



WELLESLEY WETLANDS PROTECTION COMMITTEE RETREAT MEETING MINUTES

Kingsbury Room, Police Station, 485 Washington Street
Thursday, January 12, 2023, 3:00 – 5:00 p.m.

Voted to approve on 02/09/2023

Members Present: Ellie McLane, Chair; Peter Jones, Vice Chair; John Adams, Secretary; James McLaren, Kevin Hanron; Douglas Hersh, Associate; and Eben Scanlon, Associate.

Staff Present: Lisa Moore, Environmental Education, Outreach & Compliance Coordinator; Julie Meyer, Wetlands Administrator

Environmental Education, Outreach, and Compliance Coordinator Lisa Moore was present before the start of the meeting to introduce herself to the recently appointed WPC members. She distributed copies of educational and outreach materials that were also provided electronically in advance of the meeting, including a letter to new homeowners. L. Moore left at the start of the meeting.

3:00 Meeting Open (Chair)

The WPC **considered a definition of climate resilience** from the Center for Climate and Energy Solutions to kick off discussion: *“The ability to anticipate, prepare for, and respond to hazardous events, trends, or disturbances related to climate. Improving climate resilience involves assessing how climate change will create new, or alter current, climate-related risks, and taking steps to better cope with these risks.”*

Secretary J. Adams said he was fine with the example definition provided. Member K. Hanron reflected that no one can be sure what the risks will be, which can make it challenging to prepare. Chair E. McLane highlighted the distinction between the goals of climate *mitigation* as compared to climate *resilience*, emphasizing that mitigation attempts to reduce impacts related to climate change.

Associate member E. Scanlon shared that protecting wetlands helps the Town handle a multitude of events outside the mean by protecting the services that wetlands provide, for example flood protection from heavy rains and water supply during a drought.

Vice Chair P. Jones acknowledged that an increasing population and an expansion of the built environment challenges the Town’s ability to protect wetlands, and thus its resilience. Secretary J. Adams referenced the Wetlands Bylaw as a tool to protect wetlands.

The WPC next turned to a reflection of options as to whether and how to include climate resilience in the regulations and/or bylaw. They began by reflecting overall on how the Committee currently administers the wetlands bylaw and regulations. They reflected on their custom of handling requests to waive performance standards if the applicants go through the bylaw regulation waiver process. They noted the decisions made by the Planning Board and the Zoning Board of Appeals have the potential to negatively impact wetlands. P. Jones praised the WPC for doing a good job with native plants.

The discussion of **what does climate resilience look like in Wellesley** was then discussed. E. McLane pointed to report on regional impacts that was provided in the prep packet. P. Jones reminded the Committee that Wellesley may not see the same impacts as neighboring towns and stressed the need to look at Wellesley’s data. For example, in Wellesley, there are many undersized culverts and wonders how will the Town handle a need for stepped-up cleaning of culverts to prevent flooding if there are more frequent or larger storms.

Wetlands Administrator J. Meyer pointed out that regulations^{1 2} allow the WPC to consider mitigation be applied to remedy an existing adverse impact for which the applicant is not legally responsible. She also offered that there are instructions in both the state and local wetland regulations that spell out exactly what an alternatives analysis must provide.^{3 4}

The WPC then turned to a discussion of how Wellesley can bolster resiliency to heat waves by maintaining the Town's existing tree canopy. Member D. Hersh stated that it is important to consider species selection when reviewing proposed mitigation planting schedules in wetland applications. E. McLane appreciated P. Jones for his leadership in asking applicants about ecological succession when the Committee is reviewing mitigation planting plans.

J. Adams said that many trees in town are reaching the end of their lifespan and asked if the WPC should consider a performance standard for "canopy stability" that requires an informed consideration of the existing health of the trees to be protected, and to propose a succession plan for those trees as well. The Committee considered the advantages of requiring random or yearly reports or checks from staff or 3rd party peer reviewers to demonstrate no net loss and indeed improvements to the health of the parcel as a condition of the permit.

D. Hersh and E. Scanlon reflected on the contrast between the Wellesley Wetland Bylaw regulations and the Wellesley Tree Bylaw. They considered that removal of both a 30-year-old tree and a 500-year-old tree have been approved to be replaced with the same mitigation (that is, one replacement tree). The Wellesley Tree Bylaw was seen to be stricter in terms of replacement. K. Hanron said the WPC has the discretion to require 2:1 for every inch caliper removed, for example. The WPC agreed to better align the Wetlands Regulation tree mitigation requirements with the language and replacement schedule provided in the Tree Bylaw.

P. Jones suggested that natural propagation in a naturalized area is under-utilized and can be required as a condition. He referenced the valuable guidance provided in the Massachusetts Forestry Best Management Practices Manual. Member J. McLaren called natural propagation on site "anticipatory succession," noting that Mt. Auburn Cemetery evaluates their canopy in this manner. E. McLane noted that they can ask for an arborist report to include an estimate on the remaining life of planned trees to be protected on the site. E. Scanlon described natural propagation as a way of planning for the future. E. McLane also suggested the Committee consider invasives management as a new standard special condition.

