

**REVISED APPROVED Town of Sheffield
CONSERVATION COMMISSION**

July 25, 2022

7:00 PM

Note; These minutes replace the formerly approved 7/25/22 minutes, as voted on 8/22/22.

Commission Members Present:

Don Ward, Chairman
Ted Pitman
Anya Rosoff
Rene Wood

Commission Members Absent:

Don Roeder

Others Present:

George Oleen, Alternate; see sign in sheet

Chair Ward called the meeting to order at 7:05pm; He addressed all meeting agenda items in a different order than listed on the agenda.

1. Continuation of Public Hearing: Notice of Intent application for 854 & 864 South Undermountain Road for existing and proposed riverfront area restoration and related site work.

E. Goodman, attorney for the applicant engaged in a discussion with the Commission regarding the Mullen Rule, which the Town has adopted, as D. Roeder was absent, and the Commission had only four members present. A supermajority of four members must vote in favor of the NOI and any Special Conditions. Attorney Goodman said she would decide later in the meeting, if warranted, whether the applicant would ask for a continuance so D. Roeder could fulfill the Mullen Rule requirements and rejoin the Commission on this matter or accept the vote of the four Commissioners present.

Jackson Alberti of Foresight Land Services presented and discussed a revised site plan showing the riverfront area improvements. The site plan also showed Enforcement Order (EO) completion dates noted in bold, clear delineation and total square footage of existing and proposed riverfront area alterations, and total square footage of proposed riverfront area restoration. All were in bold with bold arrows pointing to these areas. Discussion focused on riverfront improvement versus riverfront mitigation 310CMR10.58(5)(a) – improvement of riverfront area and 310CMR10.58(5)(g) – mitigation of riverfront area were cited; these are areas currently occupied by lawn. Discussion focused on removal and revegetation per the Enforcement Order and the NOI.

He and Attorney Goodman reviewed the areas allowed to remain, as noted on the provided map as “existing to remain” or “proposed” including the covered deck, tent site, pergola, two proposed pergolas, which are open, wooden structures and one wooden bridge (see map for complete details). The septic system was discussed at a previous meeting and found not to be an issue. Discussed normal/ongoing mowing versus annual mowing and weed whacking in certain

areas within the two hundred feet (200') riverfront area, but such areas were not clearly delineated on the plan so a person looking at the map, including future Commissioners when the applicant came forward seeking a Certificate of Compliance, would not be able to distinguish such areas. Questions ensued as to how these areas could be made clearer.

The applicant is no longer asking for consideration of whether Race Brook is an intermittent stream, although Attorney Goodman said they may do so in the future.

Green areas on the map will not be mowed but revegetated and the applicant is working with Helia Land Design on these areas. There is a footpath that generally follows the property line that will be mowed so it may be used. Commissioners felt this footpath should be shown on the map.

E. Stockman, the Commission's peer reviewer, indicated that the applicant in their NOI is asking where they can mow and this needs to be clearly delineated for the two types of mowing - general mowing and annual mowing with weed whacking. The same needs to be done for the footpath. She noted that once an area is declared through a Special Condition to be a restoration or mitigation area, it is "no touch in perpetuity" per 310 CMR 10.58(5)(h). Important to accurately show these areas on the site plan. All agreed further color coding should be done to distinguish all of these. This will be done for the next meeting.

Special conditions to the NOI were briefly discussed, including one specifying an annual visit for inspection of the plantings and mowing work for a three year period.

E. Stockman circled back to 310 CMR 10.58(5)(a), Redevelopment within previously developed riverfront areas: improvement and reviewed the approximately 4600 square feet of degraded area from their WPA Form 3 (4535 sq. feet). Discussion ensued regarding the ratio of degraded area to improvement the Commission should require and specify. E. Stockman stated a 1:2 ratio is required for mitigation done in other than degraded areas.

Attorney Goodman felt the 1:2 ratio was not appropriate for improvement as she felt the Conservation Commission knew about the general situation and that the 3 years statute of limitations had expired, so the applicant should not be held to post 1996 standard. E. Stockman noted the Commission had discretion for improvement under 310 CMR 10.58(5)(a) and could establish the square footage for improvement. The removal of a goat pen and gravel road, as well as the Events Barn not being counted, were noted. The green areas on the map are under the EO. Separate areas for mitigation need to be color coded and shown. Just as plantings were noted under the EO, applicant will need to note plantings, and have list of plants for the areas of mitigation under the NOI. It was felt showing areas fulfilling restoration for the EO in one color and mitigation and improvement areas for the NOI in another color would further clarify the matter.

