



TOWN OF BRIMFIELD

CONSERVATION COMMISSION

Salisbury Annex Building, 2nd Floor
23 Main Street
Brimfield, Massachusetts 01010

Roger deBruyn (Co-Chair)
Michele Restino (Co-Chair)
Joseph Collins
Joseph Coan
Joseph Gallo
Carol Platenik
Steve Phifer

Agent: Angela Panaccione

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MEETING MINUTES

WEDNESDAY NOVEMBER 18, 2015 @ 7:00 PM

Members Present: Michele Restino (Co Chair)
Joe Collins
Carol Platenik
Joe Coan
Angela Panaccione (Agent)

Members Absent: Roger DeBruyn (Co Chair)
Joseph Gallo
Steve Phifer

Also Present: Roger Woods, Roger Woods & Co.
Peter Whitten, 20 Dunhamtown Palmer Road
James Gerrish, 49 Seventh Street
Anna Ozolins, 7 Cubles Drive
Scott Martin, 122 Brookfield Road
Robert Martin, 122 Brookfield Road
June Mendala, 79 Cubles Drive
Ed Mendala, 79 Cubles Drive
Bob Chevailier, 51 Cubles Drive
Skip Gross, 59 Cubles Drive
Claire Foti, 59 Cubles Drive
Ethan Keon, 31 Sturbridge Road

Meeting Opens: 7:27 PM – Michele Restino (Co Chair)

7:27 PM Notice of Intent DEP #117-0357: 48 Washington Rd (Map 8 C 15) – Roger Woods

Roger Woods submitted a Notice of Intent (NOI) for the reconstruction of a Single Family Home at 48 Washington Road (Assessors Map 8 C 15). The work includes the construction of a single family house, with associated septic system, well and driveway. The proposed work is in the buffer zone of a Bordering Vegetated Wetland; resource areas regulated under M.G.L.

Michele Restino opened the public hearing and property owner/representative Roger Woods was present.

Roger Woods presented the site plan to the Commission. The project is a re-development of an existing SFH lot. Currently, the property contains a mobile home which is proposed to be demolished. The applicant will then construct the new proposed SFH with well and septic. The old driveway will be removed, and a new one installed further from the BVW than the existing drive. All work will occur within a pre-existing lawn and the erosion and sediment controls will be installed 8-feet from the edge of the BVW, marking the approved limit of work as shown of the site plan entitled Septic System Plan “New” – 48 Washington Road, Project # 15138; prepared by Roger Woods & Co.; Signed & Stamped by David S. Roberts; dated 10/19/2015; Scale: 1”=30’.

The system received Title 5 approval from the Board of Health.

Motion made by Joseph Collins to close the hearing and issue the Order of Conditions with special conditions, for DEP #117-0357: 48 Washington Road

Motion Seconded by Carol Platenik

No further discussion – 4-0-0 – Motion Carries

7:37 PM Administrative Matters: Out of Order – Agenda

Motion made by Joe Coan to move out of order from the posted Agenda, and open the Request for a Certificate of Compliance for DEP File #117-0201

Motion Seconded by Carol Platenik

No further discussion – 4-0-0 – Motion Carries

7:38 PM Request for Certificate of Compliance DEP # 117-0201: 49 Seventh St – James Gerrish

James Gerrish submitted a request for a Certificate of Compliance for the work regulated by a final Order of Conditions DEP #117-0201, issued to James Gerrish, dated May 9, 2006, for property located at 49 Seventh Street (Assessors Map 5A B 2), Brimfield, MA. The project was for the re-construction of a single family home with associated septic, well, drive. A site visit was conducted on November 2, 2015. Neither the Conservation Agent nor the Applicant could locate the file for the project. The Agent retrieved the recorded OOC from the Registry of Deeds website. The Agent recommended issue the COC based on the project being a SFH reconstruction on an existing foundation with significant Title 5 upgrades.

Motion made by Joseph Collins to issue the Certificate of Compliance for a Complete Certification of the Order of Conditions DEP # 117-0201; finding the project was completed in compliance with the approved conditions, plans and documents.

