

TOWN OF LANCASTER
CONSERVATION COMMISSION

Meeting Minutes

February 28th, 2023

Members Present: Chair Tom Christopher, Vice-Chair Tom Seidenberg, Bruce McGregor, Jim Lavallee

Members not present: Greg Jackson

Also Present: Charlotte Steeves (Conservation Agent)

List of agenda items presented:

1. **Public Hearing- Request for Determination of Applicability**- 26 Shirley Road (Assessor's map 30 parcel 42)- Kersey (Matthew S. Marro Environmental Consulting)
2. **Public Hearing- Notice of Intent**- 0 Lunenburg Road (Cook Conservation Area; Assessor's map 19 parcel 17A)- Lancaster Land Trust
3. **Continued Public Hearing- Notice of Intent**- Jones Crossing (off Deershorn Road)-Assessor's Map 40, Parcels 12, 12D-12Z, 11B-11N, 11P- O'Hagan (PLACES Associates)
4. **Request to Lift Cease and Desist Order**- Harbor Classic Homes – 2039 Lunenburg Road (Assessor's map 4 parcel 9)- Koivu (Matthew S. Marro Environmental Consulting)

Chairman Tom Christopher called the meeting to order at 7:02 PM.

Public Hearing- Request for Determination of Applicability- 26 Shirley Road (Assessor's map 30 parcel 42)- Kersey (Matthew S. Marro Environmental Consulting)

Present: Matthew Marro (representing applicant)

1. Mr. Christopher read aloud the public hearing notice. Site plans were shared on the screen.
2. Mr. Marro filed an RDA for the replacement of a sub-surface sewage disposal system. He said the tanks themselves are outside of the buffer zone and the existing system will be left and abandoned in place. He said some area will be removed for the new system. They will create an entrance around the northern side of the driveway and garage. There will be traversing into the buffer zone resulting in some piling of materials in the buffer zone. There is also an existing lawn. He said there is proposed erosion controls that will be in place.
3. Mr. Lavallee said the lot is within the riverfront of a stream on the provided narrative.
4. Mr. Marro said this was an error and that he can correct this.
5. Mr. Seidenberg said he received an email from a resident claiming that the work will be within a riverfront zone and therefore the applicants need to file an NOI. He said he believes this lot was created prior to the riverfront act and is 'grandfathered in' and therefore not subject to the regulations of riverfront areas. He said the septic upgrades are exempt.
6. Mr. Marro said the septic system is outside of the buffer zone and would be exempt.
7. Mr. Lavallee made the motion to close the hearing and it was seconded by Mr. McGregor.

8. Mr. McGregor made the motion to issue a negative determination of applicability. It was seconded by Mr. Lavallee under the condition that the narrative be edited to correct the mistake.
9. Mr. Marro said he would send the correction.

Roll Call Vote to issue the RDA: Thomas Seidenberg yes, Bruce McGregor yes, Jim Lavallee yes, Tom Christopher yes. The motion was passed.

Public Hearing- Notice of Intent- 0 Lunenburg Road (Cook Conservation Area; Assessor's map 19 parcel 17A)- Lancaster Land Trust

Present: John Farnsworth (Representing Lancaster Land Trust)

1. Mr. Christopher said the applicant has requested a continuance so they can contact the Natural Heritage. He said he would like to open the hearing and vote on the continuance. He proceeded to read the hearing aloud to the commission.
2. Mr. Farnsworth said he sent in a request to open and continue the hearing. He said it would be beneficial to run through the site photos. He is looking for feedback on the application. The commissioners agreed to the brief presentation. Site photos were shared on the screen.
3. Mr. Farnsworth said the property is adjacent to the conservation commission property. The Cook conservation area is Town property. He said the parcel is part of the old roadbed. There is degradation in the entrance to the area. He proposed adding a lip to stabilize the edge of route 70. He showed 2 culvert outlet photos from the Denny's property. He showed a swale that needs to be stabilized, resulting in around 3000 square feet of area and 2000 square feet to clean up the swale. He recommended the inlet be cleared out and kept groomed. He showed the area where a proposed block wall would be installed at the edge of the parking area. The hillside would be groomed, and this would enable the area to be maintained. He also showed photos of a site with a similar project and block wall. He said the area was raised up with permeable material and installed a rock wall with hay bales to stop erosion and flooding. He would like to propose something similar for the Cook property. He shared the site plan showing the proposed area for the block wall and erosion control areas which re 100 feet from the streambank, but still within 200 feet.
4. Mr. Seidenberg made the motion to continue the hearing to March 14th, 2023, and it was seconded by Mr. Lavallee.

