

**Great Barrington Conservation Commission Meeting  
Town Hall, 334 Main Street, Selectmen's Meeting Room  
June 27, 2012**

**ATTENDEES:** Andrew Mankin, Jennifer Connell, Jessica Dezieck, David Shannahan

Absent: Orit Kadosh, Bruce Gore

Acting Chairman Mankin brought the meeting to order at 7:00 pm.

7:00 NOI 167- 0362 – Rising Pond Dam, filed by Kevin Mooney of General Electric. Proposed work is for the repair and/or replacement of portions of the existing dam structure, including: replacement of riprap downstream of the spillway, repair and enhancement of the concrete downstream spillway apron, minor regarding of the right embankment, and minor vertical extension of the right downstream concrete training wall.

Paul Davis from GZA asked in May to keep file open. Mr. Davis received an email from DEP Western District Office with their 401 and they request the hearing closed. There were three other permits pending: 401 for dredging which is removal of concrete associated with the dam, and regular 401, and section 404. We do not have any of those permits, however the Western Office of DEP has deferred their authority under the 401 to Ken Chin's office in Boston. Both permits are done except that they are pending procedural activities. The Army Corp of Engineers has to clear the historical issues. We anticipate permits in within a week. We have been back and forth with Agent Sewell about the draft Order of Conditions. There is one issue which the engineer asked for clarification. Prefer not to have two environmental monitors out there simultaneously. There is an assigned individual there during all of the construction. Not a wetlands person but would have wetlands representative on call.

Andrew Mankin asked how often would a person with wetland experience be there? And Mr. Davis answered once per week. Agent Sewell agreed with that. Mr. Davis will send the resumes. Agent Sewell will strike that out of the Order of Conditions. Mr. Davis noted that there will be an on-site person overseeing the work.

**MOTION:** Jessica Dezieck that we close the public hearing.

**SECOND:** Jennifer Connell

**VOTE:** 4-0, all in favor

**MOTION:** Jessica Dezieck that we approve the Notice of Intent with 36 special conditions.

**SECOND:** Jennifer Connell

**VOTE:** 4-0, all in favor

7:15 Enforcement Order – 20 Berkshire Heights – Review of Stockman Associates Wetland Delineation and March 28th Enforcement Order for Lipson Property.

Nick Andersen, Evan Hardcastle, Susan Lipson in attendance. Nick Andersen commented that they had Emily Stockman verify what was done in 2003. The conclusion (reading from report) "based on the data collected and the observations made overall the BVW embankment boundaries depicted on the previously cited plan adequately delineates protected wetland resource area. Similarly the designation on the easterly wet meadow seed barrier is accurate." That brings us all up to date and we are back to square one. Agent Sewell asked if there was a new map and Nick Andersen noted that there is not a new map just a verification of the line

itself. Andrew Mankin asked if she verified the old wetland delineation and Nick Andersen said that she did.

Nick Andersen noted that they are here tonight with a new plan with a little of their ideas and a little of the Commission's ideas. The new plan spells out the demarcation. It's an updated planting plan. This is more tree centric still with some lower bushes along the bank and with more trees within the 50. Tightening up the no mow back to where the last enforcement was which was 10 to either side. Demarcation with granite pillars and the planting plan and the pipe being pulled out makes amends and this is a way to preserve it. The plan calls out a swamp white oak, three black tupelo, five paper birch as well as the removal of existing haphazard lilac trees and along with six winterberry and six plethora. So along with that a 10 foot no mow on either side of the intermittent stream and then the pipework where it was pulled back and the riprap swale. That is the demarcation and planting plan and Emily's updated look at the wetland line.

Jessica Dezieck asked if they were comfortable with 50 foot no mow. Nick Andersen commented that it limits the maintenance of the property and the future use of the property and in relation to what the infraction was 50 feels punitive rather than mitigative.

David Shannahan said that based on this particular circumstance, 10 feet on either side is adequate. With a 50 foot swath you will be unable to control vegetation.

Andrew Mankin noted that establishing the wetland boundary puts a better perspective on the piece of property.

Nick Andersen said that at a later date an RDA will be filed to start the three year timeline.

Andrew Mankin commented that the one thing he'd like to see on the plan is to have the granite markers continue along the boundary of the wetland. The wetland area have a better chance of not getting mowed. Wetlands area is no mow.

Nick Andersen replied that they wanted to maintain the field as is.

Agent Sewell commented that you can't mow wetlands. Nick Andersen responded that it is a maintenance issue, it is an area that has been historically mowed and they have a right to maintain it as in the past. Andrew Mankin noted that it was an historic violation of mowing. Eight years ago they were told to stop, they didn't. I do not see that it is historic and it is a wetland.

Nick Andersen replied that he was concerned about that was going to be in three years if left undone. Jessica Dezieck commented that we would need a planting report anyway and there is no reason why we can't review that area. Invasives will be the problem.

