

**HARVARD CONSERVATION COMMISSION  
MINUTES OF MEETING  
AUGUST 4, 2011  
APPROVED: October 20, 2011**

Chairman Paul Willard called the meeting to order at 7:06pm in the Town Hall Meeting Room

**Members Present:** Paul Willard, Wendy Sisson, Don Ritchie, Jim Breslauer, Jaye Waldron and Patrick Doherty

**Others Present:** Liz Allard (LUB Admin), Judy Gustafson, Jeff Richards (Transformations, Inc.), Judy Gustafson, Dan Wolfe (Ross Assoc.), Tim & Rachael Schmoyer, Barbara Henderson, Warren Henderson and Cindy Femoni

**Master Plan Steering Committee**

Jaye Waldron had previously stated that she is unable to attend the meetings of the Master Plan Steering Committee (MPSC) and had requested that another individual of the Commission be chosen for the Committee. Jim Breslauer had volunteered to represent the Commission on the MPSC, but has yet to be appointed by the Commission. Don Ritchie made a motion to appoint Jim Breslauer as the Conservation Commission's representative to the Master Plan Steering Committee. Patrick Doherty seconded the motion. The vote was unanimously in favor of the motion.

Mr. Breslauer stated that the MSPC has requested that each Board and Commission look at the goals from the previous Master Plan and determine what has been completed under their purview and what has not and why it has not. Mr. Breslauer reviewed the 2002 Master Plan and has made the following observations:

- ❖ Open Space & Recreation Plan - update completed in 2008, expires 2015
- ❖ Conservation Fund & Land Acquisition Policy – Funding available through Community Preservation Act funds until 2011. Bond authorization has not taken place as recommended
- ❖ Wetlands Protection & Floodplain Overlay Districts – Not completed
- ❖ Agricultural & Historic Landscapes – Not completed

Jaye Waldron stated that climate change should be considered when determining the overlay districts.

**Land Stewardship Subcommittee Signs**

Wendy Sisson stated that she has been speaking with Kim Becker of Becker Design who created the signs at Holy Hill in regards to regulation signs for the Conservation Lands. Ms. Becker has stated that you can no longer get signs with baked enamel on aluminum. The choices are vinyl on aluminum or embedded fiberglass. The cost for the fiberglass signs would be \$876, with a \$200 set-up and design charge. The Subcommittee is recommending that the trail blazes be painted and that small aluminum discs with the Commission's signature acorn be used for property bounds. Ms. Sisson stated the Subcommittee is requesting the appropriation of funds for the purchase of the previously mentioned signs.

Jim Breslauer made a motion to appropriate no more than \$1800 for the purchase of signs for Conservation Land. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion.

Ms. Sisson also reported that great progress is being made on the wooden conservation signs by the senior tax work-off participants.

**Continuation of a Notice of Intent – Department of Public Works, Bare Hill Pond Dam, Willow Road, DEP#177-591, Harvard#0411-01.** Opened at 7:30pm

#### **Land Stewardship Subcommittee Appointments**

Wendy Sisson stated that the Land Stewardship Subcommittee has requested the re-appointment of Pam Durrant to a three year term and that the current associate member Bob Benson be appointed to David Kay's three year term. Don Ritchie made a motion to re-appoint Pam Durrant and Bob Benson to the Land Stewardship Subcommittee each for a three year term. Wendy Sisson seconded the motion. The vote was unanimously in favor of the motion.

**Notice of Intent Hearing – Tim Schmoyer, 278 Stow Road, DEP#177-596, Harvard#0711-01.**  
Opened at 7:45pm

#### **Review & Discuss Order of Conditions, Transformations, Inc. Stow Road, DEP#177-585**

After a review of the Order of Conditions, Don Ritchie made a motion to approve them as amended this evening. Patrick Doherty seconded the motion. The vote was unanimously in favor of the motion.

