

Town of Becket Conservation Commission 26 November, 2019 Meeting Minutes

Commissioners in Attendance: David Johnson (Chair), Meredyth Babcock, Cindy Delpapa, Alison Dixon, and Agent Mary Stucklen.

Commissioner not in Attendance: Henry Scarpo

Members of the public: Aaron Biasin, Steve Blanchard, Shannon Boomsma, Bob Gross, Steve Morrison, and James Schaefer.

Chair Johnson called the 26 November, 2019 Becket Conservation Commission meeting to order at 6:30 PM, read the meeting guidelines and introduced the Commissioners and Conservation Agent. Chair provided comment and documentation for the following two items:

1. Reporting of an alleged violation according to the MA Public Records Division:
 - a. When the Conservation Commission receives a notice of a possible violation to the Wetland's Protection Act, the person reporting an alleged violation will remain anonymous. However, the person reporting the alleged violation may choose to have their complaint placed in the public domain.
 - b. The Conservation Commission is not required to track the number of notices of a possible violation to the Wetland's Protection Act. However, the actions the Conservation Commission take to investigate and or address any notice of a possible violation must be placed in the public domain.
2. Public access to emails and letters provided to the Conservation Commission according to the MA Attorneys General's office:
 - a. We do not need to read the emails and or letters in a public meeting. That is up to the chair to decide.
 - b. We are required to disclose in a meeting that public comments were provided to the Commission in the form of letters and emails.
 - c. Inform the public that anyone submitting a letter or email that is a comment on an issue before the CC is by statute a public document.
 - d. Inform the public that these public documents will be provided to a member of the general public unedited upon request.
 - e. The AG's office said in the interest of moving a meeting forward, we must balance transparency with effectiveness of an open meeting. We may limit the time of public comment or be silent.

Public input and comment for items not on the Agenda. None offered.

New business

A Request for Determination of Applicability submitted by Daniel & Sadie Mecca of 275 Maid Marion Lane (Map 217, Lot 254) for the installation of a replacement septic system. Agent Stucklen reported the applicants have requested a continuance until the December meeting as the project is first going before the Board of Health. Motion made to continue the RDA for the installation of a replacement of a septic system at 275 Maid Marion Lane (Map 217, Lot 254) until the 17 December, 2019 Becket Conservation Commission meeting, (Dixon/Babcock). MSV.

A Request for Determination of Applicability submitted by David Levenfeld of 293 Old Pond Road (Map 211, Lot 49) for the regrading and widening of an existing driveway and removal of trees.

Commissioners completed a site visit. S Blanchard, S Morrison, and S Boomsma were present representing the applicant. S Boomsma provided an updated plan to the Commission and explained the extensive renovations planned for the house requires improved access for equipment as the current driveway is too constrained. Some of this work is within the buffer to Center Lake. Additional proposed work includes rebuilding the stairs leading to the house, replacing stairs to the dock supported by techno post, expanding the seasonal dock and installing a shed on the bank ten feet off the shoreline. This shed was not included in the RDA filed and is requested as an amendment. Commissioner asked where the dock sections would be stored off-season. S Boomsma was not sure but it was suggested the dock segments could be placed beneath the proposed shed. Commissioners did not want the dock sections to disturb any vegetation or the bank of Center Pond. Options discussed included storing the sections under the shed, hanging sections from the shed or storing pieces in the uplands. In response to a question about the graded area being a temporary, S Boomsma stated the regrading was temporary and the area will be reseeded. Another requested amendment to the RDA was shown in a new plan provided by S Boomsma. This plan shows a reoriented access drive in a switchback configuration from the road up the slope toward the house. S Morrison explained the narrow road and lack of parking would make it difficult to complete the renovations. There is no place to park and vehicles could block the road at times. Commission discussed if this proposed work could be an amendment to the RDA as it is a significant change within the buffer area of Center Pond and this change has not been shared with MA DEP. Commissioners were in agreement, the reconfiguration of the driveway requires an NOI. Motion made to issue a negative determination #3 for the work proposed in the RDA and as shown in the updated plan dated 11/26/2019 at 293 Old Pond Road (Map 211, Lot 49) with the following special conditions: the dock sections are to be stored in a manner that does not result in the disturbance of any lakeside vegetation or bank area and the regraded area will be reseeded with a conservation mix as soon as the project is completed, (Dixon/Babcock). MSV.

