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CITY OF PITTSFIELD

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

**MINUTES
CONSERVATION COMMISSION
Wetlands Protection Act Public Hearing
Pittsfield City Hall, City Council Chambers
Thursday, August 26, 2021 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
Stephanie Storie
Jonathan Lothrop

Members Not Present:

Nick Caccamo
Elizabeth Calebaugh

A quorum was present.

Also Present:

Robert Van Der Kar, Conservation Agent
Ted Kozlowski, Clerk

2. New Business:

- A. Continued: Mass DEP File #263-1155: Notice of Intent application for the construction of a building addition with related site work on property located at 13 Taconic Park Drive (Map H13, Block 20, Lot 5). Such actions are proposed to occur within the Riverfront Area associated with the West Branch of the Housatonic River. The applicant is Cavallero Plastics.

James Scalise, SK Design Group came forward to speak on the application. He reviewed the history of the project and the site. They have had some logistical setbacks, which they have since resolved. They have shrunk the site down. They have about 290sqft of alteration in the Riverfront. Storm water analysis has been done.

Mr. Van Der Kar gave his review of the application. Both outstanding issues comply with the rules. He recommends the mitigation area consist of 30 woody plantings.

Mr. Lothrop asked if the driveway pitch would change. There are two parallel lines in the existing driveway showing the grade. It will pitch towards Taconic Park, but it will be flatter. They have a perimeter stone drain to chambers before discharge.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue Order of Conditions 1-33; it was seconded by Mr. Lothrop and was approved unanimously.

- B. Continued: Mass DEP File# 263-1168: Notice of Intent application for a floodplain determination, groundwater control, pond outlet work, and utility connections on property located at 100 Dan Fox Drive (Map G3, Block 1, Lot 3). Such actions are proposed to occur within Inland Bank and Land Under Waterbody. The applicant is Mill Town Foundation, Inc.

Jim Scalise, SK Design Group came forward to speak on the application. Soil boring and test pits were done. They found the drain does not pitch enough. They propose a new foundation drain at 4ft with a fully buried cutoff wall. They'll excavate trench, lay the wall and back fill. That will keep the pond from dewatering. They are postponing the building addition discussed until a later date.

They did a floodplain study using statistical rainfall. They found the 100-year storm stays within the stream. It has a very fine sediment. He fears erosion of that channel. They hope to certify to FEMA to get the floodplain approved. They are asking to bury reinforcing under the stream, and are looking for approval the floodplain line contingent on the federal letter of map revision.

Aaron Altshuler 494 Tamarack Rd came forward to speak on the application. He confirmed how far across the stream they plan on going. Mr. Scalise noted the portion of his land affected on the map. He will be happy to meet separately with Mr. Atshuler to discuss any other issues.

Mr. Lothrop confirmed the drains around the building and parking lot.

Mr. Van Der Kar gave his review of the application. He spoke with Mr. Scalise to clarify some concerns. He's fine with the project and the letter of map revision. He wants a baseline of the non-drawn down water elevation of basically what it is today. Mr. Scalise hopes to come back soon with a wildlife habitat survey and will include that.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue Order of Conditions 1-33; it was seconded by Mr. Lothrop and was approved unanimously.

- C. Mass DEP File #263-1167: Notice of Intent application for the redevelopment of the existing Taco Bell restaurant on property located at 555 Hubbard Avenue (Map L14, Block 3, Lot 109). Such actions are proposed to occur within Riverfront Area associated with the East Branch of the Housatonic River. The applicant is Chipotle Mexican Grill, Inc.

Karlis Skulte, Civil & Environmental Consultants came forward to speak on the application. He reviewed the site and project. They propose to use the existing site for a new restaurant. They have subsequently reduced the amount of impervious areas on site. All existing run off goes to retention basins, then into the Housatonic. They propose to reconstruct and repave some of the parking areas, sidewalks and some minor changes to the drive thru lanes.

Mr. Lothrop noted there is currently a lot of pooling of storm water. There are no plans to modify the current stormwater management. They are essentially replacing in kind. There are catch basins along the edge of the property, which route to the retention basin before going to the Housatonic. Mr. Lothrop would like to see some kind of upgrade of components, given this was built a while ago.

