

CONSERVATION COMMISSION

Meeting Minutes

December 12, 2022

7:00 PM

Town Hall – First Floor Meeting Room

Commissioners present:

Don Ward, Chair
Ted Pitman, Vice Chair
Don Roeder
Anya Rosoff
Rene Wood

Others Present:

See meeting sign in sheet

Chair Ward opened the meeting at 7pm. Two site visits had been conducted earlier in the day at Race Brook Lodge and McCain Pond. T. Pitman requested moving agenda items to first hear from applicants present at the meeting.

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.**

Mark Volk, the applicant's agent presented the Commission the agreed upon revised site maps. E. Stockman reviewed them further and noted the two matters at hand:

- **Enforcement Order:** Since open items have been incorporated into the OOC for the NOI, she recommended this matter also receive Commission approval. She presented a draft letter on the matter, which the Commission accepted and will be signed by Chair Ward. She noted the breakout of the 43,000 square feet and the size of the riverfront areas are all on the revised plan and easy to understand.
- **Notice of Intent:** the site plan revisions, including the shading of relevant areas, legends, and other matters discussed at the 12/28/22 meeting, are complete. Restoration and replication areas are noted. The Open Space restriction, as noted on the revised map, is spelled out in the Declaration of Deed Restriction. Section 2.K serves as a general summation of restrictions. While the OOC with the NOI will last three years, unless subsequent action taken, the Deed Restriction is in perpetuity. She reported her approval, answered Commissioner's questions, and recommend Commission approval with 5 Special Conditions added to the WPA Form 5 OOC, as follows:
 1. Prior to the start of work, a copy of the recorded Declaration of Restriction shall be submitted to the Conservation Commission.
 2. Prior to the start of work, the restoration approved under the 4/21/21 Helia Land Design Enforcement Order restoration Plan and depicted as six (6) downstream pink polygons on the final 11/28/22 site plan must be approved.
 3. Approved vegetation management is limited to selective dead/dying tree removal, mowed/maintained lawn (yellow polygons), and maintained meadow/tall grass (light green polygons), as depicted on the final 11/28/22 site plan.

4. The use of hay bales and erosion controls with plastic netting is prohibited.
5. 1:1 native shade tree replacement for all trees removed.

A motion made by D. Roeder and seconded by T. Pitman to approve an Order of Conditions (WPA Form 5) for 854 & 864 South Undermountain Road (Race Brook Lodge; # 281-0266) with the addition of five Special Conditions: 1. Prior to the start of work, a copy of the recorded Declaration of Restriction shall be submitted to the Conservation Commission; 2. Prior to the start of work, the restoration approved under the 4/21/21 Helia Land Design Enforcement Order restoration Plan and depicted as six (6) downstream pink polygons on the final 11/28/22 site plan must be approved; 3. Approved vegetation management is limited to selective dead/dying tree removal, mowed/maintained lawn (yellow polygons), and maintained meadow/tall grass (light green polygons) as depicted on the final 11/28/22 site plan; 4. The use of hay bales and erosion controls with plastic netting is prohibited and 5. 1:1 native shade tree replacement for all trees removed, was approved by a 5-0 vote.

A motion made by R. Wood and seconded by T. Pitman to release the Enforcement Order for 854 & 864 South Undermountain Road (Race Brook Lodge) as detailed in the draft letter presented by E. Stockman; to approve such draft letter and authorize Chair Ward to sign the letter, was approved by a 5-0 vote.

E. Stockman will provide the approved WPA Form 5 Special Conditions and the letter, as referenced above to Town Hall for finalization. Commission member signed the WPA Form 5 signature page. The matter was completed at 7:35pm

2. Request for Certificate of Compliance-McCain Pond. Chair Ward opened the public meeting to order at 7:35pm. Shaun McCarthy, the applicant's agent presented the request. Subject to the Commission receiving a corrected request including corrections to the cover letter and either submitting a corrected report, or verifying the listed annual work reports, and provision of Order Of Conditions #281-0228, **a motion made by R. Wood and seconded by T. Pitman to issue a Certificate of Compliance, WPA Form 8B, as requested, was approved by a 4-0-1 vote, with D. Roeder voting NO.** Commissioners signed the form.

