

Becket Conservation Commission

June 30, 2011

Minutes

The meeting was called to order at 6:32 p.m.

Commissioners Present: Richard Pryor, Acting Chair; Kathy Vsetecka, Agent; Purr McEwen; Bud Moylan; Marty Winters

Commissioners Absent: Scott Morley

Others Present: Dave Lenart, Barry Fogel (Attorney for applicant), Paul Merrill (Lake District), Anne Shrader (Lake District), Alice Limina, Anthony Limina (Lake District), Norma Stanton, Al Kirchner, Graham Gurry, William Hoch (Camp Watitoh), Allen Orsi (PARE), Lauren Hastings (PARE), Jeanne Pryor, Recorder

The Commission members and Recorder were introduced.

• **Continued Notice of Intent Conservation Group, Inc. Barry Fogel, Esq. Center Pond Dam Map 210 Lots 30, 28, 34 Maintenance, repair and improvement of Center Pond Dam**

Barry Fogel presented an introduction for his client, Conservation Group, Inc. Mr. Fogel noted that Mr. & Mrs. London are co-signatory to the NOI as owners of land on the south side of the dam and Camp Watitoh is a co-signatory as owner of land on the north side of the dam. There will be extension of the dam on both properties. There is an agreement between Conservation Group, Inc. and the Center Pond Restoration and Protection District that the District will take title of the dam after it is reconstructed and the District will then own and manage it. Camp Watitoh will not be involved with the ownership of the dam. The applicant has their NOI, has filed an environmental notification form that was reviewed by the public and by the agencies, there was a public comment period, there was a scoping session in town and a site visit and the Secretary of Environmental Affairs issued a certificate saying that no environmental impact report was required. The state agencies must issue their permits. The applicant will be filing the water quality certification application with DEP which is linked to the Army Corp review which is derived from their MA programmatic general permit which has to do with doing work in and near Center Pond. A filing will be made with the Army Corp and DEP and a Chapter 91 license application will be filed with DEP to authorize the structure of the dam because Center Pond is a great pond in size and is subject to Chapter 91. The objective is to try to get all the permits issued in time for the construction season in the fall of this year. If that is not accomplished, then construction would occur in the fall of next year. In response to a question from Mr. Pryor, Mr. Fogel stated that they are under an order from the DCR Office of Dam Safety to do 6 month status checks (May and November) on the dam to ensure the integrity of the dam. An inspection was done in May to fulfill the requirements of the Office of Dam Safety and everything was consistent from previous inspections. Ms. Vsetecka asked Mr. Hoch if there is a written agreement to do work in the replication area that is on Camp Watitoh property and Mr. Hoch responded "No." His concern would be that the Committee understand that they are not a party to the contract so that there would be no responsibility on the Camp for any failure of the applicant to fulfill its requirement under the order. They would also expect to be indemnified and held harmless by the applicant for any occurrences that might take place during the project and that any contractors brought on site have the required certificates of insurance, workers compensation, and that the Camp not be responsible in any way for anything that might happen to anyone in the course of doing that work. They are supportive of the project and are willing to do what they can to keep it moving but are not sharing in the liability in any way and are not before the Commission as a co-applicant. Mr. Hoch noted that he and Mr. Fogel would work out a

memorandum that will formalize the Camp's consent insofar as the conditions that he noted. Mr. Hoch noted that the replication area doesn't interfere with the Camp's existing operation; it is already in the buffer zone. Mr. Fogel stated that as seen in the NOI, this has been filed under the limited project provision for dam repair. They have done a delineation of all the resource areas in the area and representatives of PARE will describe these and describe existing conditions along with where the resource areas are. They will describe the construction sequence and how the different stages of the project will be done in a way that will avoid, minimize and mitigate impacts to the resource area to the extent possible. The Commission was presented with a returned notice to abutters and Ms. Vsetecka will follow up.