A Request for Determination of Applicability submitted by Harriet Glassman of 293 Old Pond Road (Map 210, Lot 53) for the removal of three trees in the buffer zone. The Commissioners completed a site visit. A Biasin of Berkshire Engineering explained the homeowner had a tree fall on their dock last year and wish to be pro-active about removing any potentially dangerous trees. Two of the trees proposed for removal are on the neighbor's property and the neighbor has provided an email granting permission for the removals. These trees will be cut at ground level. Commissioners asked if the applicant would consider leaving 'stalks' for wildlife value? The larger tree proposed for removal is on the applicant's parcel and is not dead and appears to be in good health. Commissioners asked if the homeowner would be willing to remediate the loss of this large and healthy tree with shrubs to replace some of the lost wildlife habitat? Representative felt the owner would be amenable. Motion made to issue a negative determination #3 for the removal of three trees as described on the plan provided with the RDA filing for 293 Old Pond Road (Map 210, Lot 53) with the special condition that a 1:1 replacement planting of native shrubs will be completed by June 1, 2020 for each tree removed, (Dixon/Babcock). MSV. Requested the paperwork be sent to Berkshire Engineering. Agent Stucklen will send a letter to the applicant requesting she consider leaving eight foot 'stalks' and not cut the tree at ground level as this provides wildlife habitat. Commissioner mentioned wildlife fencing was observed during the site visit and the letter should include information about the pertinent WPA requirements relative to wildlife fencing and encourage the homeowner talk with the Commission.

A Notice of Intent application submitted by James and Donna Schaefer for the installation of a second garage, expansion of a driveway, and repair of deck footings and retaining wall at 138 Bonny Rigg Hill Road (Map 218, Lot 128; DEP File #102-0448). Commissioners completed a site visit. J Schaefer submitted revised plans to the Commission two weeks previous but copies were not provided to MA DEP. The plans show landscaping, site details, elevations, and the deck supports. Agent Stucklen summarized the comments received from MA DEP including the emphasis on the special requirements for work in a Riverfront Area. This project could be considered a redevelopment project. As redevelopment an alternative analysis would not be required but 2:1 mitigation for any disturbance of the Riverfront Area

above 10% would be needed. J Schaefer mentioned the plans do not show the planned removal of the gravel currently adjacent to the house from the lower deck area to the car parking area on the north side of the house and subsequent revegetation this area. This is an approximately 1,200 square feet reduction in imperviousness. The garage is approximately 300 square feet and the driveway extension is approximately 600 square feet. J Schaefer discussed if the new garage is considered disturbance with Mark Stinson, (MA DEP). Consensus was the second garage was not new disturbance and would not need mitigation leaving the driveway extension as the only disturbance needing 2:1 mitigation. Without more precise measurements the Commission lacks the information needed to confirm the conversion of the gravel area will meet the mitigation requirement. A vote will need to be postponed until the additional information is provided. The Commission discussed the new deck footings and requested the erosion control extend further to the north- past the edge of the deck. Commission also asked for all new plantings be native species and the planting list should be provided to the Commission. This information should also be sent to MA DEP. Motion made to continue the public hearing for DEP File #102-0448 until the 17 December, 2019 Becket Conservation Commission meeting, (Dixon/Babcock). MSV.

J Schaefer raised the issue of the draw-down of Indian Lake. Because of the recent rains the draw-down is unlikely to meet the target by the end of November. The Indian Lake Association would like to extend the draw-down. Commissioners noted the OOC requires a 30 November end date for the draw-down and a maximum draw-down rate. Draw-down must stop by 30 November. A letter from MA Natural Heritage stating an extension would be acceptable may be submitted to the Commission for consideration but until this happens all of the conditions in the OOC are in effect.

