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**TO:** Select Board, Town of Harvard

**FROM:** David Haschig  
(Owner/Broker/Appraiser – Ruo & Haschig Realty / RHR Appraisals)

**DATE:** April 2, 2021

**RE:** Evaluation of MGL Chapter 268A, Section 19(b)(1) and (3) relating to potential "Conflicts of Interest" for BHPWMC members

The Bare Hill Pond Watershed Management Committee ("BHPWMC") consists of members appointed by the Select Board. The BHPWMC is responsible for seeking to implement the Town of Harvard's policy to protect and preserve Bare Hill Pond and its watershed for the Town, its residents, and future generations. The BHPWMC implements these policies by making decisions each year (listed below) which execute on the policy of the Town to protect and preserve the Pond and its watershed, and which is budgeted annually by the Town. Town Counsel has indicated that certain types of decisions might be viewed subject to consideration under Massachusetts General Laws Chapter 268A as raising a question of a potential financial conflict of interest for members of the BHPWMC that own property that abuts Bare Hill Pond or is in the Bare Hill Pond watershed. While it appears that Town Counsel believes acting on these matters do create a conflict of interest, his recommendation was to disclose the possibility to the Select Board, and to seek an exemption ruling that would confirm any committee member could act on these matters and, by this exemption, avoid any appearance of impropriety.

### Background

The category of "decisions" that raise a possible conflict of interest are carefully defined under Massachusetts General Law 268A. A decision needs be a "particular matter" for the rules to apply. Essentially under 268A, Section 1, a "particular matter" is a decision by a board involving a proceeding, an application, a submission or other determination, or the award of a contract, among other things, by a town board or committee.

There are exemptions under Chapter 268A, Section 19 (attached below). These exemptions allow for a member of a board or committee to act with permission of the appointing authority, in this case, this Select Board. The first type of exemption involves decisions on a "particular matter" by a member with a possible financial interest, such as that of an abutter, where it "is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from" the board or committee member, such as an award of a contract. The second type of exemption would be a decision on a "particular matter" that involves a determination of general policy and the interest of a committee member or his/her immediate family is shared with a substantial segment of the population of the municipality."

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### Decisions Made By BHPWMC

The first category of decisions ("Contract Decisions") that might be considered "a particular matter," that are made by the BHPMMC from time to time are:

- The solicitation of a proposal and entry into a contract with a contractor or contractor(s) to perform maintenance on the components of the pump house control system in accordance with the contracting procedures established by the Town.
- The solicitation of a proposal and entry into a contract to engage a wetlands expert consultant to perform environmental monitoring of the Pond and the watershed as required under the Order of Conditions for the draw down.
- The solicitation of a proposal and entry into a contract every 3 years to engage a wetlands expert to test phosphorous reduction effectiveness of the rain gardens that capture storm water from road, school and parking lot runoff in Town Center in accordance with the requirements of the Order of Conditions authorizing the construction of the rain gardens.
- The solicitation of a proposal and entry into a contract from time to time, to measure in-lake sediment levels in the Pond as a means for evaluating best practices for avoiding future algal bloom risk.

It is important to note that the normal conflict of interest rules that apply to awards of contracts to a family member or a business owned by a BHPWMC would not be exempted, just the appearance of a conflict resulting from being an abutter.

A second category of decision (a "General Policy Decision") that might be considered "a particular matter" with a possible conflict of interest is a policy decision made by the BHPMMC each year:

- The decision to file a Notice of Intent with the Conservation Commission and to conduct draw down of Bare Hill Pond each year under an Order of Conditions issued by the Conservation Commission under the environmental regulations of the Wetlands Protection Act, and then to perform such draw down with operational assistance from the Department of Public Works, and complete the environmental monitoring conditions contained in such Order of Conditions.

Because a question has been raised as to whether members of the BHPWMC might have a financial interest in one or more of these decisions by virtue of their ownership of property which abuts/is near Bare Hill Pond or within its watershed, it is recommended that a ruling be obtained from the Select Board to cover any committee member participating in these decisions based on the applicable exemptions in Section 19(b) (1) and (3).

