

Whately Conservation Commission
Wednesday, August 26, 2020
Via Zoom

Commissioners present: Andrew Ostrowski, Ann Barker, Montserrat Archbald, Scott Jackson (chair), and George Owens

Others present: Megan West, Mark Wamsley (Kestrel Land Trust), Chuck Dauchy, Chris Chamberland (Berkshire Design Group), Jared Glanz-Berger, Grant Joseph

Meeting convened at 7:00 p.m.

1. Request for a Determination of Applicability submitted by Megan West for repair of a driveway culvert at 54 State Road in Whately. The site visit for this Request was conducted on August 25. Megan West presented her project, which was followed by Q&A and discussion. Discussion focused on two issues: 1) whether the existing culvert was structurally sound enough to bear the weight of the repair and 2) containing sediment from the excavation to prevent discharges of sediment into the stream. The Commission voted unanimously (5-0) to issue a negative Determination of Applicability with the following conditions.
 - The work shall be conducted when the stream is dry.
 - The applicant shall request a pre-construction meeting with the Conservation Commission and/or its representative and the contractor responsible for the work, to review the conditions of this Determination and ensure that they are understood. Arrangements for this meeting will be made at least one (1) week prior to any activity on the site other than the installation of erosion control.
2. Request for a Determination of Applicability submitted by Debilitating Medical Condition Treatment Centers, Inc. for construction of a marijuana cultivation facility, including a greenhouse and associated site work, as well as outdoor cultivation at 7 River Road in Whately. The site visit for this Request was conducted on August 25. Chris Chamberland presented the project. Q&A and discussion followed. Commission Chair Jackson stated that based on the site visit, the Commission was not yet ready to approve the bordering vegetated wetland delineation and suggested that he and the delineator (Ward Smith) meet on the site to finalize the delineation. Discussion focused on the following issues.
 - Jackson explained that he did not believe the project (marijuana cultivation) was covered by the agricultural exemption to the Wetlands Protection Act because it could not be “conducted in accordance with federal and state laws.” The applicant conceded this point.
 - The Commission indicated a willingness to permit continued use, but not improvement, of a farm road that runs through a small amount of bordering vegetated wetland. No final decision on this was made.
 - The Commission indicated that it would like to see a 25-foot buffer between bordering vegetated wetland and proposed structures and marijuana cultivation.
 - The Commission indicated a willingness to permit perimeter fencing around the marijuana cultivation to cut across a narrow strip of bordering vegetated wetland that runs along a drainage ditch on the property. No final decision on this was made.
 - The Commission did not support a suggestion from the applicants that perimeter fencing placed at the edge of fields currently under cultivation should be covered under the agricultural exemption, assuming that the land between the marijuana cultivation and the fence would be used to grow a different (legal) crop. Jackson pointed out that the language in regulations specifies that the exemption covers normal maintenance and improvement of land in agricultural use, and that in

Whately, except for the cultivation of marijuana, the placement of fencing around cultivated fields is not a “normal” activity.

- The Request for a Determination of Applicability (RDA) describes three different options for the marijuana cultivation operation and asks the Commission to indicate which of the three options would be acceptable. Jackson pointed out that this not an appropriate use of the RDA process and asked the applicants to choose one option on which the Commission would make its Determination.

3. Review of a proposed conservation restriction for the Whately Center Woods project. Because he serves as Chair of the Kestrel Land Trust’s Board of Trustees, Scott Jackson recused himself from this discussion and left the meeting. Mark Wamsley of Kestrel Trust previously shared a draft of the conservation restriction for proposed Whately Center Woods. The Commission discussed particulars with Mr. Wamsley and current property owner Chuck Dauchy. The Commission agreed to submit comments individually to Montserrat Archbald, who will summarize them for Mr. Wamsley prior to the September meeting, when we will vote on a revised draft.
4. Discussion of culvert replacement for the Whately Center Woods project. Because he serves as Chair of the Kestrel Land Trust’s Board of Trustees, Scott Jackson recused himself from this discussion and left the meeting. The Commission engaged in an informal discussion with current landowner/engineer Mr. Dauchy about culvert replacement options for access road to Kestrel's proposed parking area on Chestnut Plain Rd. The culvert is on town land. Mr. Dauchy plans to put together two or three options that will meet the needs of the site so the Conservation Commission and Whately Highway Department can determine what is both permissible and practicable.
5. The Commission voted unanimously (5-0) to accept the minutes from the July 15th meeting.

Meeting adjourned at 8:30 p.m.

Respectfully submitted,

Scott Jackson