E. Stockman requested square footage number calculations and sources of degraded areas be broken out and noted in site plan boxes to build on what is already noted. She discussed keeping final actions on the EO and the NOI separate from each other. Closing the EO can be done by a letter from the Commission as there is no official WPA form to do so. This can be done after all the EO required plantings are in and established after 2 years. Further discussion distinguished the requirements of the EO and NOI, the later requiring the plantings to be completed and established after 3 years. The NOI Order of Conditions and Special Conditions go for three years unless an extension is requested by the applicant and granted. E. Stockman referenced her letter of April 2022 for further details and noted that areas that were legally degraded do not need to be mitigated.

A motion was made by Chair Ward, and seconded by T. Pitman, to accept a riverfront improvement ratio of 1:1½ for the area under NOI jurisdiction. The motion was approved by a 4-0 vote.

Attorney Goodman summarized the items to be done for their next appearance before the Commission:

- Site plan will be color coded as discussed, including areas to be mowed; areas to be mowed annually and weed whacked; and the footpath
- Charts to be added to the site plan to show square footage calculations for degraded riverfront area to be mitigated and the same for restoration areas

All other items discussed earlier as being color coded and added to the site plan were asked to be added. The applicant asked if there were any other requirements he should be aware of and the Commission replied no.

A motion was made by R. Wood, and seconded by T. Pitman, to continue the Public Hearing for the Notice of Intent application for 854 & 864 South Undermountain Road for existing and proposed riverfront area restoration and related site work until August 22, 2022 at 7:00pm, per the request of the applicant's attorney. The motion was approved by a 4-0 vote.

Both applicant and agents and E. Stockman, Commission's peer reviewer, were asked to provide sample Special Conditions for the NOI.

2. Update on Dry Hydrants.

R. Kilmer, Jr. was present from the Sheffield Volunteer Fire Department to provide a written description of such construction activities for the first four dry hydrants, as per 7/25/22 meeting. Joe Wilkinson later joined the meeting. Neither had a written work description for the Commission.

After discussion, the chair let them give the following verbal description of the work for the first four dry hydrants to be replaced, which are the two behind Town hall and the two by Miller Ave bridge:

“ We will dig out the broken pipes, which are 6” plastic pipes and have broken due to the impacts of the sun and exposure. They will be replaced by duct iron pipes, which are so strong you can run over them. The replacement pipes will be put in the former pipe area; the cap top will be replaced as well as the sieve. A flush out valve will be installed. Cut out, remove, and replace. Reseed any damaged lawn. The long arm will sit on top of the bank so it can get the broken pipe out of the dirt. Width of dug ditch will be a maximum of 32”. May place straw wattles crosswise when construction completed for erosion control. Will be done in dry season when water low. Will reseed lawn area.”

Chair Ward cautioned about introducing any problem seeds and encouraged a careful choice of reseeding mixture. E. Stockman discussed the work she had done with Egremont to develop a set of procedures for their dry hydrant work, including for repairs, maintenance, flushing, dredging, etc., noting what information was needed in an NOI, and that an NOI may be amended to include such procedures. Chair Ward said he will get a copy of the Egremont Dry Hydrant NOI. R. Wood will get J. Wilkinson the DEP file # for this NOI so he may post it when this work is done.

3. Neal Chamberlain’s Request for Conservation Guidance

N. Chamberlain, a local builder installing a second floor screened porch and related groundwork at 238 Cooper Hill Rd, Ashley Falls, came before the Commission to discuss this work, whether the 310 CMR 10.10.02(2)(a)2 exemption applied to this situation, and if not, how to proceed. The exemption was reviewed and found non-applicable as the structure was not used in the service of the public nor used to provide the services listed. There is a perennial stream behind the house and no measurements were given on the distance to the construction area, as well as whether the site is in the floodplain. Chair Ward advised he file an RDA and include such distances on a site plan. Chair Ward explained the RDA review process, RDA negative or positive determination, and further steps if positive.

