

Conservation Commission Minutes, 01/19/2017

Lenox Conservation Commission Landuse Meeting Room January 19, 2017 Minutes

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

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

The meeting was called to order at 7:30 PM.

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. Continued again to December 8, 2016, but prior to that, Stantec, stating that they had verbal agreements with all parties, request further continuation to have time to draft the document for final approval. Continued to January 5, 2017. Continued to January 19, 2017.

On January 18, 2017, a Commissioner had suggested that more time would be needed for Stantec to come up with additional plantings. On January 19th, Jim McLaughlin of Stantec was unable to attend for a continuation. The PMAC, hand delivered a formal request to continue.

NC advised the Commission of a request to continue the hearing and read into the record emails starting with his own email he had sent this morning to Jim McLaughlin of Stantec which follows:

Good morning, Jim. I thought that we would be done tonight, but late yesterday I received an email from some members. I had asked them all to get back to me quickly with questions and suggestions. Joe was the only one who did, and you answered his two questions quickly. Joe then consulted with John Burns (Consultant) and as I understand they feel that there is a need for some other species, not just blackberries and red raspberries, but they would like to have planted a variety of species native to the area species. Joe has indicated that there should be some ferns and shrubs, too. I apologize for getting this to you with such little notice.

Mr. McLaughlin then responded via email:

Neal that is very, very disappointing news.~I shall have to consult with the airport commission to see how they want to handle this and whether they want to ask for a continuous of tonight's scheduled meeting.~I think it is fair to ask that the comments/email from those members who made them be forwarded to us asap, so we can review? ~

Following that email, NC contacted Mr. McLaughlin to see if would have someone come to the meeting to request a continuance.

At 3:00 PM, David Keator of the Pittsfield Municipal Airport Commission hand delivered a letter asking for continuance. He stated at that time that neither he nor Commissioner Chris Pedersen could be present due to conflicts. An excerpt from Mr. Keator's letter is as follows: *It is our understanding that your commission has not fully vetted the resolution agreed upon between the PMAC and Mass Audubon. Upon the completion of the review by Lenox Con Comm we ask that we be notified so that we can schedule a final hearing on the issue.* NC noted that Mass Audubon had sent a letter dated January 10th to the Commission stating that they were in agreement with the latest restoration plan (January 3, 2017) submitted by Stantec. It was received at Town Hall on Friday, January 13th, but PA was not in the office and the following Monday was a holiday. NC was made aware of the receipt of the letter today, January 19th.

NC continued with reading the emails. This one he had received from JS on January 18th: *Hi Neal & Tim, I've been corresponding with John Burns about the Stantec planting plan. He thinks the answers to my questions were correct, however, he thinks just planting two species isn't enough. He's going to send me some suggestions, but I think we can make our own on the basis of what's already growing there. I think if we send them home for two weeks to improve the planting plan there will be time to begin planting in May.*

TF said that he had also sent an email which had been a part of this email discussion. It was in response to NC's email: *Joe and Tim why don't you come in with a plan for added plants for tomorrow night to add to theirs.* "Theirs" is referring to Stantec's list of proposed plantings. TF's response is as follows:

It is up to the applicant to submit a plan that is 100% compliant. When they fail to do so the commission should deny the project or condition the work to be 100% compliant. But I will say, once again, that the LCC should not be doing planning and design for the applicant/consultant and we need to be mindful of the proper process.

Joe is exploring very important questions and they should be considered fully in a public hearing (step 1). Then, when the commissioners are satisfied that ALL the questions have been answered about ALL aspects of the project, the commissioners should vote to close the public hearing. At that point the commission needs to review the available information and vote to issue the project Findings of Fact (step 2), stating in some detail how the project does or does not comply with the SMA performance standards. Finally, the commission needs to vote on an Order of Conditions

(step 3). The OOC might approve, deny, or condition various elements of the project - and each decision or condition for each element needs to be based on the Findings of Fact.

The reason this is dragging on is because people - the applicant, consultant, and commissioners alike, keep jumbling up the different steps of the process.

JS then asked Mr. Burns for his suggestions: *Hi John, I agree with you that we need some other species. Do you have any specific ones in mind? The original plan was to plant several hundred tree plugs. I thought they should try some shrubs and ferns too. I know Neal wants to close this tomorrow so that planting can begin in May. I don't see why we can't go a couple of more weeks before we close.*
Joe

Mr. Burns responded to JS:

See my report for other species. A lot of it comes down to logistics and sourcing. Notice how easy it would be to get the seeds of just these two species.

