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CITY OF PITTSFIELD

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

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. 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

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MINUTES CONSERVATION COMMISSION Wetlands Protection Act Public Hearing Remote Meeting Via Zoom Thursday, April 22, 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
Jonathan Lothrop
Nick Caccamo
Elizabeth Calebaugh
Stephanie Storie

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 #263-1158: Notice of Intent application for the use of hydro-rakes and aquatic herbicides/algacides to manage aquatic nuisance vegetation on property located at 669 Churchill Street in Pittsfield (Map D13, Block 2, Lot 2.) Such actions are proposed to occur within Inland Bank and Land under Waterbody. The applicant is Jeffrey Carr.

The applicant has requested a continuance to the May 13, 2021 meeting.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the May 13, 2021 meeting; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- B. Mass DEP File #263-1159: Notice of Intent application for the replacement of an existing garage and patio with a new garage and deck on property located at 152 Blythewood Drive in Pittsfield (Map D11, Block 2, Lot 8.) Such actions are proposed to occur within buffer zone associated with Inland Bank and Bordering Vegetated Wetlands. The applicant is Mike Dargi.

Ken Boudreau, Hill Engineers came forward to speak on the application. They propose to replace the garage, approximately 500sqft, with a new 900sqft garage. It is strictly a buffer zone project and only increases surface slightly. He would to replace some of the flagstone and retaining wall with a deck with a walkway. He would like to remove four conifer trees and another three that are slowly dying. They will not be impacting floodplain or wetlands.

Mr. Lothrop asked about the plan to replace the trees. They have not had that discussion but are willing to replace 1:1, obviously smaller. They were waiting for input from the Commission regarding trees or shrubery. Mr. Lothrop highly recommends native species.

Mr. Caccamo confirmed the amount of impervious surface regarding the flagstone. It is about 1:1. Mr. Caccamo asked Mr. Van Der Kar whether trees or shrubs were preferable. He would love to see the same species, Eastern Hemlock.

Mr. Sakshaug asked about the trees in the tree line in the northwest corner of the property. There are other, larger trees that will remain. As you go south, there are more shrubs. That detail is in the wetland's report.

Mr. Van Der Kar gave is review of the application. His concern is about the wetlands boundary. The delineation was done in December, which is a tough time to do boundaries. He was unclear if there was any grading needed with the new garage. DEP also noted that the boathouse and dock no longer have a valid Chapter 91 license.

The new garage will be elevated a couple of feet, allowing access from the driveway side. There will be no grading impact. The erosion control will encompass the entire site.

Chair Conant would like to see the site. He suggested preparing an NOI for the Chapter 91 license for the next meeting.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the May 13, 2021 meeting; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- C. Mass DEP File #263-1160: Notice of Intent application for the replacement of the existing ski lodge and improvements of the storm water management system on property located at 101 Dan Fox Drive (Map F2, Block 1, Lot 3.) Such actions are proposed to occur within Inland Bank, Bordering Vegetated Wetlands, Bordering Land Subject to Flooding, and Land Under Waterbody. The applicant is Blue Chair Properties.

Jim Scalise, SK Design came forward to speak on the application. They propose work on both sides of Tamarack Rd. There are four items to discuss tonight: Replacement of the lodge, slopeside erosion control work outside the buffer zone, storm water improvements and culvert improvements that collects drainage from the property to the snow making pond.

The lodge location is entirely outside the buffer zone. The demolition was approved at the last meeting. Erosion controls will be in place during the entire construction.

They've installed erosion controls on the site. A large area on the south has been mulched, seeded and covered in hay. All stockpiled materials have been moved outside the buffer zone. Sediment traps have been installed in 3 locations. Swalls collect runoff from the mountainside. A turbidity curtain has been installed in the pond. It is ongoing.

There is no increase of impervious surface. Being proactive, the parking lot was added to the scope of the project. They have catch basins, routing it through a forebay before reaching the pond. Storm water management is all new and included in the application. Given the configuration of the property and the density of development, they don't meet the full storm water standard but it is a significant improvement. They have groundwater recharge for all new construction. They have a long term pollution control and an O&M Plan.