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**Supporting Information:** To facilitate these two determinations by the Select Board, the following information supports a finding that the exemptions apply.

**Contract Decisions:** First, for the Contract Decisions, they are only remotely related to an abutter interest and are in support of the Town interest in protecting the Watershed. Nevertheless, Town Counsel has indicated that if a realtor/appraiser opines that the BHPWMC action on these Decisions will have no impact/no substantial impact on the value of an abutter's property due to the remote connection of these decisions, that the exemption applies and would support the Select Board's finding that each Contract Decision "is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from" the award of a contract by the BHPWMC. I, David Haschig, who has been a licensed real estate broker for over 35 years and a certified residential appraiser in MA and NH for nearly 20 years, is confirming via this letter that the BHPWMC action on these Decisions will have no impact/no substantial impact on the value of any residential property that either abuts Bare Hill Pond or is in the Bare Hill Pond watershed, and thereby would not result in any positive financial benefit for any said BHPWMC members/residential owners.

**General Policy Decision:** For General Policy Decisions, I understand that the exemption applies because the interest of a BHPWMC member who is an abutter "is shared with a substantial segment of the population of the municipality." This is supported by a number of important facts:

1. The Harvard GIS Map indicates that there are 200 parcels that fall within the definition of an abutter to Bare Hill Pond<sup>1</sup>. (see attached Bare Hill Pond abutters map) That represents approximately 8% of the 2502 parcels in Harvard.
2. The General Policy Decisions impact more than just the Abutters to Bare Hill Pond but all users of Bare Hill Pond and its watershed. There are 539 parcels in the Bare Hill Pond Watershed as a whole and this represents 21.5% of the parcels in Harvard (see attached Bare Hill Pond Watershed map)
3. In addition, the Town Beach boat launch are actively used by a large proportion of the community and on a given day, there may be more persons using Bare Hill Pond in the community than those abutting the Pond. This is supported by data from the Park and Recreation Commission that indicated that 190 families purchased an Annual boat rental pass, 269 people purchased day passes for boat rentals, 111 canoes and kayaks were stored on the racks, 34 boat moorings were leased and 1557 families purchased annual parking passes. This does not include off season use for ice fishing, cross-country skiing, snow mobile use, and visits to the Pond to fish, boat or for other purposes.

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<sup>1</sup> An abutter is defined as a parcel that abuts BHP and any parcel that is an abutter to an abutter within 300 feet of the property line of BHP. [05-02: Voting on Matters Affecting Abutting or Nearby Property | Mass.gov](#)

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These facts support the finding that a member of the BHPWMC that is a Pond abutter has an interest that is shared with a substantial segment of the population of the municipality in making the General Policy Decision. The State Ethics Commission has ruled that if 10% of the community shares this interest, then these facts should be more than sufficient where 8% of parcels in Town are abutters<sup>2</sup>, when the entire watershed is considered along with the active use of Bare Hill Pond by many non-abutter residents.

Accordingly, it is my professional opinion that the Select Board should authorize the participation of any/all BHPWMC members, including those who either abut Bare Hill Pond or are in the Bare Hill Pond watershed, in any of these matters/decisions that would fall under MGL Ch. 268A Sections 19(b)(1)and(3).

Very truly yours,

(Owner/Broker/Appraiser – Ruo & Haschig Realty / RHR Appraisals)

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<sup>2</sup> Summary of the Conflict of Interest Law for Municipal Employees | Mass.gov (Example under II.D.).

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## MA GL CH268A Section 19

### **Municipal employees, relatives or associates; financial interest in particular matter**

(a) Except as permitted by paragraph (b), a municipal employee who participates as such an employee in a particular matter in which to his knowledge he, his immediate family or partner, a business organization in which he is serving as officer, director, trustee, partner or employee, or any person or organization with whom he is negotiating or has any arrangement concerning prospective employment, has a financial interest, shall be punished by a fine of not more than \$10,000, or by imprisonment in the state prison for not more than 5 years, or in a jail or house of correction for not more than 2 ½ years, or both.