*Ratification of an **Enforcement Order** issued to Karen Availle of 318 County Road (Map 409, Lot 20) for unpermitted work in the Riverfront Area.* The Enforcement Order (EO) prepared at the October meeting needs the Commissioner's signatures. Agent Stucklen provided a brief update. Stockman Associates was hired as the environmental specialist- a condition of EO. Emily Stockman is expected to be at the December meeting to address condition #3 in the EO. Motion made to approve the nomination of Emily Stockman as the environmental consultant per the condition in the Enforcement Order issued to Karen Availle, 318 County Road (Map 409, Lot 20), (Dixon/Babcock). MSV. Agent Stucklen also reported the EO was appealed to DEP in Boston. The appeal was transferred to the Western MA DEP office and Mark Stinson. Commissioner Babcock again recommended the Commission be pro-active about educating landowners about Riverfront Resource Area and the pertinent regulations in the WPA. The Commission will discuss possible outreach avenues and materials. Chair further expanded on his discussion with the AG's office concerning open meeting law and reports of potential violations. Under the protections afforded a 'whistle blower', the privacy of someone reporting a possible violation must be maintained and the Commission does not have to reveal how many complaints are received by the Commission. Agent Stucklen reported the lawyer for K Availle did ask for this information for a portion of this year.

Old Business

*A **Notice of Intent** application by the Department of Conservation and Recreation for the initiation of an Aquatic Management Program to control nuisance aquatic plants and maintain future vegetation at Buckley Dunton Reservoir (Map 203, Lot 1; DEP File #102-0446).* Agent Stucklen informed the Commission the answers to the follow-up questions sent to the applicant were received today (11/26/19). Copies were disseminated to the Commissioners for review. DCR requested a continuation of the public hearing to February or March. Agent Stucklen also reported she was unable to find any record of prior hydro-raking. Commissioners read the Q&A responses. After a brief discussion the consensus was the answers consisted of statements with no data, pertinent citations or other substantiation of the answers. Commissioners did not have any additional information requests which would be a reason to continue the public hearing. Commissioners detailed the concerns related to the proposed treatment as an ecological restoration project including:

The applicant did not provide recent data or studies to challenge the MA DEP's assessment of Buckley Dunton as impaired only for mercury in fish tissue in the most currently EPA approved assessment of the Commonwealth's waters, (the *Integrated List of Waters*). The MA DEP did not consider Buckley Dunton

euthrophied or degraded because of nuisance aquatic vegetation. Additionally, Buckley Dunton's watershed, with less than 10% of its area developed, is dominated by undisturbed forest and natural areas within October Mountain State Park. The literature indicates with such a small percentage of development the water way is highly unlikely to experience water quality degradation such as eutrophication. If not degraded the applicant would need to make a stronger and substantiated explanation of how the proposed work would constitute an ecological restoration. The limited dissolved oxygen and secchi disk data is over five years old (2014) and does not support the claim there are water quality issues in Buckley Dunton or that past treatment to reduce nuisance native plants has resulted in better water quality, (the D.O. was higher before the first chemical application than measured prior to the second chemical application during the summer of 2014. The post treatment readings were slightly higher at the surface and 1 foot but given the water temperature was significantly cooler the percent saturation was not improved. The DO was lower near the lake bottom post chemical treatments despite cooler water suggesting no improvement in water quality if only based on DO. The limited data in the 2014 report, DO and water temperature, lacks metadata, such as time of day of the sampling, and does not include other important factors, chemical constituents and aquatic life data needed to make a well-informed assessment of water quality).

The NOI states the proposed project would increase the dominant ecosystem, open water. and decrease an area populated by a native plant community. The applicant did not provide rationale and scientific justification for why the conversion of the target area from native aquatic vegetation to open water habitat is desirable and would be a beneficial ecological restoration. Given the vast majority of Buckley Dunton is currently open water habitat, the applicant did not provide an explanation why eliminating a native plant colony is not a loss of habitat diversity. The statement that by eliminating the native vegetation in the cove, "the benthic plants will have the ability to recover and increase the aquatic plant diversity," (11/26/19 response to questions) was not supported by data, the scientific literature or by the past history of the treatment of the cove. The 2014 where the elimination of the native vegetation did not result in an "increase in plant diversity" but a return of the conditions the applicant finds warrants more aquatic plant management. Additionally, the potential the physical disruption caused by the harvester and the denuding of the cover of the native vegetation may result in non-native invasive plants taking hold in the cove was not addressed in the NOI.

The NOI states bladderwort goes through "boom and bust cycles" (Ibid). No explanation and scientific support were provided to explain the ecological restoration advantage of treating the native bladderwort in one small cover during a 'boom' phase versus simply waiting for a 'bust' cycle and allowing the ecosystem to follow this natural cycle.