#### **Update on Bare Hill Pond Watershed Management Committee Outreach Program and August Meeting**

Jaye Waldron updated the Commission on the August meeting of the Bare Hill Pond Watershed Management Committee. Ms. Waldron stated that reports have indicated more native species within the pond. The punch list of items to be completed to finalize the stormwater facilities (BMPs) has been completed by DPW. The contractor, JJ Phelan, still has several items to complete. The Committee has decided rather than constructing an additional facility at the beach, the area will be swept periodically. Paul Willard stated that at the upcoming September meeting with the Committee the Commission needs to be clear that there will be no sign-off on an additional draw down until there is a plan to treat runoff from Pond Road.

The Committee discussed their five year plan. Additionally, they discussed alternatives to phosphorus removal through spot chemical treatment or vacuuming. The outreach meeting held in July for pond abutters was very successful. The Committee will have informational material available at the flea market in October. It was recommended that the recently created wetland brochure by the Commission be made available for this event as well.

#### **Solarize Mass**

Wendy Sisson compiled a letter for Solarize Mass that outlined the process for filing with the Commission should it be necessary for an applicant to remove trees or locate a ground mounted system within the wetland buffer zone and/or wetland. There are currently no State regulations that would overrule the Wetland Protection Act or the Wetland Protection Bylaw in regards to solar installations.

Ms. Sisson recommends that the Tree Cutting Policy be changed to allow the removal of trees without having to file a Request for Determination of Applicability. Ms. Sisson feels there are several circumstances in which there would be no need to file even though the work is clearly in a buffer zone. For example Ms. Sisson's property is completely in the buffer zone to a wetland that is up gradient from her lot. Trees removed from her property would not create an adverse impact to the wetlands due to topography and distance. Don Ritchie wanted to know what would be the criteria that would make the determination that there will be no adverse impact. By allowing the Agent and/or two other members to make the decision could leave the Commission in a bad place should some feel they were being required to file, whereas others may not have to file. No changes to the Tree Cutting Policy were approved.

Jaye Waldron left the meeting at 9:32pm

### **Galerucella Beetle for the Control of Purple Loosestrife**

Liz Allard informed the members that she had been contacted by the Nashua River Watershed Association (NRWA) in regards to a location that would be suitable for the dispersal of the Galerucella beetle to control Purple Loosestrife. The Commission wanted to know how much land area the NRWA is looking for. Members noted that the invasive species is starting to take hold in several locations around Town. Ms. Allard will contact NRWA to determine if there is a location size requirement, while members will look closer into appropriate locations.

### **Planning Board Comments**

Liz Allard explained to the members that the Planning Board has received a request to modify an existing Special Permit for New Cingular Wireless at 0 Brown Road. The request is to add a generator to the site location. No new ground work is required as the generator will be placed on an existing concrete pad. The Commission had no comments to this request. A letter will be sent in that regard to the Planning Board.

### **Sand to replenish Island Beaches**

It has recently been brought to the Commission's attention those property owners on the islands on Bare Hill Pond replenishing their beaches without permits from the Commission. This is considered a limited project under the Wetland Protection Act, but still requires the proper permits. The Commission recommended educating the property owners on this subject matter. Liz Allard will send each island owner a letter explaining the Wetland Protection Act, the Harvard Wetland Protection Bylaw and the process required for such activities.

### **Review Activity to take place at Markley Range, Devens**

Don Ritchie had reviewed the plans received by the Commission for the removal of contaminated soil at Markley Range on Devens. The activity is exempt under the Wetlands Protection Act; however erosion and sedimentation controls will be installed during the activity. Mr. Ritchie had no issues with the project as proposed. The members present were in agreement with that decision.

### **Review Drainage Plan on Tully Land**

Members have had an opportunity to review the plan submitted by Ducharme & Dillis for the drainage improvements on the Tully land at the rear of the Department of Public Works (DPW). Members have requested that Liz Allard now obtain price quotes to have the work completed by an outside source as the DPW will not be able to take on this task.

