

Town of Sheffield
CONSERVATION COMMISSION
May 23, 2022
7:00 PM

Commission Members Present:	Don Ward, Chairman Anya Rosoff Donald Roeder Rene Wood
Commission Member Absent:	Ted Pitman
Others Present:	Members of the public, see sign in sheet

Chairman Ward called the Conservation Commission meeting to order at 7:00pm and announced the meeting was being recorded.

1. Continuation of Public Hearing on Notice of Intent (NOI) for 854 and 864 South Undermountain Road for Existing and Proposed Riverfront Area Restoration and Related Site work.

Chairman Ward opened the continuation of the Public Hearing, as stated above. Elisabeth Goodman, Esq. and Marc Volk were present for the applicant, as was the applicant, Casey Rothstein-Fitspatrick. E. Stockman was present as the Commission's peer reviewer.

The applicant's representatives provided a history of the Enforcement Order and the NOI for these properties, noting the plantings and work done to date under the Enforcement Order. They stated the NOI was to provide a base plan noting what is there presently and what the applicant wished to do. They referred to the email from Jackson Alberti of May 18, 2022, which included a response letter from Foresight Land Services to Stockman Associates LLC Review Comments, focusing on four items on pages 3-4, elements included in the Enforcement Order addendum on 7/9/21.

Extensive comments were provided on each of these four items - the pergola's footing being a stone foundation; review of elements in place prior to 8/7/1996; review of mowing; mitigations called for under the NOI; repair of the septic system; replacing posts on the decks; and the footbridge. The applicant's representatives felt the septic system should be classified as a repair/upgrade as the system cited in the NOI was never hooked up to the main, existing system. The cited repair/upgrade was a matter of laying a pipe between the two systems to establish the connection. A map was provided; E. Stockman provided a full sized copy of this map for the Commission. Mitigation was also reviewed, with Chairman Ward questioning whether required mitigation was 1:1 or 2:1.

After the applicant's presentation, E. Stockman was asked to respond and in doing so noted that the Commission should focus on correct use of the WPA's terminology, starting with the word "repair". She cited WPAR (Wetlands Protection Act Regulations) 10.58(6)(c) noting that a

repair/upgrade to a septic system was exempt from WPA regulations, while a new system – defined as an increase in flow to the system – was not exempt.

E. Stockman agreed that the septic system was properly classified as a repair/upgrade and WAS EXEMPT from WPA regulations.

Structures were next discussed beginning with the 20 x 30 structure and awning. Applicant's agents discussed it as having no walls and soft roof (awning) sitting on stones on the bank of the river. E. Stockman cited WPA performance standards applicable to redevelopment 10.58(5) and tied this in with the Enforcement Order and the perennial stream classification, thus 200' of river frontage is protected. After discussion of conditions prior to 8/7/1996, E. Stockman cited the need for improvement in the resource area (10.58(5)(a) and (f)), which she did not see in the presented plans. She stated the project needs to show improvement before using mitigation and felt Attorney Goodman cited the plantings in mitigation as the improvement, was not accurate and in effect "double dipping".

E. Stockman cited examples of improvements, while noting the area under discussion is an historically degraded area, as well as the differences between a commercial improvement and an improvement to the river front area, Attorney Goodman did not agree. E. Stockman continued by giving examples of improvement, including improvement benefitting wildlife habitat, such as continuous expansion of greenways rather the piecemeal, separated greenway areas. She noted 2:1 mitigation was appropriate for these properties, not 1:1 mitigation. Discussion ensued with the applicant noting, and E. Stockman agreeing, that such mitigation may be done on the other side of Race Brook with more plantings.

WPAR 10.58(5)(g) requires the mitigation to be in perpetuity and needs to be put in as a Condition of the NOI.

Applicant has proposed approximately 4800 sq. feet of mitigation; needs to double this to 9600 square feet, with the ideal mitigation being a continuous, contiguous area of mitigation. Applicant's agents and Applicant discussed the existing property line up to foot bridge on other side of the river.

Applicant will submit a revised site plan showing all mitigation areas. Short woody shrubs were suggested as this riverbank area is devoid of an understory. Given the dead trees in this area, the applicant's agents were asked to consider whether small trees, such as red maple, should be included in the plantings mix. The applicant was asked to address 10.58(5)(a) and (g).

Two Electrical Vehicle charging stations were discussed and given their footprints shown on the map, as well as the applicant saying they are not Tesla charging stations with Tesla height impacts, E. Stockman stated no objections.

Regarding footings on the various decks: as it is clear these are replacement footings, there was no issue with this action.

M. Volk stated the applicants wants to address whether sections of Race Brook stream are “intermittent” rather than “perennial”. If intermittent”, the riverbank becomes a buffer rather than subject to the 200’ river front regulations in the WPA, which are less strict. The governing criteria is observation at least once per day over four days in any consecutive 12 month period. (See 10.58.(2)1.d for full text of regulation). A stream may have parts of it be perennial and parts be intermittent. He asked the Commission for Foresight Land Services to be considered a competent source of documentation.

