

**Lenox Conservation Commission
Landuse Meeting Room
January 7, 2016
Minutes**

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

Absent with notification: Dick Ferren, (DF)

Staff present: Gwen Miller, Land Use Director/Town Planner, (GM); Peggy Ammendola, Land Use Clerk (PA)

Notice of Intent, Mitch Greenwald, Trustee, Martha Lane, Map 18 Parcels 46, 47, 51, 52, 57 and 58. Alteration of an on-site wetland buffer zone to allow for the construction of a gravel road, utilities, swale, driveways, septic and 2 single family houses. The altered BVW will be replaced with the recreation of a BVW that connects the two onsite BVWs. *Continued from October 1st to October 15th for further information. On October 15th, the Commission received an email from Rob Akroyd of Greylock Design Associates requesting that this hearing be continued to November 5, 2015 to adequately respond to some of the legal issues raised by the Commission. On November 4th, Mr. Akroyd again asked via email for a continuance until November 19th. He said that Mitch Greenwald has been in contact with Town Counsel Joel Bard. Attorney Greenwald will be sending a letter to Attorney Bard "early in the week" of November 2nd for Attorney Bard's response regarding the Town's legal position on the subject property. At the November 19th meeting correspondence from Mr. Akroyd was read into the record in which he requested another continuance until December 3, 2015. At the end of the December 3rd meeting, this matter was continued to Jan. 7th.*

Present was Rob Akroyd and Attorney Mitch Greenwald.

Mr. Akroyd presented a packet with an amended narrative, a nine page stormwater management memorandum and revised plans, P-100 and P-101 with the revision date of January 7, 2016. He summarized the revisions.

NC asked Mr. Akroyd if he had been able to secure an answer to the Commission's question regarding ownership. Attorney Greenwald responded that the Applicants, as listed on the NOI, would own the easement, therefore he did not believe the property owners' names should also be required. He also addressed the Commission's opinion that according to the Agreement for Judgment, dated December 26, 2012, which had been provided to the Commission early on in the hearing for this project, the attorney for the Plaintiffs, Lori Robbins had signed the document, therefore, a separate document with the owners' signatures was not required as the Commission had requested. *(From minutes of October 1, 2015- Chestnut Lane is a closed road that is located between Martha and Sullivan and the agreement allows Macalin Realty Trust and Richard and Cynthia Arndt, who are not a part of this application, the right to reconstruct Chestnut Lane. Mr. Akroyd said that the Plaintiffs, Jarvis and Maggio, were contesting the rights of Macalin and Arndt to reconstruct. The Land Court ruled in favor of Macalin and Arndt permitting them to reconstruct to gain access to their lots provided the Commission approves.)* Mr. Akroyd said that after consulting Mark Stinson of Mass DEP, Mr. Stinson felt that because of the judgement, the owners were not required to be listed on the NOI. Attorney Greenwald agreed that the owner's names could be on the application, but a condition in the Order of Conditions should state that the property owners under the easement would not be responsible for any other conditions in the Order of Conditions. TF questioned the Commission's authority to include such a condition. Discussion ensued as to whether or not the owners should be listed on the NOI. Attorney Greenwald stated that in his opinion

this was not necessary. It was discussed that Attorney Greenwald and Town Counsel Joel Bard could develop language that could be used as a condition in the Order of Conditions that would satisfy the Commission, but that it would be wise to share with Mr. Stinson to make certain it will be satisfactorily under the wetland regulations. TF said that regulatory language requires the Commission to have the owner's name on the application in the case where the applicant is not the owner and referred to the Department of Environmental Protection, 310 CMR 10.05, Paragraph 4 which states that "If the applicant and land owner are not the same, the Applicant shall obtain written permission from the landowners prior to filing the NOI for proposed work except for work proposed on great ponds or Commonwealth tidelands." It was agreed that this question should be put to Mark Stinson.

Discussion turned to the proposed structure and the effect of the 30 feet no-disturb zone. Attorney Greenwald asked if this was enforceable and "If conditions would work, could we do it?" referring to the construction of a structure on the lot. The Commission responded to the latter in the affirmative. Mr. Akroyd said that if a 30 foot non-disturb zone were proposed, it would eliminate the second lot and that the proponents would either accept or appeal the decision. He will discuss with his client and Attorney Greenwald.

RFC made a motion to continue to January 21st at 8:00 PM. JS seconded the motion and the Commission voted 6-1 to continue, with TF voting in opposition.

Requests for Determinations of Applicability under the Wetlands Protection Act, and the Scenic Mountain Act, Town of Lenox for property known as Kennedy Park and Pleasant Valley Wildlife Sanctuary, West Dugway Rd., Map 17, Parcel 24; Map 21, Parcels 6, 7, & 8 and Map 22, Parcels 2 & 4. The project involves the cutting of dense blocks of hardy kiwi plants. The Commission conducted two separate public meetings, one immediately following the other.

Presenting the requests were Jessica Toro and Sari Hoy of Native Habitat Restoration and Karro Frost of Massachusetts Division of Fisheries & Wildlife-Natural Heritage and Endangered Species Program.

Also present were Jane and Bruce Winn of Berkshire Environmental Action Team.

The process for controlling the kiwi, which is destroying the canopy, was detailed. Vines which are climbing into the trees will be cut to a height of 3-5 feet and pathways will be cut through areas where the trees have been pulled down by the kiwi. The cut kiwi will remain in place. Cutting will be done with chainsaws and hand loppers. There are no wetlands within the target area. NHESP will be monitoring the work as it progresses.

In regards to the RDA filed under the Wetlands Protection Act, VA made a motion to issue a Negative II Determination. TF seconded the motion. The Commission voted to agree 6-0.

In regards to the RDA filed under the Scenic Mountain Act, TF made a motion to issue a Negative II Determination. JS seconded the motion. The Commission voted to agree 6-0.

Request for Determination of Applicability, 130 Pittsfield-Lenox Road LLC, 130 Pittsfield Road Map 22, Parcel 36. The project proposes a new hotel at the site of the current Magnuson Hotel.

Bob Fournier of SK Design made the presentation. He said that the purpose of the RDA was to confirm that there were no wetland boundaries, flood plain or resource areas and indicated that this is the first of many steps to secure permits for a new hotel proposed for this site. After discussion regarding the Applicant's request, JS made a motion to issue a Negative I Determination. RFC seconded the motion and the Commission voted to agree 6-0.

There was a site visit on December 22, 2015 and attended by Mr. Fournier, TF, JS, VA, NC, and GM. DL went to the site at another time.

Other Business-

Beaver Dam near 111 Plunkett St.-The Lenox DPW has requested an Emergency Certification to lower the water level by 2 feet at a beaver dam near 111 Plunkett St. The current level is so high that if it should the dam break it could take out the culvert and road. NC made a site visit on January 2, 2016 and determined that this is an emergency. A WPA Emergency Certification Form was issued.

Henry Avenue pumping station-The Commission anticipates the DPW to file for a project to replace the pump system and 1400 feet of pipe. A site visit was conducted on December 7, 2015 and attended by Charlie Chiu, TF, JS, VA and NC.

Montessori School, 21 Patterson Rd., Lenox Dale-On December 26th NC went to the site to confirm that the new addition will not be within the proximity of the wetlands.

Approve Minutes-December 3, 2015-JS made a motion to approve the minutes as amended. DL seconded the motion and the Commission voted to agree 6-0.

RFC made a motion to adjourn. DL seconded the motion. The Commission voted to adjourn at 9:10 PM.

Respectfully submitted,
Peggy Ammendola