



Wellesley
MASSACHUSETTS

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Voted to Approve 05/04/2023

Town of Wellesley
Wetlands Protection Committee (WPC)
Regular Meeting with Executive Session Minutes
April 6, 2023

Members Present: Ellie McLane, Chair; Peter Jones, Vice Chair; John Adams, Secretary; James McLaren; Kevin Hanron; Doug Hersh, Associate Member; Eben Scanlon, Associate Member

Members Not Present: None

Staff Present: Wetlands Administrator Julie Meyer

Guests Present: Jim Morse, David Silverstein, Rahul Golhar, John Rockwood, David Hickey, George Saraceno, Jim Morse, David Himmelberger

6:33 PM – Meeting Open (Chair)

6:33 PM – Meeting Entered Executive Session

The WPC convened in open session. The Chair made a motion to enter into executive session under Article 2A1 Purpose 3 to discuss litigation involving violations at 9 Peirce Road and to permit Julie Meyer and Ivria Fried to attend the meeting and to return to open session afterwards. The WPC voted by a 5-0 roll-call unanimously to leave the current meeting enter into executive session.

6:59 PM – Meeting Resumed (Chair)

Administrative Business

1. Approve Minutes

Mr. Adams stated both sets of minutes for March 2nd and 16th would be reviewed at the next WPC meeting. Board members were in agreement.

2. Remote Meeting Considerations

Regarding the extension of the expiration of remote meetings, the WPC discussed whether to resume in-person, stay remote or try hybrid meeting. Ms. McLane commented that hybrid meeting format would be cumbersome and challenging. Mr. Jones agreed with the disadvantages of hybrid and preferred to meet in-person. Mr. McLaren expressed a slight preference to meet online. Mr. Adams was in favor of either in-person or remote and did not want to do hybrid. Mr. Hanron indicated that except for late meetings, he preferred in-person. Mr. Hersh preferred in-person, while recognizing that remote meetings encourage more public participation. Mr. Scanlon agreed with Mr. Hersh. Ms. McLane noted one benefit of meeting remotely was that plans are more easily viewed but felt remote meetings were easier to get to on time from work. Mr. Hanron acknowledged that the summer would be a good time to try to meet in-person due to the advantages of traveling while there is still light. The Chair stated that they will decide whether to do a trial return to an in-person meeting at a future meeting. The Committee agreed to table a vote.

7:05 PM – Active Matters

1. 15 The Waterway (project update)

Ms. Meyer summarized that she and three other WPC members conducted a site inspection after consideration of comments presented by neighbors. She indicated the applicant was in compliance with the Order of Conditions. She further stated that she did not observe any active wetland violations. Ms. Meyer stated that she was worried about the white oak tree as the soil is dry. She stated that the project representative has provided an irrigation plan via email for the large white oak tree that is to be protected according to the plan of record.

2. 1 Sunnyside Av (project update and update on notice of violation)

Ms. Meyer confirmed the applicant was dewatering via the approved plan. She stated that she inspected the dewatering system with Town Engineer George Saraceno to review and confirm the dewatering was working according to plan. Ms. Meyer and Mr. Saraceno requested the applicant protect a tree from stockpiling dirt over its critical root zone via establishing fencing.

7:08 PM Public Meeting Open (Chair)

Ms. McLane read aloud the remote open meeting guidelines. Mr. McLaren made a motion to delegate signatures of the Wetlands Protection Committee (WPC) for this meeting. The motion was seconded by Mr. Jones. The motion was approved by a roll call vote 5-0.

Public Voice for items not on the agenda (Chair)

None at this time.

Public Hearings and Meetings

1. 2b Pickerel Rd (cont. NOI) - MA-DEP file # 324-1020; Applicant: G. Yehiav; after-the-fact landscape construction within Buffer Zone to Morses Pond. Continued at request of applicant to 4/27.
Discussion: The WPC discussed the lack of additional information or communication provided by the applicant. The applicant agreed to obtain and provide a stamped surveyed plan to the WPC that shows property boundaries. Ms. Meyer offered to draft an EO requiring the patio be removed if no updates are

received by a deadline set by the Committee. The WPC discussed withdrawing the option for the applicant to obtain an after-the-fact Order of Conditions, and or issuing fines for allowing an unapproved alteration to remain without the OOC.

