

Wayland Conservation Commission

Minutes: Thursday, December 19, 2019

Approved: January 09, 2020

Location: Council on Aging, Town Building, 41 Cochituate Road, Wayland, MA

Present: Sean Fair (Chair), Barbara Howell (Vice Chair), Kathy Schreiber, Tom Davidson, John Sullivan, Joanne Barnett, Tom Klem, and Linda Hansen (Conservation Department Director).

Not present:

Minutes: Ryan Brown

S. Fair opened the meeting at 7:00pm noting that a quorum was present and that the meeting was being recorded by WayCAM.

Citizens Time

No public comments were made during citizen's time.

Chapter 193 Stormwater and Land Disturbance Bylaw Draft Regulations: Public Comments

Clifford Lewis, speaking as a member of the Wayland Board of Public Works, stated that the Board of Public Works would like more time to review the draft regulations.

C. Lewis, now speaking as a Wayland citizen, stated that the draft regulations are a complex and nuanced document that refers to numerous other documents, making it challenging for citizens to easily comprehend. C. Lewis referred to the definitions section of the draft regulations, specifically the definition of the term "agent" and notes it is defined in two different ways. Tree is only defined in the body of the document and not in the definitions section. Stormwater is only defined in the Chapter 193 document, where it is defined as runoff.

C. Lewis speaking to the cumulative effect of minor and major projects, suggesting that each project should be considered a major project, noting that minor projects for a specific property would likely be used up by previous owners, resulting in originally defined minor projects being considered major projects by future owners. C. Lewis stated that no positive credit is given to past projects, such as additional tree plantings, only liability. C. Lewis suggested doing a cost-benefit analysis for major projects, as the associated fiscal and time costs could be significant.

C. Lewis questioned the appropriateness of the "presumptive benefit of trees", specifically not presuming the benefit. C. Lewis also noted that there is not an appeal option that could be leveraged by applicants. C. Lewis concluded his public comments by providing some examples of how these regulations are excessive and prohibitive to citizens trying to do work on their property.

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Annett Lewis, speaking as a Wayland citizen, read from a prepared statement that is provided below.

I have had occasion to review the DRAFT Wayland Ch. 193 Stormwater and Land Disturbance Regulations that were made available to the public just within the past week. As currently written, they are overbroad, overreaching, difficult and costly to comply with (especially for minor projects), place an undue financial burden on homeowners, would unduly interfere with the routine operations of the Department of Public Works, and at 29 pages in length are much too complicated for the average person to follow.

Such a wide-sweeping regulatory scheme deserves the attention of the public through a town-wide outreach and discussion. Other than the December 12, 2019 legal notice in the *Wayland Town Crier*, I am unaware of any publicity or outreach by the Conservation Commission on this proposal. Have you even shared your draft with, for example, the Planning Board or the Board of Public Works or any other board or department?

Following are some specific comments pulled together in the limited time that has been afforded for review:

Section 4.0 Applicability – The Chapter 193 Bylaw was approved by Town Meeting to cover new development and redevelopment of a **parcel of land** (see definitions of “development”, “new development” and “redevelopment” at Sec. 193-2 and note the concept that, as defined, the modification of land is meant to usually involve construction). It was not meant to require a homeowner who has lived in a home for years to obtain a permit to put in a patio or to install landscaping or to remove trees that are growing too close to his house. Moreover, since there has been absolutely no publicity and no outreach, homeowners will have no idea that permits must be sought for these activities. How will the Commission obtain compliance? How will you oversee such activities on private property?

B. Determination of the Area of “Land Disturbing Activity”

2) Trees – This provision doesn’t even take into account those properties that have forestry plans such as those that fall under M.G.L. ch. 61. Why should those lands that are actively being managed by forestry experts have to be tied up in your costly regulatory process? The seven tree exemption is inadequate to address the planned removal of trees on those lands. And what about Public Shade Trees in the town’s right-of-way? As written, it would appear that the Commission wants to oversee those as well.

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3) Segmentation/Phasing – This may be understandable if applied to development of a previously undeveloped parcel of land or if applied to a parcel of land after demolition of a large structure. But the example provided gives little comfort because there are no time durations specified for determining what is considered segmentation/phasing for purposes of the regulations. If there is a five-year hiatus, is that really segmentation/phasing? As written, this provision may be unenforceable.

