

## Conservation Commission Minutes, 12/08/2016

**Lenox Conservation Commission  
Landuse Meeting Room  
December 8, 2016  
Minutes**

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

**Absent with notification:** Joseph Strauch, (JS)

**Staff present:** Peggy Ammendola, Land Use Clerk (PA)

**Request for Determination of Applicability, Jeffrey and Andrea Lynch, 35 Taconic Ave., Map 46 Parcel 23.** Removal of trees along driveway and on side of garage and the large white pines just behind the house.

Presenting the application was Jeff Lynch. Mr. Lynch explained that the trees have dropped limbs and damaged the house and vehicles.

There was a site visit on November 26th that was attended by Mr. Lynch, and Commissioners JS, DL, TF, and NC. DF, RFC and VA went separately.

TF stated that the work must be done from the upland side, reaching toward trees and pulling back so that no work is done within the wetlands. Mr. Lynch agreed. DL made a motion to issue a Negative 3 and VA seconded the motion. The Commission voted to agree 6-0.

**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 1<sup>st</sup> and continued for another update on October 15<sup>th</sup>. 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 3<sup>rd</sup>. The Lenox CC attended a meeting of the Richmond CC on November 10, 2015 at 7:00 PM. On December 3<sup>rd</sup>, the NOI was continued to Jan. 21, 2016. On Jan. 21, this was again continued to February 4<sup>th</sup>. At the Feb. 4<sup>th</sup> meeting this was continued to February 18<sup>th</sup>. On February 18<sup>th</sup>, 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. Continued again to December 8, 2016.*

On December 2, 2016, Town Planner Gwen Miller (GM) received the following email from Jim McLaughlin of Stantec:  
*We are currently scheduled for a continuation of the hearing for the subject project on next Thursday, December 8. As discussed at the November meeting we met with Audubon on December 1 and had very fruitful discussions and now appear to have agreement between the Airport Commission and the Audubon Society on a restoration/access path plan including a revised revegetation plan. However, the plan now needs some significant revisions including specific language additions requested by the Audubon. To that end, we will be making those revisions and submitting to Audubon for their review next week to make sure that all of the proposed changes have been appropriately addressed. In order to give the Audubon sufficient time to review and comment, and to also provide sufficient time to get the final revised plan to the Conservation Commission for their review prior to a meeting, we are requesting that the hearing scheduled for the next Thursday, December 8, be continued to the next regular meeting of the Conservation Commission in January, which I believe is Thursday January 5. Thank you for your consideration on this matter.*

Upon receipt of this letter, GM contacted NC who responded by saying that he had no issues with the request. GM replied to Mr. McLaughlin request agreeing to put Stantec on the January 5<sup>th</sup> agenda.

TF said that request for continuation needed to be properly considered by the Lenox Conservation Commission at the hearing as it was scheduled for December 8<sup>th</sup> and that GM did not have the authority to grant another continuation via email on behalf of the Lenox Conservation Commission, nor should this matter be deliberated outside of a public meeting.

NC explained that GM had consulted with him before she responded to Mr. McLaughlin and that this was handled no differently than it has been in the past with other requests for continuation so that an applicant did not have to come in. He added that as in

the past in similar situations, at the scheduled meeting, the hearing would be opened. At that time the Commission would be advised of the request and there would be a call for a motion. The Commission then would vote to continue or not to continue.

The hearing was opened. RFC made a motion to continue the hearing to January 5, 2017 at 7:30 PM. DL seconded the motion.

TF stated that the Commission should be aware of potential consequences of handling something in this manner. He understands that there is precedence, and that sometimes that makes sense, but he doesn't believe that it makes sense in this instance. New information is included in the letter and agreeing to continue in advance of a public hearing deprives the public of the opportunity to hear Stantec's argument and the Commission's deliberation as to if their argument makes sense or not. TF said that it is foreseeable that the Commission wouldn't like what Stantec said in the letter, but by making the decision in advance, the Commission cannot discuss the letter and the public cannot be aware of the Commission's decision and the public cannot make a comment on the Commission's decision. TF feels that handling a continuation as this was handled is a violation of the Open Meeting Law, therefore he objects. With this project in particular, he feels the Commission has to be more careful.

