

**HARVARD CONSERVATION COMMISSION  
MINUTES OF MEETING  
DECEMBER 15, 2022  
APPROVED: MARCH 16, 2023**

Chair Don Ritchie called the meeting to order at 7:03pm, virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022, under MGL Chapter 131 §40 Wetland Protection Act and Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw

**Members Present:** Don Ritchie, Eve Wittenberg, Paul Willard (7:06pm), Jaye Waldron, Joanne Ward (7:12pm), Jim Burns, Mark Shaw (7:07pm) and John Iacomini (Associate Member)

**Others Present:** Liz Allard (Conservation Agent), Marc Seigny (Harvard Conservation Trust), Bruce Leicher (Bare Hill Pond Watershed Management Committee), Kelsey Nickerson, Diane Rayla, Kelvin Wiebe, Don Osmer, Tom Cotton (Deer Management Subcommittee), David Pinard, Joe Pulido (Deer Management Subcommittee), Dan Wolfe (Ross Associates), Mya Minkin, Robert Kody (Envision Homes), Daniel Tracey, Bob Douglas (Deer Management Subcommittee) and Diandra Bilodeau

**Harvard Conservation Trust Request to use Prospect Hill Management Area for the annual New Year's Day Walk**

Eve Wittenberg made a motion to approve the use of the Prospect Hill Management Area by the Harvard Conservation Trust for the annual New Year's Day Walk. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Eve Wittenberg, aye and Don Ritchie, aye.

**Discuss Bare Hill Pond Drawdown Status, DEP#177-659**

Bruce Leicher, chair of the Bare Hill Pond Watershed Management Committee, stated the drawdown started with the goal of 6.5 feet, however that goal was exceeded due to an error that Mr. Leicher took responsibility for, which was the mis-reading of the markers indicating the level of the pond. Mr. Leicher explained the Department of Public Works had alerted him on November 18<sup>th</sup> that he should check the level of the pond as their readings indicated it had been drawn down lower than 6.5 feet. Mr. Leicher has now added a failsafe for determining the depth of the drawdown by using the manhole housing as the 6.5-foot marker. The amount beyond the 6.5 feet might be 6" – 12". Paul Willard stated the Pond Committee may want to be aware of the amount of water coming into the pond, which has been less due to the drought conditions. Mr. Leicher agreed. Mark Shaw asked what are the Pond Committee's thoughts on the amount of mud in the tributaries and drawdown depths at around 8 feet in some areas. Mr. Leicher stated the pond has been down to 8 feet in the past without any damage. Mr. Shaw stated deeper drawdowns tend to leave a lot of silt and muck on the private beaches. Mr. Leicher stated data shows the silt and decomposing material will erode as the rain runs into the center of the pond and not to the shores. Jim Burns suggests now that pipe has been exposed and gauges are back in place to paint an orange marker on the pipe to serve as a second level indicator as the pond is being drawn down. Jaye Waldron, who lives on the pond, stated she does not recall seeing the pond this low, but maybe she is forgetting that. Don Ritchie thanked Mr. Leicher for attending this evening to discuss publicly what had occurred during the drawdown this season.

**Deer Management Subcommittee (DMS) Update on Hunter Information**

As a result of the events pertaining to the DMS providing hunter information to the Conservation Agent, Eve Wittenberg wanted the entire Commission to be aware of what had taken place. Liz Allard, the Conservation Agent, explained she became aware that the list of approved hunters for the 2022 season was lacking two of the hunters. When this information was requested by Ms. Allard from the DMS she was repeatedly denied that information because a member of the DMS felt it was confidential information that she was not qualified to have it nor was there need for her to have it. Joe Pulido, a

member of the DMS, stated the information the Commission had previously received is what is considered Personally Identifiable Information (PII). He stated that the DMS uses that information as part of the vetting process to qualify the hunters, with the hunters having the understanding that is what that information was going to be used for. Mr. Pulido stated information sent to Ms Allard for this program year had the names of the hunters only; the information previously sent to the Agent with all of the information was in error and should not have been sent, which leads him to the question, if the Commission is requesting that level of information what is it going to be used for? Don Ritchie stated it was in order for the Commission to have contact information of the hunters who are on the conservation land. Mr. Pulido stated again the information shared with the Agent was more than just name and address; it included such things as driver's license numbers, vehicle license plate numbers and hunter ID numbers that should have not been passed sent on to the Commission. Paul Willard asked why? Mr. Pulido stated the hunters had not given their consent to provide that information to the Commission; the DMS has an obligation to protect that information; if others, such as the Commission, want it they have to have a legitimate reason why. Mr. Ritchie stated the Conservation Agent is knowledgeable as to which information is to remain confidential and which can be shared with the public.

