

Conservation Commission Minutes, 06/15/2017

Lenox Conservation Commission
Landuse Meeting Room
June 15, 2017
Minutes

There were no filings for the Commission to act upon.

Members present: Chair Neal Carpenter, (NC); Tim Flanagan, (TF); David Lane, (DL); Joseph Strauch, (JS); Rose Fitzgerald Casey, (RFC); Vince Ammendola, (VA)

Members absent with notification: Dick Ferren, (DF)

Staff Present: Peggy Ammendola, Land Use Clerk

Site Visit:

Jennifer Sagalyn, Laurel Lake Realty Nominee Trust, Sagalyn Jennifer/Jeffrey Trust, 40 Sargent Brook Road-On June 4, 2017 NC went to the site as the property owner wanted to fix the muddy driveway by putting in crushed blacktop. NC said that the drive was 92 feet from the Laurel Lake. He advised the property owner that this would not require a filing with the Commission.

Other Business:

Joseph Sonsini, 0 Lee Road, Map 2 Parcel 7-NC said that he is working on a project regarding this property which is presently under a sales agreement. Several years ago, prior to Mr. Sonsini purchasing the property, a Certificate of Compliance was issued for DEP File # 198-203 when the property was owned by David Segal but it has been determined that it was never recorded at the Registry of Deeds. (David Segal was the Owner listed on the Order of Conditions and Floyd Tuler was the Applicant.) NC said that he will be trying to make contact with Mr. Tuler or Gary Johnston who also has been associated with this property to find if they have the original Certificate of Compliance. If the original cannot be located, another Certificate will have to be issued.

Laurel Lake-On June 9, 2017, Mark Alimansky, President of the Laurel Lake Preservation Association (LLPA) sent an email to NC which reads as follows:

The Lenox Conservation Commission approved a Notice of Intent (NOI) (DEP 198-0242) in October 2010 filed by the Laurel Lake Preservation Association (LLPA) for a three foot drawdown of Laurel Lake.~ The drawdown was approved for each year of a three year period (2010-2011, 2011-2012, 2012-2013). ~In 2013, the state legislature extended existing NOIs for an additional four year period (2013-2014, 2014-2015, 2015-2016, 2016-2017).

~ The LLPA requests that this existing NOI be extended for an additional three year period (2017-2018, 2018-2019, 2019-2020).~ We were advised by Mark Stinson in the Massachusetts Department of Environmental Protection, Western Region, that the LLPA has this option. ~As a consequence, the LLPA seeks the approval of the option by the Lenox Conservation Commission at its next scheduled meeting.

Should you have any questions, please contact the LLPA.~ We look forward to your notification.

TF, referring to DEP regulations and the Conservation Commission Handbook, advised the Commission of the procedure in dealing with the request. Following the issuance of an Order of Conditions, the next formal step would be a request by the applicant for a Certificate of Compliance. An applicant has the option to request an extension up until 30 days before the expiration of an Order, which he believes is in October 2017, therefore LLPA is in the window of opportunity to request an extension. TF said that the Commission has the option to grant an extension or not and that would require a vote of the majority of the Commission. This procedure does not require a public hearing notice and the vote would be taken at a meeting and not in a hearing.

TF said that the normal expectation is that an applicant completes all of the work by the expiration deadline which is 3 years after the issuance of the Order of Conditions, but when the project cannot be completed in time, it is reasonable to request an extension. In referring to the Handbook for Conservation Commissioners, he said that the Commission should be as careful in scrutinizing a request for an extension as the original NOI and a site visit is important for the Commission to evaluate the status of the project and compliance with the Order of Conditions.

TF said that there are five circumstances under which the Commission may deny the request for extension one of which is if there is new information that was not available at the time the Order of Conditions was issued. The Commission has new information that should be considered in light of the conditions that the Commission issued, and in fact it was the Commission's intent at the time of issuing the Order of Conditions to get new information. This is why the Commission asked LLPA to do surveys and reports so that the Commission would be provided with information they didn't have at the time of issuance. TF said that in his opinion, it would not be appropriate for the Commission to grant the extension because of new information and that the Commission should let the Order of Conditions expire and then deal with the knowledge they have if LLPA wants to do more work in Laurel Lake. He continued that in addition to the report being new information, he has had personal communication with eight individuals at Mass Wildlife about drawdowns and the impacts in the lake and in particular, the Commission's Order of Conditions for Laurel Lake. TF said that he has talked to Mark Tisa, Deputy Director, and Todd Richards, Assistant Director/Operations at the Lake and Pond Owners Association Conference at Berkshire Community College last year, both of whom did presentations about drawdowns. He has also talked to Tom French who is the Assistant Director of Natural Heritage Endangered Species Program; Eve Schlüter, Chief of Regulatory Review; Peter Hazelton Aquatic Ecologist; Mike Jones, State Herpetologist; Andrew Madden District Supervisor Division of Fisheries & Wildlife Mass Wildlife's Western District; and Leanda Fontaine Gagnon, the District Fisheries Biologist. He said that each of these individuals said that

concerns were raised over drawdowns and that they would like to see a different view and a new policy coming forward from the Division of Fisheries and Wildlife about how the conservation commissions should handle this.