Won't get enough seeds from the plants on the top even if it's a banner year. If they all were to germinate then it would be a start. The ferns would be quite easy, but if you just went with spore then it would be 2 years before you had coverage. It still should probably part of the plan.

Without watering, I'm not sure the success rate of tree plugs would be all that high. Shrubs would be more effective at mitigating erosion.

NC stated that Stantec wants to know what the Commission wants for more plantings. Stantec did provide a plan, but the Commission didn't agree with everything. At that point the Commission contracted Mr. Burns and he was hired as a consultant. Mr. Burns provided his report and suggestions and it was given to Stantec. TF said that the Commission had asked for a short term stabilization plan which included plantings, and they also asked for a long term restoration plan. He believes that at some point, Stantec has combined the two plans and labeled as the final plan.

There was discussion regarding Mr. Burns' report. JS believes that all that the Commissioners have received is a summary, not a full report. GM said that Mr. Burns provided his summary and came to a hearing to review. She said that he specified specific plant species that are included in the plan Stantec submitted to the Commission last week. Stantec also included the memo from Mr. Burns in their plan.

RFC admitted to being confused and asked why, since she thought that the Commission had the blessing of an independent consultant, "are we back to square one". NC referred to one of JS emails where he stated "I think we can make our own (plant suggestions) on the basis of what's already growing there.", and NC asked JS if he could come up with a list of what he would like to have in addition to the berries. JS agreed, but said that Stantec needs to come up with something. DL asked: "Hasn't Stantec already done that?" TF responded that they have partially, but that there are a lot of questions that the commission has asked that have not yet been answered. NC asked TF why he hasn't submitted questions to Stantec so that they could be prepared to answer. TF argued that questioning should be done in a public hearing where the public has the opportunity to participate. TF said that he was ready to discuss his questions with Stantec tonight, but they were not present. DL asked the others if they were happy with the plan that has been agreed upon by Audubon, the airport and Stantec. JS responded in the negative and added he had stated at an earlier hearing that the plan agreed upon by the others would not be the Commission's plan. TF said that the commission is not ready to make a decision as they are still fact finding. JS argued that his questions had not been fully answered. He said that he had asked for evidence, but did not get any. He described that the answers were just statements by two parties involved about what they think will happen. He would have liked to have had someone from Harvard Forest or State Forest who knew something about reclamation who could give the Commission some guidance on what to do. DL responded that this is why the Commission hired John Burns. TF responded that Mr. Burns' role his role was to go to the mountain to see if the existing vegetation could be used as an indicator for pre-existing conditions. TF also said that he would not call Mr. Burns' summary a report. JS said that he didn't know what Mr. Burns was told to do. TF added that the Commission has discussed and listed a collection of relevant scientific literature with instruction to review and return to the Commission with plans that followed a professional standard on how to do a remediation. This, he said, is still missing from Stantec's report.

JS and RFC said that it is important that Stantec send a representative who is a biologist or environmentalist as well as an engineer.

DL suggested that the Commission start an Order of Conditions for this project. TF agreed that this was one approach.

Becky Cushing of Mass Audubon wanted to clarify that while she and Tom Lautzenheiser do not oppose the approach that Mass Audubon has agreed to with PMA and Stantec, they don't think that this is the only approach.

There was a lengthy discussion on how to efficiently move forward to a conclusion on this matter. RFC felt that Stantec should be notified to have qualified individuals who could answer both engineering and questions relating to species. TF gave an example of why an engineer is needed. He said that the Commission has asked for the stormwater compliance report and he said that some of the information Stantec's submitted was seriously deficient. TF said that he pointed this out that they were using 25 foot contours and that was the only topographic description. Other issues TF had, included but not limited to: plans do not follow the standards that are required in the SMA; dates are wrong; plans have not been stamped and there is a question on the revision date. DL felt that the Commission should provide information to Stantec on what the Commission needed to resolve. NC repeated that this is what he had asked at the last meeting. TF responded that NC has asked for the Commission to do so privately, but it should be done in the context of a public meeting.