4. Discussion/Possible Action re: Request for Determination of Applicability (RDA)

procedures. Chair Ward used the above discussion to review how the Conservation Commission has been involved in deciding if an RDA is required following review by the Chair, or previous Commission Administrative support, after receiving an inquiry from the public or a notice from the Building Commissioner that a filed permit needs the Commission’s review. This has required the Chair to review available documents, frequently talk with the building permit filer and an on-site visit. Other Commissioner’s have been asked the same questions by landowners and it has put them in an awkward position. E. Stockman reminded the Commission that there is no State map showing all waterbodies, and even though the Town of Sheffield’s online maps now have a conservation layer, site delineation is the only way to be certain of riverfront and buffer distances from a project. She also noted that from a regulatory perspective, an on-site visit and opinion from a Commissioner has no legal weight or value. An RDA is important protection to the landowner, as well as the Commission.

The Commission will draft a letter for review at the 8/8 meeting, which will spell out the conditions under which a building permit applicant should file an RDA or NOI. Such letter when approved will go to the Building Commissioner for distribution to all applicants he would have formerly sent to the Commission Chair. Such conditions will include if within 100' of riverfront, 200' buffer zone, NHESP areas, and floodplain. This will remove the decision from the Chair, provide guidance to applicants and the Building Commissioner, protect the property owner, and get applicable matters before the Commission.

5. Discussion/Possible Action re: Enforcement Order (EO) for 1448 South Undermountain Road. Emily Stockman made comments on the status and progress of this Enforcement Order, including Oxbow Associates' report of 7/22/22. She recommended a site visit, which was set for 8/22 at 5pm. Wetlands replications are coming along, and a site visit will view these, actual delineations, and whether Oxbow's work has met the EO's requirements. A concern was raised regarding loosestrife and their discussion of it and whether there were any other invasives in Oxbow's plant list for replication areas. Discussion regarding whether one of the three man-made ponds has created its own wetlands where the drainage outlet occurs for this pond; this will be reviewed during the site visit. E. Stockman will line up an Oxbow representative for the site visit per the Chair's request.

6. Discussion/Possible Action re: Letter to Division of Conservation and Recreation (DCR) The Commission followed up on T. Pitman draft letter to DCR re: the unavailability of a resource in Western MA to address ACEC issues. Commissioners had reviewed the draft letter sent by J. Hughes; R. Wood had made suggestions, which were discussed. Further corrections included ~~Berkshire County~~ and substituting Western Massachusetts, the Commissioner of DCR's name and address where the letter will be sent, and cc only to Representative S. Pignatelli. T. Pitman reviewed a map of MA ACECs. Chair Ward will sign the letter on behalf of the Commission. *A motion made by R Wood, seconded by A. Rosnoff, to send the draft letter as amended and to be signed by Chair Ward, was approved by a 4-0 vote.*

7. Approval of Minutes of 7/11/22. After the minutes were reviewed and several corrections were pointed out, *a motion made by R Wood, seconded by T. Pitman, to accept the minutes of 7/11/22, as amended, was approved by a 4-0 vote.*

8. Commission Member Items. Passed over.

9. Public Inquires. None, as no public was present.

10. Adjournment.

Chair Ward made a motion to adjourn the meeting, which was seconded by R. Wood and approved by a 4-0 vote. The meeting adjourned at 9:03pm.

Respectfully Submitted,



Rene Wood, Commissioner



Documents reviewed at this meeting:

- 7/25/22 Sign in sheet
- 7/25/22 Meeting Agenda.
- Oxbow Associates, Inc. Status Report for 1448 S. Undermountain Road; 7/22/22
- Emails from Emily Stockman to Jackson Alberti and responses; string dated 7/20/22, on Race Brook Lodge NOI.
- Emails from Jackson Alberti to the Conservation Commission dated 7/18/22 on Race Brook Lodge NOI.
- Report from Foresight Land Services dated 7/18/22 re: Race Brook Intermittency Documentation.
- Riverfront Area Restoration Revised Site Plan, SP1, dated 6/23/22, Race Brook Lodge; done by Foresight Land Services.
- Email from R. Wood to Town Hall, dated 7/18/22, revisions to draft letter by T. Pitman re: DCR's ACEC coverage
- Email from T. Pitman to Town Hall, dated 7/24; address of DCR Commissioner for above draft letter.
- Map of MA Areas of Critical Environmental Concern (ACECs)
- Email from Jill Hughes to R. Wood and others, dated 7/25/22 with attachment of generic technopost slab for property at 238 Cooper Hill Rd, Ashley Falls.
- Email from Neal Chamberlain to Don Ward, dated 7/25/22 re: exemption request for 238 Cooper Hill Road, Ashley Falls.