The existing culvert under Tamarack Rd is filling with silt. It needs to be maintained and renovated. They are proposing to control the culvert. They propose to clean the silt, create a sump and complete the work. They also propose to clear out the sediment in front of the pond using timber mats for the machinery. Any soil excavated will be stockpiled outside the buffer zone for drying, then transport it safely.

Mr. Lothrop asked about the culvert. The water level of the pond does on occasion back up onto the road. It would be unfortunate to do all this work and have it inadequate. The pipes currently are full of mud and can't carry any water. That's why they want to put the stop logs. The infrastructure has just been ignored for a long time that needs to be remedied. This is about the most intrusive part of the project. That is the only way to really get the water out. They are doing soil boring to study the pond. In about a month, he can more fully answer the question. They also have a beaver problem and are working on it.

Mr. Sakshaug asked about the dredging. They're dredging 95yds, which is very close to 100yds. How do you get that close without going over? They limit to surface area. A good operator can dig within a couple inches. His sense is it will be less than 95.

Mr. Van Der Kar gave is review of the application. They are right up to the threshold of a habitat evaluation. The other work is outside the resource area. The storm water BMPs comply with the standards. They need to follow the O&M Plan to maintain the drains.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue Order of Conditions 1-34; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

D. Continued: File #21-01 - Request for Determination of Applicability for outdoor marijuana cultivation and related site work on property at 997 Pecks Road in Pittsfield (Map E17, Block 1 Lot 101). Such activities are proposed to occur within the Riverfront Area associated with the Daniels Brook. The applicant is Northeast Cultivation.

Marc Volk, Foresight Land Services came forward to speak on the application. They feel this is outside of wetland resource areas under agricultural exemption, 10.04 (1a.) They discussed it with DEP and agreed there is no prohibition of agricultural activities under the WPA. Floodplain calculations were submitted; a 3rd party review was done which agrees with their analysis that floodplain will not impact the area worked. They are requesting a determination that this is an agricultural exemption for the hoop houses.

Mr. Van Der Kar gave his review of the application. Regarding the intermittent stream delineation, the boundary seems fine but he would call it Inland Bank. The way the flags were numbered was also confusing. The Committee could issue a Positive 2a Determination, proving that boundary based off the line work, not how the flags are numbers.

Daniel's Brook is the big question. The mean high water mark seems fine. It all checked out. The question is, does marijuana meet an Agricultural Exemption? The floodplain boundaries are based off a TR20 calculation, which is a newer, more refined than TR55, and it works. But they have very specific language to use TR55, which is pretty antiquated. It's up to the Commission. He doesn't have an issue using TR55.

The ultimate question is whether marijuana is an agricultural commodity. The definition in WPA is very black and white. The definitions refer to federal law, and marijuana is still illegal federally. That just can't be reconciled.

Mr. Lothrop asked if the hoop houses were permanent structures, where would this application be? The Agricultural use shrinks the riverfront boundary from 200 to 100ft. In that case, the hoop houses wouldn't be regulated. If not, the project is very difficult to permit, if at all. It is a very important distinction to make.

Mr. Caccamo asked if DEP has given any guidance. There is no case law, so they cannot offer any guidance.

Mr. Sakshaug is happy with the TR20, as it's more accurate. The whole thing boils down to is this a legal agricultural commodity. Federally, it is illegal. Are we going to go with state law or federal? If state law says it has to be legal federally, then it's not. To him, it is agriculture. It's a big target for appeal, however the vote goes.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Positive 3 Determination that it is not a federal Agricultural use, therefore requiring a Notice of Intent; it was seconded by Ms. Calebaugh and was approved by a Roll Call vote. Mr. Forster, Mr. Sakshaug and Mr. Caccamo voted Nay.

