

## Conservation Commission Minutes, 02152018

**Lenox Conservation Commission  
Landuse Meeting Room  
February 15, 2018  
Minutes**

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

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

**Staff present:** Peggy Ammendola, Land Use Clerk, PA

**Also present:** Ken Kelly-Lenox Land Trust; Rich Lefkowitz; Roger Scheurer of LLPA; Attorney Beth Goodman of Cain Hibbard & Myers; Mike Leavitt of Berkshire Natural Resources Council (BNRC); Emily Stockman of Stockman Associates LLC.

**Notice of Intent, David Ward, Stone Path Development, Inc., 241 Walker St., Map 8 Parcels 1 & 6-1. MA DEP File # 198-0300.** The project is the construction of a 9 unit residential development with associated roadway and driveways. First hearing November 2, 2017. Continued to November 16<sup>th</sup>. Continued again to December 21<sup>st</sup>. On December 21, applicant requested to continue to January 4, 2018. Due to the inclement weather the meeting was continued to January 18, 2018. On January 18<sup>th</sup> the applicant requested another continuance to Feb. 1 and on Feb. 1<sup>st</sup> they asked to continue to February 15<sup>th</sup>. On February 13<sup>th</sup>, Chair Neal Carpenter advised that the applicant asked for another continuance to March 1 at 7:30 PM.

DF made a motion to continue the hearing to March 1, 2018. VA seconded the motion and the Commission voted to agree 5-0.

**Notice of Intent, Edward Merritt, 139 Lime Kiln Rd., Map 27 Lot 18.** The project proposed is construction of a 24' X 30' garage in the northwest corner of the property. The property is partially in the outer riparian of the riverfront. Originally scheduled for Feb. 1, 2018, but on that date the applicant requested to continue to Feb. 15, 2018. On Feb. 15<sup>th</sup>, another continuance was requested to March 1<sup>st</sup>. DF made a motion to continue the hearing to March 1, 2018. DL seconded the motion and the Commission voted to agree 5-0. On February 15<sup>th</sup>, Mark Stinson of Mass DEP advised the Conservation Commission and Rob Akroyd of Greylock Design Associates, representative of Mr. Merritt, that this project should be reviewed as a Riverfront Redevelopment project.

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**Notice of Intent, Berkshire County Natural Resources Council (BNRC) for property located at Under Mountain Rd., Map 11 Lot 9 and Map 16 Lot 26. Mass DEP File # 198-0303.** The project proposed is the creation of a public trail which will include the construction of three footbridges and a boardwalk. Portions of the proposed project are located within Bordering Vegetated Wetland, Bank, Bordering Land Subject to Flooding and Buffer Zone.

Presenting the NOI was Emily Stockman of Stockman Associates. Also present was Mike Leavitt of BNRC.

Ms. Stockman stated that "the goal of the project is to create a trail that navigates a myriad of different ecosystems and provides a vista to a historic farm pond and an open water portion of Parsons Marsh. The trail has been designed to comply with Federal Trail Accessibility Standards (Architectural Barriers act). The pedestrian trail will traverse open field habitat, upland woodlands, forested swamp, emergent marsh and will span intermittent stream tributaries to Marsh Brook." The trail will be 1700 feet long.

Minor excavation is anticipated to address grades on the trail as the trail crosses the upland meadow and approaches the first footbridge. The impacts from the small machinery to get to the far side of the brook will be temporary. There will be no excavation in the area that has been deemed archeologically sensitive sites.

Ms. Stockman gave a thorough review of the plans and the scope of work.

The Commission agreed to have a site visit on Wednesday, February 21<sup>st</sup> at 9:00 AM.

VA made a motion to continue the hearing to March 1, 2018 at 8:00 PM. JS seconded the motion and the Commission voted to agree 5-0.

**Request for Determination of Applicability, Diane Marcus, Director of Belvoir Terrace Inc. for property located at 148 Cliffwood St., Map 17 Parcels 13.** The project is to connect an existing house to municipal sewer. A portion of the work will take place in the buffer zone to a Bordering Vegetated Wetland.

Brent White of White Engineering presented the RDA. The single family home is presently on a septic system. Mr. White reviewed the plan and gave a detailed presentation for the project.

