

Conservation Commission Minutes, 02/18/2016

**Lenox Conservation Commission
Landuse Meeting Room
February 18, 2016
Minutes**

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

Members absent with notification: Rose Fitzgerald Casey, (RFC); Dick Ferren, (DF)

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

Request for Determination of Applicability Town of Lenox, Golden Hill Rd., Map 2 Parcel 30-0 and Map 38 Parcel 70-0, aka the Henry Ave. Wastewater Pumping Station-Demolition of existing structures; construction of new pumping station and control building; and replacement of paving, perimeter fencing and existing sanitary sewer lines to Walker St.

Anthony DeSimone, Wastewater Process Design Engineer with Weston and Sampson Engineers, Inc., presented the application and site plan for upgrading the pumping station. Mr. DeSimone said that today the Town notified Weston and Sampson that they want to change the proposed garage and control building from 50 feet by 50 feet to 26 feet by 14 feet, therefore Weston and Sampson will bid an alternate for a smaller building which would be precast concrete/prefab. If this results in a change in the project, Mr. DeSimone will come back to the Commission with a new RDA application. The proposed project includes a two bay garage; electrical control facility; storage facility for the town and what is currently proposed in the building pumping station; wet well; new valving structure; submersible pump; and sewer modification to get the facility to work. The existing aeration basin will be used for overflow storage if needed but this is not anticipated. Mr. DeSimone said that the site is mostly rock covered with about 3 feet of soil; therefore there will be some blasting. They do not know where the water line on Henry Avenue is currently located, but a temporary water line will be put in to assure that the houses will have water service. Mr. DeSimone described the path taken by the drainage from the roof which will enter the crushed stone filled ditches and then into footing drains around the base of the building. The drainage will discharge into the Housatonic River via the existing 12 inch vitrified clay pipes that were constructed in the 1970s when the original treatment plant was built. They will be tying into the drain line above the bank line. Drainage calculations are provided in the application. The catch basins will surcharge but will not leave the top of the basins. There are no issues with a 25 year storm. Hay bales, which are not shown on the plan will be added to the silt fence which is shown on the plan. Both will be put across the riverfront area.

DL made a motion to accept the project as presented with the change to include hay bales and issue a Negative II Determination. VA seconded the motion and the Commission voted to approve 5-0.

Notice of Intent, SMA, Pittsfield Municipal Airport, 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. Property in Richmond was also involved. On December 3rd, the NOI was continued to Jan. 21, 2016. On Jan. 21, this was again continued to February 4th.* Present were the following: Randy Christensen, Senior Environmental Scientist, Stantec; Chris Pedersen of the Pittsfield Municipal Airport Commission; Becky Cushing, Mass Audubon; Joe Cardillo, property owner; Clarence Fanto, Berkshire Eagle; Bruce Winn of BEAT.

Mr. Christensen said that just before the last meeting, a February 4, 2016 draft plan was submitted to the Commissioners with the request that each review during the two week period between then and now. He described that plan as having been developed as the result of a number of meetings, site visits and discussions with all parties involved who were identified as the two property owners, Audubon and Joe Cardillo; the Conservation Commissions of Richmond and Lenox; Pittsfield Municipal Airport Commission; and the contractor. Mr. Christensen said that as of today, after six months into this process and 14 public hearings, Stantec has not been able to obtain a reasonable consensus on an appropriate level of restoration to address the interests of the Scenic Mountain Act.

In the absence of an approval of the proposed plan tonight, he asked that a partial approval of the plan be granted so that Stantec could start planning for the gates, order seed and proceed with the grading and seeding phase of the project. This is work Mr. Christensen feels is critical. As soon as there is stabilization, there will be more time to establish some minimal turf and root mass which will be better for the plantings as talks continue regarding planting scheme. Mr. Christensen submitted to the Commission his Interim Plan in his letter of February 18, 2016. He read it aloud for the benefit of all who were in attendance at tonight's hearing. (The letter is attached to the minutes.)

Mr. Christensen said that the planting scheme seems to be contentious. He defended it by saying that he feels that it is a reasonable plan, not arbitrary, and is based on field data that he has collected from two different stands on this site. He would secure bare root stock from in and out of state. He reiterated that he strongly believes in natural vegetation. He said that in his involvement in the logging industry for over 20 years, he has seen roads repair themselves. His fear all along has been erosion and invasive species taking hold where none exist presently.

He has a huge concern as planting has been thrust into the equation. He said that he built a scientific based planting scheme with the knowledge of replanting for the site itself knowing that the small stock availability, and that digging in the soil would be very difficult if not an infeasible endeavor. He hopes that the Commission will consider the planting scheme which includes over 2,000 pieces of nursery stock. He wants to separate the seeding and grading from the more involved planting scheme for the time being and later have further discussions on revegetation in general.