TF said that the 2015 Massachusetts State Wildlife Action Plan has weighed in on this, and identifies priority species and habitat and management strategies. It lists what the state feels should be protected priorities for all the different resource areas and includes a chapter on lakes and ponds. He said that they have identified in lakes and ponds 59 species they call the greatest conservation needs. This is information that the Commission didn't have before but would take into account if the Commission was reviewing again. Additionally, TF said that the International Union for Conservation of Nature and Natural Resources lists drawdowns as a threat to natural ecosystems. TF said that the latter document references USGS scientists and in particular Dr. Allison Roy of the UMass Department of Environmental Conservation. He spoke to Dr. Roy and Jason Carmignani who works with Dr. Roy, both of whom were doing studies in Massachusetts about the impact of drawdowns and their conclusions were that drawdowns have a significant impact on native species.

In conclusion, TF said that he has a lot of documentation on drawdowns, new information that the Commission did not have access to when the Commission wrote the original Order of Conditions and he does not support extending the Order of Conditions.

TF made a motion to deny the request for an extension of the Order of Conditions under the authority of 310 CMR 10.05 Section 8 (b) 2., which says: "Where new information not available at the time the Order was issued, has become available and indicates that the Order is not adequate to protect the interests identified in the act." TF added that his conclusion is the Commission has the information and the Commissions eight year old order does not protect the interest. JS seconded the motion and the Commission voted to agree 6-0.

Andrew Lane, 114 Hubbard St., Map 47 Parcel 60-Provided to the homeowner a form to request a Certificate of Compliance.

Baker's Pond-Follow up to June 1, 2017 meeting-DF and TF provided a document that they compiled following a site visit requested by Town Manager Chris Ketchen to determine informally if the project was in compliance at the. This document reads as follows:

- Restore water level to 85.3; as built spillway structures, bank, pond bathymetry, and path locations must comply with approved Notice of Intent Plans and Order of Conditions
- Repair and replant bank and S.E.C. areas as needed after water level and spillway modifications
- Decommission access road and restore native vegetation
- Confer with Conservation Commission about planting plan

The Commission discussed and agreed to the above points and requested that PA provide the above to Mr. Ketchen.

351 Housatonic St. On June 6, 2017, Nancy Schaffer, a paralegal with Smith Green and Gold, LLP in Pittsfield contacted Gwen Miller, Land Use Director, via email regarding a request for a Certificate of Compliance (CoC) for property owned by Ellen Brodbar. Ms. Brodbar, who is represented by Attorney Virginia Stanton Smith was scheduled to close on the sale of her property on June 9, 2017. Ms. Schaffer said that the missing CoC is considered a title defect that must be resolved in order for the Seller to give "good title" to the Buyer. She was asking to see if it could be located, and if it couldn't be how to proceed in order to get one. *NOTE: Attached to this email was an Order with the hearing date of March 21, 1977.*

PA researched Conservation Commission files and sent the following response to Ms. Schaffer:

"Re: 351 Housatonic St., Brodbar. I located a file in the basement under the name of David Roche. ~{Our archived files are filed by name, and later, within the last several years, we began filing under map and parcel numbers.} ~I began the search under the name "Brodbar" and when I found nothing looked under the map and parcel numbers associated with 351 Housatonic. ~I found nothing. ~Referring to your attachment, Ms. Schaffer, I searched under the name of David Roche and found a file for Housatonic St. Although the street address of 351 Housatonic isn't referenced, the file contains a copy of the same attachment you sent yesterday. ~I was unable to find that a letter of compliance was ever sent. ~In that file I did find minutes from 1994 and have typed those excerpts as follows:

March 17, 1994

"David Lane could not find anything in the Registry of Deeds regarding a lien on the property, and the DEP has no file. There are too many issues that need to be clarified before the Commission can issue a Letter of Compliance. Whether a water line runs under the culvert is not certain. DIRECTIVE: Send a letter to Heller's office inviting someone there to come to the next meeting so these issues can be clarified and needed action taken. A site visit may be necessary."

April 7, 1994 CC minutes states:

The Commissioners believe that the Order of Conditions that Laurie Robbins (of Phil Heller's office) has is for a different culvert than the one under question. The Commission cannot issue a Letter of Compliance until the conditions stated in the Order of Conditions are met. Directive: Write to Ms. Robbins and invite her to a Commission meeting with all of her papers so this matter can be clarified.

I have spoken to Neal Carpenter, Chair of the Conservation Commission regarding your request and he subsequently has spoken to David Lane who is still on the Commission. ~I understand that this culvert is defective, and therefore, seeing that this is a different commission than before, cannot provide a Certificate of Compliance. ~The previous Order of Conditions would have to be closed out and a new Notice of Intent would have to be filed.

Mr. Carpenter has told me that if you have any questions you may contact him."

NC advised the Commissioners of this request and advised them that he had consulted with Mark Stinson of DEP. Discussion ensued. The consensus of the Commission was that this was handled appropriately.

Approve Minutes-June 1, 2017- JS made a motion to approve the minutes. DL seconded the motion and the Commission voted to agree 6-0.

Respectfully submitted,
Peggy Ammendola