

**TOWN OF LYNNFIELD
CONSERVATION COMMISSION**

MEETING MINUTES

DECEMBER 17, 2019, 6:30 PM

H. Joseph Maney Hearing Room, Lynnfield Town Hall

Members present:

Commissioners; Chairman Paul Martindale, Bill Thompson, Melanie Lovell, Kirk Mansfield, Janice Solomon, Angelo Salamone (absent - Don Gentile), Director Emilie Cademartori

6:30pm Chairman Paul Martindale called the meeting to order.

New Public Meetings/Hearings

6:30 Notice of Intent – 45 Lakeview

Applicant: Aguiar Jr. Defreitas

Project: Reconstruct previously demolished single-family home

Consultant James Kavanaugh presented the project summary. This property was recently before the ConCom with an RDA to install a tight tank, as a compliant Title 5 system could not be installed. At that time, there was no proposal to expand the dwelling. After an unsuccessful attempt to expand vertically, the house has been demolished. The owner is proposing to rebuild the home in the same footprint (the lot is not zoning compliant). The deck will be rebuilt or re-planked with the same footings.

Solomon asked for confirmation that the deck would not be expanded. Kavanaugh replied that he could have the surveyor pin the corners. Chair Martindale proposed a site visit. Cademartori had already asked Kavanaugh for flood elevations to be added to the plan. She further suggested that at the conclusion of construction, the existing grade in front of the deck be brought back to existing conditions, as this area is in the floodplain.

A site visit is planned for Saturday January 18, 2020 at 10:00am.

On a motion duly made by Lovell and seconded by Solomon the LCC voted (6-0) to continue the hearing until January 21, 2020.

Continued Public Hearings

6:49pm - Continued Public Hearing - Notice of Intent – 165 Lowell Street

Applicant: Andrew Zuroff, Boston Clear Water Company, LLC

Project: Restore and or reconstruct portions of an existing stone spring house, regrade areas around the structure, remove six trees, construct a series of field stone retaining walls and create a wetland replication area.

On a motion duly made by Thompson and seconded by Mansfield the LCC voted (6-0) to re-open the hearing.

Attorney Richard Nylen was present to represent Boston Clear Water (BCW). Atty. Nylen stated that this new NOI was filed in August and that the LCC was unable to hold a hearing within the required 21-day period, and has subsequently lost its jurisdiction over the matter. He further stated that he was in attendance at this 12/17/2019 meeting as a courtesy to explain his client's position. Martindale remarked that the client chose to appeal to the DEP rather than provide additional time for the LCC to hold a hearing. Nylen reiterated his position regarding the loss of jurisdiction over the expiration of the 21-day period.

Cademartori interjected that the hearing was left open because the DEP appeal was under the Wetlands Protection Act, not the local bylaw, which was also what Town Counsel Mullen recommended. Martindale said that an email request from Town Counsel to provide an additional week was not taken up by Nylen and the client appealed to the DEP instead.

Nylen stated that his client "would love" for the LCC to approve the NOI for the spring house. Martindale said that it is difficult to discuss/act on the new NOI without anyone present to discuss the project. Nylen then restated that the LCC no longer had jurisdiction. Martindale then asked if Nylen would be withdrawing the NOI, to which Nylen said no. He added that what his client wants is for the LCC to either approve or deny the NOI. Solomon expressed confusion regarding Nylen's request.

Cademartori added that she believed it to be unfair that BCW ask the LCC to decide on something without someone to represent the project. Martindale said that if a representative would be present at the next meeting, the LCC will discuss the project. Nylen reiterated the LCC did not have any jurisdiction and that he was not going to withdraw the NOI. Martindale noted that he did not feel comfortable with any decision until further consultation with Attorney Mullen.

Cademartori asked for confirmation from Nylen that regardless of how the LCC acts, if its decision is not the same as how the DEP decides, that he considers the LCC decision null and

void since the LCC has no jurisdiction to begin with. Nylen confirmed this to be his client's position.

Solomon expressed concern that the LCC has been unable to enter the BCW property. Lovell suggested that the LCC continue the hearing. Nylen noted that he wanted the minutes to reflect that BCW was not assenting to a continuance.

Abutter Mary Bliss of 175 Lowell Street commented that she is confused by the events taking place.

