

**Town of Sheffield**  
**CONSERVATION COMMISSION**  
**August 22, 2022**  
**7:00 PM**

Commission Members Present: Don Ward, Chair  
Ted Pitman  
Anya Rosoff  
Don Roeder  
Rene Wood

Others Present: See sign in sheet

Chair Ward called the meeting to order at 7:05pm.

**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.** Chair Ward opened the continuation of this public hearing at 7:06pm and said the applicant's attorney had requested deferment to 9/12/22 at 7pm to allow time for further preparation. *A motion made by R. Wood, and seconded by D. Roeder, to continue the public hearing on 9/12/22 at 7pm, per the applicant's request, was approved by a 5-0 vote.*

**2. Public Hearing: Request for Determination of Applicability, filed by David Klein for property located at 1548 S. Undermountain Road, in accordance with the provisions of MGL C.131, §6. The proposed project: expansion of an existing front porch and enclosure to make a three season sunroom.** Chair Ward opened the hearing at 7:10pm and the site visit done earlier by all Commissioner's was reviewed. All agreed the site visit and answers given by the homeowner and architect were clear and complete. *A motion made by T. Pitman, and seconded by R. Wood, to issue a Negative Determination #3, with the following conditions: 1) proper installation of straw waddles to protect riverfront areas and removal of waddles after construction is completed; and 2) avoidance of heavy equipment in the buffer zone as much as possible, was approved by a 5-0 vote.*

**3. Discussion/possible action regarding request for approval of Utility Pole at 1567 County Road.** Jeff Smith, of Salvini Associates, LLC, presented the request for approval for placement of a National Grid pole at 1567 County Road. The pole location had not been finalized when an RDA for this location was approved in May 2022. The Commission had agreed upon a 15' buffer zone, by the intermittent stream, in which no work was to be done or structures placed. From the diagram done provided by National Grid, it was not clear whether the pole was inside that buffer zone. The exemption under WPA 310 CMR 10.02(2)(b)2.h was discussed but unclear if it applied in this case. *A motion made by R. Wood, and seconded by T. Pitman, to send a letter to National Grid, cc to Jeff Smith, asking National Grid to clarify in writing whether the exemption of WPA 310 CMR 10.02(2)(b)2.h, in their opinion, applies, and if not*

to file the appropriate RDA or NOI, as well as hold the required pole hearing with the Select Board if not already done, was approved by a 5-0 vote. R. Wood volunteered to write the draft letter for Chair Ward's approval.

Continued discussion focused on subsequent Town of Sheffield culvert work, which came before the Commission, and Chair Ward's feeling that currently the conditioned 15' buffer zone is not adequate. He encouraged J. Smith to monitor the drainage. It was pointed out if boundaries are contained in the RDA, they are valid for a 3 year period and there are no regulatory procedures to adjust an RDA, as there are for an NOI.

James Kelly spoke of his experience re: tree cutting plans on this same slope, in which he was denied the ability to cut in this area unless he filed an NOI. He queried whether the rules are the same for all applicants. He also discussed previously made changes on the site at 1567 County Road with work undertaken to lessen the wetlands nature of the lot and sell it as a drier lot.

Discussion ensued about the Commission's jurisdiction when new information on an approved project becomes available, with the Burden of Proof being with the applicant on an NOI but an RDA application not subject to this same burden of proof. E. Stockman commented on difficulty of distinguishing between a gully vs. stream vs. intermittent stream and the need for Commissioners to trace the water flow until where no more water is observed, and a MassDEP Data Block is located. This wasn't done for the May 2022 application. After 3yrs from an RDA Negative Determination issuance date, any new work must come forward with a new RDA. J. Smith will provide J. Hughes with contact information for the letter/email.