Ms. Wittenberg wanted to point out that the DMS is a subcommittee of the Commission, structurally DMS is subordinate to the Commission and that all information is not DMS information, it is the Commission's information. Other than a driver's license number, the other information provided by the hunters is not what is typically protected as "PII." Ms. Wittenberg further stated the error on the part of DMS was not letting the hunters know this information was to be shared with the Commission. The burden of justification for not letting the Commission know who is participating in our program rest with DMS, because this is the Commission's program. This information is a matter of public record and could be requested by a member of the public. In addition, DMS should provide this information to the Commission for the permanent record. Mr. Pulido stated he had no concerns with providing the names of the hunters, but does with providing the additional information being requested. Ms. Wittenberg asked what Mr. Pulido is worried about; confidential information, such as driver's license numbers, would be kept confidential as the Agent is qualified to keep that information private. Mr. Pulido asked about phone numbers and email addresses being kept confidential, stating the Commission would need consent from the hunters to have that information. Again Mr. Pulido asked why the Commission needed that level of information. Joanne Ward stated she has dealt with this on the government side of things in her previous job; name, address, email address, phone numbers and license plate number are not protected "PII."

Don Osmer, a hunter within the program, understands the contact information, and explained what type of information he provides to the DMS for the vetting process. Mr. Osmer wanted to know if that information is being stored somewhere and if it were going to be kept safe. Mr. Ritchie explained the role of the Agent, who would redact any personal information if it were requested. Ms. Allard explained why it would be useful as her role as the Agent to have this information and the that her job description includes a confidentiality clause. Ms. Ward asked who sent the information in the first place, as that was in error. Ms. Allard explained the information was not sent in error. This same incident occurred during the first season of this program with Bob Douglas, Chair of DMS, eventually being told by the Town Administrator that the information was to be provided to the Agent because the Commission had agreed they wanted that information provided to their staff. In addition, Ms. Allard wondered how the DMS was keeping this information safe, as they are not employees of the Town of Harvard. Ms. Wittenberg wanted to reiterate that this is the Commission's subcommittee; if the Commission wants the information then it should be provided the information.

John Iacomini asked why the program was put on pause. Mr. Ritchie explained the Town Administrator felt it was the only way to get the information being requested. Mr. Iacomini asked how would the hunters have known the program was paused? Mr. Ritchie stated it was his understanding the Police Department was put on notice; however, he is not certain that ever happened as the information was received. Mr. Ritchie suggested if the DMS wants to change the rules next year and the Commission approves it then that is what will happen. Mr. Pulido and Ms. Allard did not agree on what the Town

Administrator had requested and Mr. Ritchie was not interested in continuing this discussion. A final comment from Kelvin Wiebe requested an action point after this meeting as to what the Commission needs and what they will be doing with that information. Mr. Wiebe had an issue with his personal email address being shared by a Town Hall employee with another Town Hall employee shortly after he moved to Town two years ago. Mr. Wiebe wants to know if that information will be shared within Town Hall or beyond. Mr. Ritchie stated the only time it would be shared is when a Freedom of Information Act for that information is requested, which would include any personal information being redacted.

**Notice of Intent Hearing – Mary Maxwell, 90 Warren Avenue, Harvard#1122-02.** Opened at 7:46pm

**Continuation of a Notice of Intent Hearing – Yvonne Chern, 203 Ayer Road, DEP#177-711, Harvard#0322-01.** Opened at 8:29pm

**Continuation of a Notice of Intent Hearing - Sean & Diandra Bilodeau, 134 Old Littleton Road, DEP#177-718, Harvard#1122-01.** Opened at 8:30pm

**ZBA Request for Comments – 90 Warren Avenue**

This location is before the Commission this evening for a Notice of Intent. The Commission will request the ZBA reference the Order of Conditions within their decision.

**Planning Board Request for Comments- 184 Ayer Road**

The Conservation Agent has reviewed the application and plans submitted to the Planning Board and have found there are no wetland resource areas within 100' of any of the proposed activity, therefore the Commission has no comments on this application.

**Annual Town Report**

The Annual Town Report is due on January 30<sup>th</sup>. Eve Wittenberg volunteered to assist in drafting the 2022 annual report of the Commission. Wendy Sisson will provide the land management update and Liz Allard will update the application table within the report.