### **Update on Enforcement Order – McEvoy, 115 Prospect Hill Road**

Liz Allard explained that a letter had been received from Oxbow Associates in regards to the restoration plan for Earl McEvoy at 115 Prospect Hill Road. The letter indicates that the upper area within Area#1 along Madigan is not responding as well as hoped. Oxbow Associates recommends the re-grading of this area during the dry period and seeding with annual rye grass. Area#2 has rebounded substantially. The Commission agreed to the request to change the plantings along the stream from swamp maples to speckled alders. Oxbow will continue to monitor the site for the presence of invasive species through the end of this growing season and will hand pull as needed to discourage their growth.

### **Review & Discuss Five-Year Plan**

Wendy Sisson has begun filling out the form in regards to land stewardship and has requested that Liz Allard complete the regulations and administrative part of the form. A draft of the plan shall be available for review at the next meeting.

### **Adjournment**

Don Ritchie made a motion to adjourn the meeting at 10:08pm. Jim Breslauer seconded the motion. The vote was unanimously in favor of the motion.

Respectfully submitted, Liz Allard Land Use Administrator/Conservation Agent

**Harvard Conservation Commission  
Continuation of a Notice of Intent Hearing Meeting Minutes  
Department of Public Works, Bare Hill Pond Dam, Willow Road  
DEP#177-591, Harvard#0411-01  
August 4, 2011**

The public hearing was open at 7:30pm by Chairman Paul Willard under the Massachusetts Wetland Protection Act, MGL Chapter 131 §40 and the Harvard Wetland Protection Bylaw, Chapter 119 of the Code of the Town of Harvard in the Town Hall Meeting Room

**Members Present:** Paul Willard, Don Ritchie, Wendy Sisson, Jim Breslauer, Patrick Doherty and Janet Waldron

**Others Present:** Liz Allard (LUB Admin)

This hearing was continued from May 5, 2011 on a Notice of Intent filed on behalf of the Department of Public Works for maintenance and repairs to the dam on Bare Hill Pond within a resource area, Bare Hill Pond.

Liz Allard spoke with Dam Safety who stated that what the engineer recommends is what they would recommend as well. Paul Willard stated that the removal of stumps along the dam is a concern to him. With no representative present to allow for an additional continuation, Wendy Sisson made a motion to close the hearing and issue an Order of Conditions with the special conditions that no stumps be removed, herbicides will be used, and a copy of the Chapter 253 Dam Safety permit, part A shall be submitted to the Commission. Don Ritchie seconded the motion. The vote was unanimously in favor of the motion.

Respectfully submitted,

Liz Allard  
Land Use Administrator/  
Conservation Agent

**Harvard Conservation Commission**  
**Notice of Intent Hearing Meeting Minutes**  
**Timothy Schmoyer, 278 Stow Road, DEP#177-596, Harvard#0711-01**  
**August 4, 2011**

The public hearing was open at 7:45pm by Chairman Paul Willard under the Massachusetts Wetland Protection Act, MGL Chapter 131 §40 and the Harvard Wetland Protection Bylaw, Chapter 119 of the Code of Harvard in the Town Hall Meeting Room

**Members Present:** Paul Willard, Don Ritchie, Jim Breslauer, Patrick Doherty and Janet Waldron

**Others Present:** Liz Allard (LUB Admin), Dan Wolfe (Ross Assoc.), Tim & Rachael Schmoyer, Wendy Sisson, Warren Henderson, Judy Gustafson, Barbara Henderson, Cindy Femino and David McDonell

This hearing is for a Notice of Intent filed on behalf of Timothy Schmoyer for the construction of a fence, clearing and re-grading with a proposed paddock area within the 100' wetland buffer zone at 278 Stow Road, Harvard.

Wendy Sisson recused herself as an abutter.