3. Public Hearing: Notice of Intent filed by Wesley McCain for property on 400 East Rd., in accordance with the provisions of M.G.L. Chapter 131, sec. 40. The proposed project: Aquatic Management Program at the McCain residence. Chair Ward opened the public hearing at 7:50pm. Several Commissioners had made a site visit earlier in the day.

Shawn McCarthy of Solitude Lake Management, the applicant's agent, presented the NOI application. He discussed the types of organisms found in the pond, with a survey planned in the Spring 2023 before any treatment is done. He explained the various proposed products listed in the pond management plan as well as alum, a potential backup treatment.

D. Roeder had questions on several of the proposed products and stated his support for appropriate phosphorus test(s) as a Condition to any OOC for this NOI, as well as wanting samples of each organism to be treated. Discussion ensued regarding the toxicity and dissolvability of several of the products listed. S. McCarthy discussed the plan's steps of survey;

plan accordingly; verification of problems; and spot treatment(s). If copper algaecide is used, no more than ½ of the pond would be done at a time. After treatment, post-treatment survey with spot treatment(s), as needed. Submitted annual report will focus on: what, why, and effect of the treatments. D. Roeder noted that none of the species listed are invasive species and given the broad family of some of the listed species, the list needs to be further clarified by use of appropriate scientific nomenclature.

The requested term of the NOI is 5 years; several Commissioners stated an initial term of 3 years, with potential 1 year renewals.

A. Rosoff questioned, and asked for information on, how the application qualifies as an Ecological Restoration Limited Project. This led to the 11/29/22 MassDEP letter assigning a WPA File Number (281-0272) and the six comments made in the letter. S. McCarthy began his response and R. Wood requested that he put his answers to these 6 comments in writing, which would remove the minute taker's burden of accurately capturing his responses, and would allow further review of his comments, as well as a potential review by the Commission's consultant.

R. Wood asked if he would like to ask for a continuance of this public hearing to 1/9/23 at 7pm. With his yes response, **R. Wood made a motion to continue the public hearing on this matter to January 9, 2023 at 7pm. The motion was seconded by T. Pitman and approved 5-0.**

4. Continuation of Public Hearing: Request for Determination of Applicability, filed by Richard & Catherine Goewey for property located at Water Farm Road, Sheffield, in accordance with the provisions of M.G.L. Chapter 131, sec. 40. The purpose of the hearing is to install a culvert for driveway across seasonal stream. Chair Ward opened the public meeting at 8:35pm. The Goewey's were not present, and the Commission has had no correspondence from them since the last meeting of 11/28/22. As such, the Commission discussed options, including getting in touch with the applicant and, pending their providing a written request to continue the hearing, to continue the hearing pending their authorization.

T. Pitman discussed issuing a negative Determination, under #2. D. Roeder spoke of doing the right thing with a project of minimal impact. Other members did not have enough information to continue the discussion as it is unknown if the Goewey's have had a chance to trace the source of the intermittent stream. An intermittent stream – if the source is in an area subject to Wetlands Protection Act jurisdiction – is part of that WPA protected area. If the source is not a WPA resource, there is no further action to be taken other than a negative determination. Chair Ward will call the Goewey's and document his conversation to Town Hall. **R. Wood made a motion to continue this public hearing to January 9, 2023 at 7pm. The motion was seconded by D. Roeder and approved 4-0-1 with T. Pitman voting NO.**

5. Approval of Minutes of 11/28/22.

After these minutes were reviewed and corrections pointed out, **a motion made by R. Wood, seconded by A. Rosoff, to accept the minutes of 11/28/22, as amended, was approved by a 5-0 vote.**

Chair Ward reviewed the mail. **A motion made by T. Pitman, seconded by R. Wood, to continue membership in MACC in 2023, was approved by a 5-0.** National Grid's spray plan notification

was reviewed. A. Rosoff shared her experience at a MACC in-person event and provided a listing of all program materials, which will be sent out by Town Hall.