**Approve Minutes**

Eve Wittenberg made a motion to accept the minutes of December 1, 2022 as amended. Joanne Ward seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye.

**Review Ann Lees Field Memorandum of Understanding (MOU)**

A draft of the revised MOU had been provided to the members for their review for further discussion at the next meeting of the Commission.

**Pine Hill Village Update – Request to Extend Order of Conditions, DEP#177-586**

Paul Willard made a motion to extend the Order of Conditions for Pine Hill Village, DEP#177-586 to December 31, 2023. Mark Shaw seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye.

**Adjournment**

Jim Burns made a motion to adjourn the meeting at 8:44 pm. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; Eve Wittenberg, aye; Paul Willard, aye; and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,  
Land Use Administrator/  
Conservation Agent

#### **EXHIBITS & OTHER DOCUMENTS**

- Conservation Commission Agenda, dated December 15, 2022
- BHPWMC Drawdown Update December 14, 2022
- Sewage Disposal System Mary Maxwell 90 Warren Avenue Harvard, MA Job No.: 33970, Plan No.: L-14604, prepared by David E. Ross Associates, Inc., November 202
- Bilodeau Residence, 134 Old Littleton Road, L-1 Pool Layout Plan, prepared by James K. Emmanuel Associates, Landscape Architects, September 23, 2022

**Harvard Conservation Commission  
Notice of Intent Hearing  
Mary Maxwell, 90 Warren Avenue, Harvard#1122-02  
December 15, 2022**

The public hearing was opened at 7:46pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022.

**Members Present:** Don Ritchie, Eve Wittenberg, Paul Willard, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw and John Iacomini (Associate Member)

**Others Present:** Liz Allard (Conservation Agent), Dan Wolfe (Ross Associates), Mya Minkin and Robert Kody (Envision Homes)

This hearing is for a Notice of Intent filed on behalf of Mary Maxwell the demolition of an existing cottage and the reconstruction of a new single-family home, driveway, bridge, wells and septic system with portions within the 100' wetland buffer zone and the 200' of Bare Hill at 90 Warren Avenue, Harvard.

Dan Wolfe, of Ross Associates, explained the application before the Commission this evening is the third plan they have seen over the past several years. The bridge crossing has been redesigned with a lot of effort put into its orientation and installation. As in the previous versions, the existing cottage is to be removed and replaced with a new dwelling. Also, as previously proposed, the existing driveway has been moved from where it was originally located by the original applicant. The bridge crossing is proposed at the narrowest point of the wetland. As for the placement of the house, moving it any further from the wetland would require a large retaining wall and fill on the Bare Hill Pond side of the property. Waivers to the setbacks within the Wetland Protection Bylaw (WPB) Regulations are being requested, as the site has some unique features. The proposed bridge will require a waiver to the 50-foot no disturbance of natural vegetation due to its placement over the wetland, as well as to the 75-foot no structures setback. The placement of the bridge over the wetlands is necessary to access the house. A portion of the house is also within the 75-foot no structure setback, however if the house were to be located outside the 75-foot setback it would then be located on the steep slope down to Bare Hill Pond; therefore, a waiver to the 75-foot no structures is being requested. Mr. Wolfe is also seeking a waiver of the \$6,544.75 filing fee to a lesser amount. As suggested on the site walk, shifting the house would create a difficult approach to the garage from the driveway and pushes everything closer to the steep slopes. The proposed walkway at the front of the house has been removed, however the proposed ramp remains as it is necessary for the owner, who uses a wheelchair. The ramp remains slightly within the 50-foot setback. A recharge trench has been added along the driveway to address the concerns expressed by the Bare Hill Pond Watershed Management Committee. Mr. Wolfe explained with ledge in that area the trench may be as shallow as 6-inches in some areas. Mr. Wolfe noted the family developing the property is very conservation orientated and has done their best to create a plan that is sensitive to the environment of the land and the needs of their family.

Jaye Waldron suggested removing the elevated deck and shifting the house to that area without much disturbance to the steep slope. Mr. Wolfe stated during design that was looked at, however by shifting the house would push the elevated deck closer to the pond, which would make it appear as if it were looming over the pond as opposed to the low-profile design it currently has. Eve Wittenberg feels the Commission is trading off the aesthetics of the house with the requirements of the WBP Regulations. Ms. Wittenberg suggested the house could be made smaller to eliminate the need for it to be within the 75-foot setback, along with fear of it looming over the pond if it were to be shifted outside the 75-foot setback, as protection of the wetland is the concern of the Commission. Mr. Wolfe noted the position of the house was an overriding factor in the two previous approved applications and is how he based his

advice to the applicant and their designer. Mark Shaw stated the placement of the house has been well done considering the land, wetlands and required offsets.