Roll Call Vote to issue the RDA: Thomas Seidenberg yes, Bruce McGregor yes, Jim Lavallee yes, Tom Christopher yes. The motion was passed.

Notice of Intent- Jones Crossing (off Deershorn Road)-Assessor's Map 40, Parcels 12, 12D-12Z, 11B-11N, 11P- O'Hagan (PLACES Associates)

Present: Marck O'Hagan (applicant and owner); Patrick Burke, PLACES Associates, representing applicant

1. Mr. Lavallee said that he filled out the Mullens certification from the prior hearing.
2. Mr. O'Hagan said they now have a DEP number.

3. The commission said that they have not yet had a chance to review the submissions from Mr. O'Hagan and Mr. Burke sent earlier that evening.
4. Mr. Burke shared an overall site plan with the audience. He said they have addressed prior comments in the letter that was sent out. They investigated the watershed area around a depression on the site. The investigated near wetland flags 20 and 21. He said the USGS map shows the stream as an intermittent stream.
5. Mr. Christopher said he was out there on Saturday. He said he looked at the plan closely and saw the top of the basin is at elevation 395.
6. Mr. Burke said the basin is already incorporated into the previous stormwater plan.
7. Mr. O'Hagan said they updated the plan to show snow storage areas.
8. Mr. Burke said they addressed the question on permanent impacts to the buffer zone. He said there are 7790 square feet of building area within the 100 foot buffer zone, and they were able to stay out of the 50 foot buffer. He said there are no priority habitat of rare species within the area.
9. Mr. Burke showed the stream stats program showing the location of the 0.13 square mile drainage basin tributary to the depression near Bow Ridge Brook. He showed 2 potential vernal pool and 2 certified vernal pools on abutting properties. There were none listed within the area of their site. He showed a plan with a proposed conservation area.
10. Mr. O'Hagan said there is a large area that they will not be developing on. They are proposing an area just over 3 acres to be set aside as conservation land.
11. Mr. Burke showed a plan with areas for snow storage. The plan showed 2 primary areas, one of which is near the detention basin. He said they received comments from the DEP that they addressed. He went through each of the concerns that were addressed. The first was a drainage analysis. They changed the land coverage to 'good', which will impact pre-and post-development flows to meet standard 2. Secondly, there is a new deed reference showing the single lot with updated information. Third, Bow Ridge Brook is a cold-water fishery and therefore requires 1-inch treated flow from the impervious areas. They are meeting this with the water quality units which treat 80% of total suspended solids. They ran a HydroCAD analysis for a 2-year storm, and estimated 8805 cubic feet of treated runoff, and they are treating 14,940 cubic feet to meet this standard. They also mentioned the superseding order of conditions.
12. Mr. O'Hagan mentioned item number 27 on the order of conditions talking about individual NOIs for each individual lot. The DEP said the one NOI for a single lot is appropriate. He also said a demarcation or fencing was mentioned during the last meeting. They are clearing up to the 50 foot line and there is existing vegetation that can act as a demarcation for the tenants to keep them from disturbing the riverfront area.
13. Mr. Seidenberg said during the last meeting, the commission expressed a desire to have the wetland and resource areas reviewed. He made the motion for the commission to require a peer review of the wetland areas. Mr. McGregor seconded this motion.
14. Mr. O'Hagan said the site has been reviewed by the conservation agent and by other wetland specialists. He said going back out to review the site would be excessive since the site has been reviewed 3 times.
15. Mr. Seidenberg said he is not a wetland scientist, and he cannot identify most of the plants, nor say if a wetland is a vernal pool or not. He said the commission always requests a peer review of large projects and it would make him uncomfortable to proceed without the peer review. He

said the consultant that did the wetland line worked for Mr. O'Hagan and was likely to side with the client. He said it is the commissions duty to get their own consultation.

