



## **TOWN OF PELHAM CONSERVATION COMMISSION**

Pelham, Massachusetts

### **Minutes for December 17, 2020**

Present: Janice Gifford, David Gross, Richard Seelig, Tilman Lukas, Meredith Borenstein, Dana MacDonald

Also present: Maria Firstenberg, TRC; Sean Tarpey, Friend of Cadwell Forest; Greg Russo, TRC; Curt Griffin, University of Massachusetts Amherst Department of Environmental Conservation

The meeting was held online via Zoom due to the ongoing COVID-19 pandemic and state-mandated restrictions on meeting in person. The link to the Zoom meeting was published as part of the regular Commission agenda. The meeting was held under guidelines from the Attorney General and the Governor.

The meeting was brought to order at 7:07 pm.

#### **Public Hearing for Tower Hill Road-Abbreviated Notice of Resource Area Delineation (ANRAD)**

The Public Hearing was opened at 7:09 pm by Chair MacDonald.

Agent Borenstein read the legal ad for the ANRAD Public Hearing for which WD Cowls, Inc. is the applicant. The application is for parcel 14-1. Chair MacDonald set the ground rules for the hearing.

Maria Firstenberg reviewed the ANRAD application including the process for identifying wetlands and the site visit between herself and the external reviewer, Emily Stockman. Ms. Firstenberg noted that Ms. Stockman suggested that the flagged Wetland 1 at the north end of the parcel needs to be expanded to extend westward. Additionally, Wetland 2 needs further extension to the west and an additional wetland within quadrangle 7 on attachment D of the ANRAD application needs to be flagged and delineated. Ms. Firstenberg said that there is a need for more site viewing with Ms. Stockman when the snow cover is no longer present. There was discussion of an intermittent stream north of the parcel in quadrangle 2 on attachment D as well as another intermittent stream in quadrant 8. Chair MacDonald noted that stream S-1 is connected to the Amherst watershed and thus is a regulated resource area.

Prof. Griffin asked about the area that Ms. Stockman and Ms. Firstenberg managed to cover during their review of the parcel. Ms. Firstenberg reported that they walked through the center of the parcel and looked at flagged sites. There was a question about locating resource areas during the initial TRC review. Mr. Russo described his methodology. He said that the work was done during the last week of March, 2020.

Chair MacDonald noted for the record that the Pelham Wetland Bylaw is more strict than the state Wetlands Protection Act (WPA). Small, sensitive areas are jurisdictional under

the town bylaw that are not jurisdictional under the WPA. Chair MacDonald asked Agent Borenstein if Ms. Stockman has submitted a report, or, if not, is there a timeline for it? Agent Borenstein said that the report will be filed subsequent to the full review of the site by Ms. Stockman. There was discussion of a continuance, and it was agreed that it is in the best interest of the applicant to do that. The Commission will keep this item on future meeting agendas until the site can be reviewed and the report received. Agent Borenstein will leave it to Ms. Stockman and TRC to coordinate on the site review. Chair MacDonald formally asked TRC for permission for a continuance to keep the public hearing open. Ms. Firstenberg agreed that TRC wishes to have a continuance.

It was moved to continue the hearing until such time that Emily Stockman's report is complete. Second. Approved 5-0 (Gifford – yes, Gross – yes, Lukas – yes, MacDonald – yes, Seelig – yes).

There was further discussion of a future site visit by the Commission to review the delineated wetlands and to understand the slopes that are found on the site in regard to stormwater control.

It was moved and seconded to adjourn the hearing at 7:40 pm. Second. Approved 5-0 (Gifford – yes, Gross – yes, Lukas – yes, MacDonald – yes, Seelig – yes).

#### **Update on 22 Amherst Road Site Visit/Permitting schedule**

Commissioner Lukas reported that plans for the Amethyst Brook Apartments at 22 Amherst Road are moving forward. He said that Berkshire Design is nearing completion of the Notice of Intent (NOI) filing that should be delivered to the Commission soon. There was discussion of the timing of the filing with respect to the next scheduled Commission meeting on January 14, 2021.