**4. Public Hearing: Request for Determination of Applicability, filed by Neal Chamberlain for property located at 238 Cooper Hill Rd. Sheffield, in accordance with the provisions of MGL C.131, §6. The proposed project: to replace and extend existing deck with screen porch, addition on top of porch.** Chair Ward opened the public hearing at 7:55pm, and N. Chamberlain presented the project. All commissioners had visited the site previously and he had explained the project and answered questions. He pointed out that it is an old house, predating the WPA and the project would cause minimum soil disruption. He questioned whether a specific exemption (310 CMR 10.02(2)(b)2.e) was applicable, but the commission said no. **A motion made by R. Wood, and seconded by T. Pitman, to issue a Negative Determination #3, with the following conditions: 1) proper installation of straw waddles to protect riverfront areas and removal of waddles after construction is completed; 2) avoid heavy equipment in the buffer zone as much as possible; 3) No fueling or refueling of any equipment of any type on site; and 4) inspection of straw waddle placement by D. Roeder (or another member if unavailable) before construction begins, was approved by a 5-0 vote.**

N. Chamberlain pointed out MassDOT's straw waddles are still at the site of the Route 7A Housatonic Bridge replacement. Town Administrator's office will be asked to contact MassDOT Region 1.

**5. Public hearing: Notice of Intent application filed by Benjamin Kjome for property on 0/839 Bow Wow Road in Sheffield, in accordance with the provisions of MGL C.131, §6.**

**The proposed project: construction of a single family home.** Chair Ward opened the public hearing at 8:13pm. Four commissioners had been at an earlier site visit, walked the property, reviewed plans presented by Mike Kulig of Berkshire Engineering, Inc., and answered questions.

He reviewed the site plans at the meeting and answered questions, particularly on Board of Health involvement on the proposed septic system, house siting, and requested tree removal. While the site is in an ACEC, it is not in any priority habitat and no MEPA or ENF required as no threshold was met. Tree clearing requested, within riverfront buffer zone, is to support solar installation, and clear diseased and dead trees, white pine trees and possible others. The Commission decided that for any tree cut, the stump will remain, but the stump may be ground down to the ground. No root structure is to be removed.

Discussion included the differences of tree cutting for aesthetic purposes versus wildlife management regarding the pines by the pond. 310 CMR 10.58.3(d)1 – No significant adverse impact – was reviewed and found applicable. A rough calculation based on riverfront area would allow up to 1.632 acres (10%), whereas the applicant was asking for 9300 square feet of alteration. M. Kulig will do new site plan delineation to show this area and mark all trees they wish permission to remove. As this is a performance standard, the plan and tree cutting requests are subject to Commission approval, which may be given after NOI approval and issuance of the Order of Conditions. D. Roeder recommended Appendix A of the July 22 NOI application be included in total in the OOC, which was endorsed.

*A motion made by R. Wood, and seconded by T. Pitman, to approve the filed NOI and issue an Order of Conditions, with the following conditions: 1) site plan delineation of the proposed area of no significant adverse impact with all trees for possible cutting and stumping to be marked, all of which are subject to Conservation Commission approval before any action is taken by the applicants or agents; 2) Stumps may be ground to ground level but no root systems are to be disturbed and are to be left in place; 3) proper installation of straw waddles to protect riverfront areas and removal of waddles after construction is completed with an onsite inspection by the Conservation Commission prior to the start of any construction activity; one inspection during construction, and one at end of construction; 4) maintain in place all up gradient straw wattle; inspect after storm events of 1" or greater until removal of is approved by the Sheffield Conservation Commission; 5) lightly rake in areas of bare soil, plant New England Erosion Control Seed Mix, lightly mulch with straw mulch, and monitor for signs of erosion prior to establishment of ground cover; 6) maintain site in clean condition during all phases of construction, including proper disposal of all debris in appropriate containers stored in areas indicated on the supporting project documents and properly covering any soil stockpiles and/or remove from the site; 7) monitor for intrusion of invasive species and remove as necessary; 8) refueling, servicing, and repair of motorized construction vehicles shall take place within the confines of the limit of work/silt fence and out of all buffer areas; 9) equipment operators shall be prepared to immediately respond to accidental releases of fuel, motor oil, and other liquids through proper containment, cleanup and removal procedures; 10) upon completion of the work the applicant shall request a Certificate of Compliance from the Conservation Commission attesting that the site has been developed in compliance with this Order of Conditions and work referenced on a site plan prepared by Berkshire Engineering, Inc. previously accepted by the Commission; and 11) receive Board of Health septic system approval as presented in filed plan, was approved on a 5-0 vote.*

