston Post Road, stated he is against this project.

The Agent will send a list of possible outside consultants to all parties prior to sending out the RFQ.

Motion by Cynthia Chapra to continue 8:20p.m. at 10/6; seconded by Ellen Freeman Roth; roll call vote: each member responded Aye.

10:15 p.m. Administrative matters, Cont.

- The Conservation Agent was alerted to a driveway being repaved at 9 Golden Ball road. When she conducted the site visit, the project was complete. It appears that the owner repaved within the same footprint as the original driveway. The Commission suggested the Agent send a friendly reminder about wetland laws and the need for future permitting should the owner wish to conduct any work near wetlands.
- 18 Skating Pond Road – the WCC discussed a request to install a new pool and terrace as shown on the revised plan entitled “No. 18 Skating Pond Road Landscape and Lighting Plan” prepared by Karen Sebastian LLC, revised on 5-20-20. The WCC originally approved the construction of a new house in 2018 and construction is ongoing. The pool is outside the 100’ buffer zone, however, approximately 630 s.f. of the terrace is within the buffer zone. It was the Commission’s opinion that the work proposed will not adversely impact wetland resource areas protectable under the Massachusetts Wetlands Protection Act. Motion by Ellen Freeman Roth to approve this revised plan as a minor plan change; seconded by Rees Tulloss; Roll Call Vote: 6:0:1.
- WCC Electronically Signed Documents
- Next Conservation Commission Meeting: October 6, 2020.

Meeting adjourned at 10:30 p.m.