#### **8 Amherst Road Conservation Restriction (CR)**

There was discussion about the process timing for the acceptance of a CR on a parcel that Habitat for Humanity will donate to the Kestrel Trust which will then provide a CR to the town. The processing will start with Kestrel for approval, then the Conservation Commission, then the state, then back to the Commission, and then to the Select Board for final approval. Both the Commission and the Select Board need to sign it. Commissioner Gross noted that Exhibit D on the draft CR that was circulated to Commission members needs to be removed or revised as it refers to actions by Town Meeting that have not occurred. Chair MacDonald suggested that the paragraph on composting should be deleted. He also felt that the forestry management plan portion now in the CR should be removed as the parcel is too small for forestry. He said that he will contact Attorney Elizabeth Wroblinka, who is working on CRs for the Kestrel Trust, with his suggestions.

#### **96 Harkness Road Wood Shed on Conservation Land**

Commissioner Lukas reviewed the issue about a dead tree located between 96 and 100 Harkness Road, which is a small parcel owned by the town. He said that the town Tree Warden agreed to remove the tree, which was done after Thanksgiving. The Commission noted at a site visit in early November that a wood shed associated with 96 Harkness Road appeared to lie on conservation land, slightly to the north of the dead tree. Additionally, it appeared that a driveway with vehicles parked on it was also on town property. Chair

December 17, 2020

MacDonald noted that Elizabeth Wroblinka, working for the Kestrel Trust which holds the Conservation Restriction on the parcel, had suggested that the Commission give the owners of 96 Harkness Road an order for removal at such time when they sell the property. Additionally, it was suggested that the order state that the area on town property must not expand. This order can and should be filed on the property deed. After some discussion, the Commission agreed that there is a need to investigate how to do such a thing. Chair MacDonald said that the Commission should contact the owners of 96 Harkness Road prior to proceeding with the order. He also noted that the Commission should review the survey for the Harkness Conservation Area to confirm the location of the property line. Agent Borenstein and Commissioner Seelig will coordinate to review the Commission files for the Harkness Conservation Area that are located in the basement of the Rhodes Building.

### **Levy Boundary Violation Resolution**

Chair MacDonald asked if Kestrel has been notified that the Levy property abutting the Buffam Brook Community Forest has been remediated by the Levys. Commissioner Seelig said that he had thanked them for clearing the area bordering their property, but that he had not notified Kestrel. Chair MacDonald suggested that he copy to Kristen DeBoer the Levy's response to his original notification of the violation.

### **31 Boyden Road- Shed on Town Property**

The Commission discussed the issue that a shed and part of a driveway at the Hirsch property abutting the Buffam Brook Community Forest are across the property boundary on town land. The Commission agreed to use the same process as for the Harkness Road violation noted above. Chair MacDonald noted that he has tried to discuss this issue with Ms. Hirsch, and she knows what the problem is. The Commission agreed that it needs to move forward now with the town lawyer and then discuss a resolution of the violation with the Select Board. Chair MacDonald suggested that the Commission hire Elizabeth Wroblinka to write a draft of the order to attach to the property deed.

It was moved that the Commission hire Elizabeth Wroblinka to write a draft order describing incursions onto Buffam Brook Community Forest Conservation Restriction land including attaching the order to the property deed. Second. Discussion concluded that hiring outside counsel is more efficient and less expensive than getting town counsel up to date. Approved 5-0 (Gifford – yes, Gross – yes, Lukas – yes, MacDonald – yes, Seelig – yes).

### **58 Buffam Road Site Visit**

Agent Borenstein, Peter Labarbara. and Commissioners Gross, Lukas and Seelig walked the parcel at 58 Buffam Road and reviewed Mr. Labarbara's wetlands delineation. Agent Borenstein reported that the potential buyer of the parcel has decided not to buy, so there is no need to pursue this issue further.

The meeting adjourned at 8:47 pm.

Respectfully submitted by David Gross

