

Conservation Commission Minutes, 11/16/2017

Lenox Conservation Commission
Landuse Meeting Room
November 16, 2017
Minutes

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

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

Others present: Rene Wendell, Jane Winn & Bruce Winn of BEAT (Berkshire Environmental Action Team) who filmed the meeting; Ken Kelly of Lenox Land Trust; Doug Bruce of Native Habitat Restoration, LLC; Mike Kulig of Berkshire Engineering; Matt Ward and Dave Ward, of Stone Path Development, Inc.; Mark Volk of Foresight Land Services, and Linda Miller of Birchwood Village Town Houses

Notice of Intent (NOI), Joseph Toole, Map 33 Parcels 1 & 1.1, and Map 50 Parcel 1, 445 Pittsfield Rd. (Rear). AKA The Toole Wildlife Preserve-Mass DEP File # 198-0296 and NHESP 06-19136-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 Sept. 6, 2017, request of applicant to continue to October 19, 2017. At the Oct. 19th meeting, NC said that Sarah Gapinski of SK Design had contacted him and requested that their continued hearing be continued again to November 16, 2017 due to the death of a close friend.*

Mr. Scalise briefly reviewed the history from the time the NOI was filed to this date and provided a copy of a USGS map with coordinates and an aerial photo, both of which detail the botanical survey location. He noted that the only changes from the original NOI are:

- Relocation of the entries to the path
- Removal of the dock
- Relocation of a bench

Mr. Scalise referred to drawing #2 in the original NOI and reviewed the details of the items that have not changed. He said that a botanist would be on site to be sure the project was done properly. He also referred to the email of November 16th from Misty-Anne Marold of Natural Heritage Endangered Species Program (NHESP) in which she provided conditions to be included in an Order of Conditions. The following is Ms. Marold's email:

*The Applicants have provided the results of a botanical survey conducted by Charles Quinlan and revised the project plans to avoid direct and secondary impacts to state-listed plants. Therefore, based on a review of the additional information that was provided and the information that is currently contained in our database, the Division has determined that this project, as currently proposed, **must be conditioned in order to avoid a "take" of state-listed species (310 CMR 10.18).** The Project shall comply with the following conditions:*

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- 1)~Develop a botanical protection plan with oversight during all work within 25 feet of any state-listed plants that shall be submitted for Division approval. The plan should include the following elements:
 - a. Prior to the start of work, Charles Quinlan, or another qualified botanist, shall delineate with stakes any areas containing state-listed plants and any associated primary habitat (cumulatively "Areas of Concern"). Upon the placement of the stakes, snow fencing shall be installed to prevent access into the Areas of Concern; however it is not expected that all plant occurrences will be encircled only those within 25 feet of proposed work.
 - b. Work within 25 feet of any Areas of Concern shall be performed only after the state-listed plants have gone dormant for the season following a 25°F frost.~
 - c. Excavation work within 25 feet of Areas of Concern shall be completed prior to active growth in the spring.
 - d.~During all work within 25 feet of the Areas of Concern shall be conducted under the direct supervision of Charles Quinlan or another qualified biologist.
 - e. Any cut vegetation or soil shall be stockpiled only within the trail or in areas designated by the qualified botanist.
 - 2)~Any disturbed areas requiring application of seed for restoration and which are currently lawn, will be restored to conditions similar to that which currently exists.~
 - 3)~All non-lawn area will be restored using seed mixes that shall be composed primarily of native ecotype-forbs listed as native to Berkshire County, Massachusetts as listed in "The Vascular Plants of Massachusetts: A County Checklist, First Revision" (Dow Cullina, Connolly, Sorrie & Somers, 2011).~ We note that many commonly available restoration seed mixes contain Blue Gramma, a non-native and invasive plant;~Blue Gramma shall not be included in any~restoration seed mix used.
 - 4)~At a minimum, planting/seeding shall occur~no later than one week after completion of work in any area or as stipulated on the seed label; all seeding within 50 feet of the Areas of Concern must be completed prior to active state-plant growth in spring or as stipulated on the seed label.