Allen Orsi (Project Engineer) and Lauren Hastings from PARE gave the presentation on the Center Pond Dam rehabilitation plan and provided the Commission with a proposed site plan with wetland impacts on it and site photographs. Ms. Hastings discussed the existing wetlands on the site. She noted the existing resource areas on the site include bank and land under water of Center Pond, land underwater and bank associated with Center Pond Brook which is a perennial stream with a 200' riverfront area and a secondary spillway outlet that is an intermittent stream so there is bank associated with that. There are 3 areas of bordering vegetative wetland. Mr. Orsi explained the site plan and noted that the project will be done in 2 phases. The proposed site plan includes wetland impact areas. Phase I of the work will come in Manning Road along the existing access roadway where there are shrubs and small vegetation in the staging area that will need to be cleared out. There are some larger trees that will be protected throughout the project. As part of Phase I, a coffer (temporary) dam will be created so that they can keep water behind and work in the dry. The first component of the work will be to demolish the existing auxiliary spillway including the overflow section, the gatehouse and the pipe and constructing a new spillway there. For the first phase the water will continue through the primary spillway. A rock buttress will be installed on the upstream side to stabilize the existing concrete wall. The crest and the downstream slope of the dam will be cleared of all large trees and other vegetation and will be regraded to a uniform crest elevation and uniform slope. In response to a question from Mr. Moylan about the gatehouse and rock wall, Mr. Orsi noted that, as part of the proposed work, the existing rock wall will be coming out and a lot of the stone will be reused in other areas of the site. Mr. Moylan asked if trees would be coming out and Mr. Orsi noted that trees to be removed are shown on the plan as a circle with an X through it. Mr. Fogel pointed out that the buttress on the upstream side of the dam will become the new upstream bank of the pond. Currently the dam is the bank. Land under water impacts and bordering vegetative wetland impacts were noted. In response to a question about the plan to maintain flow, Mr. Orsi stated that in Phase I water flow will have a minimal impact to flow conditions. In Phase II the work will include taking out and putting in a new coffer dam that will block flow through the spillway and water will be allowed to flow through the newly built spillway. The limits of work are shown in different shades of green. Lighter green indicates limit of work where they will improve the dam and will be maintained as the dam going forward; middle color green is the areas that are going to be impacted temporarily during the work but after the work they will be allowed to revegetate naturally; the dark green is showing areas that are not being impacted by the work at all. Comments from the Westfield Wild & Scenic Advisory Committee were noted as they want to see base flow maintained and this was added to specifications. Part of Phase II will include dual access coming into the site. Heavy equipment will come through the existing access off Manning Road. The cover over the spill way will be designed so that equipment can be brought over it. Ms. Vsetecka asked if the Commission has copies of the modified plan and Mr. Fogel said that he will provide the Commission with any sheet that may have new notes. Ms. McEwen asked about the timing of Phase I and Phase II and discussion followed. The project cannot begin until after Labor Day. Mr. Fogel noted that the design for permitting is based on two phases. Mr. Orsi stated that another reason for the two phases was in order to get access for equipment. Mr. Pryor asked how long the project would take to be completed and Mr. Orsi suggested about 3 months, depending on the contractor. Ms. McEwen asked what the contingency plan would be once you go into winter? There was a discussion of what a stable condition for winter would be considering the dam perspective and spring erosion. Mr. Orsi said that the point between phases would be in a stable condition that it would be in the authority of the owner to request that the contractor lock up the site for the winter. Mr. Pryor asked for clarification about beginning Phase II in the fall or spring as there are restrictions of timing for the window of work and the

level of water. Mr. Fogel would ask the contractor for the schedule which should be included in the bid. Mr. Orsi noted that throughout construction the entire limits of work will have straw bales and silt fence to control runoff. Mr. Orsi responded to Mr. Moylan's question about how they will control silt, etc. from going down the spillway during construction noting that phasing will require some additional straw bale lines to divide out the downstream area and straw bales to protect the river and river channel. Ms. Vsetecka noticed that the Order of Conditions, if issued, will include a provision permitting the routine maintenance of the grass and other vegetation and that would all come under the ownership of the Lake District and Mr. Orsi responded affirmatively. Ms. Vsetecka noticed that the applicant is requesting a waiver in a few different places to the requirements for a wildlife habitat evaluation and asked that this be addressed. Ms. Hastings said that we are exceeding the wetland impact threshold for bank and we are approaching the threshold for land under water but not exceeding it. So we were asking for a waiver due to the limit of project status of the activity that we could be waived from that requirement. Mr. Fogel noted that Ms. Hastings did a screening of wildlife habitat to make sure that we weren't seeking a waiver on something that was a significant habitat function. Ms. Hastings noted that she looked at the limits of disturbance and went through the habitat evaluation form to see if there was any outstanding habitat features. Some on the list were within the limit of disturbance such as a blueberry bush or standing vegetation over the water, a dead log in the water, but when compared to the surrounding study area she found that there were no significant features that were not provided in greater magnitude in the surrounding site. There was nothing outstanding that would be taken away. Ms. Vsetecka asked about permits still needed and Mr. Fogel noted that they need the water quality certification, Army Corp and Chapter 91. Mr. Orsi noted that a Chapter 253 permit with Dam Safety for engineering is also needed.

Ms. Vsetecka reviewed PARE's response to the review comments received by DEP.

