

Conservation Commission Minutes, 09/07/2017

**Lenox Conservation Commission
Landuse Meeting Room
September 7, 2017
Minutes**

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

Staff Present: Gwen Miller, Town Planner/Land Use Director Peggy Ammendola, Land Use Clerk

Also present were the following: Rob Akroyd of Greylock Design; Mark Smith of Mark Smith Design; Kate Buttolph of Mass Audubon; Ed Merritt; and Carolyn and Eli Newberger, abutters to Mr. Merritt's property.

Notice of Intent, Edward Merritt, 139-2 Lime Kiln Road, Map 27 Lot 18-2. The project proposed is for the re-construction of the existing garage into an approximate 3,600 square foot studio expansion and to alter the existing drive to a new layout with comparable dimensions to service the studio expansion.

Presenting the application was Rob Akroyd of Greylock Design Associates. Also present were Eddie Merritt and Kate Buttolph. She represents Mass Audubon. Others present were Eli and Carolyn Newberger, abutters to the property, and Mark Smith of Mark Smith Design, Inc.

Mr. Akroyd stated that in September of 2016, he filed an NOI for this property which after three meetings was subsequently withdrawn prior to the fourth scheduled meeting. (October 6th and 20th & November 3rd and 17th, in 2016.) The project proposed was the construction of a 20'x30' in-ground pool, a 1300 sf associated hardscape terrace, a 10'x5'6" solar panel, a 3,000 sf studio expansion, a 20' x 30' garage and to alter the existing drive to a new layout with comparable dimensions to service said garage and studio. The additions, alterations and expansions were within the outer riparian buffer zone, 100' and 50' wetland buffer zones, and 100' vernal pool buffer zone. Prior to the withdrawal of this NOI, the NHESP had notified Mr. Akroyd that there were several unresolved matters related to the application and Conservation Commission had informed Mr. Akroyd that they needed more information in order to have a proper review.

Mr. Akroyd began his presentation by reviewing the plan submitted last year. He said that this new NOI is the result of the various site visits and conversations with the Commission and DEP when that NOI was open.

Then Mr. Akroyd reviewed another drawing which depicted the original proposal and in contrast the new proposal stating that he felt the new proposal was scaled back significantly and should work for the Commission

Mr. Akroyd said that he has worked with Misty-Anne Marold of NHESP to finalize the Conservation Restriction which had been contemplated in 2006. He stated that the markers have been set and the CR has been recorded in the Registry of Deeds. He added that the NHESP submitted a letter to the Commission stating that if all items outlined in their letter were completed, the project would represent a "no-take". Mass Audubon has agreed to be the holder of the CR. According to Mr. Akroyd, a substantial amount of land owned by Mr. Merritt has been given to the CR.

Ms. Buttolph stated that the CR meets with the approval of Mass Audubon. She agreed to write a letter to the Commission stating this fact.

NC said that the plan submitted raised a lot of questions, e.g., the item listed as Limit of Work in which Mr. Akroyd doesn't say what the limit of work is. He pointed out that in the field it was agreed that there would be a 15 foot distance from the fence to the new unit, but that this plan shows 5 feet. There had been discussion that within five feet of the fence native species would be permitted to grow and the other 10 feet could be mowed. NC stated that at a site visit with Mr. Akroyd it had also been discussed that if NHESP agreed that the structure could be moved further toward the CR land, the Commission would agree, but the Commissioners never said that it could be moved towards the fence. Mr. Akroyd conceded that he might have misunderstood. Mr. Merritt maintained that he could construct and maintain the structure within the 5 feet. The Commissioners commented that the distance of 5 feet was insufficient.

Another issue raised by NC was the scale on the drawing. Mr. Akroyd said that something happened when the drawing was converted to a PDF and that the dimensions given on the drawing are correct. TF said that the Commission could not scale anything with the drawing submitted.

NC referred to the August 17, 2017 NHESP letter in which a list of requirements was included and asked Mr. Akroyd how much had been completed. Mr. Akroyd noted that in the letter a few items are shown to have been completed. Requirement (d) has been recorded, but that was not noted in the letter. He said that he can provide that information to the Commission. He also said that what could be done prior to completing the public hearing process has been done, and feels that the Commission should revisit the revegetation plan of 2006 that was agreed upon.

NC asked about the flood zone replacement and the driveway. Mr. Akroyd said that they are probably not going to be changing the grade of the driveway as it will still remain at its current level. NC confirmed that the new proposal is to blacktop the driveway and the corner of the building is in the flood zone.

