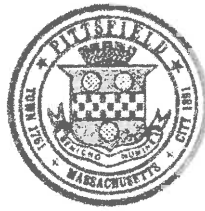


2020 SEP 17 PM 1:09



## CITY OF PITTSFIELD

PITTSFIELD CONSERVATION COMMISSION, CITY HALL, 70 ALLEN STREET, PITTSFIELD, MASSACHUSETTS 01201  
413-499-9359

### Special instructions for participating in the August 27, 2020 meeting of the Pittsfield Conservation Commission:

Pursuant to Governor Baker's March 12, 2020 Order Suspending Certain Provisions of the Open Meeting Law, MGL Chapter 30A, Section 18, and state and federal orders and guidance imposing strict limits on the number of people that may gather in one place, this hearing of the Pittsfield Conservation Commission will be conducted exclusively via remote participation. For this hearing, members of the public who wish to watch the meeting may do so on PCTV. Public comment may be made prior to the meeting by calling 413-499-9359 or by emailing [rvanderkar@cityofpittsfield.org](mailto:rvanderkar@cityofpittsfield.org). Live public access via telephone will also be provided through the dial-in information listed below. In the event that we are unable to do so, we will post an audio or video recording, transcript, or other comprehensive record on the City's website as soon as possible after the meeting.

Dial: 312 626 6799

Enter the Meeting ID: 968 8508 0514 and press #

Press # again

## MINUTES CONSERVATION COMMISSION Wetlands Protection Act Public Hearing Remote Meeting Via Zoom Thursday, August 27, 2020 at 6pm

Chair Conant called the meeting to order at 6:00 p.m. Those in attendance are noted below.

Chair Conant informed all in attendance that in accordance with MGL Chapter 30A, Section 20, voices are being recorded and pictures are being taken of all in attendance.

### 1. Roll Call

#### Members Present:

James Conant, Chair

Thomas Sakshaug, Vice Chair

Franz Forster

Jonathan Lothrop

Elizabeth Bocchino

Nick Caccamo

Stephanie Dick

## **Members Not Present:**

A quorum was present.

## **Also Present:**

Robert Van Der Kar, Conservation Agent  
Ted Kozlowski, Clerk

## **2. New Business:**

- A. Continued: Mass DEP File #263-1144: Notice of Intent application for the replacement of a 48-inch diameter concrete culvert with a three-sided concrete box culvert at May Brook on property located on West Street. Such actions are proposed to occur within Inland Bank, Bordering Vegetated Wetlands, Land Under Waterways, Bordering Land Subject to Flooding, and Riverfront Area associated with May Brook. The applicant is The City of Pittsfield.

Mr. Van Der Kar gave his review of the application. The applicant's representative is still working on responses to comments and requests a continuance to the next meeting. He pointed out that the meeting will be on a Wednesday.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the Wednesday, September 16, 2020 meeting; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

- B. Mass DEP File #263-1145: Notice of Intent application for the construction of a single-family home on property located on Williams Street (Map M7, Block 1, Lot 101). Such actions are proposed to occur within buffer zone associated with Bordering Vegetated Wetlands. The applicant is Joseph Dalo.

**Robert Fournier, SK Design Group** came forward to speak on the application. This is a single family home on a 1.2 acre lot on Williams St, by Kirin Park. The house and driveway will be in the Buffer Zone. This property is subject to 2 different OOCs going back 25 years. The original play was for a house with utilities and a retaining wall. He only got the retaining wall done and all previous permits have expired. One of the items on the agenda is for a COC for the retaining wall, on the edge of the wetlands. The house and yard will be between the wetlands and Williams St. The entire buildable portion of the lot is in the Buffer Zone, so there's no avoiding it. This lot has been maintained as a mowed lawn and meadow for 25 years; this is not an undisturbed lot by any stretch. They are just finally getting around to constructing it.

Chair Conant noted that updated information was received today and requested the Commission continue the item to the September 16 meeting. He also noted letters and emails that were received opposing the project (ATTACHMENT A.)