- 1) That it is a Coldwater Fishery Resource and it is important that no sediment enters the perennial stream. Response: erosion controls will be installed and maintained within the downstream limits of work
- 2) The "replacement area" per Wetland Replication Guidelines which is in the NOI that they will follow those guidelines so that was taken care of and the monitoring part of that also.
- 3) Limited project status was commented on and repairs will require temporary and permanent disturbance to the riverfront area onsite
- 4) Woody vegetation and root systems must be removed from the dam embankment and immediately surrounding area which they have to be to maintain the integrity of the dam
- 5) That they need all the other permits
- 6) The Commission will be advised to hold any public hearing open until the Secretary issues the certificate of compliance with MEPA, the Section 401 Water Quality Certification (401 WQC) is issued and all comments or permits are received from other State and Federal permitting agencies, such as the Army Corps of Engineers, as appropriate.

Mr. Fogel said that he would like to get an Order of Conditions at a time when it would support the construction in the fall if everything else flows. Mr. Pryor asked about a control of water note item 2 about monitoring water and asked who would monitor this. Mr. Fogel responded that either PARE or Mr. Lenart will be environmental monitor for the owners during construction. He noted that this will be written in the contract with the builder. Ms. Vsetecka asked how it was worded and Mr. Fogel will provide her with language. In response to Mr. Pryor's question about the possibility of water release that may cause harm downstream, it was explained that there will be an operation and maintenance plan developed for the owner as part of the finalized documents and DCR's review will require a manual and will require a dam operator.

Public Input

Norma Stanton asked if lake residents would have to be notified to take their docks and/or boats out starting Sept. 15. Mr. Orsi responded that the work will not affect the pond level at all.

Al Kirshner asked if, after the work is complete, there will be any raising of the lake. Mr. Orsi noted that the water level controlled by the existing spillways will be exactly as they are now. He asked about the 10' wide access area for maintenance and Mr. Orsi responded that 10' is the area that Dam Safety likes to keep free of woody vegetation and trees so vehicular access for mowing is probably closer to the toe of the slope. He asked if there was a danger of overtopping the coffer dam and Mr. Orsi noted that the contractor will be required to provide a design for the coffer dam as part of the construction process.

Bill Hoch reiterated that whatever work has to be done in the replication area that there be an agreement between the parties of complete indemnification for the Camp for any mishaps that might take place during the construction and that the Commission understands that they are not a party for that part of the project. Mr. Fogel noted that the Camp property will stay the Camp's land but the applicant will be seeking a limited temporary access license to build the replication area and then for someone to come and do the regular monitoring to ensure that the plants grow and that it reestablishes. Mr. Pryor asked if the temporary license will be in place before the Commission issues a permit. It was agreed that they need something in writing that references that a license will be obtained and this will be worked out between Mr. Fogel and Mr. Hoch. Mr. Hoch asked about the precast wall and that it would not be an obstruction to foot traffic and Mr. Orsi explained that the wall will be at grade on the north end of the plan, at grade at the south end and in the middle it gets up to about 2'. In response to a question, Mr. Hoch asked that, as a courtesy, the Commission notify the Camp when they will be on site and the Commission agreed. Public input was then closed.

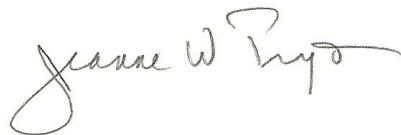
Ms. Vsetecka noted that she, Mr. Winters and Mr. Moylan walked the replication area. Ms. McEwen asked about the timing for the replication area. Mr. Orsi said that they would look at it as a growing season and do it whatever part of the year that they can do the work and have the vegetation establish most quickly. It can be done while Camp is in session. In response to a question, Mr. Orsi explained that the replication area runs along the shoulder of Route 8 and goes about 60-80' up into the wetland and loops around and continues along the edge of Route 8. The entire bump out from the side of the road is about 4,000 sq. ft. The replication area is going to be at least 665' and maybe a bit bigger.

Ms. McEwen made a motion that we continue until our July 21, 2011, meeting with the applicant's consent. The motion was seconded by Mr. Winters and passed unanimously.

In response to a question from Mr. Fogel, Ms. Vsetecka noted that the absent Commissioner could listen to the tape of the meeting. Mr. Pryor requested a status update of the permitting and Mr. Fogel said he will provide the Commission with copies of all the applications filed.

Mr. Moylan made a motion to adjourn the meeting. The motion was seconded by Ms. McEwen and passed unanimously. The meeting was adjourned at 7:44 p.m.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Jeanne W. Pryor". The signature is written in dark ink and is positioned below the typed name.

Jeanne W. Pryor, Recorder