(b) It shall not be a violation of this section:

(1) if the municipal employee first advises the official responsible for appointment to his position of the nature and circumstances of the particular matter and makes full disclosure of such financial interest, and receives in advance a written determination made by that official that the interest is not so substantial as to be deemed likely to affect the integrity of the services which the municipality may expect from the employee, or

(2) if, in the case of an elected municipal official making demand bank deposits of municipal funds, said official first files with the clerk of the city or town, a statement making full disclosure of such financial interest, or

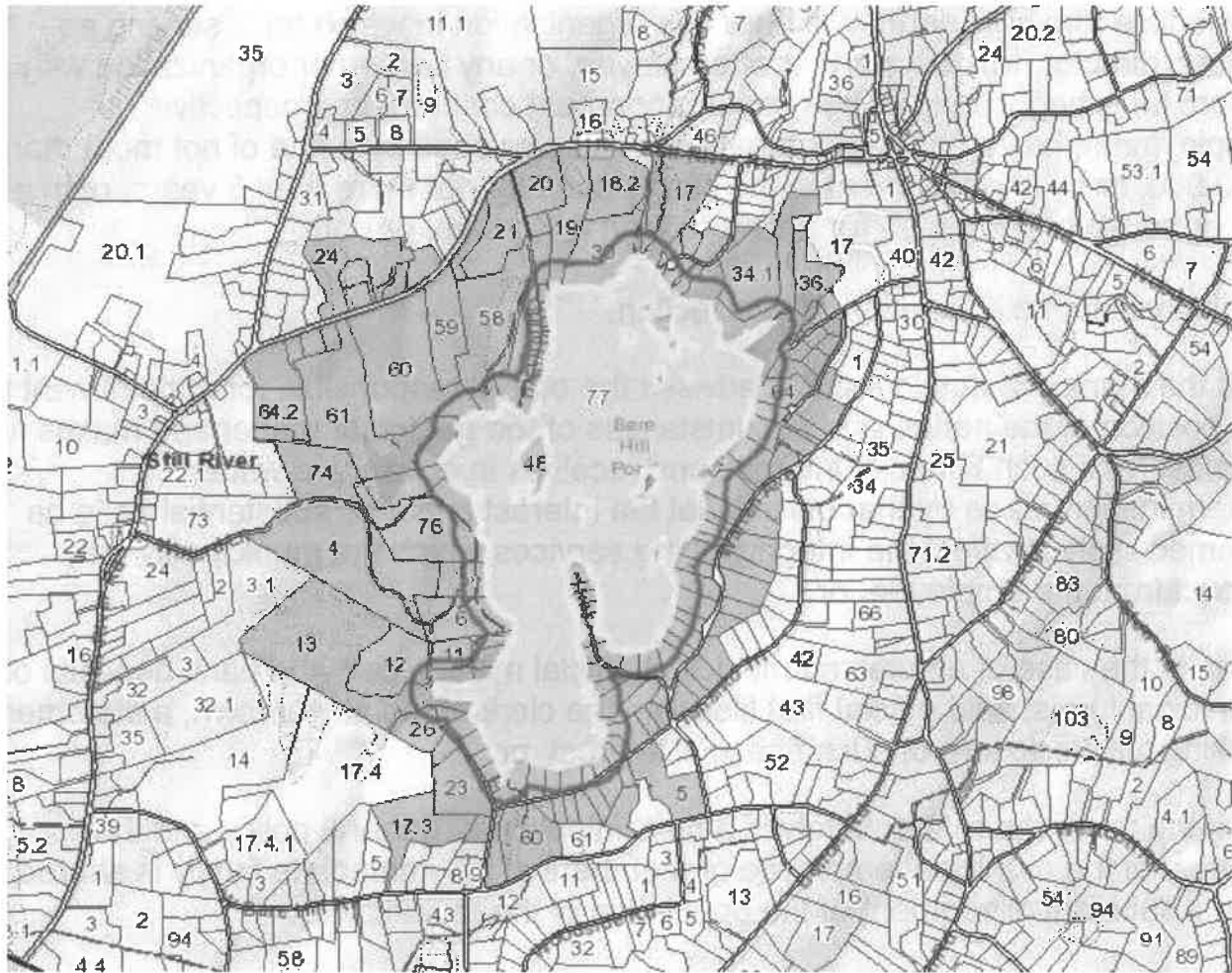
(3) if the particular matter involves a determination of general policy and the interest of the municipal employee or members of his immediate family is shared with a substantial segment of the population of the municipality.



