

Conservation Commission Minutes, 07/21/2016

Lenox Conservation Commission Landuse Meeting Room July 21, 2016 Minutes

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

Staff present: Gwen Miller, Land Use Director & Town Planner, (GM); Peggy Ammendola, Land Use Clerk (PA)

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 will also attend 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.*

Present were: Jim McLaughlin and Cody Miller of Stantec; Christopher Pedersen and David Keator and of the Commission of the PMA; Attorney Rich Dohoney Counsel to City of Pittsfield; Becky Cushing of Audubon; and Doug Bruce of BNRC.

Mr. McLaughlin of Stantec noted that Randy Christiansen, who had presented at previous meetings, is now semi-retired. Mr. McLaughlin gave an update since the last meeting of February 18, 2016 and provided photographs taken just two days ago. He said that the restoration, except for the question of the plantings, is complete in his estimation. He said that the Commission had asked Mr. Christiansen to investigate indigenous species that could be planted and a source of nursery stock and Mr. Christiansen had prepared a memo in which he talks about the types of native species and seedlings that could be expected to survive. Discussion regarding the infeasibility of transplanting from the site took place. A canopy continues to be over this whole area. He added that natural reforestation is a viable solution, but that decision would be up to the Commission.

Regarding signage, he said that Stantec has had signs prepared and placed six signs along the trail at the request of Audubon. Mr. McLaughlin had two additional signs to show to the Commission and offered them to Ms. Cushing. She declined but asked him to keep for monitoring purposes.

Mr. McLaughlin said that surveyors were at the site today and will be tomorrow to determine where property lines are of the affected properties, i.e., Audubon, BNRC, and Joe Cardillo's. Mr. McLaughlin questioned whether to go on with additional plantings or not.

JS told Mr. McLaughlin that the Commission expected to have a restoration plan in hand at this meeting. Mr. McLaughlin responded that a restoration plan was submitted in February 2016 and that the Commission had requested that Stantec look at the potential to transplant seedlings as opposed to nursery stock. This, he said, was in a memo Mr. Christiansen prepared July 11, 2016 and submitted to the Commission two weeks ago. GM said that the Town was to have a final plan, not a draft, which would have included benchmarks for monitoring. She stated that there seems to be confusion among the parties. The Town wants a peer review of the restoration plan. Mr. McLaughlin said that the submitted plan may have been labeled as a draft. He said that it was anticipated that there may be comments.

Both NC and DL said that the site has been stabilized and that it looks good. DL and TF stated that they were expecting a restoration plan to be submitted tonight, with the expectation that it would be acted on in the fall. Mr. Cardillo praised the stabilization work done by Stantec and noted that there has not been any erosion. He understood that there had been agreement to a final planting that would occur around September/October 2016.

Mr. Cardillo said that he did not want anyone going on his property without his permission. A letter to this effect, dated June 9, 2016 from Attorney William E. Martin, is on file.

Mr. Bruce asked about the pre-existing road. He has no recollection of the road, and says that it doesn't show up on BNRC or USGS maps. He did say that BNRC shows "goat paths", and doesn't think that any path of any substance could be there. DL confirmed that there is, and that there are more paths that are off that path. He said that the path isn't used that much. Ms. Cushing said that there are no official trails on Audubon's property that are open to the public. Mr. Cardillo stated that Thomas Grizey, an electrician, maintained the old beacon up until about five years ago and that he used a utility vehicle on this road to reach the beacon. He questioned if this road could be used without first going through the permitting process. NC said that this could be added to the NOI that is before the Commission.

Mr. Keator said that he was present for the February meeting and it was his understanding that the plan submitted was more or less fine as presented, but the Commission expressed concern about non-indigenous nursery stock being planted as opposed to transplanting existing trees. Stantec then followed thru with a memo stating what they could do for replanting. Mr. Keator said that he expected that at tonight's meeting the Commission would go in one direction or another and with that direction they could finalize the draft plan.

NC asked the Commissioners if they would agree to use the plan from February and parts from the latest one. Commissioners disagreed and said that a plan must be presented. RFC suggested that parties review the February 28, 2016 minutes as there seemed to be so much confusion. JS recalled that the original proposal was grass and trees, but wanted the understory planted too. As far as transplanting goes, JS said that permission from Audubon would be required to dig up plants, and he said it is doubtful the transplants would survive. He wants to know what is up there and

what would be feasible to plant. This is why the Commission is requesting a peer review. He added that the information Stantec has given the Commission has not been reliable. Mr. McLaughlin suggested that the memo that was submitted on July 11, 2016 gives information on the existing plants there and what they could possibly transplant.

TF said that they told Stantec that they could do the stabilization right away but to have a restoration plan so that the Commission could act on said restoration plan tonight. That plan was to include establishing monitoring plots, coming in with the base line for the plant community composition so that the Commission would know what they were measuring against and coming up with monitoring so that the Commission could see the degree of success over time. None of that had been presented. Mr. McLaughlin believes that this information is included in the February 18th submission. TF responded that this had not been accepted and that there has been nothing new since February. GM said that the Commission received a draft restoration plan of February 4th, a letter from February 18th which proposed the completed stabilization effort, and the July 11th letter with planting alternatives and a letter dated July 12th from the PMAC.