NC asked if the markers for the CR were in place. Mr. Akroyd said that they should have been set by Gene Galvagni, but he will check on. TF asked about the marker plan as he saw two site plans with the same number, but didn't see a marker plan. In NHESP's letter, Ms. Marold references something that the Commission does not have in this Notice. Mr. Akroyd will get a full sized sheet for the record.

Mr. Akroyd said that to create a paved driveway they typically go down six inches and remove organic material and then bring it back up to the existing elevation. It was noted that a grading plan was not provided in the Notice.

TF asked about the plans for the septic disposal. Mr. Akroyd said that there is already a shared leaching field which is on Ellen Merritt's property. Each property has its own tank and pump chamber. A line will have to be installed in the buffer zone. TF pointed out that this work was not shown in the plan.

TF noted that the project narrative describes the revised driveway layout as being located 25 feet farther from Yokun Brook. Mr. Akroyd clarified that it is farther than the proposal that was in the October 2016 NOI submission, but it is not revised from the existing conditions. The new drive will follow the existing path. TF advised Mr. Akroyd that since the new proposal is converting the gravel drive to a non-pervious surface could possibly require some of the numbers for construction disturbances to be revised.

TF commented that the mitigating measures were limited to sedimentation and erosion control and asked Mr. Akroyd what measures he was considering to maintain buffer zone function. TF said that it appears that at least 6900 square feet, and probably more, of the buffer zone was being lost, which, in his estimation is a very large part. He asked how many square feet there is between the hundred foot buffer for the BVW and the limit of work. Mr. Akroyd said that he could not answer that question. TF stated that this information is relevant to him as he reads the next section, Mitigating Measures, which talks about sedimentation and erosion control, however this information is not on the map. Mr. Akroyd agreed that the plans were hard to read as there was so much was going on. TF suggested that Mr. Akroyd have multiple drawings. From the buffer zone perspective he feels that it is overbuilt already and that the proposal would result in the loss of more function. TF also pointed out that the scale on the drawing is the wrong scale and depending on what the Commission would scale off the plan, it appears the new addition could be as close to 2, 3, 4 or 5 feet to the fence.

Mr. Akroyd responded that some of the mowed lawn could be permitted to grow in. TF said that this would do nothing in terms of mitigating the impact of the building on the site, but it would be better to let these mowed areas grow in. Mr. Akroyd also said that they could incorporate swales on the south side to deal with the run-off. TF said that the plan proposes to obliterate the entire buffer zone between the BVW and addition.

Mr. Merritt asked the Commission for their opinion on how many feet should be between the structure and the fence. TF responded that the Commission should not try to make that determination. Mr. Akroyd argued: "It isn't fair to ask us to throw darts at a board". TF responded to Mr. Akroyd: "You have read the regulations. You know about the performance standards. You are within the 100 feet buffer of the wetland. All we are asking is how do you meet the performance standards. We lack that information."

TF explained to Mr. Merritt that when one comes before the Commission with a proposal, they should be ready to go, have a final design and have all performance standards checked off. In conclusion, TF stated: "We don't have a final design. We can't approve anything other than a final design."

DF made a motion to continue the hearing to September 21, 2017 at 7:30 PM. RFC seconded the motion and the Commission voted to agree 6-1. TF opposed continuing the hearing.

AMEC Foster Wheeler-Lenox Landfill solar RPV Project, Willow Creek Road (Map 14, Parcels 2 & 3). Review of proposed changes-An Order of Conditions for this project was issued by the Conservation Commission on July 28, 2016. In a memo dated August 18, 2017, Rich Niles of AMEC Foster Wheeler proposed changes that are intended to address the MassDEP requirements related to the landfill and stormwater management adjacent to the landfill. DEP File Number: 198-0294.

Mr. Niles provided an update on the project, project changes as well as two new drawings which depicted changes. He explained that during construction, trees, but not the stumps, were to be removed along the eastern slope. Due to the amount of vegetation, understory was removed resulting in exposure of additional waste. They proposed to DEP to be permitted to clear the stumps, remove the debris, and add 8 inches of loam, erosion mat and seed. On July 18th, a Corrective Action Design was submitted to MassDEP which included a description of all changes to the landfill cover and updated stormwater calculations. A memo from AMEC Foster Wheeler dated August 18th lists the changes and provides a description of those changes. They want to establish vegetation this season.