Dan Wolfe, of Ross Associates, Inc., and Timothy Schmoyer were present to discuss the application. Mr. Wolfe explained that the new owners purchased a property that was historically used as a horse property. The site previously had one horse on it for a number of years. An electric fence had been installed all the way around the rear of the property including the wetlands and the adjoining Town owned land. The proposal includes the removal of trees within the buffer zone. Mr. Wolfe explained that the grades change slightly from the buffer zone to wetlands. The proposed plan moves the pasture area out of the wetlands area, but remains within the existing buffer zone. Mr. Wolfe believes this is an improvement to how the site had been used in the past.

Paul Willard expressed concern with the cutting of trees that will change the light pattern within the buffer zone. The proposed plan is for the creation of pasture that was used previously by a horse that resided at this location. Mr. Willard added that the regulations have changed since that horse was on the property. Jim Breslauer stated that he had the same concerns as Mr. Willard. Patrick Doherty suggested moving the fence line closer to the house and further from the wetland line, which would reduce the number of trees to be removed. Don Ritchie suggested angling the fence line from the south west side of the property to the existing corner line of the fence as shown on the plan. Mr. Wolfe asked the applicant if he had any reason to not angle the fence line as proposed.

Mr. Schmoyer stated that the wetland is a quarter of his property and that the 100' buffer zone is half of the property; if he is being told he can't use half of his property that would be a problem. Mr. Schmoyer stated that this property was previously used as a horse property and he has spent \$5,000 to have the wetland designated and to work with the Commission to come to an agreeable outcome. Mr. Ritchie stated that by angling the fence line it would create less of a slope into the wetlands. Mr. Schmoyer was agreeable to re-configuring the fence line as long as the change maintained a straight line. As proposed originally the wetland would be twenty feet from the pasture, with the fence at an angle the pasture would be approximately thirty feet from the wetland.

Jaye Waldron stated that the Commission has a 50' no disturbance zone, so why would the Commission allow this when we don't allow others to cause disturbance within 50'. Ms. Waldron added that the Wetland Protection Bylaw Regulations state no pasture within 100' of a wetland. Mr. Wolfe stated that many properties in this Town had pasture in the buffer zone when the Regulations were adopted; existing properties were recognized as "grandfathered". Ms. Waldron asked if it was an illegal horse property; if known by the Commission it would not have been allowed. Mr. Wolfe stated that the Commission would have to go after everyone with a horse in the buffer zone. On new properties, virgin land, Mr. Wolfe stated that he would hold to the setbacks, but not here there is clear evidence that the property was used as a horse property.

The question of whether there was a horse on the property long ago was posed. Mr. Schmoyer stated that the previous owners had a horse on the property, but how long ago that was, was unknown. Ms. Waldron stated she will stick with the 50' requirement, because you can't tell some people they can't touch the 50' but tell others they can. Mr. Schmoyer stated yes you can because if there are people who already have land within 50' and you're not going to tell me I can't. Ms. Waldron stated that was for people who already own property with wetlands on it. Mr. Schmoyer stated he owns property with wetlands on it, if there are other people in this Town that have property that has a horse within 50', and you tell me I can't you are singling me out.

Mr. Breslauer stated that there is a huge difference if there is an existing horse there and you purchased the property and you just moved a different horse in there, as opposed to there not being a horse there for a year, two years, five years and you are coming in and saying the fence was there and the barn was there, so it is a horse property. Mr. Willard stated that there is indeed a number in either Harvard rules or State regulation about horse and use of the land that says there is a time period, an expiration time, like maybe five years and that is why he is trying to establish when the horse was there.

Mr. Schmoyer stated that when he bought the land he was under the impression that the horse was there within the last five years. Mr. Willard thinks it was within five years and maybe more recently. No one in the room was certain when a horse was actually on the property, but they did agree that it was within the last five years.