GM asked all in attendance to say what is needed for a final draft restoration plan, set a date for submission of those comments, and a date for the return of the draft to the Commission. Mr. McLaughlin responded that he thought that everyone had been on the same page. A plan was submitted in February which had thousands of nursery stock plantings. Mr. Keator confirmed at this meeting that all members of the Commission wanted nursery stock plantings and that no one was concerned about contamination. Ms. Cushing said that Audubon would want to know what is being planted, what is to be accomplished and what are the performance standards. She said that Audubon is most interested in the end product and having the forest look like a mature, high functioning forest that was there before. She wants the site to be monitored at 3, 4, 10 and 15 years. Mr. McLaughlin said that the February 18th submission included performance standards, monitoring survivability and what Stantec would expect to see after 5 years of monitoring. This period is more than what MassDEP requires.

Mr. McLaughlin stated that the Commission never discussed in the previous meetings with Stantec of wanting a peer review. Mr. Keator said that the Commission had the peer review listed on the agenda as an "informal discussion", and that it was too late of a notice for the PMAC to be able to be present. At that meeting the Commission voted 7-0 to request that the Town Planner investigate the hiring of an independent person. (See June 2, 2016 minutes.) GM notified the PMAC of the Commission's request for a peer review and provided to them a definitive scope of work with a modest, estimated budget, a maximum of \$2500.00.

NC said that he knew that under the Wetland Protection Act, the Commission could request a peer review, but he wasn't sure that it could be done under the Scenic Mountain Act and questioned the need. JS and TF stated they want an independent review and TF said that he thought it could be done under the SMA.

TF said that the Commission needs the whole content of a restoration plan. He agrees that it should include the items that Ms. Cushing expressed for Audubon. NC said that the plan should include the work that already has been done for stabilization, so that it is a complete plan.

Ms. Cushing expressed concern regarding the trail. She had expected that more work would have been done in particular with regards to the woody debris. The tree trunks were to be placed so as to deter ATVs. Instead they appear to be lining the trail. She also feels that the trail is very wide. NC suggested that the trunks be pulled and angled into the path and that the trail be narrower. Mr. McLaughlin said that their intention was to skew the trunks a little and not have a defined trail. He also said that he thought that they were making progress; the trail was already there albeit smaller. He agreed that the contractor took liberties and it shouldn't have happened, but is it now stabilized to gain access to the beacon. JS said that there was a letter from Audubon's attorney which stated that Audubon wants the road closed. JS said that the Commission doesn't have the authority to make Audubon put a road through their property. Ms. Cushing responded that if, for safety reasons, PMA needs access, Audubon would agree, but they would want this to be a part of the SMA permitting process which would give Audubon the opportunity to comment. JS said that there would have to be an engineering study for a trail.

GM said that for the next meeting with Stantec and PMA everyone should review the minutes of February 18, 2016. It is expected that when the hearing resumes, Stantec will have submitted a final plan that will have a survey detailing plant materials that were there before the new access trail was created, show what is in the power line easement, what is growing there now and that what will be growing there in the next 5, 10, 20 and 50 years-will be close to what was growing there before the violation of the SMA. Audubon envisions a mature, intact forest. The Commission wants to be sure that the bench mark for that is established in the final restoration plan; that there is more clarity on stormwater and runoff control in the plans; and some more discussion on natural seeding versus plantings that are coming in. GM noted that it seems like a lot of work is already noted in the July 11, 2016 memo. Audubon wants a monitoring plan of more than five years. The airport will need future access to the beacon and Audubon and some Commissioners feel a need for a separate NOI for the trail that is there now. Audubon has expressed concerns about the way the logs are situated as it is not effective in minimizing illegal traffic. Audubon is making an effort so that the airport can get up to the beacon. GM polled those present to make sure that she had covered everything.

JS made a motion that the Commission hire Dr. John Burns to do a survey and review the final plan. This, he said, is the Commission's prerogative to request the airport to put \$2500.00 into an account to cover that expense. DF seconded the motion and the Commission voted to approve 6-1, with NC casting the dissenting vote.

Mr. Pedersen said that he wanted the Commission to understand what they are voting on and to understand what they are asking the PMA to do. He said that he would feel more comfortable if that is clearly indicated and added that PMAC certainly doesn't have the funds to pay for it.

Attorney Dohoney said that he hoped that they could have the opportunity to convince the Commission that the final plan would meet with their approval without the 3rd party review, citing that funds are not available.

JS responded that the problem is that the Commission doesn't have baseline info even though it has been requested. GM said that maybe with a better plan on the 18th, the Commission might agree that a peer review isn't necessary, but if it is, the parties could move more quickly toward a review.

DL made a motion to continue the hearing to September 1st at 7:30 PM. VA seconded the motion and the Commission voted to agree 6-0-1 with TF casting the dissenting vote. A copy of the restoration plan to be considered at the September 1 meeting is due to GM by August 18 so that the Conservation Commission may review prior to the September 1 meeting and provide comments to Stantec as necessary.