Rich Lefkowitz, a neighbor, was present. He reviewed the plans and had no issues with the project.

DL made a motion to issue a Negative 3 Determination. JS seconded the motion and the Commission voted to agree 5-0.

**Laurel Lake Preservation Association (LLPA), Certificate of Compliance** –Presenting the request was Attorney Goodman of Cain Hibbard, & Myers. Also present was Roger Scheurer.

NC advised Attorney Goodman that due to the fact that LLPA had not complied with the Special Conditions to the Order of Conditions, a complete Certificate of Compliance could not be provided. Of the 11 Special Conditions listed, all were met with the exception of items 1 C and parts of 1 D. Item C specifically required LLPA to file with the Commission a watershed management action plan. Over the span of 7 years, the Commission asked for this document but it was never forthcoming and in fact Dr. Wagner said that the Commission did not need an action plan. Attorney Goodman read aloud parts of the first Special Condition and questioned why the subsequent drawdowns were granted when the conditions were not fully complied with. The Commission explained that they were trying to work with LLPA.

*Attorney Goodman read Item #1 of the Special Conditions to the Order of Conditions which reads:*

*The Laurel Lake Preservation Association, Inc. (LLPA) drawdown request for three years is conditionally approved by the Lenox Conservation Commission (LCC); however, the LCC retains the right to cancel subsequent drawdowns in years two and three unless the following conditions are met:*

*The review data specified below will be supplied by a reputable engineering firm to be approved by the LCC. The engineering firm will supply a summary and evaluation of all data relevant to possible impacts of the drawdown on the invasive and native plants in Laurel Lake and the adjacent emergent vegetation. The firm will also report on any other significant observations resulting from the drawdown:*

*C. Inclusion of a watershed management action plan to address long term reduction of nutrient loads.*

*D. Monitoring program*

JS stated that there was never a study done on the drawdown zone on bivalves and other native species. Attorney Goodman challenged saying that she had read the summary report and that it does describe the bivalves. JS responded that the report did not contain analysis, or design of what Dr. Wagner was going to do so there was no way of telling whether or not there was any effect. JS referred to a portion of the report with regards to the Zebra Mussel and noted that the report doesn't show any trends or statistics, or base line data. *Note: JS prepared and presented at this meeting a document "List of Concerns Regarding the Laurel Lake Preservation Association 2010-2017 Summary Report".* Attorney Goodman said that she was not sure that her client was to analyze the data. JS responded that Dr. Wagner is a scientist and that he should give something that means something.

The Order of Conditions has expired. NC said that the Commission could only issue a Partial Certificate of Compliance because LLPA failed to comply with all of the Special Conditions. This, he explained, would close out the Notice of Intent which is recorded at the Registry of Deeds. Without a Certificate of Compliance, LLPA could not file another NOI. He advised that should LLPA file a new NOI, the Commission would make the non-compliant conditions of this Order a priority.

Attorney Goodman said that a new NOI may or may not be filed.

It was suggested that Attorney Goodman review the minutes of the prior hearings so that she would be familiar with the history.

Mr. Scheurer said that the goal of the LLPA is to sit with the Commission and have Attorney Goodman help facilitate to meet the requirements of the Commission.

Attorney Goodman said that they would take the Partial Certificate of Compliance and have it recorded. She will proceed with what her client wishes to do, i.e., file an NOI or provide a management plan.

VA made a motion to issue a Partial Certificate of Compliance for compliance of all eleven Special Conditions with the exception of #1 C. DF seconded the motion and the Commission voted 4-1, with JS opposed.

**Canyon Ranch, Certificate of Compliance, Maps 3 & 7, Parcels 50 & 43-The request was made by Foresight Land Services.** The Order of Conditions dated July 19, 2007, File # 198-0230, was deemed an Invalid Order of Conditions as the work permitted never commenced and the order has lapsed. DL made a motion to issue the Certificate and JS seconded the motion. The Commission voted to agree 5-0.

**Approve Minutes- February 1, 2018**-DL made a motion to accept the minutes as presented. JS seconded the motion and the Commission voted to approve by a vote of 5-0.

DF made a motion to adjourn at 8:50 PM. VA seconded the motion and the Commission voted to adjourn 5-0.

Respectfully submitted,  
Peggy Ammendola