Mr. Wolfe explained that the Schmoyer's bought the property with a view of a barn out back that has housed a horse and that is what they were looking for, a horse property. There is evidence that the fencing was out in the wetlands. The existence of the barn and the fencing made the Schmoyer's believe that a horse would be acceptable here. Mr. Wolfe stated that the Bylaw mentions existing uses and structures. Mr. Wolfe feels the plan as proposed was middle ground as to what was there previously, which was an existing paddock in the wetland and fencing on Town property.

Ms. Waldron stated that the Massachusetts Association of Conservation Commission suggests that manure storage area be 200' from wetland. Mr. Wolfe stated that that suggestion would be for a new construction site. Mr. Willard stated that there are numbers all over that map as to the distance. The real question is how it is stored and what is done with it. Mr. Schmoyer added that the Board of Health will require a permit and management plan for the manure and this plan was proposed with that in mind.

When asked about the barn and the number of horses Mr. Schmoyer stated the barn will have two stalls, they are currently planning on one horse, but could become two. Three manure bins for six months of manure from one horse is how the bins are set up. Mrs. Schmoyer stated that the property was listed as a horse property, which definitely gave the impression that they would be able to have a horse on the property.

As for the tree removal, Mr. Schmoyer stated he would like to remove the oaks and pines. Mr. Willard asked if Mr. Schmoyer is still talking about grading, loaming and establishing grass. Mr. Schmoyer stated that was correct. Mr. Willard asked is there is a way to establish a pasture area

without cutting all the trees; that is his concern, changing the light pattern within the buffer zone. Can you establish grass with a stable base without cutting all the trees? Mr. Wolfe stated that with the earlier recommendations to the fence line, only four trees would need to be removed. Mr. Schmoyer was agreeable to thinning other trees as long as the oaks and pines can be removed, as the oaks are not good for horses as is needles of the pines. Mr. Schmoyer stated that Massachusetts allows for solar easements that would allow for him to request that the trees on the Town land be reduced in size for solar panels on the barn.

Mr. Breslauer would like to see a revised plan that would indicate the trees to be removed within the 50' buffer and an angled fence line. If no trees are removed from the 50' buffer zone, Mr. Breslauer would not have a problem with the oaks and pines being removed. Mr. Willard would like to visit the property again to see how the wetland line extends after flag #11-16. The recommended change to the fence would be to come half way between the two drill holes and then come straight across. Mr. Willard stated that the question is how much can you improve in regards to the distance from the wetland. Ms. Waldron feels that manure in the pasture could contaminate the wetland and the surrounding ground water. Mr. Willard stated that every paddock has horses that leave manure behind and the Commission has no regulations in that regards. The sloping of the paddock will aid in direction of runoff. The proximity of the wetland beyond wetland flag #11-16 should be considered when determining where the fencing should be placed.

David McDonnell, an abutter, asked if the number of horses is a regulation of the Commission or is a concern of the Commission. Mr. Willard stated there are all kinds of recommendations as to the number of horses per acre; however there is not a whole lot of agreement on those recommendations. The conditioning of the number of horses should be done through the Board of Health stable permit.

Warren Henderson, a resident of Stow Road, asked about the flow of water and impact with regards to the fire pond further up Stow Road, which flows directly into Mr. Henderson property. Mr. Willard paraphrased the question and asked Mr. Wolfe what change, if any, this project will make on the water flow patterns in this area. Mr. Wolfe stated that the project will not change water flow patterns one bit. Mr. Breslauer stated that the topography is that the water will flow parallel to the wetlands rather than -into the wetlands. Mr. Willard thinks that since we are talking about one horse on a pretty sizeable piece of property some distance away from yours (Henderson's) is significant. Mr. Henderson stated that the number of horses could be expanded. Mr. Ritchie stated that a permit from the Board of Health will need to be obtained. Mr. Willard explained that there are not any guidelines as he stated before and it is not from a lack of trying. There are very many different standards as to how many horses per acre and to setbacks from different resource areas. It is very confusing and that is one of the reasons we have not been more specific, we just say 100', because in some cases the distance is way less, and in very few cases it is greater. The Commission's 100' setback is not completely arbitrary, but it is very conservative, so to compromise it a little bit in this case is insignificant.