On a motion duly made by Lovell and seconded by Mansfield the LCC voted (6-0) to continue the hearing to the January 21, 2020 LCC meeting.

Other Open Permitting Items

7:10pm - Enforcement Order – 165 Lowell Street DEP File #209-0604 & LCC 2019-01

Boston Clear Water Attorney Richard Nylen was present for the update. BCW appealed to have the EO rescinded/ nullified. Town Counsel Tom Mullen has filed a response. There is no new information. Nylen stated that his client's position continues to be that there is no evidence of any alteration of any wetland on the property. Rather, he has heard about silt in the driveway, and on the hillside - far from the wetland locations.

Thompson noted that from the Greenbelt property he had visited the BCW property earlier in the day and noted debris piles along the ridge line are still present and that there is no evidence of erosion control. The texture of the hillside is altered. He added that with the cost of erosion control being quite minimal the position of BCW "seems callous". Nylen responded that his client "believes in erosion control when it's appropriate". He then raised the earlier argument about the inappropriate inclusion of the installation of the large cross and the granite benches.

Nylen also noted that he was anticipating that Mr. Farrell from Greenbelt was going to remove a tree in question, and when that was done, removal of the debris would take place. However, there has been no action to date. Nylen added that he had heard that Greenbelt found Nylen's language in the letter to be unacceptable.

Nylen also added that permission would not be denied for the LCC to come onto the property to see if any alteration has been done to the wetlands. Martindale then asked Nylen who he felt was responsible for deciding when erosion control is appropriate. Nylen then reiterated his comments about the work concerning the cross and the granite benches.

Martindale suggested that if the leaf litter over the winter and into the spring has the effect of stabilizing the slope, then perhaps the LCC can end the Enforcement Order. Nylen replied that by the time the Enforcement Order was issued that area was stabilized. Martindale disagreed. Nylen reiterated that there is no evidence of erosion taking place that is altering a wetland. He further added that it isn't enough to have erosion, but that the loose dirt must be contributing to altering a resource area.

Martindale suggested that it would be a waste of everyone's time to continue the discussion and it would be up to the Superior Court to decide.

7:26pm - Minor Change Request – 4 Magnolia DEP File # 209-0618

John Morin, Morin Cameron Group was present to summarize the minor change request to the OOC issued February 2018. The original permit #209-0393 was a superseding order in 2006. Only the septic system was installed before it expired in 2016. A new OOC for home construction was granted in Feb 2018. The potential buyer would like to modify the footprint of the original home design.

The entire site is inside the buffer. The new limit of work line has not changed. The original retaining wall is no closer to the wetlands, although the home is slightly closer. Technically, the wall is a structure. The closest point from the house to the wetlands is 16'. The proposed new home footprint is 64 sq. ft. smaller. The driveway design results in an impervious area reduction of approximately 1,300 sq. ft. The ZBA has approved the new design contingent upon LCC approval.

Also proposed is a fieldstone wall to act as a deterrent to encroaching on the wetlands. Salamone asked about the previous basement elevation. Morin responded that the design calls for a deeper basement and a reduction of grading off the back of the property. Morin also noted that 5 ornamental trees are being proposed. Lovell asked if there would be a net gain or net loss of trees, to which Morin said that the additional 5 ornamental trees were more than the previous plan proposed. Morin also added that the plan calls for approval of the trees by the LCC.

Cademartori suggested a minor change request rather than filing a formal NOI because of the reduced footprint of the design, no change in the limit of work, less impervious driveway surface area and the additional drainage measures proposed.

Solomon expressed concern that the change was not insignificant and that in fairness a hearing may be in order for the benefit of the neighbors. Morin noted that there is only 1 direct abutter to the property - Mr Roselando at 6 Magnolia - who knows the house is being built one way or another and that any of the changes would not affect his property.

On a motion duly made by Lovell and seconded by Thompson the LCC voted (6-0) to grant a minor modification (insignificant change) for 4 Magnolia Drive - DEP #209-0618.

New/pending Violation Complaints/ Investigations

7:54pm - 39 Homestead

Homeowner Christopher Minor was present for the discussion. Cademartori provided a historic photo of the property. The landscaper still needs to bring a plan to review with Cademartori.