Nick Anderson said that is where they differ. In going through the paper file it looks like no mow didn't extend up there. I feel that letting it go would be a disservice to what it could be or what's best for what's up there. Agent Sewell noted that the owner always has the option to file for invasive removal. David Shannahan commented that if you have invasives growing you can file an RDA to improve the site. Andrew Mankin noted that the Commission would be open to that. Nick Andersen replied that if Commission's view is open to that we would be more at ease.

Andrew Mankin said that we don't want it left exposed so that it gets mowed. We should approve this plan with markers going up the wetland and border of the wetland. And they come back with an RDA with a maintenance plan.

David Vigneron pleased with recent review jibes with report. He feels 10 feet on either side is a negligible distance and 50 feet is a little too far. 20 feet protects that stream now and for the future.

**MOTION:** Jessica Dezieck to approve the plan as presented with revision date of 6-27-2012 with addition of granite markers swinging along wetland boundary

**SECOND:** David Shannahan

**VOTE:** 4-0, all in favor

Agent Sewell said she will need to reissue the Enforcement Order and will check with DEP to find out how to nullify the past.

7:30 NOI 167-0343 – Maple Avenue, Map 30, Lot 45, DEP file # 167-0343, filed by George Beebe, continued. The proposed project will provide flood protection and bank stabilization along approximately 600 feet of the left bank of the Green River while providing excess compensatory flood storage.

David Shannahan recused himself.

George Beebe remarked that he has 600 acres. His record as an environmental steward is exemplary. The stream bank stabilization followed a six year attempt in the 80's where the state spent thousands of dollars and it came to nothing. On the basis of that experience I delayed trying to stabilize the erosion of an ox bow down river. I tried again and that was a four year process. I hired an engineer to stabilize the banks, we came up with plans. Apologize for not being here last meeting. Andrew Mankin asked what Mr. Beebe would like to do? George Beebe asked to withdraw the application.

Andrew Mankin noted that we have permitted other project of this size and scale. We cannot move forward without DEP approval and approval from Natural Heritage.

Andrew Mankin noted that the minutes will reflect the request to withdraw application for permit 167-0343 Maple Avenue map 30 lot 45.

7:35 NOI 167-0363 - 615 South Egremont Road, filed by George Beebe. Proposed project is for increase of land in agricultural production.

David Shannahan recused himself. There is no quorum.

Andrew Mankin commented that Mr. Beebe had increased his land area. Agent Sewell presented a map from Google Earth where she and Mr. Beebe tagged the lines.

Andrew Mankin commented that the field edge we're concerned with is the edge that is 25' from river.

Jessica Dezieck asked if the edge was actually the field edge or the new land in production. George Beebe showed on a map that it was the field edge.

Agent Sewell commented that since the last meeting the corn has been planted and technically is a violation because it wasn't permitted yet. We will issue an Enforcement Order citing the permit. Up for discussion is how does the commission feel about the edge? Andrew Mankin noted that it's getting pretty close to the river. Would like to see another 10 feet. George Beebe said he measured it and it was 35 feet.

Andrew Mankin noted that it was done without our permission. Squaring off corner of a field is squaring off it's not adding acreage. Line minimum of 35 feet starting at edge of road. George Beebe said it is 32-35 feet.

Agent Sewell stated that the Enforcement Order should be worded that we want a minimum of a 35 foot buffer zone. Andrew Mankin commented that we should get it better pinpointed and the right wording and have something on a map.

**MOTION:** Jessica Dezieck to continue the Public Hearing to July 25, 2012 at 7:00pm

**SECOND:** Jennifer Connell

**VOTE:** 3-0, all in favor

Agent Sewell asked to make a site visit to get a map on file and it was agreed by George Beebe.

7:40 NOI 167-0365 - for Mile Marker 9.5 Route 23 for rehabilitation to an existing storm drain system providing highway, and adjacent landowners, drainage outfall to the Thomas and Palmer Brook.

Andrew Mankin noted that there was a site visit.

Erik Bilik described the project location as Mile Marker 9.5 on Route 23 in the Housatonic watershed that drains to an unnamed lateral to the Thomas and Palmer Brook tributary. The pipe crossing is an existing inlet in an 18 inch pipe crossing that services approximately 41 and a half acres. The service area is primarily wooded, mountain range, with low density residential abutting the highway. The run off is via two mountain streams from these sub watersheds to two yards of residential properties and they don't have a defined out fall. Complaint letters received from residents about flooding along highway. We performed a site reconnaissance and a field survey was done. Mr. Ettlinger is present today and their house is right in the middle of the worst place. The assessment is that inlet collection improvement and would like to improve viable conveyance system. We are proposing four drop inlets at the property lines. It is designed to have open back rear window, a sump area. The inlets will all have sumps in them. A pipe that in 24 inch in diameter and manhole cover under Route 23. This will protect roadway and residential areas. Resource areas related to project: a river front – no impact. Intermittent stream will have some temporary impacts. Wetland buffer will be restored to original conditions. There will be street sweeping on Route 23 for debris build up. Larger outfall pipe allows for reduced velocity and should protect downstream erosion. Erosion controls are silt fence and hay bales during construction. Improvements should reduce flood levels.