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**Abutters to BHP and Abutters to Abutters within 300 Feet of Bare Hill Pond**

**(200 parcels)**



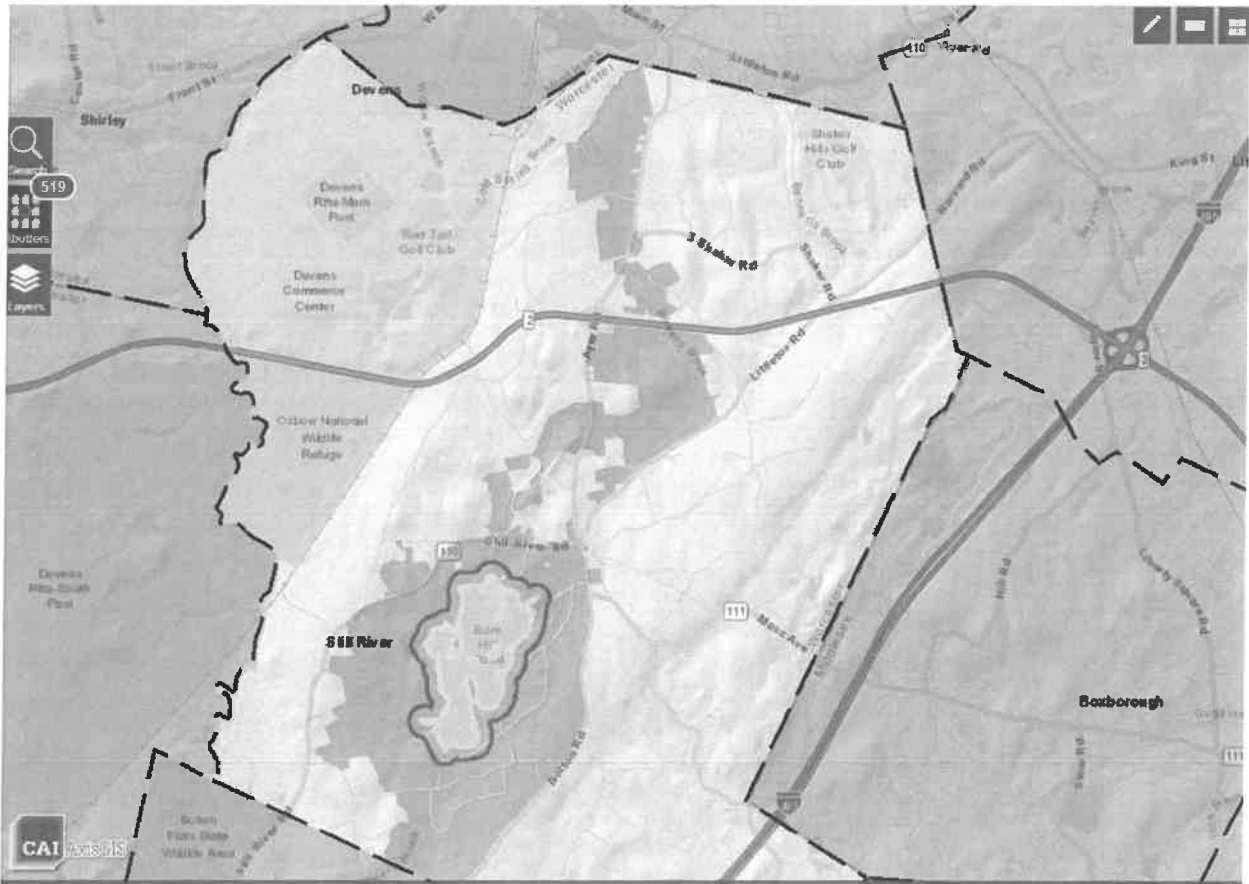
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**Bare Hill Pond Watershed Parcels  
(539 Parcels)**



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