

Conservation Commission Minutes, 11/03/2016

Lenox Conservation Commission
Landuse Meeting Room
November 3, 2016
Minutes

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

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

Notice of Intent SMA, Pittsfield Municipal Airport (PMA), 0 West Mountain Rd., Map 27 Parcel 24. On May 15, 2014, the Conservation Commission issued a Negative Determination subsequent to PMA filing a Request for Determination for the re-clearing of an existing easement and the replacement of the existing beacon and beacon pole which had fallen into disrepair at property located at West Mountain Rd. Subsequent construction activities have resulted in additional impact within the areas subject to the Scenic Mountain Act and the need for site restoration of construction access within and adjacent to the easement on land of Mass Audubon. Informal on August 20, 2015 and the first hearing was held on September 17, 2015. Update on October 1st and continued for another update on October 15th. No one was present, nor was Commission contacted for the Oct. 15 meeting. Continued to November 5, 2015 and at that meeting this was continued again to December 3rd. The Lenox CC attended a meeting of the Richmond CC on November 10, 2015 at 7:00 PM. On December 3rd, the NOI was continued to Jan. 21, 2016. On Jan. 21, this was again continued to February 4th. At the Feb. 4th meeting this was continued to February 18th. On February 18th, the seeding and grading phase was approved and the hearing was continued to July 21, 2016. On July 21, 2016 continued to Sept. 1, 2016 and again continued to October 6, 2016. The latter meeting was canceled and continued to November 3, 2016 as per Stantec who stated that they needed information from John Burns, the peer review consultant, and correspondence from the Pittsfield City Solicitor regarding the language of the airport's legal easement which will need to be reviewed by Town Counsel.

Documents received since last meeting:

- Town Counsel's opinion dated November 3, 2016

Present were Jim McLaughlin of Stantec; Attorney Rich Dohoney representing the City of Pittsfield, and Chris Pedersen, Chairman of the Airport Committee. Mr. McLaughlin said that they have just received the Town Counsel's opinion and although he has not had a chance to thoroughly review, he feels that the attorneys seem to all agree that the airport has the right to cross the property and have the ability to have a maintenance path. Mr. McLaughlin said that they have reviewed Mr. Burns' report in which he seems to generally be in agreement with the proposal to remediate the site but has made some suggestions and recommendations. They have also received a letter from Audubon and they feel that they can agree to several items. They have not advanced their plan since the last time due to the uncertainties, but now, with having heard from everyone, Stantec would like to hear from the commission as to what they would like to see in light of the additional information which has come forth and then continue to another hearing in early December so that they can present the final plan which takes into consideration Mr. Burns' report and Audubon's requests.

TF said that it appears the easement right establishes that the Airport Commission has a standing as an applicant to file an NOI under the SMA.

He added that the Commission understands that there is a central easement for the 20 foot power line access, but a second question is if they have the right to establish a new private way in addition to the power line easement for the purpose of access and maintaining the beacon and power line. Mr. McLaughlin said that the attorneys have concluded that the easement gives broad rights to the City of Pittsfield. JS disagreed that the airport has rights to a private way.

GM observed that the Commission does not have a factual basis for alternative analysis. She also questioned what would be an alternative access.

NC stated that the damage has already been done on this site, and doesn't see that it is practical to seek out an alternate route and do damage there.

Attorney Dohoney maintains that the path existed before this project and that it was the logical access. TF responded that this has been asserted, but there is no evidence. Mr. Pedersen said that Joe Cardillo provided 20 pictures to the Commission to show the evidence of the path's existence. JS argued that this proved nothing as they were simply undated photos, with no GPS markings and feels that could have been taken anywhere in the Berkshires.

Mr. McLaughlin said that for several months they have been trying to work with everyone, taking into considerations many different opinions, so that the airport can restore the site and have access to maintain their power lines and beacon. He feels that they are close to resolving this matter.

TF asked, presuming that the lawyers are in agreement and that PMAC does have the right to access the path in perpetuity, and if there currently is an issue with either of the owners on the Richmond side, what would happen if one of the Richmond property owners didn't agree with the interpretation of the lawyers. TF's concern was that should the Commission issue an Order of Conditions, the Commission would need to know that it is practicable and reasonable that the Order could be followed. Attorney Dohoney responded that he believes that PMAC would have the same easement rights in Richmond, but stated that the Lenox Conservation Commission should assume that PMAC could satisfy that right, but that it would be PMAC's responsibility to enforce compliance. He does not anticipate there being a problem. TF reminded PMAC and Attorney Dohoney that when there had been some agreement with Stantec regarding stabilization, a Richmond land owner blocked access.

JS stated that it is the Commission's responsibility to make sure that the damage is repaired. It is also the Commission's responsibility to enforce the provisions of the Scenic Mountain Act, but it cannot be a part of agreements between property owners and third parties. JS wants to see an agreement with Audubon and what is going to be there for a trail and that it meets the Commission's standards. He added that the Commission wants to see a planting plan, any reasonable plan with what has been discussed. NC said that he would like to see a plan which incorporates what Mr. Burns recommended.