6. Discussion/Possible Action Regarding FY2024 Annual Budget. The Commission's FY24 budget was discussed; R. Wood will discuss it with R. LaBombard as it is underfunded in some areas, including funding for a ConCom consultant.

7. Commission Member Items. R. Wood announced the receipt of a Mass Community Compact IT grant to implement a digital records management system, which would include Conservation Commission's records.

A. Rosoff asked for materials to be forwarded to Commissioners as soon as received, rather than waiting for the meeting at which the matter will be discussed. The Solitude Management Plan for the McCain plan was cited as an example. R. Wood will discuss with Town Administration to seek a solution.

R. Wood requested and received permission to list the 8 HVA water sites, which were discussed at the 11/28/22 meeting. They are:

Housatonic River: N-Boardman St town line, M- Covered Bridge, and S-Rte 7 Bridge

Konkapot River: Rte 7A Bridge

Rannapo Stream: Rannapo Rd culvert

Hulett Stream: Hewins St culvert

Iron Works Brook: Maple Ave Bridge

Soda Spring Brook: Maple Ave Bridge

Dry Brook: Kelsey Rd culvert

Willard Brook: Bow Wow Rd culvert

Harlan Marsh Stream: Bow Wow Rd Bridge

Schenob Brook: Miller Ave Bridge

Hubbard Brook: Sheffield/Egremont Rd. Bridge and Rte 7 Bridge

All of the above flow year round and every sample site can be driven to within close proximity.

T. Pitman noted that when he was on the McCain site visit today, he saw cutting taking place by the end of the pond and did not notice any required posting sign; he does not believe there is a cutting plan signed by DCR. This cutting was possibly in the buffer zone. The Commission approved T. Pitman following up on this.

8. Public Inquiries. Chair Ward discussed the issue of anonymous complaints and the inability to follow up with them and suggested such items be brought to a Commission meeting

9. Adjournment. *R. Wood made a motion to adjourn the meeting, which was seconded by A. Rosoff, and approved 5-0.* The meeting adjourned at 9:25pm.

Respectfully Submitted,


Rene Wood, Commissioner

Documents reviewed at this meeting:

- 12/12/22 Meeting Agenda
- 12/12/22 sign in sheet
- 11/28/22 draft minutes
- Documents for 854 and 864 S. Undermountain Rd; Race Brook Lodge NOI, DEP file #281-0266.
 - email from M. Volk to E. Stockman, dated 12/2/22 re: revised plan with Open Space and edits from 11/28/22 meeting; included earlier email string.
 - Email for E. Goodman, Esq to Don Ward, dated 12/8/22 re: Deed Restriction Race Brook Lodge & Open Space sketch to go with deed
 - 2 large size and 1 11 x 17 revised plan maps, dated 11/28/22 showing all required revisions and Open Space area
 - Draft letter by E. Stockman dated 12/12/22, accepted by the Commission to close out the Enforcement Order issued in 7/2020 on this property; Authorization for Chair to sign.
 - Draft WPA Form 5- Order of Conditions as prepared by E. Stockman and approved by the Commission
 - WPA Form 5 – Order of Conditions: Part E. Signatures
- Certificate of Compliance Application, McCain Residence Pond Aquatic Management Plan, dated 11/21; received 11/21/22, submitted by Solitude Lake Management. (DEP file # 281-0228)
 - WPA Form 8B – Certificate of Compliance; part C. Authorization
- Notice of Intent application McCain Residence Pond Aquatic Management Plan, dated 11/21; received 11/21/22. Submitted by Solitude Lake Management
- MassDEP Notification of Wetlands Protection Act file number and comments on Wes McCain project at 400 East Road, Sheffield. (WE:281-0272)
- Commission Approved Declaration of Restrictions
- Memorandum for Town Administrator to Town Departments, dated 11/15/22
- Document on Commission's actions on NOIs for Perlman Pond and Fawn Lake
- Copy of letter dated 11/28/22 from National Grid to Sheffield Select Board re: 45 Day Yearly Operation Plan Public Notice
- MACC letter, 12/29/22, re: advance notice of MACC dues for FY24

