

**APPROVED Meeting Minutes**

Town Hall- Room #014

September 3, 2019

7:30 PM

Present: Christopher Bajdek, Chair, Rebecca Weissman, Vice Chair, Shaw Lively, Utah Nickel, Allen Rutberg, Commissioners

Ryan Clapp, Conservation Agent

Absent: Jennifer Buttaro, Ann Marie Pilch, Commissioners, Sean Fay, Associate Commissioner

**Christopher Bajdek Chair, opened the meeting at 7:30 PM.**

**General Business**

**Public Comment**

- Mr. Dale MacKinnon and Ms. Elizabeth Mainini were present on behalf of their client, Constitution Village, LLC. Ms. Mainini noted that her client intends to perform as-built surveys on several detention basins along Old Cart Path to ensure they were correctly built. Maintenance on these basins has not been performed, and to do the as-builts, they will need to remove sediment and clear vegetation.
- Mr. Bajdek inquired if there was an Operations and Management Plan. Ms. Mainini believed there was, but is unsure if there was long-term maintenance involved. However, Ms. Mainini agreed that maintenance was overdue and had lapsed over the years.
- Mr. Bajdek inquired if the basins were functioning as intended. Mr. MacKinnon affirmed that they were functioning, but not to the degree they should. If they were not working, there would be major erosion issues.
- Mr. Clapp believed a Notice of Intent would be required for the rehabilitation and resumption of maintenance, to which Ms. Mainini contested that a Request for Determination or Enforcement Order is more appropriate. Mr. Clapp recommends an Enforcement Order.
- Additionally, Mr. Clapp informed the Commission that Constitution Village, LLC, intends to remove the large stockpiles on the northern side of Old Cart Path. These piles should not have been created in the first place, and supports their removal. However, based upon most recent plans, it appears that they are within jurisdiction. Ms. Mainini contested that she did not believe they were. Mr. Clapp will issue a violation notice alleging they may be in jurisdiction, and to present a plan for removal regardless.

**Review/Approve Minutes of 8/6/19 & 8/20/19**

- Not enough Commissioners were present at these meetings to vote on these minutes. Left open until the next meeting on 9/17/19.

**Discussion: Armored slope repair/alteration - #179 Mohawk Path**

- Mr. Clapp noted that the armored slope towards the rear of the property is in poor condition and the homeowner has safety concerns. However, the slope is located on the edge of the

**Conservation Commission Minutes 9-3-19**

**Drafted for the Commission by: Ryan Clapp**

**Approved by the Commission: 10-1-19**

100qNo Disturbance Buffer to a certified vernal pool. Previously, the homeowner had submitted a Request for Determination of Applicability to repair and push back the slope, and had the project denied, and wanted to know if approval through a Notice of Intent was possible.

- Mr. Robert Carlezon, engineer for the applicant, presented an existing conditions plan and a proposed conditions plan. He agrees that there is a safety concern, and noted there were trees on top of the wall that had fallen onto the house in the past.
- Mr. Bill Rodenheiser would like to rework the slope and push it towards the vernal pool. He notes that there are few feasible options for this project.
- Mr. Bajdek expressed concerns that this may be treated as a yard expansion. Mr. Rodenheiser noted the applicant hoped to install a patio in the area, to which Ms. Weissman protested, favoring revegetating with native plants.
- Mr. Bajdek suggested either replacing the boulders in the slope or regrading the whole slope and replanting the area may be an option.
- Mr. Lively expressed concerns about setting a precedent for other homeowners. There must be a strict standard to show safety issue.
- The Commission recommended that fixing the existing slope/retaining wall is the first priority. Should that fail, other options such as regrading may be appropriate. Mr. Clapp suggested an affidavit from the engineer be presented stating that the wall is a safety hazard and was not constructed using best engineering practices.
- Mr. Clapp will follow up with the homeowner, and provide a list of native plants.