About 32,170 square feet of disturbances will occur in BVW buffer zones beyond the original limits of work which had been proposed in the June 2016 NOI. Work within the buffer zone for Wetland A includes the utility trench, conduit installation and capping of the western and southern waste areas. Work within the buffer zone for Wetland B includes the eastern slope repairs and capping of the northern waste areas.

TF asked if it were possible on the northern end to excavate and remove the waste and bring it back to within the limit of work for the northern slope. Mr. Niles said that that suggestion had been made to DEP and it was turned down.

It was determined that they would have to go beyond the floodplain in at least one area to cover trash that was beyond the original scope of work. That area is located beyond the northern slope and this would impact the floodplain. The discussion then turned to how to compensate for the lost floodplain storage area of which was estimated to be 302 cubic yards of fill within the 100 year floodplain. It was finally determined that a figure representing the floodplain storage area for the entire river be estimated and provided to the Commission in order to determine the significance of the work to be accomplished and whether it required compensatory storage.

TF asked Mr. Niles if in terms of meeting performance standards Mr. Niles was looking at stormwater and compensatory storage. Mr. Niles agreed. Mr. Niles also said that he would provide test pit data so one could point to specific location and also provide report logs.

After considerable discussion, TF suggested the Commission consider this to be a Notice of Project Change. Mr. Niles said that he could submit references to the other submittal, reference the CAD approval and supply information to justify the state required changes. He then suggested that the Commission could issue a decision stating that the proposed changes have been approved. The same conditions could apply and new conditions could be added. The Commission would have to determine if the proposed changes are significant or not. Mr. Niles will check with the project manager. TF said that if this is filed as a Notice of Project Change, the hearing review and decision could be done at the same time. Mr. Niles will review the policy statement on what is required regarding a Notice of Project Change, e.g. advertising and/or notice to abutters. He will also compile a list of documents supporting the changes, and have them in chronological order. It was also discussed that the changes may be minor and would only require the approval of the Commission, not a formal hearing.

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. Continued from January 19, 2017 pending receipt of a “No Take” letter from Natural Heritage. *Continued from Feb. 2, 2017 to April 20, 2017 to September 7, 2017.*

On September 7th, Sarah Gapinski of SK Design sent an email to the Commission stating that the plant survey was recently completed on the property and the report is being prepared with the expectation that it will be submitted to NHESP by next week. She requested that she be on the October 19, 2017 meeting. The letter was shared with the Commission. JS made a motion to continue to October 19th. RFC seconded the motion and the Commission voted to agree 7-0.

Certificate of Compliance (C of C)-45-1-Estate of Tony Bartoni-DEP File Number 198-196. An Order of Conditions was issued April 18, 2003 to Sawmill Realty Inc., Stone Ledge Road Subdivision. The request for the C of C was made by Rob Hoogs of Foresight Land Services.

A house on Housatonic Street is being sold. There is an open Order of Conditions for this File Number, and before the transfer of ownership can take place, there is a need for a Certificate of Compliance. There are other properties affected including a parcel, Map 45 Parcel 54-17, owned by the Town of Lenox which is to have a Conservation Restriction. It was agreed that this Partial C of C was appropriate because it excludes the Town parcel. All lots had been part of the original parcel 45-1 when the Order of Conditions was issued in 2003. All of the work subject to that Order has been completed except for lot 54-17 which needs the CR to be completed. NC conducted a site visit on September 5, 2017. VA made a motion to issue the Partial Certification. JS seconded the motion and the Commission voted to approve 5-0-2. NC abstained as he owned abutting property and DL abstained because his son owns abutting property.

JS said that he has been to the meadow at David Ward’s property on a monitoring survey. He has looked at the CR and the Division of Fisheries and Wildlife permits for the entire project and he feels that they are not in compliance with the existing order with regards to the transfer of responsibility from Ward to the new owners; annual mowing of the meadow; and the installation of the boundary posts. The CR indicates that the transfer is to be approved by the state and the Commission and the Lenox Land Trust who holds the CR are to be notified. JS said that he has spoken to Matt Ward who told him that he was sure that this had been done, but hasn’t followed up with JS. Mr. Ward said that SK Design is to clear and install the posts.

It was agreed that the Commission will write a letter to Mr. Ward advising him that the Commission has concerns that they are not in compliance with the existing order.

Approve Minutes: *August 17, 2017*-TF made a motion to approve the minutes. JS seconded the motion and the Commission voted to approve 6-0-1. RFC abstained as she was not at that meeting.

Respectfully submitted,
Peggy Ammendola