

**TOWN OF LYNNFIELD
CONSERVATION COMMISSION**

MEETING MINUTES

TUESDAY, JULY 16, 2019, 6:30 PM

H. Joseph Maney Hearing Room, Lynnfield Town Hall

Members present:

Commissioners; Chairman Paul Martindale, Don Gentile, Chris Martone, Janice Solomon, Bill Thompson, Melanie Lovell, Director Emilie Cademartori (Absent Angelo Salamone)

6:33pm Chairman Paul Martindale called the meeting to order.

New Public Meetings/Hearings

6:36pm - Request for Determination - 35 Elmwood

Applicant: Jon Whyman on behalf of Ted Michalek

Project: Grading activity associated with new septic system installation

Jon Whyman and Julie Von Drak were present for the project update. Whyman revised the plan after the recent site visit to reflect elevation changes and new 3:1 slope grading down to the property line, with no impact to the abutting property. Chair Martindale asked if a drainage ditch would be included to which Whyman said it was not necessary based on the natural water flow. Whyman indicated that a planting scheme is prepared with plants slated for the water's edge. Director Cademartori remarked that even though the plants are not confirmed she cautioned Whyman and Von Drak to provide suitable plantings that are also geese-resistant. Martindale had 3 comments about the plan; the pencil markings are difficult to read, flood plain elevations are not clearly marked, and, the elevations are not updated for the schematic at the bottom (side profile). Gentile asked if Whyman would hydroseed upon completion, to which Whyman said yes, and the weather would dictate specific timing.

On a motion duly made by Lovell and seconded by Gentile the LCC voted (6-0) to issue a Negative 3 Determination subject to submission of an approved planting and restoration plan, the above corrections made to the current plan, and best practices utilized when conducting restoration work.

Applicant: JAM Enterprises 2, LLC

Project: 68 Unit Rental Development

Chris Sparages, Williams and Sparages, presented the update. Sparages led the discussion with a brief history of the project, then highlighting some of the changes. The building now has a “kink” which Sparages explained as providing better fire truck access. The footbridge to the back parking lot behind the site has been eliminated, and a new support system for the drainage pipe is being configured to carry the drainage pipe within an I-Beam. Gentile asked if the drainage points are the same as initially proposed, to which Gregg Monastiero said yes. The building footprint has been reduced slightly, substituted by several additional small sections of parking/paving. Martindale asked for the specific area increase of impervious surface, to which Monastiero gave an estimate of an under 2% increase. Sparages suggested that if this posed any problem, a small catch basin(s) could be installed.

Bill Jones, Linden Engineering, provided his feedback on the changes. According to Jones, “most are fine”, and many conditions need to be changed to match what is current. Some are moot points at this stage of the design/installation. Jones noted that his main concern was the increase in impervious surface, which is difficult to exactly determine. Jones also mentioned that there was little detail on the revised bridge behind the building in terms of type of material, size, span, etc. Monastiero said that more data is required before a plan can be submitted with these details. Jones remarked that the “tipping factor” is the conditions under which the pipe is full of water. Jones also added that the abutter notification was an important issue because there are 2 towns to consider - Lynnfield and Saugus. Sparages indicated that all abutter notices should have gone out by Tuesday, July 9.

Monastiero reminded Commissioners that all water inside the building goes to Saugus through sewer. Roof run-off will divert to the drainage system. Martindale noted that the landscaping plan was not provided. Monastiero noted that a plan is not finished although meetings have been held with a landscape architect. An abutter’s fence has been installed per request. Martindale asked for confirmation that Monastiero will return with a final planting plan, to which Monastiero agreed. Jones suggested that it be included with the OOC, as well as any changes reflecting updated impervious surface data. A brief discussion regarding bonding ensued, but the general consensus was that this step was not necessary at this point in the project.

Martindale suggested that the ConCom keep the hearing open until August 20, 2019 ConCom meeting, to allow Jones and Cademartori time to write up an amended OOC. Also at this time, Ruth Silman, of Nixon Peabody will have returned from medical leave, a planting plan can be presented, and Sparages can resubmit his updated stormwater design. There were no abutters present.

On a motion duly made by Solomon and seconded by Lovell the LCC voted (6-0) to continue the hearing until the August 20 ConCom meeting.

On a motion duly made by Solomon and seconded by Lovell the LCC voted (6-0) to grant a two-year extension until August 2021.

7:26pm - Request for Determination – 40 Island Road

Applicant: Heather Pascucci

Project: Extend second story deck

The applicants were present for questions. Patrick McDonald conducted a site visit. Cademartori presented a brief summary. The requested work is very minor - an expansion of a second story deck with only two additional footings. However there are a few non-compliance issues of perpetual conditions from the original OOC when the house was built. The required 3 ft wide native planting bed along the pond edge needs to be re-established and the drainage swale on the side of the house needs some modification. The applicant asked that planting not take place until the deck work is completed. No machinery will operate in between the house and the pond edge, only 2 footings will need to be dug. Gentile asked if erosion controls were needed, to which the applicant replied that water never drains to this area.