**Gary Davis, 990 Williams St** came forward to speak on the application. Due to technical difficulties, he was unable to speak. Chair Conant noted that he will have an opportunity to speak at the next meeting.

Mr. Van Der Kar gave his review of the application. He had nothing to add to the review.

Mr. Sakshaug asked Mr. Fournier about the foundation drain. What is the plan on daylighting the foundation drain? Upon further consideration, they realized any kind of a dry well, below grade, would risk being wet all the time. There was no advantage than to discharging it right to the surface. It may never run but if it does run, it will be clean water intercepted from outside the foundation of the house. They'd be happy to put it back in, but they didn't see the benefit.\

Mr. Sakshaug was concerned about the proximity of the drain to the wetland. You could have water running constantly, banging against your retaining wall. Does the retaining wall stick up above the grass? It sticks up about a foot.

He was also concerned that the wetlands are being mowed regularly. If they pass anything, there will be a continuing condition regarding mowing.

Mr. Caccamo asked about the zoning and the setback. Is this in compliance with R-20 zoning? It is. There's a section that allows for a waiver of the setback in the event the nearest structure is no closer than that. The building inspector is ready to issue a building permit. A variance is not needed by the ZBA or CDB.

Mr. Lothrop noted he's been in many zoning meetings. If they do approve this, that issue needs to be assessed further. He does not want their action to be construed as an approval of the setback.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the Wednesday, September 16, 2020 meeting; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

C. Continued: File #20-18 - Request for Determination of Applicability for installation of a prefabricated shed on property located at 8 Lombard Street (Map J10, Block 5, Lot 2). Such activities are proposed to occur within Bordering Land Subject to Flooding. The applicant is Catherine Fulks.

Mr. Van Der Kar gave his review of the application. The applicant has clarified that the foundation of the shed will be conventional wood pallets. It's pretty straightforward. The Commission can issue a Negative Determination.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to Negative 2 & 3 Determination with the special condition noted; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

- Any further work that involves the placement of fill, or materials acting as fill, will require the filing of a Notice of Intent application.

D. File #20-19 - Request for Determination of Applicability for the repair of a riprap embankment and the installation of a dock on property located at 13 Appletree Point (Map E12, Block 1, Lot 9). Such activities are proposed to occur within buffer and Inland Bank. The applicant is Regina Olchowski.

Mr. Van Der Kar gave his review of the application. This is revisiting a previously permitted project, 263-694. Because of the higher ice contact last winter, they are replacing damaged riprap.

The dock was permitted under the amnesty program in the early 2000's. The Commission can issue a Negative Determination.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to Negative 2 & 3 Determination with the special condition noted below; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

- This permit does not authorize land disturbance of property regulated by the Pittsfield Conservation Commission beyond what is required to reset the stone rip rap previously authorized under Mass DEP file # 263-694.

E. File #20-20 - Request for Determination of Applicability for the exterior remodeling of a single-family home on property located at 120 Shore Drive (Map E13, Block 3, Lot 5). Such activities are proposed to occur within the buffer zone associated with Inland Bank (Ontoia Lake). The applicants are Jim and Julie Nelson.

Mr. Van Der Kar gave his review of the application. This project is a remodel of a home, an attached garage and a deck. What was missed was a delineation of the buffer zone. In the past, the Commission has asked for an NOI for lakefront properties like this. The Commission can issue a Positive Determination or continue to the next meeting so the applicant can provide wetland boundaries.

Chair Conant recommended allowing the applicant to provide wetland delineations.

**Julie Nelson** came forward to speak on the application. She noted the remodel of the house is under the same floorplan and foundation. The property does not abut the wetlands. They are not changing the footprint. She is unclear what the delay is for. Chair Conant explained that the Agent is unclear on whether this property is Bordering Vegetated Wetland. Once the applicant provides the boundaries, the application can proceed.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the Wednesday, September 16, 2020 meeting; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

F. File #20-21 - Request for Determination of Applicability for the installation of subgrade utilities on property located at 101 & 102 Dan Fox Drive (Maps F2/G3, Blocks 1/1, Lots 3/101). Such activities are proposed to occur within buffer zone and Bordering Land Subject to Flooding. The applicant is Blue Chair Properties, LLC.