Mr. Van Der Kar gave his review of the application. With the reduction of the plans, it became just a repaving job. There's a lot of vegetation going in. Some of the trees and shrubs are native; he's asking the application to plant all native species.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue Order of Conditions 1-32; it was seconded by Mr. Lothrop and was approved unanimously.

- D. Mass DEP File #263-1169: Notice of Intent application for the improvements to an existing stormwater drainage system on property located at 467 Pecks Road (Map M13, Block 12, Lot 26.) Such actions are proposed to occur within the Inland Bank and Land Subject to Flooding associated with Onota Lake. The applicant is the City of Pittsfield, Department of Public Works.

Alison McMordie, City of Pittsfield DPW came forward to speak on the application. The property owner contacted the city regarding drainage issues. All the current drain pipes are failing. They propose to remove and replace the pipe from the catch basin. That will connect to a headwall, leading to a 177' long vegetated swale, which will lead to Onota Lake.

Mr. Van Der Kar gave his review of the application. This is a stream daylighting project. He like infiltrating as much as they can. He sees this as a betterment project. They do not have Natural Heritage comments.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the September 16, 2021 meeting; it was seconded by Mr. Lothrop and was approved unanimously.

- E. Continued: File #21-22: Request for Determination of Applicability for site grading work on property located at 160 Newell Street (Map J9, Block 4, Lot 7.) Such actions are proposed to occur within Bordering Land Subject to Flooding. The applicant is Joshua Healy.

Ann Rossi, Berkshire Engineering came forward to speak on the application. They submitted additional information yesterday. They're coming back for clarification. They can't provide one-foot increments as their datum is not tied in to anything. They need a starting point.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the September 16, 2021 meeting; it was seconded by Mr. Lothrop and was approved unanimously.

- F. Continued: File #21-25: Request for Determination of Applicability for a jurisdictional determination associated with two areas of land within property located at 874 North Street, Springside Park (Map I12, Block 1, Lot 1). The applicant is Berkshire Chapter of the New England Mountain Bike Association.

No one came forward to speak on the application.

Chair Conant wanted to confirm this is the site the Parks Commission approved.

Tony DeMartino, Chair, Pittsfield Parks Commission noted that while no set plans have been submitted, this general area is the area being considered. The original proposal was in the northern portion. They have since relocated the proposed area down south to the previously disturbed ball field.

Daniel Miraglia, 66 Ontario St came forward to speak against the application. He reviewed the history of the park area. There is a storage site near a buffer zone negatively impacting a resource area. He requests a site visit.

Victor Capelli came forward to speak against the application (ATTACHMENT A.)

James McGrath, City of Pittsfield reminded the commission they are here tonight for a jurisdictional determination of this area. There are no plans submitted, they are only conceptual plans.

Mr. Van Der Kar gave his review of the application. He has gone out to this area twice. There are no jurisdictional wetland resource areas in the 7.2 acre site. There would be no work in resource areas. He took field measurements and GPS shots.

Mr. Sakshaug asked about the “wet meadow” previously mentioned. Mr. Van Der Kar saw no data provided and did not see a wet meadow. There needs to be a dominance of hydrophilic plant materials in the area. In any upland you can find facultative wetland plants but that doesn’t mean it’s a wetland.

Mr. Sakshaug noted the request for a 700ft buffer zone. While that would be great, legally they are only jurisdictional for 100ft buffer zone. This site is outside of any jurisdictional areas.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Negative 1 Determination indicating no wetland resource areas or buffer zones; it was seconded by Mr. Lothrop and was approved unanimously.

- G. File #21-26: Request for Determination of Applicability for installation of a dock on property located at 140 Hancock Road (Map G15, Block 19, Lot 6). The applicant is Anthony & Dianna Crea.

No one came forward to speak on the application.

Mr. Van Der Kar gave his review of the application. This is a procedural determination. The approved dock plans are different than what was licensed. They’re getting a new dock layout. This fixed that discrepancy.

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

- The applicant is to revise the side yard setback shown of the licensed dock plan and submit to Mass DEP and the Pittsfield Harbormaster for their review, comment, and authorization.