The Committee then turned to data available through sources other than local observations or Town data. K. Hanron presented four graphs from Blue Hill Meteorological Observatory showing changes in precipitation, (a rough 15% increase in the last 100 years, an average temperature graph showing an increase of 4 degrees over the last 100 years, a graph showing the winter freeze date to spring thaw date based on Houghton's Pond showing that what used to be a first freeze in November is sometimes not occurring until January, and the thaw of the pond used to happen in late February and is now showing April. His final graph showed a surprising trend in wind speed decrease sometimes described as the "great stilling." K. Hanron noted that Blue Hills climatologists theorize that the decrease in average wind speed may be due to the increasing tendency for

¹ CMR 10.58(5)(g)... "mitigation may include off-site restoration of riverfront areas, conservation restrictions... projects to remedy an existing adverse impact on the interests identified in M.G.L. c. 131 Section 40 for which the applicant is not legally responsible"

² Wellesley Bylaw Regulations Section 2.6(4)(b)8. "projects to remedy an existing adverse impact on the Bylaw Interests and Values for which the applicant is not legally responsible...."

³ CMR 10.04: "Practicable means available and capable of being done after taking into consideration costs, existing technology, proposed use, logistics and potential adverse consequences (e.g., degradation of Rare Species habitat, increased flood impacts to the built environment) in light of the overall project purposes and is permissible under existing federal and state statutes and regulations."

⁴ 2.6(4)(a)3. "Practicable and Substantially Equivalent Economic Alternatives. There must be no practicable and substantially equivalent economic alternative to the proposed project with less adverse effects on the Bylaw Interests and Values. An alternative is practicable and substantially equivalent economically if it is available and capable of being done in light of the overall project purpose after taking into consideration costs, existing technology, proposed use, and logistics. The determination of practicable, the scope of analysis, and the evaluation of the alternatives shall be conducted in accordance with the methodology presented at 310 CMR 10.58(4)(c)1. to 3., respectively. This analysis should generally be conducted in a manner consistent with that under the Act."

winter storms to track further west of our area since the 1920's. Finally, K. Hanron noted that if you look beyond data recorded in the last 150 years to well documented much longer climatic cycles, we're approaching the end of a 20,000 year interglacial (warming) period that historically has regularly transitioned to a 100,000 year cooling period, and that these cycles have no relationship to anthropogenic actions.

Towards the end of the two hours, the WPC reconsidered the definition of climate resilience. They discussed whether to include the phrase as a new Interest and Value in the Wetlands Bylaw. K. Hanron preferred the term "environmental resilience." The WPC did not decide to include the phrase as a separate interest and value.

The last part of the meeting was to review Town Counsel's draft of the General Bylaw changes that would clarify the amount of a fine for a wetland violation as well as the fine schedule and what constitutes a wetland offense (44.10. Enforcement). The draft also clarifies who exactly is meant by the enforcement agent (Article 52.B.1 General Provisions under G.L. c. 40, § 21D). The WPC was in agreement with what was proposed.

"To see if the Town will vote to amend the Town's General Bylaw as follows:

1. Amend the fifth and sixth paragraphs of Article 44.10 "Enforcement" by deleting the language in strikethrough and adding the language in bold:

Whoever violates any provision of this bylaw, regulations hereunder, or permits issued hereunder, shall be punished by a fine of ~~not more than~~ \$300. Each day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the bylaw, regulations, or permit violated shall constitute a separate offense.

As an alternative to criminal prosecution in a specific case, the Committee may issue citations **in the amount of \$300 per offense** under the non-criminal disposition procedure set forth in G.L. c. 40§ 21D, as amended, which has been adopted by the Town in Article 52.

2. Insert a new Section 52.B.1.h. into Article 52 "Bylaw, Rule or Regulation Violations" as follows:

h. Wetlands Protection (Article 44)

[1] Enforcement agents: Wetlands Protection Committee and Wetlands Protection Agent.

[2] Fine schedule: first and subsequent offenses, three hundred dollars (\$300)."

The WPC also considered changing the Regulations to clarify the amount of the fine and make other changes to align the regulations with the proposed bylaw changes. Specifically, they considered whether to amend Section 1.7(6) of the WPC's Regulation by deleting the language in strikethrough and adding the language in bold. The WPC was in agreement with everything but "a." in reference to *Alteration of x sq-ft of land...* noting that d. covers a.

(6) Enforcement Process

(1) Upon the Committee's request, Town Counsel shall take legal action for enforcement under civil law. Upon the Committee's request, the Chief of Police and/or Town Counsel shall take legal action for enforcement under criminal law. Municipal boards and officers, including any police officer or other officer having police powers, shall have the authority to assist the Committee with enforcement.

(2) As an alternative ~~to criminal prosecution in a specific case~~, the Committee **or the Wetlands Protection Agent** may issue citations under the non-criminal disposition procedure set forth in MGL Ch. 40, § 21D, as amended, ~~which has been adopted by the Town in Article 52 of its general bylaws~~. **Each of the following shall be considered a separate offense for purposes of Article 44.10 and Article 52.B.1.h of the General Bylaws:**

- a. ~~Alteration of _____ square feet of land without proper approvals, including filling of said land;~~
- b. **Each tree with a "_5_" diameter at breast height cut or removed without proper approvals;**
- c. **Each violation of a permit or approval condition; and**
- d. **Failure to obtain any required approvals prior to performance of any work in the resource area.**

The WPC ended the meeting at approximately 5:10 p.m. after a short discussion on the 2023 meeting calendar.