Mr. Van Der Kar gave his review of the application. This involves installing utility lines underneath Tamarack Rd to the maintenance building. It will probably intercept the water table. They will dewater using a "dirt bag." It captures sediment and discharges clean water. The location is a concern; it has loose sediments in the parking lot, which will pick up these sediments. The bag should be moved. He suggested the swale as a primary discharge location. The swale should be loamed seeded when the project is done. The Commission can issue a Negative Determination.

Ms. Bocchino asked if backfilling the swale would cause impacts to the drainage after the fact. They have drainage issues that are pretty significant. They shouldn't be discharging to the resource area. If it does pond, they should come back to us with a plan to do something different.

Mr. Lothrop asked about whether they will jack under the road?

**Robert Fournier, SK Design Group** came forward to speak on the application. It will be open cut. Mr. Lothrop's concern is the low grade in that spot. The way it's done will be significantly important to protect the road. He wants to support the project. Mr. Fournier noted soil compaction tests will be done. Generally, trenches are usually backfilled the same day.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to Negative 3 Determination with the special conditions noted below; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

- The Conservation Commission, or its Agent, is to inspect the location of the sediment capturing bag prior to commencement of the project.
- The vegetated swale is to be utilized to convey discharge waters during dewatering and then backfilled, seeded and mulched following its use.

G. Mass DEP File #263-1080: Request for Certificate of Compliance for property located at 146 Blythewood Drive (Map D11, Block 2, Lot 5). The request is being made by Neal and Alicia Ginsberg.

Mr. Van Der Kar gave his review of the application. The Commission has been watching this project for a while and it came out great. The rain gardens look great. He commends the applicant and their representative on this project.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Certificate of Compliance; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

H. Mass DEP File #263-396: Request for Certificate of Compliance for property located on Williams Street (Map M7, Block 1, Lot 101). The request is being made by Joseph Dalo.

Mr. Van Der Kar gave his review of the application. This is the project referenced earlier in the meeting. The wall looks good. A condition of that permit was to not mow the BVW. It needs to be a continuing condition.

Chair Conant asked Mr. Fournier why this condition was not followed.

**Robert Fournier, SK Design Group** came forward to speak on the application. He does not know; he is not familiar with the history of this project. He assured Chair Conant that he will relay the importance of this condition to the applicant.

**Gary Davis, 990 Williams St** came forward to speak on the application. He thanked the Commission for their attention to the non-compliance of Mr. Dalo. He urged the Commission to deny the COC based on his clear lack of willingness to comply with past orders of the Commission.

Ms. Bocchino confirmed that if the applicant does not comply, would there be Enforcement Orders issued.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a complete Certificate of Compliance with the special condition noted below in perpetuity; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

- Condition #27 is a continuing condition. The wet meadow and wetland replacement area shall be mowed no more than twice per year between July 1 and October 31, subject to suitable soil bearing capacity. These wetland areas shall be mowed no shorter than 6 inches in height, in order to maintain them as open meadows. Please note that exceptions to this mowing can only be granted by the Pittsfield Conservation Commission.

I. Mass DEP File #263-1082: Request for a one-year extension to the Order of Conditions pertaining to work located at 101 Central Berkshire Boulevard (Map B2, Block 1, Lot 101). The request is being made by Interprint, Inc.

Mr. Van Der Kar gave his review of the application. He noted the project is complete and there is an issue with their mitigation. A one-year extension should be sufficient.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a one-year extension to September 21, 2021; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

J. Mass DEP File #263-962: Request for Certificate of Compliance for properties located at 39, 45, 47, and 51 Ontario Street (Map J8, Block 14, Lots 101, 17, 18, 19, and 20). The request is being made by the City of Pittsfield.