Mya Minkin, the applicant's daughter, explained the family has been respectfully of the pond in its design of the house, but her father Jim, who is confined to a wheelchair due to ALS, will only be able to access the outside on the proposed elevated deck. Ms. Waldron feels she is being made to feel as "the bad guy" and wants Jim to enjoy the house and what the location has to offer, but the Commission's role is to protect the wetlands. The shifting of the house and other features was further discussed as it pertained to the need for retaining walls. Ms. Wittenberg agreed with Ms. Waldron on the Commission's role of protecting the wetlands. Ms. Wittenberg was not a member of the Commission when the previous plans were approved, therefore she is looking at this plan as the only plan in question this evening. Ms. Wittenberg stated the house should either be moved or reduced in size to better fit in to the wetland areas the Commission is trying to protect.

A discussion of arbitrarily reducing the filing fee was had. It was determined Liz Allard would review a recent reduction in the filing fee to determine how that fee was reduced in comparison to this application fee. With the request to look at moving structures outside the 75-foot setback, Jim Burns made a motion to continue the hearing to January 5, 2023 at 7:30pm. Paul Willard seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,  
Conservation Agent

**Harvard Conservation Commission  
Continuation of a Notice of Intent Hearing  
Yvonne Chern, 203 Ayer Road, DEP#177-711, Harvard#0322-01  
December 15, 2022**

The public hearing was opened at 8:29pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022.

**Members Present:** Don Ritchie, Eve Wittenberg, Paul Willard, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw and John Iacomini (Associate Member)

**Others Present:** Liz Allard (Conservation Agent)

This hearing was continued from December 1, 2022 for a Notice of Intent filed on behalf of Yvonne Chern for the construction of commercial structures with associated parking, grading and drainage within the 100' wetland buffer zone at 203 Ayer Road, Harvard

As requested by the applicant's representative, Jim Burns made a motion to continue the hearing to January 19, 2023 at 7:30pm. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Jaye Waldron, aye; Joanne Ward, aye; Paul Willard, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,  
Conservation Agent

**Harvard Conservation Commission  
Continuation of a Notice of Intent Hearing  
Sean & Diandra Bilodeau, 134 Old Littleton Road,  
DEP#177-718, Harvard#1122-01  
December 15, 2022**

The public hearing was opened at 8:30pm by Chair Don Ritchie under MGL Chapter 131 §40 Wetland Protection Act and the Code of the Town of Harvard Chapter 119 Wetland Protection Bylaw virtually, pursuant to Chapter 107 of the Acts of 2022, An Act Relative to Extending Certain COVID-19 Measures Adopted during the State of Emergency, and signed into law on July 16, 2022.

**Members Present:** Don Ritchie, Eve Wittenberg, Paul Willard, Jaye Waldron, Joanne Ward, Jim Burns, Mark Shaw and John Iacomini (Associate Member)

**Others Present:** Liz Allard (Conservation Agent) and Diandra Bilodeau

This hearing was continued from December 1, 2022 for a Notice of Intent filed on behalf of Sean & Diandra Bilodeau for a proposed in-ground swimming pool, patio area, pool house and security fence within the 100' wetland buffer zone at 134 Old Littleton Road, Harvard

Diandra Bilodeau detailed the additions to the plan which included gutters on the backside of the pool house to a surface drain within the proposed retaining wall. As designed the retaining wall will remain in order to have access out of the back of the pool house for lawn equipment. The request to remove the tree at the edge of the wetland was discussed and agreed upon to remove the broken leader only, with inspection by the Conservation Agent to determine if the entire tree should be removed.

Jim Burns made a motion to close the hearing and issue an Order of Condition with the following additional condition pertaining to the removal of the tree. Jaye Waldron seconded the motion. The vote was unanimously in favor of the motion by a roll call, Jim Burns, aye; Paul Willard, aye; Jaye Waldron, aye; Joanne Ward, aye; Mark Shaw, aye; Eve Wittenberg, aye and Don Ritchie, aye.

Respectfully submitted,

Liz Allard,  
Conservation Agent