Ken Kelly referred to item 1) d., and asked it this meant that a botanist had to be on the site during the entire construction time. It was clarified that a botanist would be on site at a pre-construction meeting and when work is in the vicinity of sensitive areas.

Conditions that had been discussed at a previous meeting would be included on the Order of Conditions as well as those Ms. Marold included in her email.

DL made a motion to approve the project as presented. JS seconded the motion and the Commission voted to agree 6-0.

Notice of Intent, David Ward, Stone Path Development, Inc., 241 Walker St., Map 8 Parcels 1 & 6-1. Mass DEP File #198-0300-The project is the construction of a 9 unit residential development with associated roadway and driveways. Continued from November 2nd to permit time for adjustments to be made to the plans. .

Mr. Scalise gave an update on progress that has been made since the last meeting. They have been addressing comments made by the Commission and by Foresight Land Services who have been hired to do a peer review for the Planning Board. They have six locations on the property for test pits where stormwater processes are proposed. Birchwood Village Townhomes, located to the north, have expressed concern that this project may contribute to flooding and ponding onto their property, so survey crews have completed a topographic survey into the buffer zone. The proposal is to relocate the drainage outlet of the detention basin to the west, but there would have to be some clearing. Before clearing they will take an inventory of what is there. They will ask for a temporary easement from Birchwood as they would need to go onto their property. There will be a temporary disturbance in the buffer zone. There would be no structure, just fill material. The Commission will be provided with a planting plan and the area will be restored.

Mr. Scalise said that Foresight Land Services has submitted to the Town a redesign of Walker St. which has grades and elevations similar to the existing, but it will require the Applicant to change their road design a little. The stormwater management plan has also changed a little. A second detention basin is proposed which will drain into the first one. He asked the Commission if they are satisfied with the restoration area in the buffer and with the pipe outfall to the west. DL expressed concern that this may not be sufficient. Mr. Scalise responded and discussion ensued regarding other possible mitigation steps.

Mr. Scalise said that they have a limit of work, less water than before, and he believes a good plan. There will be no stormwater released in resource areas. In the buffer they will back fill and in other areas restore in place.

Ms. Miller asked about the site visit for the Planning Board that is to be on November 17th. Mr. Scalise told her that stakes have been put in place in preparation for the site visit. She said that she would reserve any further comments until after the site visit.

Mr. Scalise will return with plan revisions. RFC made a motion to continue to December 21st at 7:30 PM. DF seconded the motion and the Commission voted to agree 6-0.

Request for Determination of Applicability, Lawrence Lane, at 91 Pittsfield Rd., Map 22 Parcel 1, AKA Arcadian Shop- The proposal is to supplement efforts by the Town to remove non-native invasive plants from Kennedy Park, especially the effort to eradicate hardy kiwi.

Mr. Bruce of Native Habitat Restoration presented the RDA. He said that this is a limited scope project to remove invasive, e.g., bittersweet, honeysuckle, and kiwi. This project involves cutting larger stems and treating the cut stems. Mr. Bruce stated that this is the right time of the year for this kind of project. It is not within a resource area, but it is in the buffer of a vernal pool. The project area totals 25,000 square feet of which an estimated 10,000 square feet will be treated.

A second stage will be a foliar application, in late spring or early summer of 2018, but that will be under a separate filing.

There was a site visit on November 8th that was attended by JS, VA, NC and Mr. Bruce.

JS made a motion to issue a Negative 3 Determination. VA seconded the motion and the Commission voted to agree 6-0.

Notice of Intent filed by Alan Schiffman, Map 2 Parcel 7, Route 20 (Lee Rd.). The project is culvert and driveway replacement and proposed installation of a boardwalk. Mass DEP File #198-0301.

Note: The original NOI narrative and plan was revised on November 16, 2017.

Mr. Volk reviewed the project. Mr. Schiffman purchased the property with the intention of building a home in 1.5 to two years on this lot which has frontage on Laurel Lake. Until then he wants to put in site improvements so that he can enjoy the property. Water and electricity are on site. Access is via a common driveway.