It was not demonstrated that this work is a part of a comprehensive long-term aquatic management plan for Buckley Dunton. It is the Commission's practice to require a holistic management plan for aquatic vegetation management.

The response to the question challenging the claim that this proposed project would provide flood control provided no rationale or calculations on the flood gains anticipated by plant removal or that flooding is a concern for this area. The answer didn't address the Commission's observation that active manipulation of the water level using dam releases would afford more effective flood management if flooding is a threat to the surrounding areas.

Motion made to deny the request to initiate an Aquatic Management Program to control nuisance aquatic plants and maintain future vegetation at Buckley Dunton Reservoir (Map 203, Lot 1; DEP File #102-0446) presented in the NOI submitted by the Department of Conservation and Recreation, (Babcock/Dixon). MSV.

Additional Items

Update Re: Enforcement Order for A. and V. Bleier, 819 Bonny Rigg Road (Map 416, Lot 23), for unpermitted work impacting bordering vegetated wetland, buffer zone, and intermittent stream; and Enforcement Order issued to L. and N. Dean, 765 Bonny Rigg Road (Map 416, Lot 22), for unpermitted work impacting bordering vegetated wetland, buffer zone, and intermittent stream. The Bleier's did not respond to the Agent's request to provide the resume of their selected environmental consultant by the 15 November deadline. Commissioner reported there was no one on the Berkshire Engineering staff list on their website with the first name provided by A Bleier last month though it is unclear how often the website is updated. Commissioners discussed options and the history of noncompliance relative to the conditions

contained in the EO. Consensus was to send a certified letter notifying the land owners that given the significant delays in meeting the requirements of and deadlines provided in the EO, the Commission will hire a suitable wetland consultant, to be paid for by the landowner, if the credentials and contact information of the landowner's nominated environmental consultant was not provided by 13 December, 2019. Commissioners noted this is a generous extension to the timeline in the EO.

Update Re: Potential Violation 61 Donald Drive (Map 203, Lot 8) resulting from the removal of trees along the bank of Buckley Dunton Reservoir. Agent Stucklen sent a letter about the tree removal to the correct address on 18 November requiring the landowner contact the Commission by 10 December, 2019 or an Enforcement Order will be issued.

Update Re: Potential Violation 344 County Road (Map 409, Lot 16) regarding a possible animal housing within the Riverfront Area. Agent Stucklen sent a letter to the landowner about a possible violation which could result in an Enforcement Order and requesting the landowner contact the Commission. Owner left a message at the office and Agent Stucklen responded and left a voice message and will continue to work on setting up a site visit.

Discussion: The role of public comments in Becket Conservation Commission public meetings. This issue was explained in the meeting introduction.

Discussion: Attorney General's input on anonymous tips regarding potential violations reported to the Becket Conservation Commission. This was also covered in the meeting introduction.

Discussion: AG guidelines for holiday functions, qualifying as "event planning with no public purpose". Commissioners signed a statement to that effect.

Minimum submission requirements. Agent Stucklen explained the minimum requirements have been changed to one original and one copy of submissions to reduce paper and other measures to reduce materials such as thumb drives and CDs. Agent Stucklen also updated the Commissioners on her progress to improve the project tracking database. Commissioners commended Agent Stucklen on her hard work on this valuable and useful tool.

The Commission will need to provide a budget to the town administrator soon and also an annual report. Annual report and budget should be on the December agenda.

In the new year the Commission would like to host an outreach and education workshop.

General Mail: Board of Health sent a notice for a project that maybe jurisdictional. Agent Stucklen will notify the Board of Health of this likelihood. A forest cutting plan was received for a 14-acre parcel.

Review and approval of October 22nd, 2019 Conservation Commission Meeting minutes. Motion made to accept the 22 October, 2019 Becket Conservation Commission, (Dixon/Johnson). MSV with one abstention.

Action Items:

- Agent Stucklen will send a letter to the H Glassman requesting she consider leaving eight-foot stalks for each tree cut. Commissioner mentioned wildlife fencing was observed during the cite visit and the letter should include information the WPA applies to wildlife fencing and encourage the homeowner talk with the Commission.
- Certified letter to A and V Bleier regarding EO conditions.
- A Dixon to provide copy of last year's budget.
- Budget and annual report on December agenda
- Agent to contact BOH about possible WPA jurisdiction for a project before the Board.