JS asked how the soil would be prepared for seeding. Mr. Christensen said that they would go up with a light machine which is rubber tracked with a small excavating bucket and possibly one other machine. They would take the loose soil from the left hand side, the fill side, and pack it in the cut face, where they exist, to create a positive slope. This soil will be aeriated and becomes the seed platform. DL asked about fertilizing the seed. Mr. Christensen said that most Commissions object to using fertilizer, but he would not object to a slow release encapsulated form as the soil there is nutrient poor. He said that the grading will be done to try to avoid any place that would generate gully flow. There are no sensitive water ways that would receive any *eutrophication*. He repeated that he wants to keep trips up the mountain at a minimum.

Mr. Christensen said that there is a lot of seed stock adjacent to the trail, native materials and most are seed producers. He has seen fern species such as wood and Christmas ferns sprouting and they will grow in abundance. He believes that once the area is stabilized that natural colonization will quickly form. He has “high hopes” for controlling the flow.

NC said that he is in favor of the interim plan proposed.

TF stated that the choice for the tree species was based on what currently exists at the site and that Mr. Christensen is hoping for natural recolonization for the understory and shrub layer, but TF’s concern is that the Commission doesn’t have any data, or reference study plots to be able to compare or determine whether the choice is appropriate or whether the recolonization is likely or not. He said that the Commissioners can’t comment on nursery stock because they don’t know what is there. He asked how the Commission would know about the success of monitoring if there is nothing to compare it to. He concluded that he felt that a lot of progress had been made and that all parties were working in the right direction, but that there are more details to flush out. TF doesn’t feel personally that there is urgency to get the woody stock established in first growing season, but agrees that grading and seeding is critical to success of the woody stock whether it is stock that is planted or recolonized. It is necessary to have the right soil conditions first.

Mr. Christensen said that logging has occurred all over the mountain and where it has been done more recently the shrub layer is entirely composed of tree saplings, e.g. beech whips, but otherwise very few places have established shrub layers. He agreed that if the grading and seeding could be done in June 2016 he would have time to gather the data and sample data plots requested by TF and have it ready to present by the end of June to mid-July.

DL asked about the red and black raspberries that grow in the area. Mr. Christensen said that they are good as they grow in quickly and will root from the tips. They are native plants that provide good stabilization during the interim deferring to a later successional species. A disadvantage is that nursery stock would be crowded out. He would like to have Audubon’s opinion.

DL said that he had no problem with seeding and fertilizing. TF said that he didn’t have a problem with the seeding plan with the fertilizer if it was used in moderation, but he said he wanted clarity on what was meant by “restore the grade”. In the presentation he has heard both “Let us try and make it look like it did before.” and “Let us put it back sort of that way, but leave a trail.”

Mr. Christensen responded that the contractor did not cut through “virgin territory” and provided photos.

TF reviewed this history since the RDA was first filed and subsequently approved to go up the easement and work within a 25 foot radius of the tower. He said that when the documents went out to bid, the information provided for the RDA was clearly defined on all of the Stantec drawings, but at some point between when the contractor was chosen and when the Lenox Conservation Commission found out in August 2015, a roadway plus landing had been constructed. TF continued to say that the Commission heard about the fact that there may have been a trail there but that doesn’t justify putting in a roadway without a permit under the jurisdiction of the SMA. TF added that when discussions began on a restoration plan there was mention of restoring the grade to a reasonable average grade to which the Commission agreed, but when the Commission got a proposal it included a trail. TF asked at what point did the PMA decide a trail was necessary and why.

Mr. Christensen responded that it was a slow evolution and the trail was a focal point of the proposal. He reviewed how the events transpired. When the specifications were established and the contractor was selected, they met on the property with the property owners. There was a trail network going up to top and it was “left loose on the plan” that the contractor had to investigate ways of getting up to the top without serious damage. TF asked Mr. Christensen at this point if this was in the contract. Mr. Christensen responded that it was. TF said that the Commission hasn’t seen a copy of the contract, only the bidding documents. Mr. Christensen resumed saying that he went on site with Cody Miller, Resident Inspector, of Stantec; Joe Cardillo, property owner; Rene Laubach, former sanctuary director of Pleasant Valley-Audubon; and Mark Germanowski, the former manager at PMA. They looked at the trail network and the contractor thought that he could use that trail to get his materials up to the site of the beacon. The easement would have the power lines and the easement language allowed the contractor to “snake his way up”. Mr. Christensen said that it was not anticipated, never proposed, that the trail would be improved to the degree it was. That was the violation and this is when the SMA NOI was submitted to the Commission.