Martindale said that some level of restoration needs to be done, and questioned the suitable distance from the stream. After some discussion by commissioners, Martindale proposed a distance of 15' from the stream, some wetland restoration such as a wetland mix and some river birches as suggested earlier by the landscaper, removal of invasives, marking of the 15' line, removal of the wall by the homeowner, if desired - but only after the restoration is complete and with submission of a plan from the landscaper.

The homeowner asked if the landscaper could complete the removal of the debris pile, to which Cademartori suggested that Patrick McDonald could first meet with the landscaper to look at the limit of work and stabilization of the area for the winter.

Other Open Permitting Items

8:10pm - Windsor Estates – 525 Salem Street DEP File # 209-0422

Homeowners Mark Martin and Paul Guarracino were present for the discussion. Cademartori explained that developer Gregg Monastiero would like to close out the project. He applied for a COC in April, but his submission was reviewed by Bill Jones and found deficient in a number of aspects. He has since supplied minimal additional information. Bill Jones' opinion is that more information is required in order to consider the request. A meeting with Monastiero's engineer is scheduled for Thursday, December 19 in order to develop a final list of outstanding items. Site management has been turned over to the Homeowners Association which has hired an attorney and an engineer.

The last 2 units have been built. One certificate of occupancy is still being held. Cademartori has asked that the locations of roof recharge units be provided (as proof of installation) on the as-builts prior to the certificate of occupancy being issued.

Martindale asked if the stormwater only is before the LCC, to which Cademartori said that the stormwater's entire design is jurisdictional. Cademartori provided details of the inadequacies of the installation and the need for renovation. The as-built is lacking details, so Bill Jones is unable to determine compliance with the design.

Martindale suggested that an enforcement order may be necessary and that the client cannot make current repairs if the OOC is expired. Cademartori responded that maintenance of the stormwater

basins is an exempt activity and can be done in her opinion, but for any other issues that are jurisdictional an enforcement order would be appropriate.

Homeowner Mark Martin noted that Monasterio “would not be surprised” to receive instructions from the LCC, as the Homeowners Association has already attempted to have Monasterio make changes based on an engineering report that it had done. However, Martin noted that these attempts have been met with continued delays and non-responsiveness. Martin added the reason for his attendance at the 12/17/2019 LCC meeting was the concern that the developer would turn responsibility over to the Homeowners Association with unfinished obligations. Cademartori added that Monasterio has been asked to provide everything that Bill Jones requested, and until then, having him come to an LCC meeting would be a waste of commissioners’ time. She added that it may be best to see how the 12/19/2019 meeting develops, and her prediction is that some changes will be made and Monesteiro will wish to negotiate other remaining issues that would require discussion by Commissioners at a future meeting. Homeowner Paul Gaurracino reiterated Monesteiro’s unwillingness to have his engineer meet on site with the Homeowners’ Association engineer.

8:24pm - Certificate of Compliance: 24-38 Broadway The Ship Mall LLC DEP File # 209-0600

A partial COC was granted this past summer, but the LCC was concerned about some invasive knotweed adjacent to the rear parking lot. The property owner has performed the corrective actions requested and would like a complete COC. Field Inspector Patrick McDonald has visited the site on multiple occasions.

Cademartori noted that she feels satisfied that the site has been seeded and is stable. She added that the knotweed problem is significant at the 2 Broadway site, and that regardless of the plans for The Ship property, knotweed will continue to be a problem for this site, as well, although stable at present. Given a full COC on the construction project, the developer is still responsible for the stormwater maintenance on the parking lot, and has been diligent in hiring professionals Stormwater LLC to do the annual maintenance and reporting.

Solomon asked if monitoring of the knotweed is in the OOC, to which Cademartori noted that it was never included in the original scope of work. Solomon then asked if an amendment could be made in granting the COC, to which Martindale said no.

On a motion duly made by Salamone and seconded by Lovell the LCC voted (6-0) to grant a Certificate of Compliance for 24-38 Broadway.

New/pending Violation Complaints/ Investigations

8:31pm - 7 Kimball Lane (14 Sunset Dr Wakefield)

Martindale noted that he sent an email to the commissioners suggesting holding an executive session to consider legal options available for this matter. Cademartori added that the DEP was immediately responsive when the issue was first brought to her attention, but that both Wakefield and the DEP have fallen silent. Martindale asked Commissioners if they would wish to consider legal actions at the January meeting, to which all responded positively.