Decision: Mr. Jones made a motion to have the Wetlands Administrator draft an enforcement order to be ratified at the next meeting if the applicant does not respond to the Committee by the next meeting (April 27th). Mr. McLaren seconded the motion. The motion was approved by roll call vote, 5-0.

Action Steps:

Administrator: draft an enforcement order and send it to the applicant.

2. 110 Worcester St – (cont. NOI) - MA-DEP file # 324-1019; Applicant: J. Hyde; addition of electrical and gas installation supporting lab conversion project work within 200-ft Riverfront Area. Ms. Meyer commented that she received several comments from the applicant’s Attorney, David Himmelberger.

Decision: Mr. McLaren motioned to close the hearing regarding the State Bylaws under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw. Mr. Jones seconded the motion. The motion was approved by roll call vote, 5-0.

3. 132 Glen Rd (draft EO) - MADEP file # 324-1018; Applicant: Phillip & Maria Pearl; to allow mitigation work to take place prior to the receipt of a complete NOI.

Mitigation for additional impervious area within the resource area was limited to allowing a subsurface infiltration system (Cultec) to be installed. Mr. Jones confirmed that related discussion took place at the previous WPC meeting.

Decision: Mr. Jones motioned to issue the Enforcement Order (EO) for 132 Glen Road under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw. Mr. McLaren seconded the motion. The motion was approved by roll call vote, 5-0.

4. 55 Atwood St (new Request to Extend OOC) - MA-DEP file # 324-0953; Applicant: Jim Morse; to allow time for mitigation plantings to survive required growing period. Mr. Morse indicated he needed additional time for the plantings to thrive within the growing period to November, and would submit a report to Ms. Meyer within the next 4 to 6 weeks. He confirmed that the plants were looking healthy. Ms. Meyer confirmed the plantings looked good.

Decision: Mr. Jones motioned to extend the OOC for one year under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw. Mr. Adams seconded the motion. The motion was approved by roll call vote, 5-0.

5. 76 Bristol Rd (new Request to Amend OOC) - MA-DEP file # 324-0985; Applicant: D. Silverstein; Installation of wood fence with 4” space below to grade encircling rear of the yard. The plans was reviewed by WPC. Mr. McLaren commented about safety aspects, considering the proposed fencing would not completely block access to the vernal pool area. Ms. McLane commented about the waiver request in relation to the 25’ “no disturb zone,” and asked if the fence could be placed outside of the 25’ “no disturb zone.” Mr. Silverstein agreed.

Public Voice:

Neighbor Peter Chapman, 45 Hampshire Road, noted that he and the Hoffman family at 29 Hampshire Road, own the referenced vernal pool. He noted added restrictions were placed on his property when he renovated his home, as well as renovations proposed by the Hoffmans. Mr. Chapman commented about the wildlife around the vernal pool and questioned if 4” would provide sufficient access, and

sought consistency with restrictions administered. Ms. Meyer commented that in the last six- some years, 4" gap at bottom of fencing, was preferred.

Resident Cynthia Westerman, 25 Seaver Street, inquired about the distance of the proposal fence from the vernal pool. Ms. Meyer responded the distance would be approximately two feet from existing lawn (approximately 27 feet from the vernal pool/water's edge).

Decision: Mr. Jones motioned that the proposed fencing at 76 Bristol Road be installed outside of the 25' No Disturb Zone, with a 4" gap at the bottom of the proposed fence, per revised plan to be submitted under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw. Mr. McLaren seconded the motion. The motion was approved by roll call vote, 5-0.

Decision: Mr. Jones motioned that the \$500 waiver fee be returned to Mr. Silverstein since the work was modified to move upgradient of the 25-no-disturbance zone boundary. Mr. Hanron seconded the motion. The motion was approved by roll call vote, 5-0.