DL made a motion to continue the hearing to February 2, 2017 at 7:30 PM. TF said that the Commission should revisit all of the requests. Discussion ensued on advising Stantec in advance of the meeting of the questions the Commission had. NC asked why they couldn't be informed. JS asked why they needed to know ahead of time. DL feels that in order to speed up the process the questions should be made available. DL amended his motion to add that the questions be submitted in advance to Stantec. JS and TF will compile and get the questions together in a week. TF said that Stantec should be made aware that the Commission still has outstanding questions and those questions will have to be addressed in a public hearing. TF also said that there should not be phone calls or emails going back and forth and Stantec should be ready to answer questions. In the meantime, they can go ahead with the stabilization planting. RFC seconded the motion and the Commission voted to agree 6-0-1. TF abstained.

Notice of Intent, Joseph Toole, Map 33 Parcels 1 & 1.1, and Map 50 Parcel 1, 445 Pittsfield Rd. (Rear). AKA The Toole Wildlife Preserve- Proposal is to install 3 boardwalks to span beaver-flooded areas & wetlands to restore a complete public access loop trail around the property & create wildlife viewing locations.

Mass File Number-198-0296

There were five comments issued by Mass DEP:

- The Commission and applicant should review the fee as each crossing is a separate activity and should each be considered a separate fee.
Note: An additional check was received on January 18, 2017 bringing the total to \$1512.50.
- For the proposed helical piers use, there should be replication or a 401 WQC will be required based on the submitted info in the NOI. However, MassDEP Western Region has typically not seen the use of helical piers as a discharge of dredged or fill material that would require replication, if properly installed.
- If beavers are typically an issue on the property, possibly the breach of their dams can be included in the NOI/OOC? This issued should be discussed between the applicant and Commission
- The Commission and applicant should be aware of the language found at 310 CMR 10.55(4)(a). Specifically in regard to boardwalks over BVW, there should be sufficient sunlight that penetrates between the boards, and the boardwalk should be of sufficient height that sunlight can penetrate to the vegetation beneath so it is allowed to grow and not be impaired or destroyed by lack of available sunlight and the boards being too close to the ground.
- The Commission shall wait for 30 days or comments received from NHESP, whichever is first, before it closes the public hearing.

Present were the following: Joe Toole, Sarah Gapinski of SK Design Group, Colon Toole, and Michel Beaudoin from *Techno Metal Post*.

Ms. Gapinski described the area to the Commission as mostly wetlands with five ponds and is located behind the Hampton Inn and Yankee Inn. It was dedicated for passive recreation with its two conservation restrictions. She gave details of how the boardwalks would be created and the materials used. Because the boardwalks are considered commercial structures, the Architectural Access Board states the gaps between boards on the walkway can't be any bigger than ½ inch. The height of the boardwalk relative to the vegetation is 30 inches, and this is measured from bank to bank. The boardwalks will be four feet wide inside to inside and there will be handrails. TF said that the boardwalk needs to be high enough above the BVW surface to allow for light penetration to keep the BVW healthy. TF sought clarity, and Ms. Gapinski stated that the 30 inches would be above the top of the vegetation, excluding phragmites. The footings would be in the upland, and by the time the boardwalk reaches the wetland, it will be 30 inches up. At stream crossing #3, it is 18 inches deep, so it will be 4.5 feet up.

Mr. Beaudoin, the contractor for the three boardwalks detailed the installation. Vegetable oil will be used in the hydraulic equipment. It is anticipated that the work would take approximately three weeks, dependent on the weather and is expected to be done while the ground is frozen as to minimize the disturbance.

TF asked for information regarding the machine that would be used. There are two machines that will be used. Mr. Beaudoin described one as being 29" wide and four feet long and the other is 4 feet wide and 4 feet long and it has a 13 foot reach which gets to the site of the work without getting in the stream. He said that it would take four back and forth crossings to bring the four beams to make the path. Mr. Beaudoin said that temporary wood planks would be utilized, but if the Commission wanted something else, he would be happy to comply. TF wanted to make sure that the project is scheduled in a way to minimize the trips with the machines.

TF made a motion to approve as presented contingent upon approval with a "no take" letter from the Natural Heritage program with the condition that the ground remains undisturbed and timber mats or reinforcement as necessary with a minimum number of trips and that the final boardwalk elevation be at least 30 inches from the top of the BVW to the bottom of the support beams at all points. DF seconded the motion and the Commission voted to agree 7-0.