#### **Discussion: Use of Fairbanks Property & NEMBA**

- Mr. Clapp reiterated concerns raised by the Trustees of Reservations during the annual monitoring site visit. The concerns included new trail breaking, mountain bike damage, and marking of trails. Mr. John Goeller, present for the discussion, noted that trail markers were not on the Fairbanks Property, but were on the NEMBA parcel.
- Mr. Brian Forestal, chapter president of NEMBA, noted that he has alerted members of NEMBA about these concerns. However, contact can be difficult, and often the best time to reach out to people is in person as they arrive at the trails. Mr. Forestal does not believe it is NEMBA causing these issues, however, but independent bikers. However, he is willing to maintain and revegetate trails.
- Mr. Lively noted boundaries are not clear between conservation and NEMBA land, and as such, these issues are inevitable. He inquired if people ride on just NEMBA land, or also on Fairbanks. Mr. Forestal noted all trails are used.
- Mr. Kevin Keenan noted he is working on a database of trails. Mr. Lively believes that this could be an invaluable tool in maintaining boundaries and not impinging on the use of other parties.
- It was decided more frequent communication would be helpful between the Commission and NEMBA. Semiannual meetings were discussed, and Mr. Forestal will follow up in a few weeks.

#### **Review Correspondence / Other**

#### **Public Hearings/Public Meetings**

**Notice of Intent for DEP File #185-849: Old Cart Path, Paul Revere Lane, Minuteman Circle, Hiawatha Trail, Governor Prentice Way (Assessors Map 14)** for proposed construction of a roadway and drainage alteration - *Guerriere & Halnon, Inc.*, representing *Constitution Village, LLC*.

**Documents:** WPA Form 3; Plan Set entitled "Constitution Village Subdivision Modification in Holliston, MA," dated 11/15/18; email from Mr. Clapp dated 12/26/18; Response Memorandum from Mr. George Mihov dated 12/31/18.

Memorandum from Dan Wells, Goddard Consulting, Inc., dated 5/30/19.

Habitat Evaluation, Constitution Village, Holliston, MA DEP File #185-0849 dated 8/27/19

*\*Mr. Clapp took audio recording of this session of the public hearing\**

- Mr. Dan Wells, representative for the applicant, reiterated the vernal pool concerns the Commission had expressed at its previous meeting. He has developed a habitat evaluation and presented it to the Commission. He noted that the area was previously agricultural land prior to its permitting as a subdivision in 2001. This is not ideal habitat for vernal pool species. The limit of work is clearly shown in orthoimages and he overlaid the current limit of work and buffer zones. Mr. Clapp noted that in 2001, the bylaw did not establish no disturbance jurisdiction over vernal pools, which it now does.
- Dr. Rutberg noted that while much of the proposed work is within previously disturbed area, an argument can be made for further restoration as opposed to further disturbance..
- Ms. Mainini noted there are other locations more valuable for restoration than these areas, which can be addressed in plan revisions.
- Mr. Bajdek noted that nature has started to retake the area, and is now overgrown and naturalizing.
- Ms. Weissman noted the evaluation did not have any discussion or results within it. Mr. Wells is currently explaining the evaluation, but this information should all be in the report itself. She would like to see additional documentation, including compelling mitigation and minimization of encroachment.
- Mr. Lively expressed concerns over setting a precedent on ceding jurisdiction over vernal pools. The Commission needs to hold a hard line with its jurisdiction, otherwise future encroachments are likely.
- Ms. Weissman expressed concerns that houses are proposed right along the no-disturbance areas. The Commission is currently seeing many homeowners who want to remove hazard trees, furthering encroachment towards the vernal pool or wetland. Plan revisions should reflect this consideration.

**Ms. Weissman made a motion to continue the Public Hearing for DEP File #185-849: Old Cart Path, Paul Revere Lane, Minuteman Circle, Hiawatha Trail, Governor Prentice Way until the next meeting on 9/17/19. Mr. Lively seconded the motion. Vote passes unanimously (5-0-0).**

*\*Mr. Clapp ended audio recording\**

Mr. Lively made a motion to adjourn at 9:20 PM. Dr. Rutberg seconded the motion. Vote passes unanimously (5-0-0).

***\*\*All documents shall be kept in the Conservation Commission Office files\*\****