6. 173 Winding River Rd (new Request to Extend OOC) - MA-DEP file # 324-0931; Applicant: Eben Scanlon; looking to finish original permitted work to allow two full growing seasons.

Discussion: Mr. Scanlon noted that most of the construction work was completed, and was requesting a 2-year OOC extension to allow for a full plant-growing season, and all final landscaping would be completed this spring.

Decision: Mr. McLaren motioned to extend the OOC for two years under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw. Mr. Jones seconded the motion. The motion was approved by roll call vote, 5-0.

7. 60 Mclean St (new RDA) - Applicant: Rahul Golhar; install patio over lawn within buffer zone to BVW.

Discussion: Mr. Golhar presented the RDA plan, noting the previous patio would be within 100' of the wetland butter zone. Ms. McLane confirmed the proposed patio would have to be within 400 square feet to comply with RDA requirements. Ms. McLane stated the revised patio plan would have to be presented to the WPC at a future meeting. Mr. Golhar was in agreement.

Decision: Mr. Adams motioned for a positive Determination of Applicability under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw. Mr. Jones seconded the motion. The motion was approved by roll call vote, 5-0.

8. 62 Brookside Rd (new 3-year Request to Extend OOC); Applicant: G. Russell; no work done as of 3/7/2023.

Discussion: Representative Mr. Rockwood provided the proposed stormwater plan, and noted the property straddled the Wellesley/Needham line. He added that the Needham Conservation Commission extended the OOC for three years.

Decision: Mr. Jones motioned to extend 3-year OOC extension under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw. Mr. Adams seconded the motion. The motion was approved by roll call vote, 5-0.

9. 55 Rice St (*cont.* Request to Amend OOC) – MA-DEP file # 324-0998; Applicant: D. Hickey, Town of Wellesley; install four sports lighting and sound poles, and modify grading within multiple resource areas.

Discussion: Ms. McLane confirmed that the WPC decided to seek a third-party peer reviewer to help the Committee in their review. The Chair stated that a request for proposal (RFP) was circulated to six prospects. Staff received one proposal. Another interested party provided a CV and said they could not

submit a proposal until Monday the 10th nor complete deliverables until late May or early June. Staff plus Ms. McLane and Mr. Jones discussed the responses and decided to that the Committee should make the decision to wait for the 2nd proposal or not. The Committee agreed they would review both submissions and vote at the next WPC meeting. Applicant and Representative for the School Committee, Mr. Hickey, requested that the consultant report be submitted a couple of days before the meeting. Ms. Meyer suggested a deadline submission date between May 18 and May 22. Mr. Hickey stated that the School Committee provided a clarification memo in response to the WPC comments from the last meeting and that it can be presented at the next meeting when Epsilon and School Committee representatives would be in attendance. Mr. Hickey requested a continuation of the hearing until April 27. Ms. McLane agreed that tabling of the lighting discussion would be appropriate, and recommended focusing their deliberation on the proposed landscaping and grading plans.

Mr. Hickey reviewed the proposal to remove a row of existing hemlock trees suffering from hemlock wooly adelgid and so they would be able to accommodate upcoming construction. The trees would be replaced with *Juniperus chinensis* (Chinese juniper) vs a native *Juniperus virginiana* (eastern red cedar) as the former species offers more compact and consistent form and visually anchors the field to the junipers on the opposite end of the field. The amendment replacement trees will also include 2 native red maples. Between 12 to 15 trees are proposed to be replaced. Ms. McLane reminded the applicant that mitigation should be with native species. Mr. Hanron commented that the existing junipers appeared healthy and that the WPC has the discretion to allow non-native species as mitigation. Mr. Hickey suggested retaining the healthiest hemlock trees and replacing only the least healthy trees. Ms. McLane commented that additional understory plantings could be considered as well. Mr. Jones suggested keeping the existing vegetation until it dies. Mr. Jones asked the trees could be replaced at a 1:1 ratio to which Mr. Hickey agreed to revise with a note on the plan as to what species is being proposed.