**6. Continuation of public hearing: Notice of Intent application for Perlman property on 689 Home Road, in accordance with the provisions of MGL C.131, §6. The proposed project: Aquatic Management Program for Perlman Pond.**

Chair Ward re-opened the public hearing and discussion a courtesy continuance of the public hearing to 9/12/22 at 7pm, as the applicant's representative was not present and suggested conditions to have been submitted have not been received.

*A motion was made by D. Ward, and seconded by T. Pitman, to continue the Public Hearing for the Notice of Intent application for Perlman property on 689 Home Road, in accordance with the provisions of MGL C.131, §6 for an Aquatic Management Program for Perlman Pond, as a courtesy continuance until September 12, 2022 at 7:00pm. The motion was approved by a 3-0-2 vote, with D. Roeder and R. Wood dissenting.*

**7. Continuation of public hearing: Notice of Intent application filed by James McNamara for property at 1085 Berkshire School Road, in accordance with the provisions of MGL C.131, §6. The proposed project: Aquatic Management Program for Fawn Lake.**

Chair Ward re-opened the public hearing and discussion a courtesy continuance of the public hearing to 9/12/22 at 7pm, as the applicant's representative was not present and suggested conditions to have been submitted have not been received.

*A motion was made by D. Ward, and seconded by T. Pitman, to continue the Public Hearing for the Notice of Intent application for property at 1085 Berkshire School Road, in accordance with the provisions of MGL C.131, §6 for an Aquatic Management Program for Fawn Lake as a courtesy continuance until September 12, 2022 at 7:00pm. The motion was approved by a 3-0-2 vote, with D. Roeder and R. Wood dissenting.*

**8. Discussion/possible action re: Enforcement Order for 1448 South Undermountain Road.**

A site visit had been taken earlier by four Commissioners with Emily Stockman of Stockman Associates and Brian Butler of Oxbow Associates. While both contributed their respective views on how various sites/portions of the remediation work were doing, it was felt that the hydrophyte plant sites in the open field and wetlands were doing well, and the delineation boundary was shifted westwardly. The lower pond was re-delineated as jurisdictional and a system with boarding vegetive wetlands (BVW); the pipe output was cited as an intermittent stream. To incorporate these changes, Oxbow Associates will provide an updated site plan to reflect these and any other agreed upon changes.

There was discussion on concerns re: erosion in cleared areas and other unstable sites; new boundaries on areas noted on the site plan; and timing of a possible NOI submittal which apparently Attorney Goodman feels is needed but others feel may just complicate an already complicated situations given the entities involved. E. Stockman felt the Enforcement Order and remediation and restoration were doing well in accomplishing EOs goals. Since the EO requires another year of monitoring, with the owner's cooperation, this may suffice.

E. Stockman will draft a letter for the Conservation Commission's consideration, which would go to the owner citing what has been accomplished and the success so far and what needs to be done. The Commission needs to decide upon plans for within the buffer zones – plants, trees, and/or a permanent no-mow meadow habitat with an annual mow, with spot maintenance

for invasives? It was noted the owner, despite being ordered not to mow in certain areas, has done so. This needs to be addressed by Oxbow or the Commission will have to do so.

Soil conditions of various areas were discussed as well as how best to stabilize and prevent future non-conformance. Placement of stone monuments were reviewed with the Commission favoring a no-mow zone, wetland garden with native plantings/ trees within the 0-50' border and finding out what Natural Heritage would prefer in the 50'-100' buffer zone but B. Butler's suggestion was seeded with meadow / wetland gardens with native plants.

OxBow's interactions with Natural Heritage was reviewed, including an upcoming call this week, at which this item will be discussed. Management of, and what composition of the required, conservation restriction was discussed, and B. Butler will explore several new ideas further with Nature Conservancy.