A motion made by R. Wood, seconded by D. Roeder, to recognize Foresight Land Services as a competent source to document conditions, as per WPAR 10.58.(2)1.d, regarding the flow of water in Race Brook Stream through properties at 854 and 864 South Undermountain Road, was approved by a 4-0 vote.

Discussion next turned to the riverbank with E. Stockman asking the applicant and his representatives whether there is an impact to the bank from the 20 x 30 awning. M. Volk recognized the awning does cantilever over the bank area. Since that is the case, E. Stockman asked the applicant to look again at the Enforcement Order and establish the impact, what is going on and to revise their application given this impact, when identified.

The footbridge came next, with E. Stockman noting it had been recently worked on and should comply with the WPAR. Was part of the work done on the footbridge in the bank? While the applicant’s agents did not agree with her on this matter, there is an open item for the applicant’s agents to answer this question, review and address 10.54(4), the performance standards for a bank, as well as the stream crossing performance standards.

A motion made by R. Wood, seconded by D. Roeder, to continue the Public Hearing on the NOI for 854 and 864 South Undermountain Road to June 27, 2022 at 7:00pm, as well as requested documents be to the Commission by June 13, 2022, was approved by a 4-0 vote.

2. Request for Certificate of Compliance for Order of Conditions #281-0166, Perlman Pond at 689 Home Road, Sheffield.

Shaun McCarthy of Solitude Lake Management presented this request as the homeowner’s agent. (ShaunMcCarthy@Solitudelake.com) He described the pond as 3 acres with a maximum depth of 4 feet. Due to infestations of Curley Leaf Pondweed, stonewort (Nitella sp.), milfoil, and filamentous algae, the pond can not be swum in or fished. His company started managing the pond in 2013. He went over the submitted pond management program, chemicals to be used, timing of chemical applications, and stated that taking no action may mean the death of the pond. He stated the pond does not abut any Natural Heritage area. It was noted aeration devices are in the pond and the goal of the application is to make the pond more useful to the family – fishing and swimming – and wildlife. The pond drains into Soda Spring’s Creek.

D. Roeder disagreed with the treatment plan for stonewort and discussion ensued regarding appropriate treatments.

Chairman Ward noted the Commission does not have DEP's file number on this application and the NOI application, so no public meeting or decision will be made until that information is received. Questions arose re: former OOC's issued by the Commission for Perlman pond, as well as the time frame for which an OOC may be issued. Water lilies were discussed with applications made in August on a calm, no wind day.

Mr. McCarthy was asked to check his files and forward the last OOC he may have from the Commission. The Commission will also check its files.

A motion made by R. Wood, seconded by D. Roeder, to continue the Public Meeting on the above application to June 13, 2022 at 7pm, was approved by a 4-0 vote.

The Commission will also ask J. Hughes to state PUBLIC MEETING on the agenda for those items that fall under the public hearing category, just as is done for those items falling under the Public Hearing category.

3. Request for Certificate of Compliance for Order of Conditions #281-0216, Fawn Lake at 1085 Berkshire School, Sheffield.

Shaun McCarthy of Solitude Lake Management presented this request as the homeowner's agent. Fawn Lake flows into Schenob Brook and then Gilligan's Pond. Milfoil, algae, water lilies and curly leaf pond weed are the issues here. Mr. McCarthy's is seeking the use of 5 chemicals, though he stated he may not use them all. D. Roeder expressed his concern re: so many herbicides requested. Mr. McCarthy cited more algae than at Perlman pond and the treatment schedule would be algae, stonewort and milfoil applications in July and water lily application in August.

Chairman Ward noted the Commission does not have DEP's file number on this and the NOI application, so no public meeting or decision will be made until that is received. It is expected this and the Perlman application for OOC and NOI will be taken up at the 6/13/22 meeting and Mr. McCarthy is seeking a 3 year OOC. Chairman Ward thanked Mr. McCarthy for coming to preview both applications.

A motion made by R. Wood, seconded by D. Roeder, to continue the Public Meeting on the above application to June 13, 2022 at 7pm, was approved by a 4-0 vote.

4. Public Hearing: Notice of Intent Application, filed by Lee Perlman for property on 689 Home Road, in Sheffield, in accordance with the provisions of MGL C 131, §40. The proposed project: Aquatic Management Program at the Perlman residence.

Chairman Ward noted the Commission does not have DEP's file number for this NOI application, and thus cannot hold the public hearing. It will be scheduled for the 6/13/22 meeting.

A motion made by R. Wood, seconded by D. Roeder, to continue the Public Meeting on the above application to June 13, 2022 at 7pm, was approved by a 4-0 vote.

