



## TOWN OF PELHAM CONSERVATION COMMISSION

Pelham, Massachusetts

### Minutes for April 30, 2020

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

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 7:02 pm.

#### **Updates on Revised State Guidelines for Public Meetings**

Chair MacDonald said that there are online meetings at 11 am on Wednesdays for Conservation Commissioners held via Zoom. These meetings provide information about what procedures have changed due to pandemic restrictions. Agent Borenstein will circulate info on this. Of particular note is that Commissioners can now sign official documents electronically.

#### **Procedures for NOIs, RDAs and ANRADs**

The Commissioners discussed the difficulty of processing Notices of Intent (NOIs), Abbreviated Notices of Resource Area Delineation (ANRADs) or Requests for Determination of Applicability (RDAs) when meetings and field trips in person are restricted. Chair MacDonald noted that the Commission needs to follow state guidelines about delaying decisions until it is safe to meet in person. The Commission noted that applicants can submit any time and are encouraged to do so, but the Commission will not process the application until restrictions are lifted. There was discussion about the use of an independent analyst for complex or technical applications. Chair MacDonald said that Emily Stockman is working on the Amherst solar project brought forward by Cowls Land Company. He suggested that the Commission consider asking her to do independent analysis for projects submitted to the Commission.

There was discussion of the Williamsburg solar array disaster that was featured in a front-page article in the Daily Hampshire Gazette this week. Agent Borenstein said that the array was built over an old gravel pit, and because of its location only an RDA from the Conservation Commission was required. The stormwater plan was insufficient, causing considerable preventable environmental damage. Chair MacDonald noted that engineering for construction and stormwater mitigation on the site is critical to get right in order to prevent such problems. For any projects in Pelham applicants will need to submit an NOI, and such NOIs must clearly delineate all the wetlands on the site and adjacent to the site. Stormwater discharge from the project during construction and upon project completion will be a critical aspect of the Commission's review of the project. For projects such as large solar arrays, a soil &

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sedimentation control specialist will likely be necessary for the Commission's review. The Commission agreed that it will be necessary to have an independent observer on site regularly to observe construction.

Commissioner Lukas asked if the Commission can require a performance bond to ensure that any environmental damage, if it occurs, can be remediated from bond monies rather than from monies obtained by pursuing the construction company in court. It was suggested that the Zoning Board of Appeals (ZBA) will need to approve the project, and thus the ZBA might best be situated to request such a bond.

Commissioner Seelig asked about the current status of the ANRAD that was discussed at the Commission's April 6 meeting. Agent Borenstein said that she had received an email about an ANRAD for a project that particularly asked about Pelham's procedure for ANRADs. She noted that to date she has not received a direct request for an ANRAD. The Commission agreed that if an ANRAD is submitted, that the Commission will pick a reviewer to assist with the analysis of the delineation with an eye to the town Wetlands Bylaw. The procedure for paying for the review would be for the reviewer to invoice the Commission and then Agent Borenstein would pass on the invoice to the applicant for payment. It will be necessary to have the reviewer paid before the review can proceed.

Commissioner Lukas asked for clarification, in terms of wetland delineation, what the difference was between an ANRAD and an RDA? Agent Borenstein noted that an RDA form has a checkbox for approval of delineation. There is no fee for RDA. For an ANRAD, the Conservation Commission receives \$2 per foot of Bordering Vegetated Wetland (BVW) delineation up to \$2000. An ANRAD is permanently recorded on the property deed whereas an RDA expires after 3 years, though that can be extended for 2 years.

**Potential Enforcement at 59 Meeting House Road**

There was discussion of removal of trash and debris in the BVW at 59 Meeting House Road, and the potential restoration of Buffer Zone. Chair MacDonald said that this has been taken care of. There had been a van still on the property after the Commission's last meeting, and the van was moved. Agent Borenstein expressed a concern that the area next to the driveway looks like a parking area, and that it encroaches on the BVW. The Commission discussed putting boulders there to prevent access to the BVW from the road, but Chair MacDonald said that he thinks that the tenants got the message and this should resolve. Commissioner Seelig said that he will keep an eye on the property on his daily walks.

