

Conservation Commission Minutes, 02/23/2017

Lenox Conservation Commission Landuse Meeting Room February 23, 2017 Minutes

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

Absent with notification: Rose Fitzgerald Casey, (RFC);

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

The meeting was opened at 7:30 PM.

Approve Minutes: February 16, 2017 DL made a motion to approve the minutes as amended. TF seconded the motion and the Commission voted to approve 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 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 and at that time continued to January 19, 2017. A PMA representative was not available at that time. It was agreed to continue again to Feb. 2, 2017 and that by January 27th, outstanding questions of the Conservation Commission will be prepared by TF and JS and submitted to Stantec. Continued to Feb. 16, 2017 at which time the public hearing was closed and a public meeting was scheduled for February 23, 2017 so that the Commission could discuss conditions.

Present was Chris Pedersen of the Pittsfield Municipal Airport Commission.

JS, stating that the SMA had been violated, asked to deny the request and a call for a complete restoration and followed by writing an order of conditions. TF explained that there are different elements and that it is too simplistic to approve or deny the request. NC did not want to deny the request and felt that the NOI should be the focus. TF asked that the Commissioners look at the judge's order (See minutes of February 16, 2017 regarding the Belvedere at Kennedy Park.) which in essence stated that an NOI should not be approved after the fact. He feels that there are elements within the NOI that could be incorporated. The Commission had issued a Determination of Applicability with certain conditions. TF referred to the language of the conditions and stated that when a project doesn't comply the Commission rescinds the order. He believes that the Commission's goal is to modify the order, modify the original Determination to include restoration details. There is a lot of information and discussion about a planting plan that could provide the language for modifying the order. TF agrees with JS that the notice itself needs to be denied. He feels that there are two alternate paths:

- Comply with the judge's order
- Compel the restoration of the site-with Order of Conditions

NC feels that this could be accomplished under the NOI. He argued that The Commission has often done this after the fact in dealing with wetland issues. Individuals have done work without a permit and when it has been realized they are required to file an NOI. TF disagreed, saying that is what the judge said not to do. He added that DEP requires that when a violation is noted, the Commission is to issue orders for remediation, and not have the individual file an NOI which is approved as if it were acceptable.

TF said that the Commission would have to issue a restoration Order of Conditions on the RDA. NC questioned why the Commission had not acted on the violation while under the Determination instead of asking that an NOI be filed. He added that he had not been aware of the judge's admonition in the Town filing an NOI for the Belvedere after the fact. TF disagreed stating that this had been discussed during the hearing process on two occasions. NC asked then why the Commission had asked for a NOI. TF explained that there were two options at the time. One was to file an NOI or the other was to declare that this was a violation and order a restoration plan. The Commission wanted a plan for how to restore the site. TF said that there had been several meetings with Stantec and Mr. Christensen and the Commission specified what was expected for a restoration. Stantec came back with what was labeled a restoration, but included the road. TF said that the first time the Commission discussed with Mr. Christensen they were talking about restoring the grades. The next time they came back with the documents and they didn't have it. They wanted to preserve the altered topography. We asked them to give us a plan for restoration, but it was a NOI to do replanting on the grades already altered.

TF provided to the Commissioners documents to assist them in compiling an Order of Conditions. The documents were as follows:

- Findings of Fact (1page)
- Administration of the Government (5 pages)
- BioMap2 (16 pages)
- BioMap2 Core Habitat in Lenox (6 pages)
- Slope Stability Map of Massachusetts (1 page)
- How to Read the Map (6 pages)
- Slope Stability Map of Massachusetts (42 pages)

TF reviewed a list that he has started for findings. There was considerable discussion regarding what the Commissioners felt should be addressed and the best approach for crafting a narrative and the Order of Conditions.

In conclusion, TF said that if the Commissioners approved of his approach, he would continue working on the findings and tie them to the regulations. He asked that JS and DF help him with the planting plan.

JS brought up the area around the beacon and didn't want it to be overlooked. It was agreed that the harm done may be permanent, something which is recognized in the Act, but it will be better off attempting restoration than not. There should be no increase in the footprint of the disturbance. Frequent photo documentation was a suggestion. There was no desire to micromanage. The Commission will discuss progress at the next meeting, March 2, 2017.

Respectfully submitted,
Peggy Ammendola