16. Mr. O'Hagan expressed frustration at the delays for the project.
17. Mr. McGregor said he would not vote for this project without a peer review. He seconded the motion to require a peer review.
18. Mr. Lavallee asked if there was a peer review for the original project proposal for Jones Crossing.
19. Mr. Christopher said the first wetland review was done 10 years ago.
20. Mr. O'Hagan said they hired Mr. Carron, and he re-flagged the entire wetland line last spring.
21. Mr. Christopher said none of the ground in the wetland areas is frozen. He said he agreed with the commissioners that they have always required a peer review. He said he would work with Ms. Steeves to get an invoice for a peer review by CEI in time to have a report by the next meeting. He said the review will be to establish the wetland line.
22. Mr. O'Hagan asked if CEI could get engaged before the next meeting, he would have Mr. Carron attend.
23. Ms. Steeves said she would get in touch with CEI.
24. Mr. McGregor said the review should take a look at the wetlands to see if there were any vernal pools.
25. Mr. O'Hagan asked if the presence of a vernal pool within a wetland, would that extend the jurisdiction. He said he would rather the scope of the review be limited to the areas near the limit of work. He said the focus should just be the wetland line and the presence of vernal pools should not have an impact on his project. He said he does not want the review to be done in the areas that do not have a direct impact on the development site, rather the wetlands within proximity to the work they are doing.
26. Mr. McGregor said if the review is on the wetland areas and a vernal pool is found in a buffer zone, this would be a new jurisdiction.
27. Mr. O'Hagan said he does not want the review to occur on the 5 or 6 acres up behind the area they are working on.
28. Mr. Christopher said they would have a conversation with CEI to confirm the scope of the review be limited to the areas of development. He said there was a motion made by Mr. Seidenberg and seconded by Mr. McGregor to mandate a peer review.

Roll Call Vote to hire a consultant at the Jones Crossing site: Thomas Seidenberg yes, Bruce McGregor yes, Jim Lavallee yes, Tom Christopher yes. The motion was passed.

29. Mr. O'Hagan requested a continuance to March 14th, 2023.
30. The motion to continue the hearing was made by Mr. Seidenberg and seconded by Mr. McGregor.

Roll Call Vote: Thomas Seidenberg yes, Bruce McGregor yes, Jim Lavallee yes, Tom Christopher yes. The motion was passed.

Request to Lift Cease and Desist Order- Harbor Classic Homes – 2039 Lunenburg Road (Assessor's map 4 parcel 9)- Koivu (Matthew S. Marro Environmental Consulting)