Mr. Van Der Kar gave his review of the application. This is regarding Deming Park. The park was causing flooding to neighboring properties. The work has been done in compliance with the conditions. The city will need to confirm the compensatory storage area through an As Built plan. The Commission can issue a Partial COC for the Ontario St properties.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Partial Certificate of Compliance for 39, 45, 47, 51 and 55 Ontario St; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

K. File #EO 20-3 – Ratification of Enforcement Order issued to the Pines Condominiums for unauthorized work within jurisdictional wetland resource areas and their associated buffer zone on property located at 1450 North Street (Map H16, Block 99, Lot 0).

Mr. Van Der Kar gave his review of the order. He doesn't know the exact extent, but he believes the impact is in excess of 3,000sqft. They will know the extent by the next meeting; they will get a restoration plan from them. They will need to pull up the gravel, restore the wetlands, and then they'll talk about the right way to permit the canoe rack in the future.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to ratify the order; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

**3. Other Business:**

A. Minutes from the August 6, 2020 meeting

Mr. Sakshaug made a motion accept the minutes as presented; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

**4. Adjournment:**

Mr. Sakshaug made a motion to adjourn at 6:50pm; it was seconded by Ms. Bocchino and was approved unanimously by a Roll Call vote.

Submitted by Ted Kozlowski, Clerk

ATTACHMENT A

Conservation Commission  
City of Pittsfield  
Pittsfield, MA 01201

RE: Construction of a residential dwelling on Williams Street  
Assessor's Map/ Block / Lot M7/1/101

Dear Commission Members:

I am writing to express my concern regarding the construction of a dwelling on property owned by Mr. Joseph Dalo on the south side of Williams Street abutting Kirvin Park near its entrance road. The problem with Mr. Dalo's construction is its proximity to a Wetlands Boundary.

Since the Kirvin Park Road crosses this same Wetlands, it is subject to future flooding if the overall permeability and back-up storage in the Wetlands is interrupted or disturbed as for example by potential construction. Mr. Dalo's Bite Plan in his Notice of Intent filing shows "erosion control" channeling drainage into the Wetlands part of his property.

The Wetlands in question lies mostly East of the Kirvin Park Road and is drained by a Ditch maintained by the City and the Berkshire County Mosquito Control. Drainage from this Ditch is piped westward under the Park Road near the Park entrance and then under Williams Street to join the City's sewer system. The piping controlling drainage from the Park can be overwhelmed in times of prolonged heavy rains and flood both the Road and surrounding area including the front of the Park and three private properties, namely Mr. Dalo's and two properties at 990 and 996 Williams Street .

In addition I draw the Commission's attention to a second Ditch East of the Park Road barely visible because of dense vegetation growth. This Ditch drains the Wetland in the Park directly behind the former farm store and also empties into piping that crosses the Park Road. Mr. Dalo's "erosion control" would drain into this Ditch behind the farm store in the Park.

The entire Wetland in question covers at least 15 or more acres East of the Park Road owned not only by the City as part of Kirvin Park, but also by Mr. Dalo and the occupants of two residences at 900 and 996 Williams Street both of which abut Mr. Dalo's property.

In addition to my concern for the preservation of the Park Road, I also have concern for my own 2.3 acre property at 996 Williams Street, 280 feet of which abut Mr. Dalo's wetland on his eastern boundary. I have seen excessive and damaging flooding in this area when the drainage is not properly controlled.

Also another problem exists with rainwaters rushing down Williams Street hill channeled into a catch basin located at the Park entrance just East of the Park Road.

I am asking you as members of the Conservation Commission to deny Mr. Dalo his Notice of Intent for permission to construct a dwelling as described in his Bite Plan especially as regards his "erosion control" dumping drainage into a wetland.

I take a personal interest in the preservation of and the recreational use of Kirvin Park. I grew up on the farm that is now the park and continue to live on a corner of the former farm at 996 Williams Street.