Ms. McLane inquired about amount of fill being proposed at what elevations and requested clarity on the units used to describe the changes. Mr. Hickey clarified that the units should be in cubic feet. clarify the vertical datum/elevations. Mr. Hickey responded he would review the summary table and narrative and correct any inconsistencies related to units used for cut and fill. Mr. Hickey further clarified the vertical datum used to denote elevations in all submitted documents are in Wellesley datum as compared to the GIS which is using NAVD.

Mr. Hickey asked if it is possible to see if the consultant could complete the work prior to the May 18th date. The Chair said that while the deadlines are already aggressive, the Wetlands Administrator can include that question when in communications with prospective consultants.

Public Voice

The WPC reminded speakers to try not to repeat what others have said, and reminded anyone of the role of the WPC.

Resident Brent Willis, 41 Bellevue Road, supported the lights project; emphasized lack of evidence to support that the Epsilon study is biased. He hoped the professional WPC peer review report would not be biased. He stated the proposal confirms 100 hours, less than 3% of all nighttime, with a limit of not exceeding 9:00 PM. He stated the WPC listen to all stakeholders in town not just those who can attend a meeting.

Resident Wendy Vonpecco, 26 Oakland Circle, stated the importance of a third-party consultant perform a site visit. She asked about the idea to approach Town Counsel regarding a guarantee regarding limiting proposed lighting to 100 hours. She also indicated the topic of sound decibels had not been mentioned.

Resident Cynthia Westerman, 25 Seaver Street, reiterated points presented by resident Brent Willis. She notes she lives near the wetlands for over 30 years, and has seen increased wildlife around the area of her home since the high school and parking lot was built and pointed out that the parking lot lights are on all night long. She stated she wished to understand what species are being discussed.

Resident Reina McManus, 2 Mulherin Lane, referenced the Epsilon submission statement of night time light calculations regarding the lighting project. Less than 2.8% of total annual night-time dark hours. She stated that the time of year proposed for games are focused during spring and fall – during bird migration, fish spawning, circadian rhythms, mating and nesting, etc. Light trespass is estimated to be twilight, which is like the full moon in brightness when many animals seek shelter and refrain from foraging and mating. Requested the 80 db noise from the PA system when combined with lights has negative effects on the quality of habitat. She stated the Town Wetlands Bylaw gives broad powers to protect the values and interests of the wetlands from activities that you deem likely to have a significant or cumulative effect, including but not limited to the values of the bylaw. She states there are alternatives to night games, but no alternatives to the Fuller Brook Park and its wetlands.

Resident Kristy Kovacks, 20 Clifford Street, expressed her concern regarding the consequences of adding light including increased foot and vehicle traffic, noise, trash and potential for additional activities, and noted that there are no restrictions on after-game activities. She mentioned the negative effect on area wildlife, and noted that there are no restrictions presented regarding further additions of lighting and noise. Ms. Kovacks asked WPC to help protect wildlife diversity, and to consider the proposal as a separate project and not an amendment.

Resident Christopher Spagnuolo, 14 Paine Street, stated he has not seen a decline in flora and wildlife in his 14+ years as a local resident. He said he has lived through many changes in the neighborhood, including the building of the new high school. He sees coyotes, owls, eagles and other wildlife in the area. He noted that the lights on the Hunnewell Fields (including the tennis courts) are open for thousands of hours in the spring, summer, and fall. He said the lights proposed for the 11- or 12-night games, in contrast, are negligible to compared to the lights at Whole Foods, tennis courts, Reedy field, Diane Warren softball field; etc. Mr. Spagnuolo stated that many neighbors support the project who cannot attend the meetings. He noted that he can hear the MBTA train 40 times per day. He mentioned the Epsilon study author had a bunch of abbreviations, master of science, and other certifications.

Resident Jeanne Mayell, 27 Seaver Street, spoke to the number of nights being proposed for lighting as 21 and for school use only, noting that the figure provided was not exact because the number of games cannot be guaranteed. She submitted a letter confirming the number of games could be 101 or more night games. Ms. Mayell stated that the other users would include club teams, outside groups, and private organizations. She asked that Committee members review her letter.