Present: Brian Milisci (Haley Ward); Peter CampoBasso

1. Mr. Christopher said this is the project that the commission put an enforcement order with the planning board due to stormwater issues entering Fort Pond. They added a joint enforcement order mandating a redesign of the project. He said he attended a meeting with the engineer, agent, and members of the planning board concerning the redesign and request to lift the enforcement order.
2. Mr. Milisci said they had submitted a report that was reviewed by the planning board with a peer review. He said they dug test pits in the existing detention basin area. He said they added HydroCAD calculations with the drainage report. They found that the basin is sized properly for the runoff and the design of the development. However, the area of the basin has high groundwater, and this could prevent the detention basin from meeting the stormwater standards. He said they can not utilize the basin for recharge. They has to find another option to provide recharge. They found an area along Lunenburg Rd on lot 24 (retail lot), where there are sands and gravel and low groundwater table. They retrofitted the existing system with a recharge area. Water will be directed into the recharge area prior to entering the detention basin. He said the basin will be retrofitted with a subdrain to help drain the basin between storm events. They also repositioned the outlet to be further away from the road. They also evaluated the latest rainfall information from NOAA to evaluate pre and post development flows using current rainfall data to ensure things are sized correctly. He said that the stormwater system will act correctly from a water quality and quantity standpoint.
3. Mr. Seidenberg asked about the construction and maintenance plan. He asked who will be responsible for this.
4. Mr. Milisci said the roadway will remain private and a homeowner's association would be responsible for the maintenance.
5. Ms. Petracca asked if the total number of homes in the redesign is still the same.
6. Mr. CampoBasso said yes.
7. Mr. Christopher said he would like the plans to be peer reviewed by CEI. He said this is a new plan that involves changes to the septic system, and this also needs to be reviewed. He said a few of the homes slightly intrude in the riverfront area and this will require separate NOI filings for each of these lots. He also said the northern detention basin needs to be constructed prior to any other work. He said they will refer this project to CEI.
8. Mr. CampoBasso said this was a joint order by the commission and the planning board. He said he would like to coordinate efforts for the peer review to be used by both the commission and the planning board.
9. Mr. Christopher agreed.
10. Mr. Seidenberg said he also agreed with the combined reviews.
11. Ms. Ogilvie asked about the stormtech basins.
12. Mr. Milisci said the deep-sump hooded outlets come from the catch basins at the edge of the pavement that collect and treat stormwater. The original plan called for these, and they were installed. The recharge stations would be installed to further treat the stormwater, and these would be added to the site. He said there will also be roof recharge at each of the homes.
13. Mr. CampoBasso requested a continuance to March 14th, 2023. He said they will be able to provide a sequence of remaining construction to ensure the drainage and detention basin will be addressed right away.
14. Mr. McGregor made the motion to continue the hearing to March 14th.

Roll Call Vote: Thomas Seidenberg yes, Bruce McGregor yes, Jim Lavallee yes, Tom Christopher yes. The motion was passed.

Discussion on Quorum

1. Mr. Seidenberg said there was an email conversation that constituted a quorum. Ms. Petracca raised a concern that the commission did not have a quorum during the last meeting. He said there was an article written by a lawyer stating that the general rule in Massachusetts is that a quorum constitutes more than half of the number of seats. However, there is an exception for when other laws specify a quantum for quorum. The conservation commission calls for a different metric excluding the vacant seats. They currently have 5 seats, so there is a quorum of 3. He said there could be case law changes that he is not aware of. He said if the board is concerned, Ms. Steeves should reach out to the town administrator to see if the commission can act with only 3 members present. He said any actions they took without meeting quorum would have to be redone.
2. Mr. McGregor said Mr. Lavallee had filled out a Mullens certification.
3. Mr. Christopher said it is important to have all of the members informed. He said the commission has been struggling for 2 years to fill all of their seats.
4. Mr. Lavallee said he liked when they had a 7-member board to allow flexibility when one member was absent. He said if there isn't a quorum and there are votes, this can be an issue. He said he is unsure if the commission is on solid ground and that it is a good idea to check with the town administrator.
5. Mr. Seidenberg said there is enough ambiguity that the opinion of town counsel will be valuable.
6. Mr. Christopher said that contacting Town Counsel would have to go through Kate Hodges.
7. Mr. McGregor said members are generally good with notifying the commission of absences ahead of time. He said they can cancel those particular meetings when they know quorum will not be reached.
8. The commission agreed that it would be a good idea to have town council look into the quorum issue.
9. Ms. Petracca said she appreciates if the quorum issue is looked into with town counsel.
10. Mr. Lavallee made the motion to adjourn and it was seconded by Mr. McGregor.

Motion to close the hearing: Roll Call Vote: Thomas Seidenberg yes, James Lavallee yes, Bruce McGregor yes, Mr. Christopher, yes. The motion was passed.

The meeting was adjourned at 8:47 PM