Andrew Mankin commented that the site visit looked like a good plan. It will be an improvement. Some concerns about trees that will be taken down. Seems unavoidable and out of our jurisdiction. David Shannahan said he will contact Tom Whelan to see if trees could be moved.

Jessica Dezieck stated her concern is the non-point source area and creating a point source area. All coming from one source. Eric Bilik commented that this whole area contributes to one point discharge 18 inch pipe that exists today. Now same area contributes to one point discharge but has system expansion.

Jessica Dezieck asked if straw wattles could be used instead of silt fence and hay bales. Agent Sewell noted that there is a slope there and they will be moving a decent amount of earth and we do ask that hay bales not used in wetlands as they spread invasive species. Jessica Dezieck also asked if the replacement of the willow trees would be possible. Eric Bilik said he would bring it up to contractor. As they are taking out the bank set it off to the side and replace after.

**MOTION:** Jessica Dezieck to close the public hearing

**SECOND:** Jennifer Connell

**VOTE:** 4-0, all in favor

**MOTION:** Jessica Dezieck to approve plan as presented with June 27, 2012 special conditions that have been drafted and not use hay bales.

**SECOND:** Jennifer Connell

**VOTE:** 4-0, all in favor

7:50 RDA Phieffer Arboretum 249 Long Pond Road to repair or replace bog bridges and nature trails within BVW.

Christine Ward representing the Great Barrington Land Conservancy explained that there is an existing bog bridge area that is deteriorating. Proposal is to repair the existing bog bridging within the existing footprint with natural locusts.

Andrew Mankin noted that there was a site visit. It looks very straight forward. Going forward with other trails try to treat as trail maintenance. David Shannahan asked about the removal of the old material. Christine Ward answered that it will be removed from the wetland area and placed in the woodland area.

Andrew Mankin noted that it is all natural materials and will be distributed and not piled.

**MOTION** Jessica Dezieck to close the public hearing.

**SECOND:** David Shannahan

**VOTE:** 4-0, all in favor

**MOTION:** Jessica Dezieck to approve RDA and issue and vote negative #3.

**SECOND:** Jennifer Connell

**VOTE:** 4-0, all in favor

8:10 NOI 167-0365 Long Pond Road Map 34 Lot 11A for proposed construction of a single family house associated site work.

Mark Volk reported that this is single family house on Round Pond. The only resource area is Round Pond. The proposed house is 2250 square foot house that includes the garage area. Put in a gravel driveway. The septic system is out front which is going to be an alternative septic design with jet bath. Stone patio and walkways are proposed within jurisdictional area. Screen porch with roof and five foot deck and walkway and a dock with feet. The dock can be removed in winter. All work other than house will be done by hand. Wooden piers will be used. Erosion control will be mostly all wattles. The house site is rung by a double row of wattles and silt fence. Tree wells in the patio area. Three mature trees to be cut within 100 foot buffer zone and an 8 inch hemlock that will be in the way.

Andrew Mankin asked what is the diameter of trees. Mark Volk answered that 10-12 inches in diameter are used in tree identification. Andrew Mankin followed up by asking how many trees that are not that diameter would be taken out? Mark Volk said approximately 13. Trees have been flagged.

Agent Sewell noted that there are no comments from DEP.

Andrew Mankin stated his concern for the trees within buffer zone that will be taken down. Another site visit to see those that are marked out. Because the slope is steep and blasting might have to be done there needs to be a clear plan of how that is going to be done, how much and where. Is it practical to blast without taking out more trees? Hard to approve a plan where

we don't know what's going to happen in this particular site is difficult. How will the removal of ledge take place and where will it be stored.

Mark Volk noted that it will be stored by the road. Make a short stockpile and haul off site. Ledge removal will go away from Round Pond. Regulated blasting through fire chief. I can put together a blasting plan.

Andrew Mankin went on to say that the other area of concern is the gazebo and deck. Last permitted project was on Lake Mansfield and we did not allow a gazebo by the pond. We are hesitant to start to permit structures right next to our ponds. We've tried not to in the past.

Mark Volk asked if that means no structure at all down at the pond?

Andrew Mankin answered that would be preferable. Allow a deck but not a roofed structure.

Jessica Dezieck stated that she would prefer not to see pressure treated wood used in a wetland.