NC responded that in the future when there is a request for a continuation, he will have an applicant or representative attend the hearing to make their request.

TF continued that even if Audubon and Stantec work out some sort of an agreement it does not mean that the Commission would approve any of it. NC said that Stantec is trying to get agreement between the two parties before coming to the Commission. TF said that the whole concern that the Commission has had about the easement is whether or not the Commission could properly accept an application from Pittsfield on the area of property that is outside of the easement. He said that the Commission knows that they have the right to use the easement and the way the law reads the Commission has to decide if an applicant can be treated as an owner or not. If they have title to land like Audubon does, someone who holds an easement may also have a legal interest in the land. TF said that the Commissioners know Stantec has a legal interest in the 20 foot path for the power line, but they do not yet know if there is a legal interest in the area outside of the power line where they expanded the road. The Commission needs to be able to collect everyone's info on that and this is another piece of business that should have been handled if they are having discussions. TF feels that there are so many more moving parts to this and that the Commissioners need to be careful about following the regulations. TF added that because GM is a town employee, when Stantec sends an email to GM that is not going to the Commission it puts her in a predicament as she becomes the legal custodian of a public document that is official business and she can't act on that. He stated that no one can act on that outside of the hearing and GM must pass that document immediately to the Commission and the Commission has to wait to the proper hearing. NC explained that the letter had come to him, the Commission and GM. GM contacted NC and NC told GM that that he did not have an issue with Stantec's request as Stantec had said at the last meeting that they may still need more time. NC then advised the other Commissioners that Stantec had asked for a continuation.

The Commission voted to continue the Public Hearing to January 5, 2017 at 7:30 PM with a vote of 5-1. TF voted to oppose the continuation.

DL commented that the plants could change and referred to the letter of John Burns, the consultant. TF said the Commission can continue to have that discussion with Mr. Burns even after the hearing process is completed. The next step for the Commission would be to review everything that has been said and vote on findings, i.e., finding of fact, standards followed or not followed, etc.

Once there are findings the Commission will then know what they are up against and can propose Orders of Conditions. He concluded that the Commission shouldn't be debating/negotiating the plants or design until the findings are issued.

**37 Bramble Ln Map 2 Parcel 5-Kerry Stein-** An RDA had been filed and was on the December 8, 2016 agenda, but was withdrawn on November 30, 2016. DF made a motion to approve the withdrawal. VA seconded the motion and the Commission voted to agree 6-0.

**Approve Minutes:**

**November 17, 2016-**RFC made a motion to approve the minutes as amended. DF seconded the motion and the Commission voted to agree 6-0.

**Other Business:**

**Eversource Energy-** 2017 Yearly Operational Plan was submitted to the Commission on November 30, 2016-The Plan was email to all Commissioners on December 5, 2016.

**Emergency Certificate-Hillcrest Educational Center at Highpoint-Map 32 Parcel 8-**An Emergency Certificate had been issued at the November 17, 2016 meeting. NC said that he went to the site and the tree was taken down December 7<sup>th</sup>.

**Richmond Road culvert-**At Honeymoon Cottage-NC reported that he went to the site after a rain and it looks good. Both channels were coming in and out.

**New Lenox Road culvert-**NC said that this project looks very good.

**Parson's Marsh Hikes-** Doug Bruce of BNRC was present to tell the Commissioners that he and nine others hiked this Town property last Wednesday. He had spoken to GM and NC about it in advance. He said that he would like to conduct a public hike on December 17<sup>th</sup> at 10:00 AM, and because the Commission has jurisdiction, he wanted to formally ask. The Commission had no objection.

**Site Visit-**An RDA has been filed for 107 Yokun, LLC and is on the agenda for January 5, 2016. It was agreed to have a site visit on December 10, 2016 at 9:30 AM.

RFC made a motion to adjourn. DF seconded the motion and the Commission agreed 6-0. The meeting was adjourned at 8:17 PM.

Respectfully submitted,  
Peggy Ammendola