Updates/Correspondence

8:37pm - Pillings Pond Treatment Year-End Report

The year-end report was received and distributed to Commissioners. Martindale began by noting that the vendor Solitude concludes that the new treatment of copper sulphate is more effective than the previous alum treatment plan, claiming that they can keep the copper level in the water column longer.

Cademartori offered her comments. The OOC expires in May, so if it is to be continued the Order will need to be extended. The Order has routinely been renewed since about 2004 – and it includes hydro raking, the boat ramp, the dock installation and herbicide treatments all included on 1 order. She added that, in her opinion, it is inappropriate to keep extending an OOC for work that is no longer being done. The order limits the chemicals that can be used, and doesn't include all the chemicals that are currently being used. The OOC was originally designed to be something that would evolve over time, but Cademartori believes “we are stuck in a rut”. The report is “generous” in what it claims to have done. The report talks about doing a survey, but there is no map. It talks about treating 20 acres – every time, but, this acreage is not tracked anywhere.

Furthermore, Solitude is out treating the Pond by themselves - LCC staff is never with them. Solitude said they took nutrient samples in the Spring, but where is that data? Claims of improvement do not have any pictorial proof. If the LCC issues a new order to the LCC instead of to Solitude, then the LCC can include conditions which will become part of their contract, such as nutrient samples, locations, mapping, etc. There was general agreement that a new order should be issued.

Solomon suggested that perhaps Patrick should be included in some of the monitoring work. Thompson added that in the report, he noted that “Glyphosate” was being used (ROUNDUP), on phragmites – a concern as a carcinogen. Martindale suggested that the LCC conduct a survey on the Pond and added that he expected the Pond homeowners (Notos) may be happy to assist. Some limited discussion ensued regarding treatment of phragmites stands that are upland, which may raise issues with treatment on private upland property.

8:45pm - Jordan Park Construction Update

Cademartori reported that the project is ongoing and on track. There has been no response from abutters.

8:46pm - Annual Stormwater Compliance Letters

Letters are being mailed at present. This year, a listing of outside contractors is being provided as an assist in completing stormwater inspections and reporting. Also, in order to comply with the new federal stormwater NPDES permit through the DPW, it may be necessary to work with the Town Accountant and Town Counsel to determine what the financial remedies would be if the Town takes over the required stormwater inspections and maintenance when the responsible property owners fail to do so.

Martindale then suggested the LCC transcribe the earlier discussion regarding 165 Lowell Street and provide it to Town Counsel. Cademartori noted that there has been no response to her inquiries of the DEP.

Administrative Matters

8:50pm - LCC Meeting Dates for 2020

Martindale asked Commissioners to note the new schedule.

8:50pm - Arbor Day Native Tree Talk - April 23, 2020

Cademartori reported that, in celebration of both Arbor Day and Earth Day 2020, the Tree Committee and the Tree Warden will host a native tree expert to provide a talk as part of the Library's Speaker Series.

8:51pm - Annual Ethics/Open Meeting Law acknowledgement

Martindale noted that an online test was not required this year, but that signed acknowledgements of receipt of pertinent materials are required from Commissioners.

8:52pm - AFY 2021 Annual Budget

Cademartori reported that she has submitted the capital budget, level funding the Solitude contract amount at \$25,000. The rest of the budget will remain level funded other than the COLA increases. Goals and objectives are requested from all departments.

Cademartori asked for Commissioners' interest in attending the scheduled February 5, 2020 MVP Community Resilience Building Workshop.

8:59pm - Meeting Minutes

The draft November 19, 2019 LCC meeting minutes were reviewed.

On a motion duly made by Solomon and seconded by Lovell the LCC voted (6-0) to approve the draft November 19, 2019 LCC meeting minutes, as corrected.

9:04pm - Adjournment

On a motion duly made by Salamone and seconded by Solomon the LCC voted (6-0) to adjourn the December 17, 2019 LCC meeting.

NEXT REGULAR MEETING – Tuesday, January 21 , 2020

As recorded and submitted by Jennifer Welter