E. File #21-09: Request for Determination of Applicability for the confirmation of a series of wetland resource delineations along the Housatonic Railroad Company right-of-way. The applicant is TEC Associates.

Tom Lewis, TEC Associates came forward to speak on the application. As part of their renewal of their management plan, they are required to confirm their wetland delineations.

Mr. Van Der Kar gave his review of the application. This same boundary was approved a few years ago. This is not the best time of the year to look at boundaries. If the commission would like, he can walk the site and give a better assessment.

Chair Conant felt it was not necessary, as they've done this before. Mr. Sakshaug confirmed there's not much of a chance the boundaries have moved.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Positive 2a Determination; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- F. File #21-10: Request for Determination of Applicability for the repair of a driveway on property located at 8 Lombard Street (Map J10, Block 5, Lot 2.) Such activities are proposed to occur within Riverfront Area and Bordering Land Subject to Flooding. The applicant is Catherine Maquire.

No one came forward to speak on the application.

Mr. Van Der Kar gave is review of the application. It's a straightforward application. They would like to repair their driveway. The shed was approved last year, limiting the amount of buildup replaced on the site.

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 Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- The amount of airport mix introduced on to the site shall be mitigated, at a 1:1 ratio, by removing soil making up the existing driveway from the site.

- G. File #21-11: Request for Determination of Applicability for the removal of invasive plant species on property located along Churchill Street (Map D15, Block 1, Lot 5.) Such activities are proposed to occur within Riverfront Area of the Churchill Brook. The applicant is Noah Henkenius.

No one came forward to speak on the application.

Mr. Van Der Kar gave is review of the application. This is a great project, removing invasive species. There could be some exposed soil; he was unclear what they were proposing to put there. This is a multiple year project, so they do not currently have a plan. They hope to talk to the owner after the Knot Weed is removed.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to Negative 2 Determination; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- H. Mass DEP File #263-1035: Request for an extension of the Order of Conditions for property located at 999 Dalton Road (Map M14, Block 3, Lot 11.) The applicant is Freight House Realty LLC.

No one came forward to speak on the application.

Mr. Van Der Kar gave is review of the application. They are seeking a three year extension. Ownership was just recently transferred. An In Lieu fee was recently received. The commission can issue a three year extension.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue an extension of the Order of Conditions to July 23, 2024; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- I. Continued: Mass DEP File #263-1097: Request for a Complete Certificate of Compliance for property located at 600 Merrill Road (Map L13, Block 2, Lots 1.) The request is being made by Thomas Flynn.

No one came forward to speak on the application.

Mr. Van Der Kar gave is review of the application. They are waiting for the installation of the control valve of the retention basin.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to continue the item to the May 13, 2021; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- J. Mass DEP File #263-450: Request for a Partial Certificate of Compliance for property located at 34 Fasce Place (Map K12, Block 17, Lot 2.) The request is being made by Joseph A Sondrini.

No one came forward to speak on the application.

Mr. Van Der Kar gave is review of the application. This part of the GE cleanup project. A number of parcels were included in the NOI. The commission can issue a Partial Certificate of Compliance.

Seeing no further debate or discussion, Mr. Sakshaug made a motion to issue a Partial Certificate of Compliance regarding 34 Fasce Place; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

3. Other Business:

- A. 2021 Wild Acres Youth Fishing Derby announcement and discussion

Mr. Van Der Kar noted the derby starts at 8am on May 8. They are already close to the cutoff of 150, including staff. All Covid protocols will be followed.

- B. Affirmation of the use of the Controy Pavilion by the Berkshire Family YMCA

Mr. Van Der Kar reviewed the agreement to use Controy Pavilion for their summer camp during the week.

Mr. Sakshaug made a motion to approve the agreement for the use of the Controy Pavilion; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

- C. Minutes from the April 1, 2021 meeting.

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

4. Adjournment:

Mr. Sakshaug made a motion to adjourn at 7:30pm; it was seconded by Ms. Calebaugh and was approved unanimously by a Roll Call vote.

Submitted by Ted Kozlowski, Staff