Mr. Schmoyer stated that the Wetland Protection Act states that at 100' from a protected resource the town bylaws dictates what happens; ever town differs, I can go to one town and it is 25', I can go to another it is 50', 50' is the largest I have seen for a do not disturb buffer, Harvard has the largest do not disturb buffer that I have seen in this State. Mr. Henderson asked if before Mr. Schmoyer bought the house was aware of the wetlands on the property. Mr. Schmoyer stated there is no requirement to notify there are wetlands on the property and when I bought the house there was four feet of snow; there was a barn and a fence and four feet of snow on the ground; so I am trying to do, I think, the right thing and try to meet the Town the best that I can, now I can also go to war with the Town.

Mr. Henderson asked if there are buffers established in our Town Bylaws and the fact remains that a lot of existing paddocks don't meet that standard since they were established prior to the standard, so does that mean ant new ones that come along have to meet that standard. Mr. Willard explained that the applicant has requested a waiver to the setback requirement. The

Commission weighs the evidence and can decide to modify the setback requirements, which this does if we approve. Mr. Breslauer further explained that what the Commission is looking at now is that instead of the fence being 25' from the wetland it would be 40' from the wetland. Essentially the Commission is giving up 10' of setback, so it is a relatively minor setback we are considering at this time. Mr. Wolfe stated that this is what he was trying to get at in the beginning, that if he was to come in with a completely undeveloped piece of property then he would be required to meet the setbacks established by the Commission. Mr. Breslauer added if the topography was such that the area would drain directly into the wetland then the outcome could be very different. Mr. Willard stated that he is satisfied with the changes made this evening.

Judy Gustafson, a resident of Stow Road, wanted to know what the special circumstances are to allow this waiver. Mr. Willard stated that the prior use of the property, the grade of the property, the willingness of the new owners to come forward to discuss the matter, in addition to the reduction of tree cutting within the 50' no disturb zone. Ms. Gustafson asked if there would be any impact to drinking water. The Commission again stated that due to the distance of this activity and those concerned with their well water there should not be an issue. Liz Allard reminded those concerned that testing of their well water now would give them a baseline of the quality of their drinking water should concerns arise in the future.

With revisions requested to the plan, Jim Breslauer made a motion to continue the hearing to August 18, 2011 at 7:30pm. Patrick Doherty seconded the motion. The vote was unanimously in favor of the motion.

Respectfully submitted,

Liz Allard  
Land Use Administrator/  
Conservation Agent



## **DOCUMENTS & OTHER EXHIBITS**

### **Notice of Intent Hearing – Tim Schmoyer, 278 Stow Road, DEP#177-596, Harvard#0711-01**

- WPA Form 3 Notice of Intent – Timothy Schmoyer, 278 Stow Road, Harvard, MA, dated July 2011
- Site Plan of Land in Harvard, Massachusetts prepared by Ross Associates, Inc., Job No. 27293, Plan No. L-11689, dated July, 2011

### **Review & Discuss Order of Conditions, Transformations, Inc. Stow Road, DEP#177-585**

- WPA Form 5 Order of Conditions – Transformations, Inc., DEP#177-585, dated August 4, 2011

### **Review Drainage Plan on Tully Land**

- Preliminary Drainage Improvement Plan, 47 Depot Road, Harvard, Massachusetts, prepared by Ducharme & Dillis Civil Design Group, Inc., Job No. 4588, Drawing No. 4588-SP, dated July 20, 2011

### **Update on Enforcement Order – McEvoy, 115 Prospect Hill Road**

- Oxbow Associates letter RE: 115 Prospect Hill/Madigan Lane, Assessor's Parcel 16-11.1, Wetland Restoration, dated July 15, 2011