The Applicant wishes to put in an entrance wall of dry laid stone. The end of it is in the buffer zone. Two existing 36 inch culverts will be replaced with an imbedded bottom culvert. NC asked about the question from Mass DEP, "Can open bottom crossing be used instead of embedded?" Mr. Volk said that DEP regulations do not restrict an imbedded bottom culvert and an embedded one has less of an impact. NC said that the stream is intermittent, mostly dry, and the water source is from Rt. 20.

The boardwalk that is proposed is 475' in length and 28" off of the ground and designed to allow for angled light penetration. It is to access Laurel Lake and a dock. Construction is proposed to be done in approximate 8 foot sections with three 2x6 stringers and a deck being 48" wide except with a small curb on each side and with 3/4" spacing. Curbing is proposed to be supported every approximate 33" with a decking board 52" wide. The boardwalk is proposed to be constructed of black locust wood or other rot resistant lumber. This area is all BVW and not a significant wetland until you get 2/3rds to halfway out.

A removable dock is proposed from the mean high water (MHW) out through a cattail patch into the open water. The size is to be 40 feet long and 4 feet wide. The end 10 feet will have an additional 4' width to allow for an 8' wide by 10' long pod for storing kayaks. The dock will be removed in the winter season and stored on a small upland island at the end of the boardwalk. The dock must and will be permitted through a Chapter 91 dock permit with Mass DEP.

Floyd Tuler, an abutter to the property had a few comments, but had no objections to the project.

There was a site visit on November 8th that was attended by Mr. Volk and Philip Williams of Foresight Land Services; Jim Harwood of J. Harwood Architect; JS, VA and NC. DL went at a later date with NC.

DF made a motion to continue to December 7th at 7:30 PM in order to have time to receive comments from NHESP. DL seconded the motion and the Commission voted to agree 6-0.

In reviewing the project, Mass DEP made the following comments:

- [1] The Commission needs to keep the public hearing open until NHESP has issued its determination
- [2] Can an open bottom crossing be used instead of embedded?

[3] The commission should ensure that the elevation of the walkway is sufficient to ensure light can penetrate both through the boards and the side of the walkway so there is no impairment to the BVW beneath it.

[4] Any proposed structure seaward of the high water mark, whether it be on, under or over it, will require a Chapter 91 license.

[5] There are two separate activities therefore there must be a filing fee for each. The Commission should review all the work and determine the appropriate additional filing fee owed to the Commission and MassDEP.

ADDITIONAL REQUIREMENTS:

Chapter 91 license may be required. Application and transmittal form are available on the MassDEP website

<http://www.mass.gov/eea/agencies/massdep/water/approvals/wetlands-and-waterways-forms.html#2>. If necessary, contact MassDEP Waterways Program at 617-292-5929 for direct mailing or provide information why license is not required.

This project proposes a discharge of dredged or fill material into "Waters of the United States" potentially subject to the federal Clean Water Act. Per the Massachusetts General Permit (MAGP) issued under the federal Clean Water Act, you may be required to notify the US Army Corps of Engineers, New England District of this project proposal.

Request for Determination of Applicability, David Schwartz, 40 Frothingham Crossing, Map 3 Parcel 31-Septic leaching field replacement.

Mr. Kulig presented the RDA for a subsurface sewage disposal system upgrade for a single family home. Some fill associated with leaching field is shown within the 100 foot buffer zone. (This is lawn.) All components are outside of the 100 foot buffer.

There was a site visit on November 14th and attended by Ben Naylor and Fatjon Rabić of Berkshire Engineering; and JS, VA, DL, and NC.

DF made a motion to issue a Negative 3 Determination and JS seconded the motion. The Commission voted to agree 6-0.

Approve Minutes-November 2, 2017- VA made a motion to approve the minutes with edits. DF seconded the motion and the Commission voted to agree 6-0.

Respectfully submitted,
Peggy Ammendola