Motion Seconded by Joe Coan

No further discussion – 4-0-0 – Motion Carries

7:37 PM Administrative Matters: Out of Order – Agenda

Motion made by Joe Coan to resume the original order from the posted Agenda

Motion Seconded by Joseph Collins

No further discussion – 4-0-0 – Motion Carries

7:27 PM Notice of Intent DEP #117-0358: 20 Dunhamtown Palmer (Map 1 A 12.6) – Peter Whitten

Peter Whitten submitted a Notice of Intent (NOI) for an addition to a Single Family Home at 20 Dunhamtown Palmer Road (Assessors Map 1 A 12.6). The work includes an addition to a single family house, as well as the permitting of a previously constructed riding rink. The proposed work is in the buffer zone of a Bordering Vegetated Wetland and in the Riverfront Area of Penny Brook; resource areas regulated under M.G.L. Chapter 131, §40.

Motion made by Joe Collins to Open the Public Hearing for the Notice of Intent DEP #117-0358

Motion Seconded by Carol Platenik

No further discussion – 4-0-0 – Motion Carries

Property owner/representative Peter Whitten was present. He supplied the agent with certificated of mailing for abutter notification and supplied the Commissioners with his written responses to the DEP comments received on the project.

Mr. Whitten gave a brief history of the site and its development to the Commission. The property was purchased in 1979 and in 1980 work began on the property. A single family home with associated well, septic and dive way

were constructed by 1981. Mr. Whitten also dug pond adjacent to Penny Brook and diverted the water from the brook, to the pond, through two CMP culverts. At this time the fill removed from the pond during construction was added to the yard and graded into a riding rink. Aerial photos from 1997-2005 were supplied to the Commission for review showing the status of development on the Parcel pre and post 1996. In 2005, Peter Whitten relocated the riding rink to its current location without the proper permitting. The riding rink resulted in 6000 SF of unpermitted disturbance in the riverfront Area of Penny Brook.

DEP issued a file #, but included the following comments:

1. Insufficient information has been included in the Notice of Intent showing compliance with the Riverfront Redevelopment Standards of 310 CMR 10.58(5).
2. An improvement over existing conditions, per 310 CMR 10.58(5)(a), is required. Acceptable improvements include, but are not limited to: 1) Significant net reduction of impervious surfaces; 2) Planting of indigenous plant species; 3) Providing storm water management demonstrably in excess of what is required per 310 CMR 10.05(6) (k) through (q); 4) Removal and proper disposal of noxious but otherwise legally located materials.
3. Because work has been done closer than the degraded area that existed in 1996, in that it does not comply with 310 CMR 10.58(5)(c), it appears that restoration and/or mitigation is required. Please review 310 CMR 10.58(5)(f) and (g) and the ongoing requirement of 310 CMR 10.58(5)(h).

DEP also provided guidance for compliance with the Riverfront Area Performance Standards in the File Number Notification email.

Peter Whitten responded in writing to these comments to both DEP and to the Commission. He provided the Commission with a summary of his proposal to meet the Riverfront Redevelopment Standards of 310 CMR 10.58(5).

To make improvements over existing conditions of the capacity of the Riverfront Area to protect the statutory “interests” of the Act, G.L. c. 131, § 40 Peter Whitten has proposed to plant several highbush blueberry (*Vaccinium corymbosum*) shrubs along the Bank of Penny Brook to provide wildlife habitat value.

Even though Stormwater management is NOT REQUIRED for SFH development, it was addressed for the riding rink. During the rink construction in 2006, Peter Whitten graded the rink away from Penny Brook to direct the surface runoff away from the Riverfront Area. Additionally, he installed wooden perimeter fence and an apron of trap rock to catch any sediment exiting the rink.

To establish compliance with 10.58(5)(c), (d) & (e) the proposed addition to the SFH (and work within the outer 100-foot Riverfront Area) is located within the limits of a pre-existing lawn and the old riding rink. Therefore, due to a lack of topsoil (“degraded”), this portion of the Project qualifies as redevelopment within previously developed Riverfront Area. The proposed work for the SFH addition will not be located closer to the perennial stream than existing conditions and will not exceed the amount of degraded area prior to 1996. Furthermore, the area of the unpermitted activities post 1996, in combination with the proposed 18’ X 24’ addition to the existing single family home will exceed the amount of degraded area in existence after 1996, BUT the combine work will not result in the alteration of more than 10% of the total Riverfront Area of the property.