H. File #21-28: Request for Determination of Applicability for the construction of an addition to a single-family home on property located at 88 Glory Drive (Map M5, Block 1, Lot 108). Such work is proposed to occur within Riverfront Areas associated with the Ashley Brook. The applicant is Len Light.

Robert Harrison, Berkshire Design came forward to speak on the application. They propose a single story addition on the back of the house. There is currently a deck with a fully developed back yard. They propose silt barriers. There is an existing discharge, which will be upgraded with a rain garden.

Mr. Van Der Kar gave his review of the application. The majority of the work takes place where the deck is. The work ends up being closer to the river. The new deck would be exempt. There is some discharge that needs some work; the rain garden would help with that. He would like 6 Hemlocks planted, a fair compromise to do this under an RDA.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Negative 2 & 3 determination; it was seconded by Mr. Lothrop and was approved unanimously.

- The rain garden is to have a surface area of no less than 150 square feet
- Six Eastern Hemlocks shall be planted that are no less than 6' in height.

I. File #21-29: Request for Determination of Applicability for the installation of vinyl siding and the replacement of a porch on property located at 24 King Street (Map G10, Block 17, Lot 8). The applicant is Henry Bush. Such work is proposed to occur within Land Subject to Flooding.

No one came forward to speak on the application.

Mr. Van Der Kar gave his review of the application. He believes this involves an in-kind porch replacement, but is just not clear. A negative determination can be issued with a condition that the new porch would have the same footprint as the existing.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Negative 2 & 3 Determination with the special conditions noted below; it was seconded by Mr. Lothrop and was approved unanimously.

- All refuse within 100' of the West Branch of the Housatonic River is to be removed from the site and properly disposed of.
- The new porch will have the same footprint as the current porch.

J. Continued: Mass DEP File #263-1124: Request for a Complete Certificate of Compliance for work performed within the Eversource F132 electrical utility corridor. The request is being made by Eversource Energy.

No one came forward to speak on the application.

Mr. Van Der Kar gave his review of the application. He had a site visit and the logs are still there.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue to the September 16, 2021 meeting; it was seconded by Mr. Lothrop and was approved unanimously.

- K. Mass DEP File #263-1045: Request for a Complete Certificate of Compliance for work done on property located on Churchill Street (Map D12, Block 2, Lot 201, 202.) The request is being made by Aegis Renewable Energy.

No one came forward to speak on the application.

Mr. Van Der Kar gave his review of the application. Additional swale work needs to be done to capture and redirect more water.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the September 16, 2021 meeting; it was seconded by Mr. Lothrop and was approved unanimously.

- L. Continued: Mass DEP File #263-1108: Request for an Extension of the Order of Conditions for work done at 745 East Street (Map I9, Block 9, Lot 30 & 31.). The request is being made by Heka, Inc.

No one came forward to speak on the application.

Mr. Van Der Kar gave his review of the application. Erosion control barriers have been installed and are all set.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue an extension to August 24, 2023; it was seconded by Mr. Lothrop and was approved unanimously.

- M. Mass DEP File #263-1109: Request for an Extension of the Order of Conditions for work done at 52 Gordon Street (Map I8, Block 99, Lot 62.) The request is being made by Central Berkshire Habitat for Humanity.

No one came forward to speak on the application.

Mr. Van Der Kar gave his review of the application. The applicant has requested an extension. They have a big riverfront restoration at the U-Haul property which has not progressed.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the September 16, 2021 meeting; it was seconded by Mr. Lothrop and was approved unanimously.

3. Other Business:

- A. Review and approval of Lake and Pond Setback Ordinance

The draft was previously circulated. Some minor edits and typos were noted. Mr. Van Der Kar noted the specific performance standards in order to comply. The WPA is ambiguous on the buffer zone. When trying to limit work within 35ft of the lake, they were appealing to DEP and winning. This gives more leverage when it comes to 35ft of the lake.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to approve the ordinance with the edits noted with a recommendation to the City Council for approval; it was seconded by Mr. Lothrop and was approved unanimously.