Attorney Dohoney said that they need to come to a reasonable conclusion with Audubon. Mr. McLaughlin said that a bigger issue is a gate which has been suggested by Audubon. He said that a gate would not block access as anyone who wished to access the trail could go beyond either side of the gate. TF said that the key to success is to stop the traffic so there should be discussion on whatever mechanism was needed as traffic has to be considered in the restoration area.

RFC made a motion to continue the hearing to December 8, 2016 at 7:30 PM. DF seconded the motion and the Commission voted to agree 7-0. (Stantec wasn't sure that they could be prepared for December 1st, the regularly scheduled meeting, but felt that they could by December 8th. As there were no other items on the December 1st agenda, the Commission agreed to cancel the December 1st meeting, and postpone it to December 8th. It was also agreed that the December 15th meeting would be canceled with the next meeting date to be on January 5, 2017.

Approve Minutes: *October 20, 2016-TF made a motion to approve the minutes with revisions. DL seconded the motion and the Commission voted to approve 6-0-1. JS abstained as he was not at that meeting.*

Notice of Intent, Edward Merritt, 139-2 Lime Kiln Road, Map 27 Lot 18-2. The project proposed is the construction of a 20'x30' in-ground pool, a 1300 sf associated hardscape terrace, a 10'x5'6" solar panel, a 3,000 sf studio expansion, a 20'x 30' garage and to alter the existing drive to a new layout with comparable dimensions to service said garage and studio. The pool, terrace and solar panel will be within the outer riparian buffer zone, 100' wetland buffer as well as within the 100' vernal pool buffer zone. The studio expansion and garage lie within the outer riparian buffer zone and the 50' wetland buffer. The altered drive is within the outer riparian buffer zone, the 50' wetland buffer zone and the 100' vernal pool buffer zone. *The first hearing was on October 6, 2016 and continued to October 20, 2016. At the conclusion of that meeting, it was continued to November 3rd. On November 3rd, Mr. Akroyd requested a continuance to November 17th to allow time for him to resolve a number of concerns of NHESP.*

Documents received since last meeting:

- November 2, 2016 response from Natural Heritage Endangered Species Program (NHESP)

In an email dated November 3, 2016, Mr. Akroyd requested a continuance to November 17, 2016. This is due to NHESP's response in which they stated that there are a number of matters which need to be resolved.

The Commission reviewed NHESP's letter. NC said that he has spoken to Mark Stinson at MassDEP regarding the request for a pool on the property which doesn't have a dwelling. Although reference is made to a "studio", it is actually a garage, and a pool is permitted on the lawn if there is a dwelling, but there isn't one. The Rivers Protection Act, permits work in the riverfront area, but when expansion is proposed, it is encouraged that the expansion not encroach further into the riverfront.

It was noted that the current NOI submissions on record do not contain sufficient and detailed physical site characterizations as needed to demonstrate compliance with inland wetland performance standards. The following information has been determined by the Lenox Conservation Commission to be necessary to complete a review of the Notice of Intent per Massachusetts Wetland Protection Act (MGL Ch. 131 S40 & 310 CMR 10.00 et seq.).

TF said that Mr. Akroyd has not provided the Commission the information for a proper review. All of these items have been requested before, either at the site visits, hearings, or both. It was suggested that the Commission send a letter to Mr. Akroyd confirming the continuation to November 17th and listing the items they need to make a determination on the Notice of Intent. In the event the documents requested are not presented at that time, the Commission will have the option to close the public hearing and deny the request due to insufficient information.

Items requested:

- Complete Site plan including detailed contours (2-foot or less) tied to proper vertical and horizontal datum, including indications of all jurisdictional areas, buffer zones, and floodways
- Work Area Grading plan showing existing and proposed elevation contours (1-foot or less) tied to proper vertical and horizontal datum
- Completed Conservation Restriction-There are two.
- All items required by NHESP
- Revise plan to show proper revision dates, stamped and signed

- Change the foot print of the driveway and hammerhead
- Address Audubon's questions regarding performance standards

TF added that the Commission cannot design or negotiate a project, and that the cycle of continuing the hearings should be discouraged.

DF made a motion to continue the hearing to November 17, 2016 at 7:30 and to send a letter to Mr. Akroyd confirming the continued date and with instructions that the items listed above must be submitted at that hearing for the Commission to properly review the request, the public hearing will be closed and the request denied for insufficient information. RFC seconded the motion and the Commission voted to agree 7-0.

Certificate of Compliance (CoC), Bernd Schoner, 12 Sargent Brook Rd., Map 1 Parcel 36-NC advised that he went to the site on October 18, 2016 and found that the completed project was in compliance with the Order of Conditions. Photos were taken at the site visit and were provided to the Commission for their review. RFC made a motion to issue the CoC and VA seconded the motion. The Commission voted to approve 7-0.

RFC made a motion to adjourn. JS seconded the motion and the Commission voted to adjourn 7-0. The meeting was adjourned at 8:40 PM.

Respectfully submitted,
Peggy Ammendola