The 2005 relocation of the riding rink to an undisturbed section of the riverfront located closer to the perennial stream than existing conditions (and within the inner 100-foot Riverfront Area) was not performed in compliance with 10.58(5)(c), (d) or (e). In order to mitigate against the impacts of the 6000 SF rink Mr. Whitten proposes the restoration of 25,000 SF of Riverfront Area through the removal of invasive species (Oriental Bittersweet & Multiflora Rose). The goal of the project is to restore the native plant community within a portion of the Riverfront Area of Penny Brook, including a wetland system which is hydrologically connected to Penny Brook. Invasive plant species will be selectively removed over time in order to restore the biodiversity of this parcel.

Following invasive plant management, Peter Whitten will replant the Riverfront Areas where remaining vegetation is sparse. Nursery-grown native plants will be selected based on site conditions and availability. Additionally, no further alteration within the restoration or mitigation area, except as required for maintaining the area in its restored or mitigated condition, is proposed or will occur; and Mr. Whitten will supply the Commission with semi-annual reports documenting the restoration and mitigation measures taken to ensure the restoration or mitigation has been successfully completed, for at least two growing seasons.

Motion made by Joe Coan to close the Public Hearing and conditionally approve the project as proposed pending any additional comments from MassDEP, for DEP #117-0358: 20 Dunhamtown Palmer Road

Motion Seconded by Joseph Collins

No further discussion – 4-0-0 – Motion Carries

7:52 PM Notice of Intent: Lake Sherman Aquatic Control (Map 6 B 3) – Town of Brimfield

The Town of Brimfield submitted a Notice of Intent for the management of Lake Sherman. The goal is to control nuisance plant growth utilizing treatment with USEPA/State registered aquatic herbicides and algacides and annual winter draw down. The proposed work will occur in resource areas regulated under M.G.L. Chapter 131, §40. Project location: Lake Sherman (Assessors Map 6 B 3).

Motion made by Joe Collins to Open the Public Hearing for the Notice of Intent for Lake Sherman Restoration

Motion Seconded by Joe Coan

No further discussion – 4-0-0 – Motion Carries

Several members of the Lake Sherman Association, as well as other Lake Residents were in attendance. Anna Ozolins, who has spearheaded the restoration project and secured town funds for the restoration program presented the Project to the Commission. The Applicant and the Property Owner is the Town of Brimfield, but no members of the Board of Selectmen were present. The NOI was prepared by Anna Ozolins, with the Assistance of the Conservation Agent and Aquatic Control Technologies.

Initially the project consisted of just chemical treatments, but due to the densities of Milfoil throughout the Lake (95% cover as of June 2015 survey), both ACT and the Conservation Agent recommended restarting the winter drawdowns. By incorporating a winter drawdown will allow Milfoil outbreaks along the shore to be exposed and killed over the winter. This will decrease the amount of chemicals required for treatments (as well as costs of the treatments) and will also provide lake residents the opportunity to do winter repairs to structures (docks, retaining walls) that have been neglected since drawdowns stopped in 2001.

Currently there is no DEP File # because the project was proposed as a limited project, which doesn't exist as of October 2014. DEP recommended the project could be submitted as an Ecological Restoration Limited Project (see 310 CMR 10.11, 310 CMR 10.12 and 310 CMR 10.53(4)(e)5). If not submitted as an Ecological Restoration limited project, then the work should be able to fully comply with the Performance Standards for Bank and LUWW. The guidance document on lakes and ponds management can still be referenced when it comes to wildlife habitat issues for the Bank alteration due to the drawdown. If only non-native invasive species are targeted, then we don't require any particular square footage of resource area impact as non-native invasives do not provide any presumptive value to any of the Interests of the Act.

The purpose of this Notice of Intent (NOI) Application is to formally acquire authorization under the Massachusetts Wetlands Protection Act associated Regulations for the practice of annually drawing-down and Chemical treatments Lake Sherman. It is the belief of the Town that allowing for an annual drawdown is in the best interest of protecting the multiple interests of recreational home owners, aquatic habitat, flood control, and wetlands. The Town is requesting a five (5) year Order of Conditions for this project.

The objective of the management program is to provide site specific control of high density growth of

submersed non-native aquatic plant species, specifically variable watermilfoil (*Myriophyllum heterophyllum*), Eurasian watermilfoil (*Myriophyllum spicatum*), and floating-leaved aquatic vegetation (*Nymphaea* and *Brasenia* species) to improve and maintain open water habitat, promote growth of less pervasive native plant species and provide safe recreational access to the lake. Based on the distribution and density of nuisance plant coverage in Sherman Pond it has been concluded the restoration goals of the Applicant can best be achieved through the integrated management approach that will utilize limited winter drawdown, manual hand-pulling and the prudent use of USEPA/MA DAR registered herbicides.