B. Acceptance of land donation (Map J9, Block 12, Lot 3) from Patrice Akegnan.

Mr. Van Der Kar reviewed the property. It's a small parcel in the center of Pittsfield. The Commission has slowly been acquiring land around it. They are all unbuildable.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to accept the land donation as described; it was seconded by Mr. Lothrop and was approved unanimously.

C. Minutes from the July 14, 2021 and the August 5, 2021 meeting.

Mr. Sakshaug made a motion to accept the July 14, 2021 minutes as presented; it was seconded by Mr. Lothrop and was approved with Chair Conant abstaining.

Mr. Sakshaug made a motion to accept the August 5, 2021 minutes as presented; it was seconded by Mr. Lothrop and was approved with Ms. Storie and Mr. Lothrop abstaining.

4. Adjournment:

Ms. Sakshaug made a motion to adjourn at 7:25pm; it was seconded by Mr. Lothrop and was approved unanimously.

Submitted by Ted Kozlowski, Staff

ATTACHMENT A

For Conservation Committee 8/26/21

The Wetlands in Springside Park Regarding RDA 21-25

by Victor C. Capelli

**Environmental Analyst
Field Ecologist**

- According to the MACC handbook (Massachusetts Association of Conservation Commissions) - any filling, grading, removal of vegetation like trees, shrubs or grasses from building construction or human development are **DIRECT IMPACTS** on wetlands because they change the drainage patterns of recharge for those wetlands. Direct impacts also includes pollution from runoff of impervious surfaces (blacktop, gravel, asphalt) that contains any solvents, oils and toxic substances that derive from those operations which can affect biologic systems in wetlands. These changes can only be mitigated by a watershed management plan under local administration, DEP and the Army Corp of Engineers. Cumulative impacts on a wetland are those environmental impacts resulting from combined direct and indirect impacts over time. Indirect impacts are the biological and ecological consequences from the negative direct impacts produced by human development such as attrition and extinction of species and biodiversity loss.
- The proposed NEMBA bike park sits within a “wet meadow”, a type of “emergent wetland” listed under WPA classification. It is a wetland resource area because of its hydrophilic soil , water conducting and absorbing characteristics and hydrophyllic plants. According to the general provisions of 310 CMR 10.0,(1), BVW’s (borders of vegetated wetlands) are wetlands that share a border with a stream, pond or lake. Wet meadows fit that description and the wet meadow that lies within the proposed NEMBA bike park site is a potentially affected BVW. The general provisions of 310

C.M.R. 10.0, (1) describes the burden of proof where the applicant's project will not affect a resource area, a) any person who files a Notice of Intent to perform any work within an area subject to protection under M.G.L. 131 40 (Massachusetts General Law) or within the buffer zone has the burden of proof of demonstrating to the issuing authority, b) -"that the proposed work within the buffer zone will contribute to the protection of the interests identified in M.G.L. 13, 40". Likewise, the applicant has the burden of proof to demonstrate compliance with Buffer Zone regulatory criteria listed at 310 C.M.R.10.24 (1) and 10.53 (1). Runoff from the hardscape bike park through the wet meadow buffer zone and into the wetlands will be aggravated, chronic, will permanently disfigure and damage their ecological character. By changing the runoff contributions, the wetlands will be further degraded by the lack of rainfall contributions through infiltration channels and pathways that would normally maintain water flow.

- The 7.2 acre hardscape replacement of the wet meadows will also derange and aggravate flooding of the road and surrounding area by removing the sponge ability of the wet meadow to absorb excess rainfall and increase the dehydration of wetland substrate, which benefits from unhindered downhill flow from the wet meadow to the wetland below. The Massachusetts Buffer Manual (Berkshire Regional Planning Commission 2003) defined vegetated buffers as: "living filters" that serve as "protected areas between a water-body and human activity, such as development or agriculture."
- * The wet meadows are "emergent wetlands" according to federal and state classification, enclosing the proposed bike park site and have identifying wet meadow hydrophilic floral species such as; sedges, grasses, rushes, smartweeds (polygonum,sp.), rumex or dock, Blue flag Iris, Purple

