

GREAT BARRINGTON CONSERVATION COMMISSION

Wednesday, June 28, 2023

Call to Order: Chairwoman Van Olst opened the meeting at 6:38pm. Those present: Andy Didio, Michael Lanoue, Andrew Mankin, David Shanahan, Kate Van Olst. Absent: Tom Ferris.
Also present: Conservation Agent, Shep Evans

Approval of Minutes of the meetings of February 22, 2023; March 22, 2023 and May 24, 2023.

Lanoue made a motion to approve the February 22, March 22 and May 24, 2023 minutes; **Mankin seconded**. Van Olst asked for any discussion – there was none. By roll call vote the motion was approved unanimously.

Notice of Intent (DEP # 167-0455) from Solitude Lake Management on behalf of URJ Eisner Camp, property is at 53 Brookside Road. The proposed work consists of mechanical hydro-raking to manage nuisance aquatic vegetation in the Eisner Camp pond. Continued from May 24, 2023.

Evans stated as per the DEP's recommendation, SOLitude Lake Management is seeking water quality certification and is in the process of taking samples. He stated SOLitude is requesting a continuance to the July 26 meeting.

Didio made a motion to continue to July 26 at 6:30pm; **Lanoue seconded**. Van Olst asked for any discussion – there was none. By roll call vote the motion was approved unanimously.

Request for Determination of Applicability from BSC Group on behalf of Massachusetts Electric Company. The property is the ROW for Seekonk Road and Alford Road and the proposed work consists of installing eight (8) new or replacement power poles and associated tree removals required to reconfigure an existing overhead electrical distribution line. Project activities are proposed within the 200-foot Riverfront Area associated with Seekonk Brook and 100-foot Buffer Zone of BVW and/or Bank, however all work will be done by mobile equipment operating from the roadway and within the ROW.

Erasmé da Cruz, BSC Group, presented stating this is for the installation of eight new poles on Seekonk Road to reconfigure the overhead electric line and make service more effective. He noted the work is in the riverfront area and buffer zone, but will be done from the road and the area will be restored to preexisting conditions though two trees will be removed for clearance. He added Natural Heritage has approved the work.

The Commissioners verified the location and requirements for the installation/work.

Didio made a motion to issue a negative determination #3; **Mankin seconded**. Van Olst asked for any discussion – Carol Baier, 26 Seekonk Road, stated the letter submitted by the applicant referred to dredging and asked if that would occur – E. da Cruz replied there would not be dredging and Mankin added in the regulations, the definition includes dredging, but that will not happen here. She continued to ask where the trees are being taken down – it was clarified it is at 401 Alford Road at the intersection of Seekonk and Alford Roads. By roll call vote the motion was approved unanimously.

Enforcement Order issued 4-11-2022, property at 24 Cottage Street, property owner is 24 Cottage, LLC. Violation is substantial alteration including excavation, filling and/or clearing Riverfront; Estimated and Priority Habitat; Flood Plane; Bank and Land under Waterway. Concept Restoration Plan dated 4-24-2023, revised planting schedule 5-17-2023, from Foresight Land Services on behalf of 24 Cottage, LLC. Awaiting review and comment(s) from Natural Heritage and Endangered Species Program.

Evans stated there have been site visits in the area that included viewing this property where white stone was placed by the river along with a sitting/recreational setup. He noted this is a Natural Heritage habitat and the Commission will await its comments before making a decision. He stated Foresight Land Services has a plan for stone removal and adding plantings, and the Commission will do a site visit before the next meeting.

Didio made a motion to continue to July 26 at 6:30pm; **Lanoue seconded**. Van Olst asked for any discussion – there was none. By roll call vote the motion was approved unanimously.

Enforcement Letter issued November 17, 2021 to Mary P Akers, Riverfront property at #4 Cottage Court Clear-cut Riverfront, Flood Plain and State Listed Species Habitat.

Evans provided an overview of clearing that occurred on the property going down to the river which is currently covered by a tarp - and he provided a photograph. He stated an enforcement letter was sent previously and M. Akers contacted Jess Toro, Native Habitat Restoration, regarding remediation, but the work did not go forward. He noted that enough time has elapsed to issue an Enforcement Order to remedy the situation and present a restoration plan to the Commission.

Didio made a motion to issue an Enforcement Order to Mary P. Akers for 4 Cottage Court; **Lanoue seconded**. Van Olst asked for any discussion – there was none. By roll call vote the motion was approved unanimously.

Discussion of DFW proposal to remove the remains of an old dam at Old Maid's recreation area. Wednesday, June 28, 2023

Evans described the dam/rocks on the Williams River at Old Maid's Park that creates an impoundment of water and silt - and the proposal by Massachusetts Fisheries and Wildlife to remove the dam to improve the integrity of the River allowing it to take its normal course. He stated Parks & Recreation is asking if the Conservation Commission would write a letter in support of the proposal. He added this is in an exploratory stage and, if it moves forward, the project would be under Mass Fisheries and Wildlife supervision and they would provide a plan for the Commission's review.