The proposed project has been filed as a Ecological Restoration Limited Project under 310 CRM 10.53(4) and will protect the interest of the Wetland Protection Act by controlling a nuisance species, improving fish habitat, improving water quality and slowing lake eutrophication.

Overgrowth of noxious weeds has been of growing concern in Lake Sherman for some time according to historic reports. The survey carried out during the fall of 2010 show that this concern is valid and that it should be addressed as soon as possible. Overall, vegetative coverage throughout the lake was considered moderate to heavy (75-100% coverage), with areas of dense growth common. A total of seven rooted aquatic macrophytes were identified during the evaluation. The vegetation survey revealed significant growth of Variable Milfoil. This species has been identified as invasive by Massachusetts DEP and was found in densities above 95% in Lake Sherman. Bladderwort and Bushy Pondweed were identified as potential nuisance species due to their high densities throughout the lake (65-85% coverage). These species are generally beneficial and are commonly found growing along the bottom of lakes and ponds; however growth of these species in Lake Sherman was found reaching the pond's surface in high densities, especially through the middle of the lake.

Specifically, the Town is requesting approval to use of Reward (diquat), Sonar (fluridone), and Clipper (flumioxazin) herbicides to control growth of nuisance, non-native plants, as required. Approval for the use of a copper based algacide (i.e. CUSO₄, Captain, SeClear) and buffered Alum are also requested in the event that nuisance algae develop or management of nutrients is deemed beneficial. The proposed products specifically affect the target plant (and algae) species to be controlled and have a negligible effect on the non-target species and wildlife when applied in accordance with the label directions. All chemicals are applied at or below suggested doses according to the product label. In addition, doses are based on plant types and densities so that a minimum amount of the chemicals are introduced into the lake. All chemical applications will be performed by Certified Applicators. The USEPA/MA registered aquatic herbicides will be applied at recommended label rates, in accordance with the "Order of Conditions" and DEP "License to Apply Chemicals" permits (BRP WM04). Prior to treatment the shoreline will be posted with signs, warning of all temporary water use restrictions prior to treatments. A site specific "License to Apply Chemicals" for the proposed treatment will be filed with Massachusetts DEP, Office of Watershed Management.

The Sherman Pond drawdown is to be initiated annually by November 1, with refilling commencing near the beginning of April the following year. The Lake will be drawn-down a maximum of 1 foot. The target drawdown rate will be $\pm 1/2$ " per day, at an average target outflow of ± 10 CFS. However, the proposed outflow shall not exceed 2 cfs/square mile of watershed, or about 10 CFS during this period, unless dictated by storm events. The Lake will then be maintained at this level until the end of March, when the Lake is gradually allowed to refill by replacing the flash boards to achieve a Lake rise of not greater than 0.5" per day. During the refill, a discharge to East Brook of 0.5 cfs/square mile of watershed (or about 2.75 CFS) will be maintained.

Pre-management inspections will be conducted in order to finalize the treatment areas and assess the growth phase of the target plant species. Post-management inspections will be conducted in order to assess the efficacy of the management efforts and any impacts on non-target species so future applications can be properly adjusted to minimize non-target impacts. Historically these inspections have been coordinated with representatives from the Town of Brimfield and the Brimfield Conservation Commission so lake conditions can be mutually accessed and management options discussed. We will continue to schedule inspections on mutual agreeable days in the future as allowable.

The Commission inquired about the status of the dam for draw down purposes and Anna Ozolins supplied the Commission with photos of the dam. The dam appears to be structurally sound, and the side bars to hold the flash boards are still in place. Once the rocks are removed from the top of the dam, and put back on the sides for stabilization it should be fine to install flash boards. The Agent did comment it would be hard at this time to say the dam is completely fine, but once a draw down commences it will be much easier to examine the current dam structure.