Limitations of conservation restrictions on a deed, funded monitoring; in-perpetuity maintenance; and annual reporting were discussed. State law limits deed CRs to 30 years unless the CR has come through EOEEA, which remain in perpetuity. Question: process to secure this type of CR?

Slopes – pitch and drainage and open/flat – were reviewed. Chair Ward was concerned about mowing to the crest of the bank and over the bank due to erosion and further disturbances. Trees here would provide structural elements, hold the soil, and keep the mowers away. Felt a tree reforestation within the 50' buffer could be successful but whatever the plans, the owner needs to be involved and understand them.

In the multi-party jurisdiction on this site: The Nature Conservancy or whomever holds the CR will steward it all; Conservation Commission has the wetlands; and NHESP has the non-wetland areas.

The decided on plan:

- E. Stockman will write a draft letter to go to the owner after Commission review, to include comply and non-comply elements
- B. Butler to update site plan based on revised delineations; suggest a design incorporating monuments to the left of the driveway; trees within the 50' buffer zone; and meadow, native plants within the 50-100' buffer zone.
- Agenda item for 9/12 at 7pm for any updates; expect Oxbow's work for 9/26/22 at 7pm meeting.

**A motion was made by R. Wood, and seconded by T. Pitman, to continue the Public Meeting for the Enforcement Order for 1448 South Undermountain Road until September 12, 2022 at 7:00pm. The motion was approved by a 5-0.**

**9. Discussion/possible action re: Instruction to File a Request for Determination of applicability and a Notice of Intent.** This matter was rescheduled to the 9/12/22 meeting.

**10. Approval of Minutes.** As not all members had received a draft copy of 8/8/22 action on them was deferred to 9/12. After the minutes of 5/10/22 were reviewed and corrections pointed out, **a motion made by R Wood, seconded by D. Roeder, to accept the minutes of 5/10/22, as amended, was approved by a 3-0-2 vote, with D. Roeder and R. Wood abstaining.** R. Wood explained the suggested corrections E. Stockman had made to the previously approved 7/25/22

Meeting minutes for 8/22/22

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minutes, which corrected WPA CMR sections citations as well as critical word corrections. Her suggested corrections came in the day after the 8/8/22 meeting. **A motion made by R Wood, seconded by D. Roeder, to accept the revised approved minutes of 7/25/22, was approved by a 5-0 vote.**

**11. Commission Member Items.** Chair Ward went over the Commission's mail which included four cutting plans. The plans will be in the Commission's upstairs mailbox until the 9/12/22 meeting for commissioner's review.

Chair Ward reminded members of their homework re: special conditions on OCCs for Perlman Pond and Fawn Lake and the Housatonic Valley Authority (HVA) was doing water analysis on the Housatonic, Konapot, Iron Brook, and Hulburt in Sheffield.

Chair Ward discussed a tree situation which will require the issuance of an Emergency Certification Order once a written statement is sent by the arborist or owner to J. Hughes. A tree is in danger of falling on a house but is in the riverfront area on Mill Pond.

**12. Public Inquires.** None.

**13. Adjournment.** **R. Wood made a motion to adjourn the meeting, which was seconded by T. Pitman and approved by a 5-0 vote.** The meeting adjourned at 10:20 pm.

Respectfully Submitted,

Rene Wood, Commissioner

**Documents reviewed at this meeting:**

- 8/22/22 Sign in sheet
- 8/22/22 Meeting Agenda
- 7/25/22 Revised Approved minutes
- 5/10/22 Draft minutes
- Email from Jeff Smith to Town Hall dated Aug 12, 2022 at 1:26pm
- Two maps re: 1448 S. Undermountain Road, Sheffield
- Berkshire Engineering, Inc. Response to DEP File Number Comments, dated August 2022 re: 0/839 Bow Wow Road
- Two maps re: 0/839 Bow Wow Road
- Forest Cutting Plan for Safian; Old Joe Road
- Forest Cutting Plan for Safian; Old Joe Road
- Forest Cutting Plan for Giumarro; Hullet Hill Road
- Forest Cutting Plan for Sinico; Polikoff Road