4) Impervious Surface/Porous Pavement – Existing Zoning Bylaws already address maximum lot coverage issues *see* Code of the Town of Wayland: Sec. 198-801 Attachment 1 Table of Dimensional Requirements; Sec. 198-1604 Aquifer Protection District; Sec. 198-1701, et seq. Flood Plain District, Federal Flood Plain Protection District, Watershed Protection Districts; to name a few such provisions and oversight requirements.

It is really unbelievable that a homeowner who wishes to put in a new or replacement walkway by placing bluestone slabs or pavers on stone dust should have to go through the onerous and costly process that is laid out in these draft regulations.

Section 5.0 Application Requirements –

A. Permit Type

1) Minor Permit – If what is involved is 500 square feet why should that necessitate any permit at all? And why does a) claim jurisdiction at 500 square feet of impervious surface while b) doesn't claim jurisdiction until 2,501 square feet?

2) Major Permit –

a) Given the provisions of our existing Zoning Bylaws, there are very few instances where lot coverage (i.e., impervious area) can exceed 20% and I believe that in each instance, the zoning bylaws and regulations require that the Conservation Commission review the plans and provide input to the decision-making body. So why should an applicant be burdened with having to go through yet another different regulatory process with the attendant expense and time delay?

d) What is the definition of a “private way”? Is it a private subdivision road, a paper road where the subdivision regulations have been waived, a common driveway? How will the need for the DPW and the Commonwealth of Massachusetts to obtain a major permit affect the planning and timing of roadway projects and the additional expense? One would think that if meeting certain ConCom criteria is really necessary, a general permit could be issued to cover this particular type of work (i.e., similar to the EPA & Army Corps of Engineers General Permits).

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e) What about repaving a parking lot or removing asphalt and laying new asphalt? Is that meant to be covered? And, if the project originally was subject to review by Town governmental bodies within a reasonably recent time horizon, why should the project have to go through the burden and expense of doing it again? This provision will dissuade people from undertaking such projects.

B. Filing Application

2) Minor Permit Application – Considering how many more permits the Conservation Office will be handling under this proposal, the idea that the staff will have sufficient time to devote to meeting with folks seems disingenuous. One would hope that the Commission is not intending to then ask for more staff.

a) 1. For landscaping and tree removal projects, why should one have to hire a landscape designer, an engineer and a Registered Land Surveyor and go through the long laundry list of preparing multiple plans, calculations, soil tests and an O&M Plan? Where is the dividing line for when one must do all of this?

2. For increases in impervious surface, one is required to hire an engineer which seems excessive in the case of, for example, laying down pavers or bluestone slabs for a walkway. And in that case, why would one be required to do soil testing, provide an erosion and sediment control plan, and stormwater O&M plan?

I have always supported the efforts of the Conservation Commission to protect our wetlands and I enthusiastically voted for the adoption of Chapter 193. But this set of regulations is not ready for prime time. It needs the opportunity of real community scrutiny and input. And the requirements need to be simplified and streamlined so that residents can and will actually comply with the Commission's regulations.

Please do not vote to adopt these current draft regulations.

A. Lewis finished reading her statement to the Commission.

Keven O'Leary, Wayland citizen, remarked on the concept of major and minor projects, specifically in regards to the Town of Weston having adopted this frame work. K. O'Leary noted that Weston created a position to oversee the regulations and the individual hired for the position was quickly overwhelmed. K. O'Leary asked if the Commission will hire additional staff in order to keep current staff from being overloaded.

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L. Hansen stated that the responsibilities would likely be split between her and the town engineer, no new staff members are being considered at this time.

K. O'Leary asked if these regulations are even needed, remarking that projects related to the bylaw are proceeding smoothly just based off of the wording of the bylaw. Nothing that, the regulations will likely add more red tape and paper work to projects.

S. Fair asked K. O'Leary if he could review the definitions to help provide more clarity.

Carole Plumb asked about the amount of phosphorous measured in runoff reaching the river. Did the Commission check with the River Stewardship Council? C. Plumb also asked about the overriding public interest and who defines that.

Open Meeting Law Complaint

The Commission discussed the complaint and concluded that the Commission was at fault and did not call role when T. Davidson was participating remotely during the 11.21.2019 meeting.

J. Barnett moved, T. Klem seconded the motion to delegate the responsibility of responding to this complaint to Louise Miller (Town Administrator) or Town Counsel. All in favor 6-0.

Adjournment

J. Barnett moved, T. Davidson seconded the motion to adjourn the meeting at 8:30pm. All in favor 6-0.

The next scheduled Conservation Commission Meeting is Thursday January 9th, 2020.