Several other residents of Lake Sherman were present at the hearing as well, and they all expressed their support for the drawdown and chemical treatment of the lake. One Lake Resident inquired if the town would “remove all the beavers in the lake”, since the beavers are causing water quality problems and flooding all along the lake. The Agent replied even though the Town owns the physical lake and boat launch, the areas you would install traps to get the beavers are all on private property. It would be the local home owners responsibility to contact the Board of Health for a trapping permit if they felt their property (well, septic, house) was being negatively impacted by the beavers activity on their property.

Motion made by Joseph Collins to continue the Public Hearing until Wednesday December 30, 2015 at 7pm
Motion Seconded by Carol Platenik
No further discussion – 4-0-0 – Motion Carries

8:18 PM Public Hearing: Brimfield Conservation Commission

Michele Restino re-opened the public hearing.

Motion made by Joseph Coan to accept the 2015
Motion Seconded by Joe Collins
No further discussion – 4-0-0 – Motion Carries

Motion made by Joseph Coan to close the public hearing
Motion Seconded by Joe Collins
No further discussion – 4-0-0 – Motion Carries

8:34 PM Administrative Matters: Minute Approval – October 14, 2015

Motion made by Joseph Coan to approve the minutes from Wednesday October 14, 2015
Motion Seconded by Carol Platenik
No further discussion – 3-0-1 (Joe Collins abstains) – Motion Carries

8:35 PM Administrative Matters: Minute Approval – September 23, 2015 & October 28, 2015

Motion made by Joseph Coan to table the approval of the minutes from Wednesday September 23, 2015 & October 28, 2015 until the next meeting scheduled for Wednesday December 9, 2015 at 7:00pm
Motion Seconded by Carol Platenik
No further discussion – 4-0-0 – Motion Carries

8:40 PM Administrative Matters: Other Projects, Monitoring, Enforcements and Violations

1. Little Alum Drawdown: Zach Lemieux, Brimfield Highway Department began the annual drawdown of Little Alum Lake on Monday November 2, 2015.
2. Site Visit w/ Mark Stinson, DEP 12/5/2015 at 9am: The Agent has reschedule the culvert assessment training with Mark Stinson for Saturday December 5, 2015 at 9am. Michele Restino and Carol Platenik will attend.

3. Green Acres Fence: Joseph Collins informed the Commission the owners of Green Acres are proposing to replace their current wooden post fence with a chain linked security fence. He inquired if it would be an activity that needed a permit from the commission since the work was occurring in the buffer zone, and possibly a BVW. The Agent stated if the fence was raised at least 8” from the ground it would meet the exemption for fences, but any fence in the BZ of BVW, that would be toed into the ground, would need at least a RDA.
4. Site Plan Review: The Planning Board requested comments on a site plan for an addition to an existing building at the Brimfield Exchange LLC, owner Richard T. May. The Agent reviewed the plans and sent a response to the planning board inquiring about the extent of work proposed. She informed the Planning Department, that according to our maps a portion of the parcel falls within the jurisdiction of the Mass. Wetlands Protection Act (310CMR 10.00). Specifically, Parcel 13 B 1 has the following regulated resources associated with it:
 - Bordering Vegetated Wetland Resource Area (e.g., wetland, marsh, stream, vernal pool, bank, lake).
 - Riverfront Area of West Brook
 - Within the 100-foot Buffer Zone of a Wetland Resource Area
 - In Designated Priority Habitat 1228 for a state listed endangered species

She informed the Planning Board any building and/or clearing that may be proposed could be within the Conservation Commission’s Jurisdiction and requested the Planning Board have the applicant contact the Conservation Office to determine whether a permit from the Conservation Commission is necessary.

The Commission received a response from the Planning Board, stating “the Planning Board determined the Applicant did not need Conservation Approval”. The Agent expressed her displeasure with the response and stated the Planning Board does not have the jurisdiction to determine whether a plan needs conservation commission approval or not, only the Commission can make that determination. Michele Restino will send a letter to the Planning Board reminding them of their jurisdiction, and informing them the Commission will not authorize any building permit for the expansion without at least receiving a site plan that consists of more than architectural design of a building.

Next Meeting Date: Wednesday December 9, 2015 at 7pm

Office Closed: Monday November 23, 2015 – Friday November 27, 2015

Meeting adjourned 9:09 PM –

Motion made by Joseph Coan to adjourn 9:09 PM
Motion was seconded by Carol Platenik
No further discussion – 4-0-0 – Motion Carries

Sincerely Submitted
Angela Panaccione, Conservation Agent