Jonathan represents the seller of the property. After this is done it still requires a special permit? It is a building lot.

Andrew Mankin replied that we're not questioning the fact that they can build a building on a building lot. It's building a structure right next to a resource area and in the buffer zone which is in our jurisdiction.

Mark Volk noted that the Wetlands Act doesn't say you can't build anything in the buffer zone. Andrew Mankin replied that we are not saying you can't do anything in the buffer zone. You can't build a structure down by the lake. Mark Volk said they are 30 feet away because we have to be 30 feet away. Agent Sewell asked if they had reviewed or looked at alternate locations for the gazebo that is outside of 50 feet. Mark Volk responded that this is the alternative plan he was given to present.

Andrew Mankin stated that the overall issue is to maintain the intactness of our pond and lake boundaries. Round Pond is one of the few lakes that is mostly unspoiled. The more that we can maintain the shoreline the better.

Andrew Mankin asked that another site visit get scheduled.

**MOTION:** Jessica Dezieck to continue public hearing to 7:15pm on July 25, 2012

**SECOND:** Jennifer Connell

**VOTE:** 4-0, all in favor

#### MISCELLANEOUS

1. Approval of May 23, 2012 meeting minutes.

**MOTION:** Jessica Dezieck that we approve the May 23, 2012 minutes.

**SECOND:** Andrew Mankin

**VOTE:** 4-0, all in favor

2. Other business

- a. Jessica Dezieck reported that the vernal pool at Lake Mansfield has been certified. We have the paperwork and a rare species form and NESN has been notified of a presence of a rare state listed wildlife species in the vernal pool in the habitat.
- b. Phragmites control estimates from others are coming in.
- c. Andrew Mankin asked if there were applications for conservation commission from the town selectmen's secretary. Agent Sewell said not as yet.
- d. Andrew Mankin noted that we want to contact Morgan Allen about mowing on the McAllister property. People are concerned he's mowing too early taking out birds that are nesting in the field. David Shannahan noted that they need to mow when it is mature. If it goes too long some animals won't eat it. If he doesn't mow it they will have to pay someone to brush hog it. Andrew Mankin suggested we talk to him about it.

3. Nicky Marcus working for Neena Paper on Housatonic River south of the mill. We've been hired to revisit the bank erosion problem on the river and we wanted to give an update on what we're doing. NOI submitted in 2008 to do a bank restoration project. Project was built and failed and was gone within a year. Low flow normally but spring is high flow. Used small stone and not high enough and it washed away. I've been hired to do the design, the construction and give a two year guarantee. Later this summer we will submit a design. There are rare species and we will be dealing with Natural Heritage, DEP, and the Army Corps of Engineers. Would like to do construction late fall when water is low. Purpose is to protect buried debris that is in the bank and stabilize the slopes.

Mike Brown from WSP has been involved since last fall. Previously, 100 test pits were dug and there are approximately 15 acres of buried debris. Most of the material is inert. Some areas of heavy metals. We will do more soil borings. We will probably need soil remediation and will need to excavate some soil. We will be doing a wetland delineation. Our question is if there is a soil excavation for remediation near a wetland with minor impact on the resource area, should we go for a Request for Determination?

Jessica Dezieck noted that an RDA is inappropriate because it is wetland and riverfront area.

Andrew Mankin suggested it be tied into the NOI and that would give you 3 years to complete.

Nicky Marcus said that probably by the August meeting we'll have the NOI filed.

4. Letter from Mr. Delmolino. Agent Sewell said she was at the property and a volleyball court was installed 50' from the river. Probably an Enforcement Order. We walked the property. They changed the layout of the property. Current FEMA maps are not current. He says it's out of floodplain. Jessica Dezieck noted that we need to continue work on the file. We have an order of conditions. Agent Sewell noted that the plantings are in. Would not grant permission to not remove invasives. Doesn't want to remove bittersweet or pay someone to remove it. Wants to mow it.

Jessica Dezieck commented that she and Agent Sewell have gone through all of the filings on this property and there are a lot of conditions on the land that we should get a handle on. What are the historical conditions on this land.

Andrew Mankin said to reply to the letter and say no to mowing.

Agent Sewell also said that they want tents for catering and car parking in the lower field. DEP and Natural Heritage won't respond because it's temporary.

Andrew Mankin questioned what temporary means. We need to find out what the regulations are. There is a difference in putting up a tent for the weekend and putting one up for six months.

Agent Sewell noted that they will need a permit to put up a tent for an event.

5. Next meeting we need to vote on new Chairman.

6. Agent Sewell noted that she approved the emergency permit for Beartown State Forest.

**MOTION:** Jessica Dezieck to close the public hearing at 9:26.

**SECOND:** Jennifer Connell

**VOTE:** 4-0, all in favor

Respectfully submitted,

Julie Arnet Kelley  
Secretary