Ms. McLean requested that Ms. Meyer provide an update on her conversation with Town Counsel regarding whether the number of light-hours can be restricted or conditioned. Ms. Meyer stated that she spoke with Ivria Fried. Ms. Meyer stated that Ms. Fried said that the WPC may condition lights and the number of light hours in perpetuity. Ms. Meyer further stated that such a decision should be based on scientific evidence. Ms. Meyer confirmed Ms. Fried's acknowledgement that such lighting hours could be conditioned in perpetuity; and if appealed, outside counsel would be representing both parties. Ms. Meyer also mentioned that there are controls already currently used on the site for something. Finally, Ms. Meyer stated that it would be up to the WPC to work with the applicant to come to an agreement that is deemed to be both reasonable and enforceable.

Mr. McLaren asked Mr. Hickey if there is currently a metering built into the light system. Mr. Hickey responded yes and that the Musco system used on the Warren field can be programmed through either Recreation or via Musco. The new system will be more sophisticated where the Athletic Director can create reports.

Public Voice Resumed

Resident Josephine Okun, 15 Cottonwood Road, mentioned a violation at the Wellesley High School Track and Field renovation that the applicant had; MassDEP OOC #324-0809, with fencing maintaining a 4" gap at the bottom to allow for wildlife passage with a trash catcher to prevent trash from blowing. Ms. Okun asked if this condition had been implemented.

Ms. McLean asked Ms. Meyer to follow up on this aspect. Ms. Meyer confirmed she would research the fencing. Mr. Hickey addressed both the fence gap and the trash collection. The Wetlands Administrator at the time of that permit walked the site and agreed the plans of record would not be able to be built. Mr. Hickey noted that a Certificate of Compliance was issued for the project. Ms. McLane stated that periodic gaps so the fence is not a barrier to wildlife habitat may need to be added.

Mr. Hickey requested that the Request to Amend OOC at 55 Rice Street be continued to the next WPC meeting on April 27, 2023.

Decision: To continue the Request to Amend OOC at 55 Rice Street, to the April 27th meeting under both the Massachusetts Wetlands Protection Act and the Wellesley Wetlands Protection Bylaw.

Actions(s): Applicant to submit additional landscaping, grading and lighting matters.

Mr. Scanlon had a request. He stated appreciation for the research with Town Counsel about the ability of the WPC to condition lighting at 100 hours. He referenced Mr. Hanron's insight that if the lighting hours were exceeded, the Town could be issuing a fine against itself. Is there a way to enforce beyond a fine? He questioned the implications regarding exceeding the 100-hour proposed limit. Ms. Meyer suggested Committee Members consider how this aspect could be addressed, with other enforcement possible. Ms. McLane asked Mr. Hickey to follow-up up to find if there is a way to program whether the light limits can be engineered into the system. Mr. Hickey said he would look into the matter. Mr. Hersh suggested the Committee consider possible enforcement guidelines if they were to approve the lights and set conditions. Mr. Hersh clarified the distinction between the NRC and the WPC in terms of their respective powers. The NRC can have a policy not to exceed 100 hours but it's a discretionary policy and they can decide to make exceptions and it's not legally binding for the NRC to change or make exceptions to their policy. Ms. Meyer added that's in contrast to an Order of Conditions which is like a deed restriction that is registered, runs with the land in perpetuity and is enforceable at the state level presumably at the state level. Mr. Hanron asked for clarification from the Wetlands Administrator that Town Counsel told her that the WPC could have an OOC specifying such an element, to which Ms. Meyer stated that yes, just like any condition, as long as it is evidence-based, you can condition. She added, the Town Counsel noted that the hardest part is monitoring compliance. Continued to the 27th.

Adjournment

Mr. Jones motioned to adjourn the WPC meeting. Mr. Adams seconded the motion. The motion was approved by roll call vote, 5-0.

There being no further business, the meeting ended at **9:16 PM**.