5. Public Hearing: Notice of Intent Application, filed by James McNamara for property on 1805 Berkshire School Road, in Sheffield, in accordance with the provisions of MGL C 131, §40. The proposed project: Aquatic Management Program for Fawn Lake.

Chairman Ward noted the Commission does not have DEP's file number for this NOI application, and thus cannot hold the public hearing. It will be scheduled for the 6/13/22 meeting.

A motion made by R. Wood, seconded by D. Roeder, to continue the Public Meeting on the above application to June 13, 2022 at 7pm, was approved by a 4-0 vote.

6. Approval of Minutes.

A motion made by A. Rosoff, seconded by R. Wood, to accept the minutes of 4/25/22 as amended was approved by a 4-0-1 vote.

7. Discussion/Possible Action re: Enforcement Order for 1448 South Undermountain Road.

No new information has been received on this matter, so the Commission took no action.

8. Commission Member Items.

A. Rosoff discussed about getting agenda items emailed earlier than picking up packets, available Thursday afternoon. This meeting had extensive documentation, which can be hard to complete reading over the weekend. Chairman Ward with discuss with J. Hughes.

Discussion ensued on Order of Conditions re: pond management. Chairman Ward prefers to keep OOC's to 1 year to provide oversight and noted the DEP is favoring the use of two chemicals for treatment in ponds. He asked E. Stockman of Stockman Associates if her company provided consulting services on waterbodies; Ms. Stockman said yes and noted she was the peer reviewer on Stockbridge Bowl.

E. Stockman noted the MA Supreme Judicial Court has ruled against a municipality or Conservation Commission adopting a blanket No Chemicals stand, but Conservation Commissions have latitude in this area and have the authority/responsibility to review every such project and chemical treatments plans sought by applicants. The issue for the Commission to focus on, in her opinion, is whether the proposed chemical treatment plan and management plan will meet the project goals.

She noted there are state organizations focused on waterbody management issues, including chemical applications, drawdowns, etc. She will forward information to J. Hughes for the Commission. While the state wants 3 year OOC's issued as appropriate, the Commission may wish to include the requirement for an annual report of treatment effectiveness, which would allow it to take subsequent action. The Commission may also ask for a plant survey before and

after treatment applications to assess the treatment's success in meeting the plan's goals. Key question: Are the performance standards stated in the plan being met?" She reminded the Commission that such treatments also impact the land under the water and banks, both of which the Commission has control over.

E. Stockman also reminded the Commission that it is imperative the Certificate of Compliance be recorded at the Registry of Deeds and the Commission get a copy, and proof, of the filing.

D. Roeder brought to the Commission's attention that the plantings done by the Town of Sheffield where Rannapo Road was relocated away from the Housatonic River, due to the bank collapse, are dead. These plantings were likely done under an Order of Conditions, and he wondered if anything was in the OOC regarding replacement of dead trees.

ACTION ITEM: The NOI from the Town on this project and issued OOC need to be checked for such language.

Chairman Ward informed the Commission it would be receiving an NOI from the Town of Sheffield for bridge work on County Road. This bridge goes over Iron Works Brook. He also reviewed a forest cutting plan and will ask J. Hughes to include these in the Commissioner's packets. Most important thing is to make sure the DCR Forest Service signature is on the plan. DCR must review all plans and sign off on them before the applicant may proceed with the cutting project.

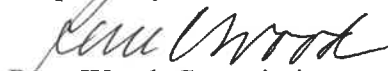
Next meeting was set for 6/13/22 at 7pm.

9. Public Inquires. None.

10. Adjournment.

R. Wood made a motion to adjourn the meeting, which was seconded by D. Roeder, and approved by a 4-0 vote. The meeting adjourned at 9:30pm.

Respectfully Submitted,



Rene Wood, Commissioner

Documents reviewed at this meeting:

- 5/23/22 Sign in sheet
- 5/23/22 Meeting Agenda
- Email from Jackson Alberti, Foresight Land Services to Sheffield Town Hall, 5/8/22, Re: Race Brook House LLC DEP File #281-0266 Peer Review Response Letter and Revised Site Plan.
- Copy of 301CMR DEP WPA Section 10.58, (5); pgs 236-237

- Large map of Riverfront Area Restoration Plan, Race Brook House LLC, SP-1, dated 9/27/21
- Aquatic Management Program at Perlman Residence, DEP File #281-0166; Solitude Lake Management
- Aquatic Management Program at Perlman Residence, DEP File #281-0166; Solitude Lake Management
- NOI Application Perlman Residence; Aquatic Management Program, 5/22
- Aquatic Management Program at Richardson Residence, Fawn Lake, DEP File #281-0216; Solitude Lake Management
- NOI Application Richardson Residence, Fawn Lake; Aquatic Management Program, 5/22
-