Mr. Christensen said that in his original proposal, the first draft, he was to trying to leave the trail in place, put 19 water bars in place to break into micro water sheds, etc. with the reasoning being that this would provide stabilization as water is considered to be the biggest enemy on site. The area would then be seeded and natural restoration would then take place. Between that and going to all of the parties, working with Audubon, and this commission there was a lot of discussion about restoring the entire slope. At that point, conversations began about grading and planting schemes. Plantings were not in the original draft. Suddenly the need to identify and talk about a trail going up there, came to be a reality and the Commission asked us what we were going to do if we had to do maintenance on the beacon. It was realized that to gain access again, we would “have to bust up the area again”. It seemed logical at that point, since we need access for some maintenance needs, that there should be some basic minimal access. Mr. Christensen provided some photos of the trail and said that it is fairly clear, be it illegal use or frequent use by visitors to the park, that it is “kind of uncontrolled”. In trying to satisfy the SMA, Mr. Christensen said that he didn’t think that a proposal that was something like that would be accepted so he took it beyond what was existing conditions with revegetation to make sure that no soil would be lost. The trail is wider than it was, it is improved, so they wanted to restore to some nominal width. Mr. Christensen said that there wasn’t a time that the airport commission approached Stantec to have a maintenance trail, rather it evolved in the discussions with the various commissions and parties. It began with “one guy on a dozer”, said Mr. Christensen, and that all were very surprised. In conclusion he stated that they are sensitive to the process that they are in and to the penalties involved and are working toward a final end with all parties being a part of the discussion.

JS asked if Mr. Christensen if he could produce any documentation of the trail before this project, noting that there was no indication of where the photos were taken. He said that these photos could have been taken anywhere in the Berkshires and that the Commission does not know that there was a trail along the way. Mr. Christensen responded that he didn’t have a station by station documentation or maps.

Ms. Cushing was asked by NC if she had any information from Rene Laubach that would document that the trail was there. Ms. Cushing responded that she did have a report and memo from Mr. Laubach which only refers to the permitted use of the actual easement, but wasn’t aware of the meeting referred to by Mr. Christensen. She said that she did have a discussion with Mark Germanowski when the work was starting, and her question to him at the time was if this pertained to the permitted work. Mr. Germanowski agreed. She doesn’t know if there was any record other than what the project entailed.

Mr. Christensen reiterated that Mr. Germanowski, Mr. Laubach and Mr. Miller walked the trails, but Mr. Miller is the only one with Stantec who could expound on that, but as he understands, the widening of the existing trails was not proposed at that meeting to the extent that they were, but there were the existing trails that would be utilized. He added that there are a number of existing trails at the site, including those that are next to where their temporary access road is located. He has walked the trails with Audubon representatives and many times himself.

Mr. Cardillo opined that he feels that this has been a thought-out process and that Mr. Christensen should be credited for his due diligence. He said that when he became involved it had been proposed that planking would be put in through the wetlands on the Richmond side during the winter for access. At that time he suggested that this access could be avoided if they used his drive, easement and field. Mr. Cardillo produced pictures that were taken of existing conditions before any disturbance. He said that there are banks that were cut 40-50 years ago that are remaining with leaf cover. He doesn't understand why there are demands to create something that was not there. He knows that the federal government requires the beacon to be on the site, but they leave it up to all of the parties to work together to achieve the goal. The nine photos were reviewed with the Commission. Mr. Cardillo said that in reality the width of the trail at some points was anywhere from 15 to 20 feet wide, but it had slopes in it. The contractor took fill from the left side and put it on the right so that he wouldn't tip over. He stressed that there was no malicious intent. Mr. Cardillo wanted the Commission to know that the property has not been abused, no ruts from four wheelers and that he has been proud of how it has looked in the 15 years he has been there. He feels that it is unfair that Stantec is being required to create something that was not there or to make it into a sanctuary that wasn't there to begin with. The plantings required could be subject to damage if/when maintenance or repair has to be made to the beacon.

JS said that Mr. Cardillo's photos did not prove anything. Mr. Cardillo argued that if JS were to walk the land, he would see that the photos are accurate. JS said that when the original notice was filed, the Commission was told that anything big and heavy that had to be taken to the beacon could be brought in by helicopter and that the bid reflects that. JS said that Audubon wants to put logs across the trail so that there is no trail, and he supports that. Mr. Christensen responded that the intention was to minimize the trail, but not eliminate it. He didn't want to speak for Audubon, but said that the February 4th version of the plan which maintained the trail through the site wasn't an agreeable document with that land owner. He stated that a 250 pound item could be brought to the beacon by helicopter, but maintains that is not the right thing to do. He is requesting to maintain the maintenance trail with access to the beacon and to restore it beyond the level that was there.