Notice of Intent Willow Creek Road (Map 14, Parcels 2 & 3). The 748.80 kilowatt ground-mounted solar photovoltaic array on the closed and capped landfill includes work within the jurisdictional buffer zone to wetland resource areas. *Continued from July 7. NHESP Tracking number received on July 15th is 12-31042. On August 20th, Bob Bukowski Requested continuance to July 28, 2016 expect to get the MEPA review on*

Tuesday which will complete the documentation. VA made a motion to continue this hearing to July 28th and RFC seconded the motion. The Commission voted to agree 7-0.

Notice of Intent, Oliver Curme, The Dormers LLC, 138 Pittsfield Rd., Map 22 Parcel 32. The proposed project is the dredging by suction of a small pond in buffer zone to bordering vegetated wetland. The hearing will be at the Town Hall, 6 Walker St. in the Landuse meeting room. Continued from July 7, 2016. DEP File number 198-0293.

Note: On July 20th, Ms. Boomsma delivered the additional information requested at the July 7th meeting by the Commission. That information included field data sheets and a revised plan which shows the revised wetland boundary.

There was a site visit on July 19, 2016 attended by Shannon Boomsma of White Engineering, Mr. Curme and Commissioners NC, VA, TF, DL and JS.

Presenting the application was Shannon Boomsma.

Ms. Boomsma presented a revised plan which better defines the wetlands. The project is to put a small pontoon boat into the pond with a man and a suction hose. Ninety nine cubic yards of algae, muck and sediment will be sucked out and the water, which will be 90-95% clean, will be pumped back into the pond. An aerator will be anchored at the bottom of the pond which will be powered by an air compressor unit or a small solar panel. There will be no alteration to woody or rooted vegetation. The reason for the limit of 99 cubic yards is so as to not trigger the 401 Water~Quality~Certification~Regulations. Mr. Curme wants to get the pond clean enough to start the aeration and he may then stock the pond with trout. Other than when the boat is brought in on a trailer, there will be no impact to the BVW or the bank of the pond. The only other resource area is the land under water. Within two growing seasons, they will have to have same wildlife habitat quality as they did prior to the work, and this is not considered an alteration. Overwintering matter will remain in the pond. Ms. Boomsma stated that by taking only 99 cubic yards versus 240 cubic yards of algae, muck and sediment from the pond it will still provide the overwintering material in the bottom of pond. When the 99 cubic yards dries out, it will be reduced to be about 40 cubic yards. This material may be used on a garden, but it would not be disposed of within the buffer zone.

JS and TF questioned how the amount of muck removed would be determined. Ms. Boomsma said that the company doing the work would track what was removed. TF said that the Commission had asked at the last meeting for bathymetric measures. He stated that the Commission needed to know what the existing contour is and what the final contour will be after the dredging to determine the volume. Ms. Boomsma responded that she is relying on the company who will be doing the work to stay within the bounds of removing 99 cubic yards. TF said that the specifications have to be published to the Commission before the Commission can permit an activity.

TF asked what the species were of the nuisance vegetation. Ms. Boomsma said that there are algae mats but she doesn't know what species are. He also asked if she had any biological survey information on the pond. Ms. Boomsma does not; therefore there is no way of knowing what proportion is native or non-native. The pond has fish, and the company reports a 99% viable rate for living creatures in the pond. This is not a pond under the Wetlands Protection Act. TF argued that it is land under water. Ms. Boomsma responded she had spoken to Mark Stinson of MassDEP and that she submitted to him the same information submitted to the Commission and she reported that he didn't have any concerns.

TF said that with no biological information if there is an issue to be solved here, it is likely to be only aesthetics. According to Ms. Boomsma, it appears that part of the pond is suffocating, but she said that since she started working on the project, she hasn't noted fish kill. She doesn't have any oxygen data.

DL made a motion that the Commission advise Ms. Boomsma that the Commission is requesting that all performance standards be met and that the project complies with the aquatic vegetation manual. RFC seconded the motion and the Commission voted to agree 6-0-1 with TF abstaining.

DF made a motion to continue to August 4, 2016 at 8:00 PM. JS seconded the motion and the Commission voted to agree 6-1, with TF casting the dissenting vote.

Other Business

- Site visit: July 19, 2016-Eastover, 430 East Street (Map 18, Parcel 85)-NC and David Semver, contractor, checked the siltation devices.
- NC spoke to Lamar, Mass state employee, who cited "lack of maintenance" is responsible for the washout on Town property on the west side of Pittsfield Road. NC will follow up and ask for a maintenance plan.

Approve Minutes

July 7, 2016 –VA made a motion to approve the minutes as amended. JS seconded the motion and the Commission voted to approve 6-0-1, with RFC casting the dissenting vote.

RFC made a motion to adjourn. DL seconded the motion and the Commission voted to agree 7-0. The meeting was adjourned at 9:35 PM.

Respectfully submitted,
Peggy Ammendola