**Potential third party reviewers for upcoming permits**

Agent Borenstein noted that an NOI for construction at 22 Amherst Road and an ANRAD are expected soon, though no permits have been submitted to the Commission as of 4/24/2020. She asked about the procedure to line up a peer reviewer. There was some discussion of possible candidates. Chair MacDonald noted that he has not yet found a reviewer for the stormwater portion of the 22 Amherst Rd project. The Commission needs to find someone with specific expertise and get them on board. Berkshire Design is the company that is filing the project. Agent Borenstein says she will explore names of possible independent reviewers. Tighe and Bond has a good track record with us. Chair MacDonald noted that they are good

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communicators and very knowledgeable about riverfront work. Stantec is another possible reviewer with a good record. Chair MacDonald noted that the engineer for the dam removal project on Amethyst Brook near 22 Amherst Road lives in Vermont and is named Chalmetzky or Chametzky.

The Commission agreed that applicants should submit now to get things started, but they should be informed that the Commission will not complete the permitting process prior to the 45-day window after the state closing order expires. The Commission will send an NOI to potential reviewers and get quotes for the review work. Chair MacDonald expects the cost of the review for the 22 Amherst Road NOI to be \$5000-\$10,000. He asked Agent Borenstein to contact Stantec, Tighe & Bond, and Emily Stockman to gauge their interest in being our reviewer. He noted that the Commission needs to wait until the application is submitted before the reviewer can be engaged. Commissioner Lukas suggested that the Commission obtain agreement from the applicant to move forward with the independent review before the review moves forward. It was agreed that engagement of an independent reviewer should speed up the whole application review process as it will get the reviewer up to speed before the Commission begins its work.

The steps to be taken are

- Encourage Berkshire Design to submit NOI; want full-size prints of plans (set of 8)
- Contact potential reviewers
- Ask Home City permission to engage reviewer

**Minutes from April 6, 2020**

There was a motion to approve the minutes for the April 6 meeting. Seconded. Approved unanimously 5-0.

**Request from Eversource for Tree Removal Along Harkness Road**

Chair MacDonald reported that he was contacted by Eversource as well as the Pelham Tree Warden David Hawkins about tree removal. Eversource needs to put a 3-phase power line along Harkness Road to get a second feed from Amherst to Pelham. The project will link the present 3-phase main power feed for Pelham to a second feed along Route 9 to reduce the likelihood of power outages in Pelham. To install the 3-phase feed, Eversource needs to remove some trees along Harkness Road. Some trees have already been removed and new poles installed. Some trees removal will be along the Harkness Conservation Area that abuts Harkness Road. Chair MacDonald noted that all the proposed removals are adjacent to the road and do not encroach on resource areas. Eversource has requested a letter from the Commission as a courtesy to acknowledge that the Commission knows about the work. Commissioner Lukas noted that all of the tree removals are being done with a crane, so the disturbance of the area adjacent to the road is minimal. There was a question about whether or not this is a new project versus maintenance. It was suggested that it might be good to ask Massachusetts Department of Environmental Protection Western Massachusetts Circuit Rider Mark Stinson for a copy of the administrative order about exempt activities for utilities. Approximately 20 trees in the conservation area are being removed. The Commission agreed that Agent Borenstein should send an advisory letter to Eversource stating that the Commission approves

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of the removal of trees in the Harkness Conservation Area along Amherst Road to facilitate the construction of the 3-phase power connection.

**Work at 123 North Valley Road**

Commissioner Lukas noted that a potential purchaser of 123 North Valley Road contacted him to enquire about possible tree removal and installation of a garden on the property. It was agreed that the Commission should have a site visit to learn of the potential purchasers' plans if they purchase the property. Chair MacDonald noted that the property abuts a cold water fishery, and within its Buffer Zone only a small amount of work can be approved. It is imperative to keep the forest intact to protect the fishery. It will be necessary to have the current owner or their real estate agent write (email or hardcopy) that the Commission has permission to enter the property for a site visit.

It was moved that Agent Borenstein contact the potential purchaser to obtain the letter of permission. Seconded. Approved unanimously 5-0.

**Adjournment**

It was moved to adjourn at 9:03 pm. Seconded. Approved unanimously 5-0.

Respectfully submitted by David Gross