TF told Mr. Christensen that both the Commission and Audubon had asked about the maintenance history and asked how likely or how often it would be necessary to deliver a 250 pound item up to the beacon. TF said that he understood that there is a need to keep the mechanical apparatus working, semi-annual inspections, replacing the beacon light bulb, but he does not feel that other than the 250 pound item, that a vehicle would be necessary to get to the site. NC disagreed, saying that just getting the tools to the site would require a vehicle. Mr. Christensen said that they did provide information in Appendix B and Jim McLaughlin had provided ranges for maintenance which are the cut sheets that were made a part of the document. He said that it would be unlikely to be every 2-5 years, but the wild card would be lightning strikes or perhaps vandalism. This is a navigational beacon for public use required by the federal government that must be maintained in working condition. TF said that the bid document seemed to say that the beacon is an optional installation and in fact if the federal government didn't provide funding to the City of Pittsfield, the City of Pittsfield wasn't going to bother with doing it. TF asked if it wouldn't be more correct to say that if you take the federal money then PMA would have to meet a certain physical standard for the installation. "Isn't that different than saying that the federal government is requiring this?" asked TF.

Mr. Christensen outlined the procedures that apply in order for a facility to comply with the directives when accepting federal money. He said that there is only one public use airport in MA that doesn't accept federal money and therefore it is the only one not obligated to comply with federal directives. He added that the federal government is knowledgeable enough to know that these are expensive ventures so they require going through a master plan process. The PMA did this and got on a capital improvement plan that aligned with the Mass DOT and FAA budgets and finally got on the program.

TF said that the new beacon is twice the height of the previous beacon, but the RDA approved by the Commission called for a replacement beacon at the existing beacon height. Mr. Christensen responded that the height is due to a study of the height of the trees and that it had to be taller than the tallest tree.

NC said that he doesn't have a problem with having a six foot wide trail. He said that while it is true that a trail wasn't a part of the request, the Commission has approved trails, and a trail isn't a major project. Additionally access is needed because one can't climb the ledge to access the beacon.

JS said that he didn't think the landowner wants a trail. NC responded he thinks that the trail already existed and asked Ms. Cushing to speak for Audubon. Ms. Cushing said that Audubon's priority is safety so if the PMA says that there is no other way they can maintain the safety of the beacon other than having an access path, Audubon will not stand in the way. She added that Audubon is completely satisfied with how it was laid out in the document as to why there is a need for an access path but they would like it spelled out as to how often vehicular access is needed. She said that Audubon didn't put a trail there.

DL suggested the Commission make a decision on the request to repair and seed and deal with the other phases later.

Mr. Christensen said that the grading would focus on protecting the cut face and using the fill that they can to promote positive drainage across the features so that they don't have the flow runs that exist on the other trails.

DL said that he knows that the seeding will be done and that it will germinate but wanted others to know that come fall, that the trail will not be all grass by that time. The seed will hold the slope, but it will be covered with the leaves that will hold the water.

JS asked that Mr. Christensen establish points along the trail and take photos every 6 months so that the Commission can see the progress. He agreed and referred to the plan related to the grading scheme. Discussion ensued regarding success indices, maintaining ratios, sample plots and reference was made to the last page of the most recent plan.

Mr. Winn asked for clarification on what the applicant was requesting at this hearing. It was explained that the Commission was considering the request that was read by Mr. Christensen earlier tonight, a final grade and seeding. He wanted it known that the biggest stake holder, the public, has been left out and that it appeared to him that the Commission was retroactively permitting work outside of the original permit. The Commission stated that the applicant would be grading to put back as close to the original as possible. Mr. Winn asked if the original topography could be defined and if the applicant could be required to and put it back to that condition. DL responded that there is no way possible that the area could be restored to 100% of its previous condition, but that if it was 75%, he would be satisfied. JS added that everyone should be practical, and everyone involved wanted to remedy the situation. Mr. Winn responded that he would be very satisfied if the applicant was putting it back to 75% of the original grade.

DL made a motion to approve the interim plan, Pittsfield Airport-Yokun Seat Hazard Beacon-Scenic Mountain Act NOI Access Road Restoration Plan-Interim Plan dated February 18, 2016, as read aloud by Mr. Christensen, for access road grading and seeding. JS seconded the motion. The Commission voted to approve 4-1 with TF casting the dissenting vote.

Mr. Christensen said that he will be giving updates to GM. He will be attending the Richmond Conservation Commission meeting in early March.

Certificate of Compliance-Mass DEP File Number 198-0240-Terry Burman, 40 Brunell Avenue, Map 42 Parcel 30-NC went to the site on January 26, 2016 and reported to the Commission that this project was in compliance. VA made a motion to issue the C of C, and TF seconded the motion. The Commission voted to approve 5-0.

Approve Minutes-February 4, 2016-TF made a motion to approve the minutes as presented and DL seconded the motion. The Commission voted to approve 5-0.

Respectfully submitted,
Peggy Ammendola