

## Conservation Commission Minutes, 02/02/2017

### Lenox Conservation Commission Landuse Meeting Room February 2, 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:** Peggy Ammendola, Land Use Clerk (PA)

The meeting was opened 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.

As discussed at the last meeting, January 19<sup>th</sup>, TF and JS agreed to put together a list of questions that could be sent in advance of this meeting, February 2<sup>nd</sup>, to Jim McLaughlin of Stantec so that he could address at this meeting. Following is the document TF and JS submitted and was then forwarded to Mr. McLaughlin on January 29<sup>th</sup>. Note: For clarity, the document will be referenced as The Document.

NC opened the hearing and advised the Commissioners that he had received an email request from Jim McLaughlin of Stantec to continue the hearing. The reason given was to have the time to address all items in The Document prepared by TF and JS. NC also handed out to the Commissioners copies of The Document prepared which reads as follows:

*The Lenox Conservation Commission, as the hearing authority, has requested information on the following topics which must necessarily be considered in order for the LCC to determine compliance with M.G.L. Ch. 131, Section 39A, and associated Town of Lenox Scenic Mountain Act Regulations. The City of Pittsfield as applicant, or any person representing the applicant, should be prepared to declare whether more submissions of information are forthcoming or that the applicant is ready for hearing closure.*

#### *Topics*

*complete and accurate narrative and timeline describing all regulated activities along the entire length of the work site, including dates, intervals, and identification of responsible persons who engaged in regulated activities, and including designation of whether regulated activities were permitted or un-permitted, contracted or not contracted.*  
*complete copies of any and all documents pertaining to regulated activities with an associated chain of accountability, including but not limited to requests for bids, the winning bids as received, contracts as awarded, and other deals that may have been made involving work on or access to mountain regions*  
*full set of maps and plans indicating the pre-existing conditions at the project site, the conditions as they existed after work and modifications occurred, the conditions as they existed after stabilization efforts occurred, and the conditions as they are proposed to exist after a restoration plan is implemented. The form of the maps and plans must be consistent with the Town of Lenox Scenic Mountain Act Regulations. Certain details of significance have already been indicated in hearings; these included but are not limited to watershed resources including the nature and properties of soils and biotic community*  
*scientific guidelines to be followed, with criteria for success, in restoring, monitoring, and preserving the ecological structure and function of watershed resources and natural scenic qualities of the environment*  
*engineered plans describing pre-existing and restored grades at a suitable scale, together with geospatial reference and or GPS datafile of the disturbed areas, clarification of the town and property boundary surveys, and clarification of the owner or owners of the project site*  
*credible scientific and engineering evidence demonstrating and specifically documenting compliance with the SMA regulations for soil and slope stability, hydrologic performance of the project site, prevention of erosion, and restoration of filled, excavated or eroded areas, together with a copy of a completed Stormwater Pollution Prevention Plan*  
*evidence of application for all required permits; items discussed at hearings included but are not limited to building permits, electrical permits, archeological survey*

*Excerpted from M.G.L. Ch 131, Section 39A and associated Town of Lenox Scenic Mountain Act Regulations:*

*The term "hearing authority" as used in this section shall mean the conservation commission, or if none, the board of selectmen in a town, or the mayor of a city within the county of Berkshire which has accepted the provisions of this section.*

*The term "mountain regions" as used in this section shall mean those highland areas within any city or town within the county of Berkshire which are made subject to the provisions of this section.*

*The term "owner" as used in this section shall mean the person appearing as the owner in the most recent records of the tax assessor.*

*The term "person" as used in this section shall include any individual, group of individuals, association, partnership, corporation, company, business organization, trust, estate, the commonwealth or political subdivision thereof, administrative agency, public or quasi-public corporation or body, or any other legal entity or its legal representative, agents or assigns.*

*The term "regulated activities" as used in this section shall mean the removal, filling, excavation or other alteration of land within mountain regions which is likely to have a significant adverse effect on watershed resources or natural scenic qualities because of the pollution or diminution of ground or surface water supply, public or private; erosion; flooding; substantial changes in topographic features or substantial destruction of vegetation.*

*The term "significant" means what is important and of consequence as determined by the Commission.*

*The Conservation Commission of the Town of Lenox, having been designated as hearing authority under General Laws Chapter 131, Section 39A in a vote at Town Meeting 1985, promulgates these regulations pursuant to the authority granted to it.*

*The purposes of the regulations are:*

- a. to protect watershed resources;*
- b. to preserve the natural scenic qualities of the mountain region.*

*Before performing any regulated activities, or in the case of a public hearing ordered under the preceding paragraph, an applicant shall pay a filing fee of twenty-five dollars to the city or town and file notice of the regulated activities to be performed together with such information as may be reasonably required by regulation to describe the nature and scope of the proposed activities and their effect on the watershed or scenic resources protected under the provisions of this section; provided, however, that any environmental impact statement filed with any state or federal agency shall be sufficient information with respect to such activity for purposes of complying with this section.~*

*Drawings and accompanying documents shall include sufficient information to demonstrate to the satisfaction of the Conservation Commission that the interests of these regulations will be protected.*

*The applicant may submit, or the Commission may require, further information that will assist in the review if deemed necessary by the Commission to determine the effect of the proposed activity on the mapped mountain regions.*

*Within twenty-one days after the hearing, the hearing authority shall issue a written order which may impose on the proposed activity such reasonable conditions as may be necessary to protect watershed resources or natural scenic qualities against any significant adverse effect because of the pollution or diminution of ground or surface water supply, public or private; erosion; flooding; substantial changes in topographic features or substantial destruction of vegetation.~*

DL wanted to discuss each of the items on The Document provided to Stantec, stating that this wasn't an approved document and it may change.