RFC made a motion to continue this hearing to February 2, 2017 at 7:30 PM expecting that the Commission will have received notification from Natural Heritage before that date. JS seconded the motion and the Commission voted to agree 7-0.

Town of Lenox-Parking on Edith Wharton Property-

Present was Marc Levasseur of Foresight Land Services.

Gwen Miller (GM) presented to the Commission, a proposed conceptual parking lot plan and signage for the property and which is owned by the towns of Lee and Lenox. A park grant from the Department of Conservation and Recreation has been received, but in reviewing the file it was discovered that the Town was not in compliance with tax funding, some of which had to do with signage and parking. The proposal is for a parking area for 10 cars, one of which would be handicap accessible. Signage would inform the public of the source of the funding. At their last Town Meeting, Lee voted to fund the plan which has been created by Foresight Land Services. Lenox DPW will do the construction work. The lot will be graveled and there will be wooden guard rails which delineate the parking. Mr. Levasseur said that the distance to the water is 300 feet.

Discussion ensued regarding a nesting area for bobolinks on the property. GM, JS, DL, and DF will go to the property in June to assess the area for the bobolinks and go from there in mapping an area for the parking and associated trail system.

It was agreed that the plans for the signage could move forward. The signage will comply with the zoning bylaw.

GM introduced Ross Jolly, Director of Facilities at The Mount, Edith Wharton's home. Mr. Jolly said that during the course to pay off debt on The Mount, they started to work to protect their borders. There is a developer at the southern border so they realized that there was development potential for condos, so they decided to be proactive and not reactive and nurture a good relationship with the developer.

The Mount has commissioned a report to show value to all of the abutters if they created a public access park. Now that The Mount is debt free, they can put easements on it, so that no matter what happens, the public has access. Mr. Jolly said that he has developed a relationship with the developer and has met with his legal team. The developer is prepared to grant to The Mount a public access easement for 75 acres on his land, a woodland parcel which borders The Mount to the shores of Laurel Lake. This could be a park of 150 acres.

Mr. Jolly stated that just this morning they have found out that Edith Wharton built the house that is on the parcel that is owned jointly by Lee and Lenox. This is an exciting find and they are looking into the possibility of entering into a partnership with the towns so that the towns don't have to maintain a burden. They do not want it in private hands, and they feel that they are in a strong position to help.

Mark Levasseur of Foresight Land Services-He had asked NC if he needed any paper work from the Town of Lenox for repaving Crystal Street. NC spoke with Mark Stinson of Mass DEP and he advised that it was exempt.

8:00 PM Certificate of Compliance, Canyon Ranch Management, LLC, 165 Kemble St., Map 7 Parcel 43 2003

RFC made a motion to approve to issue a Certificate of Compliance and VA seconded the motion. The Commission voted to approve 7-0.

Berkshire Natural Resources Council, Inc., Memorandum of Understanding- for Town's watershed lands. NC provided copies for all Commissioners for them to read over to be ready to sign at the next meeting.

Approve Minutes:

January 5, 2017 RFC made a motion to approve the minutes. DL seconded the motion and the Commission voted to approve 6-0-2.DF and JS abstained. DF was not at the meeting and JS left after the first hearing.

Other Business

MEC Lenox Associates LP, Extension Permit for Orders of Conditions, Map 33 Parcel 4, WS Development, MEC Lenox Associates LP, 489 Pittsfield Road, Map 33 Parcel 4, 3-year extension of the unexpired Order of Conditions dated 5/19/2010.
Email dated January 19, 2017 from Andrew Manning, Project Manager of WS Development-*While the vast majority of the work covered by the Order of Conditions is complete and stabilized, there is still minor work related to pavement and utilities located behind the existing buildings that needs to be completed. While we are diligently working to complete the redevelopment of the Center, we do not anticipate that the work will be finished before the approaching 5/19/2017 Order expiration date. The extension permit will allow us the time to occupy the remaining vacant spaces, complete the site work per approved plans, and request a formal Certificate of Completion when the site is fully stabilized.*

Discussion ensued. TF wants to preserve so they can modify a project. They don't know if they will have someone come in, so they don't want to finish up until they know Preserve the option.

DF made a motion to grant the extension for 3 years and RFC seconded the motion. The Commission voted to agree 7-0

RFC made a motion to adjourn and DL seconded. The Commission voted to adjourn at 9:43 PM by a vote of 7-0.

Respectfully submitted,
Peggy Ammendola