Yours truly,  
Barbara Burgner Fuchs



Alessandra Kazura  
Gary Davis  
990 Williams Street  
Pittsfield, MA 01201

Pittsfield Conservation Commission  
70 Allen Street  
Pittsfield, MA 01201

August 22, 2020

Re: Mass. DEP File #263-1145 Notice of Intent application for the construction of a single family home on Williams Street (Map M7, Block 1, Lot 101). Applicant: Joseph Dalo

Dear Commissioners,

We are responding to the permit application referenced above. Our residential property directly abuts the Dalo property. We have lived at this property since 2016.

Currently a large amount of water drains downhill on the south side of Williams Street, crossing the Dalo building site and joining the wetlands drainage system at the entrance to Kirvin Park. The Dalo plan will divert part of this water to flow south between our properties into the main body of the protected wetland.

This is not clean water. It contains road salt and street-sourced tars and automotive pollutants. We have watched the decay and death of multiple trees, both evergreen and hardwood, along the street in front of our house. We believe this to be directly related to the runoff.

By installing the house and the erosion control barrier, the Dalo plan creates a valley which will carry much of this water south into the main wetland. Our observation suggests to us that the land is already at or near capacity to handle the runoff. During rain and snowmelt, water flows and pools on the properties. We expect significant erosion to occur as the water flows through the valley into the wetland. This erosion will add to the negative impact of the salt and pollutants.

Furthermore, we are concerned that the house and the erosion control barrier will damage the root system of the large pine tree located in the southeast corner of the building site, inside the erosion control perimeter. We suspect that this pine currently serves an important role in water management.

Altering the quantity, quality, and direction of water flow into the wetland is likely to alter the ecological balance in the wetland. We have observed improvement in the health and diversity of this habitat over the past 5 years of our residence here. These gains are threatened by this development.

We urge the Commission to deny the permit request.

Sincerely,

Alessandra Kazura

## Kozlowski, Theodore

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**From:** David and Cindy <dharrison6@nycap.rr.com>  
**Sent:** Thursday, August 27, 2020 11:46 AM  
**To:** Gary Davis; Van Der Kar, Robert  
**Subject:** Re: Fwd: FW: Dalo - Williams St.

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you Gary for forwarding this email.

To whom it may concern:

From verbal communication with Gary Davis of 990 Williams Road, we understand that Joe Dalo has a matter before the Conservation Commission regarding his desire to build a house on property he owns located on Williams street.

It is also our understanding that the Conservation Commission in the 1990's had implemented a Plan for Mr Dalo to follow in relation to the preservation of the Wetlands that form the majority of his land.

We are writing to you and the Commission as former owners of the abutting property at 990 Williams Street. Mr Dalo's land abuts 990 Williams on two sides and we are very familiar with Mr Dalo.

990 Williams was purchased by Cynthia Lear on 1/14/1991 and we subsequently sold the property on 12/30/2009. We now have no connection to this property in any way.

It was our understanding that the wetland area of Mr Dalo's property extends from the base of the retaining wall towards Kirvin Park including the large open area that forms the bulk of the property. The area from the retaining wall towards Williams Street was not wetlands.

We were also of the understanding that the Wetland area was to be mowed a maximum of one time per year. During our 18 years at 990 Williams Mr Dalo mowed the area from the retaining wall back towards Kirvin Park, finishing at the point where this narrow piece of land expanded out into the much larger piece, multiple times per year. To such an extend that this area looked like a grassy backyard as opposed to a wetland.

Also during our time at 990 Williams we once observed a commercial weed control service setting up to spray Mr. Dalo's property. We asked them where they were intending to spray the weed killer and they indicated the entirety of the wetlands from the retaining wall back towards Kirvin park which also included the large open area that forms the bulk of the property. We called the Conservation Commission and they immediately sent out a female representative and she spoke with the weed control service and Mr. Dalo and insured that the weed application not take place. (The conservation commission may have a formal record of this event)

We hope that our communication is helpful in your deliberations regarding this matter before you.

We are also happy to provide any additional information as requested.

With Respect,

1

Cynthia Lear, David Harrison, 308 Red Barn Rd, Dalton