PA interjected that she had spoken to GM in advance of this meeting to clarify that the letter asking for the continuation would be read aloud and that she understood that TF wanted to also read The Document submitted to Stantec. GM said that all that needed to be read was the continuation request. TF said that he believed that it could be discussed as this was a scheduled public hearing and was on the agenda and the list has not been formally provided or acted on by the Commission. PA explained that this may be considered ex parte communication and compared it to a trial being held without all participants. The point is that everyone is hearing the same thing at the same time. RFC suggested the Commission have an Executive Session. PA advised that there are specific reasons for which a public body may enter executive session, but this would not be one. TF stated that the Commission has the right to discuss procedure and what the Commission feels it needs to know before it is ready to close the hearing or not. TF said that he and JS tried to recall all that the Commission had been asking for and The Document is what they came up with. TF said that it was not an inclusive review of the whole file, and reminded the Commission that he stated this at the last meeting that it would be what they remembered.

It was agreed that the Commissioners review The Document before the next meeting and be prepared to suggest changes or additions. TF suggested that NC call and tell Mr. McLaughlin that The Document hasn't been finalized. JS said that what was in The Document was almost verbatim as in the SMA.

TF said that he has been ready to close the hearing for a year and a half and his opinion hasn't changed. He added that if there is a lack of clarity on what Stantec has been asked to provide, the Commission should resolve this or the Commission should say that they have enough information and close. If the Commission closes then it will deliberate and make a decision. TF asked the Commissioners if they had any issues with The Document. No one voiced concerns or objections.

On February 1<sup>st</sup>, Mr. McLaughlin sent this reply related to The Document. It was read into the record.

Hello Gwen and Neil,

The Pittsfield Airport Commission would like the opportunity to present additional information with regard to the permit application in response to the latest communications from the Lenox Conservation Commission received on Sunday, January 26.~(Error-It was January 29<sup>th</sup>.)~ However, given the level and amount of information requested, we do not have adequate time to prepare/gather and organize the information so as to properly submit or present it to the commission for this Thursday's scheduled meeting.~ Although we want to move the process along as quickly as possible, we must reluctantly and respectfully request a further continuance of the hearing to the next regularly scheduled meeting of the Lenox Conservation Commission which I believe is scheduled for Thursday, February 16, 2017.~~ Thank you for your consideration. ~

Jim

James E. McLaughlin, PE  
Principal, Airport Infrastructure  
Stantec

RFC made a motion to continue the hearing to February 16, 2017 at 7:30 PM. DF seconded the motion and the Commission voted to agree 6-1 with TF casting the dissenting vote.

**7:45 PM 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-** File Number 198-0296. 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. Continued from January 19, 2017 with the expectation of receiving comments from Natural Heritage Endangered Species Program.

On January 24, 2017, a letter was received from The Division of Fisheries and Wildlife which stated that they have determined that additional information is required in order for the Division to complete its review. Specifically botanical surveys must be conducted and upon completion the botanist is to submit their observations to the Division with a report as described in the State Listed Species Habitat Assessment and Survey Guidelines: Plants.

A request to continue to April 20, 2017 at 7:30 PM was received from SK Design Group. This project meets the requirements for the issuance of an Order of Conditions, but due to the required botanical surveys, it has been decided to wait until the spring to comply with The Division of Fisheries and Wildlife request. The results of the survey may require a revision to the project.

DF made a motion to continue to April 20, 2017 and JS seconded the motion. The Commission voted to agree 7-0.

**Berkshire Natural Resources Council, Inc., Memorandum of Understanding for Town's watershed lands.** The Commissioners have reviewed and DL made a motion to agree to have NC sign the document and give to Gwen Miller for delivery to BNRC. TF seconded the motion and the Commission voted to agree 7-0.

**Approve minutes:** January 19, 2017-DF made a motion to approve as amended. DL seconded the motion and the Commission voted to approve 7-0.

**Other business:** February 1, 2017 letter from Dmitriy Shoutov was hand delivered to the Land Use Department. It was in regards to Lenox Woods at Kennedy Park and what Dr. Shoutov described as construction and environmental problems. He referred to previous discussions on this matter and minutes of November 2015. The letter was also sent to BJ Church, Building Commissioner; and Gwen Miller, Town Planner. NC has called Matt Ward and will arrange to go to the site to see if there is a wetland issue. Dr. Shoutov believes that this would fall under the jurisdiction of the Scenic Mountain Act, but the Commission has concluded that it is not.

RFC made a motion to adjourn. DL seconded the motion and the Commission voted to agree 7-0. The meeting was adjourned at 8:07 PM.

Respectfully submitted,  
Peggy Ammendola