Loosestrife(lythrum), willow and Spotted Alder. This wet meadow is primarily underlain by hydrophilic water retaining soils- (Prb, Heb,"aquic eutrochrepts") that have a high clay content, high organic content (12-18%) and poor water percolation flow. These soils have been deemed unsuitable by the USDA for either septic system or artificial pond construction. The Amb class soils in Springside Park also have a slow water percolation rate with a severe limitation for aquifer fed excavated ponds because they hinder water flow in the sub-aqueous soil layer beneath. However, these same physical characters of texture and structure are also conducive to wetland development and maintenance because they enable runoff to flow into and collect in wetlands. The NEMBA bike construction project threatens this soil contribution by removing these valuable assets from access to perpetual wetland ecology preservation and maintenance.

- The distance from the edge of the proposed bike project area at the ball field through the Buffer Zone across the road to the Resource Area is insufficient to prevent bike park construction grading materials of sand, silt or sediment from reaching and polluting the wetland ecology. The Buffer Zone width ranges between 258, 172 and 117 feet and is nowhere near the MACC Guidebook recommendations of an "optimum "buffer zone width of 700 feet. A 700 foot wide buffer zone will remove up to 75% of sediments in runoff effluent before it reaches aquatic resources. (Recommended Widths of Buffers to Protect Aquatic Resources, Hroby T. (WDOE) (2013)- Update on Wetland Buffers: The State of The Science, MACC Buffer Zone Guidebook).
- The Pittsfield Conservation Commission also must make a determination if this project's environmental impact will either contribute or detract from the water quality and quantity of water in the groundwater table. By changing the runoff contributions via interception, infiltration, percolation and storage from the wet meadow to the wetland, you drastically diminish

the stability of the wetlands, (especially in times of drought) which contribute to the groundwater table level and potability and their connection to the surrounding aquifers.

- The wetland water levels in the riparian corridor of Springside Park fluctuate according to shifting groundwater tables in both the sub-aqueous layer above and to the consolidated bedrock aquifer below. They are both discharging and “re-charging” groundwater tables crucial to habitat and domestic water supplies. Any disruption to that delicate hydrological equilibrium upsets the balance of groundwater recharge and is reciprocal, mutually reinforcing and slow in recovery to the original hydrological state.
- The two streams located in the Springside Park wetlands adjacent to the proposed bike park site are “perennial” streams because they meet or exceed the minimum predicted cubic flow rate of 0.01 CFS at the 99% flow duration using the USGS Stream Stats method and have a “watershed size of least one half (0.5) square mile.” (MACC Handbook). Both streams have groundwater as the primary source (springs and seeps from the bedrock) for stream flow and secondarily precipitation, ice and snow melt water. This is not the same as an “intermittent” stream which flows only from rainfall runoff, springs or from winter ice and snow melt water. (USGS National Water Quality Assessment Project).
- The micro-niche alteration, destruction and degradation of potential “transpirative” (leaf respiration and transpiration) water sources (trees, shrubs and vegetation) that would replenish and maintain the wetland areas would also be a factor in their decline as a result of the bike park construction. The ambient air moisture, temperature modification, wind buffering and atmospheric O₂ contributions by the trees, shrubs and vegetation, are all vital elements of wetland ecology and works to moderate the extreme temperature events and droughts that are now

occurring because of climate change. The destruction of the trees and the green spaces and the wet meadow for the NEMBA project will accelerate both negative local micro-climate change and extinction of ecological micro-niches throughout Springside Park.

These are just some of the most obvious adverse geomorphic and ecological impacts that the NEMBA bike project will create in Springside Park. But, the bedrock geology of Springside Park (limestone and quartzite) which provides the source of all groundwater in the park is the overriding influence of geomorphic and hydrological factors and the hydrologic "baseline" of sub-aqueous and aquifer water abundance, potability and transmissivity. In essence, what the "wetland complex ecology" of Springside Park represents to the City of Pittsfield is the last intact integral piece of biological and hydrologic synthesis and synergy contributing to a bio-diverse fragment of pre-urban America. The bike park project is also a dire existential threat to the most basic natural resource (water) that the residents of Pittsfield depend on and on which we and the entire natural world depend on.

Victor C. Capelli August 26, 2021