The Commissioners agreed the project would be beneficial for the river and habitat. It was discussed that any new riverfront area would attract invasives/vegetation and could impact access to the Park, but it was stated the Park would be maintained/managed by Parks & Recreation. Evans stated he would let Mass Fisheries and Wildlife know the Commission's concern about invasive growth.

Open Meeting Law Complaint

- a. Review the Open Meeting Law complaint filed by Jonathan Hankin on May 24, 2023 regarding the Conservation Commission's lack of approved minutes for certain meetings in 2022 and 2023

Evans read the Open Meeting Law complaint dated May 24, 2023 from Jonathan Hankin: *The approved Conservation Commission minutes have not been filed or are not accessible on the Town's website, The 2022 minutes are drafts for July 13, July 27, August 24, September 28 and October 26. One set of draft minutes for November 23, which has not occurred, is filed under 2023 minutes, No minutes or draft minutes for December 2022 or all of 2023 are accessible. Regarding requested action to be taken, the complaint states: Follow the Open Meeting Law and approve and make publicly accessible all meeting minutes, ideally within 30 days, in no case longer than three meetings.*

Evans continued to read an initial response he sent via email to Jonathan Hankin on June 6, 2023: *Dear Jonathan - regarding your Open Meeting Law inquiry – I'm pleased to provide an update. The July – November 2022 approved meeting minutes have been posted. Please note there was no December 2022 meeting for lack of a quorum. For 2023, there was no January meeting, the February and March minutes will be voted on at our next meeting and the approved April minutes are currently being posted. The commission regrets the unintentional delay in finalizing these draft/pending minutes and leaves it to your good judgment whether to proceed with or withdraw your OML complaint. Sincerely, Shep Evans, Conservation Agent.*

He noted there has been no response from J. Hankin.

Evans stated a Commission meeting was scheduled for June 14 which is within the required timeframe, to discuss the complaint, but ultimately, the Commission was unable to get a quorum. He stated he then reached out to the Attorney General's Office via email letting them know the situation and requesting an extension to the next scheduled Commission meeting on June 28 so that more than a quorum could be present to review the complaint – and this was approved by the AG. He noted further AG instructions including sending a letter to J. Hankin following the June 28 meeting with copies to MA Open Government and the GB Town Clerk.

b. **Review/discuss** draft letter for the Commission to send in response to the complaint.

Evans read the draft letter to J. Hankin dated June 28: *Dear Mr. Hankin – The Commission is in receipt of your Open Meeting Law complaint signed May 24, 2023 and time stamped May 25, 2023. Thank you for alerting us that the approved minutes were not posted to the Town website. On June 5, 2023 the approved minutes for the 2022 meetings were forwarded to the Town Clerk and are now posted on the Town website. The December 2022 meeting was not held. Minutes of the 2023 meetings that were missing for February, March and May have now been approved and will be posted to the website tomorrow, June 29, 2023. The Commission believes these actions will satisfy your complaint and will bring the Commission into full compliance. Henceforth, the Commission will endeavor to have draft or approved minutes as quickly as possible in accordance with the timeline and requirements of the Open Meeting Law. Sincerely, Shep Evans, Conservation Agent.*

c. **Vote to authorize** the Conservation Agent to finalize the letter based on the discussion and send the letter on behalf of the Commission.

Didio made a motion to authorize the Conservation Agent to finalize the letter based on the discussion and to send it on behalf of the Commission; **Mankin seconded**. Van Olst asked for any discussion – there was none. By roll call vote the motion was approved unanimously.

Citizen Speak Time – No citizens asked to speak.

Media Time & Commission Time

- a. Mankin stated there are erosion issues related to paving on Route 23 and straw has been placed over the catch basins, though work should be completed quickly.
- b. Didio stated at the Lake Mansfield Task Force meeting concerns were raised about the reemergence of phragmites in the Lake and he inquired about Conservation funds to cover treatment and how to apply. Evans stated Chris Rembold, Assistant Town Manager, handled the treatment provider/process, and confirmed, as it is wetlands related, there are likely funds, but he would discuss with C. Rembold. It was discussed that CPA funds are not for maintenance/ongoing work.
- c. Mankin stated he is unable to attend the July meeting.
- d. Evans stated the Board of Health received a permit request to install beaver deceiver devices – two devices at BNRC's Thomas and Palmer Brook and one in another BNRC property, He noted it is just for the installation of the devices and he has signed off on the alteration of a water course. He added that taking beavers out of season requires a Board of Health permit.

Adjournment – **Didio made a motion** to adjourn; **Mankin seconded**. By roll call vote the motion was approved unanimously at 7:33pm.

Respectfully submitted,

Stacy Ostrow, Recording Clerk