On a motion duly made by Gentile and seconded by Lovell the LCC voted (6-0) to issue a Negative 3 Determination for the project at 40 Island Road.

Continued Public Hearings

7:35pm - Request for Determination – 30 Pinewood Road

A site visit was conducted 7/9/19. The homeowner would like to install a seasonal dock and remove a few trees (on the advice of Arborist Bob Moses, due to health, crowding, etc) and has proposed replacements. The applicant noted that one tree is infested with ants and girdled, a second overhangs the house, a third is completely dead, a fourth is dead at the top, and a fifth is actually a stand of Maples which could be trimmed at the crowns.

Lovell spoke about the importance of a “snag” tree in terms of providing habitat. Thompson distributed copies of an as-built plan and assessor’s maps, and highlighted discrepancies in property lines, particularly with regard to the locations of the 5 trees in question. Thompson proposed the Town survey the property, as the abutter is the Town of Lynnfield. Cademartori noted that she provided the plan as a general guide for the applicant. The delineation on the plan is not binding, and originated from a prior order when the home was constructed. Gentile asked if the 2015 plan was markedly different from the assessor’s map. The applicant noted that there are significant differences. Cademartori also noted that this section of Pillings Pond was dredged and it is possible that the assessor’s maps have not been updated. Martindale suggested that the Commissioners needed to “be the Town” in terms of making a decision for the applicant. Solomon expressed concerns about liability in terms of tree removal and dock placement if the property lines are not known. Martindale suggested a second site visit. A discussion ensued as to removal of specific trees. Martindale then suggested removal of trees 1, 2, and 4, and a decision for the

remaining 2 trees be postponed until after a second site visit. Thompson spoke of the problems with not having a tree policy in place. Cademartori added that she believed the Town would not spend the money to conduct a survey. Cademartori further added that a survey could be done at the time of a future stormwater project that the DPW has suggested for the end of Pinewood Road. This could also incorporate some kind of model rain garden/bank planting project. No abutters were present.

On a motion duly made by Lovell and seconded by Gentile the LCC voted (6-0) to issue a Negative 3 Determination for 30 Pinewood Road, and to permit removal of trees #1 and #2, trimming the top 1/3 of tree #3 (which may or may not be on Town property), puning the top of tree #4, and cutting the snag tree #5 to 30' in height.

On a motion duly made by Lovell and seconded by Gentile the LCC voted (6-0) to approve the location for placement of a removable dock at 30 Pinewood road.

8:12pm - Notice of Intent – Definitive Subdivision Road A/ Tuttle Lane DEP File # 209-0628

Applicant: HPI, LLC

Project: Construction of stormwater management from a nine-lot subdivision within 100' of BVW & BLSF

Notice of Intent – Lot 5 Road A / Tuttle Lane Subdivision DEP File # 209-0629

Applicant: HPI. LLC

Project: Construction of in ground pool, patio, cabana and retaining wall, including tree removal and landscaping activities associated with a new single-family home within 100' of BVW and BLSF

Chris Sparages, Williams & Sparages, Attorney Ted Regnante, and HPI, LLC partners Brian and Michael Hannon and Ken Gudak were present for the project update. Sparages led by summarizing the most recent shifting of the stormwater management system. Specifically, large pieces of the stormwater system are now 100+' away from the wetlands edge (Reedy Meadow), which saves a number of additional trees. Sparages also noted the invasives species management and plant replacement plan. Martindale asked about the size of the retention basin to which Sparages noted that it is sized appropriately for the conditions. He also added that there is a proprietary sub-system now planned for this design which is more expensive, but which requires less space.

Bill Jones, Linden Engineering, provided his comments which had been summarized in a 79-point comment narrative dated July 16, 2019. Significant changes include; 1) roof drain infiltration systems are not designed and the criteria for this design needs to be specified on the plan, 2) an outstanding plan issue is a slight change to the light pole and fixture, 3) the Homeowners Agreement needs to be run by Town Counsel (Atty. Regnante noted that this has been reviewed and comments have been submitted by Town Counsel Tom Mullen. Cademartori indicated that she will do a subsequent review.), 4) changes to the treatment unit need to be approved by the Town Engineer, 5) the distance of shift in the location of the basin and the satisfaction of the ConCom with the new distance from the wetlands and the sizing, peak run-off, and capacity of the

new stormwater system, 6) the pending and necessary review of all of the plans by the Town Engineer.

Cademartori noted that the Planning Board still needs to July 31 to review this project update and may provide some plan changes at that time. Jones summarized the issues that most concern the ConCom; 1) the length of the roadway 2) the landscaped island in the cul-de-sac, 3) waiver of the light fixture (but actually a Planning Board issue), 4) the roadway to the Reed property eliminated from the plan. Atty. Regnante highlighted the most important issue being the ConCom's satisfaction with the new location of the stormwater system. Cademartori asked if there were any substantial changes to Lot 5 since moving the basin to which Sparages said no.

Gentile noted that moving the basin has minimized tree loss, but the question is whether enough has been done that is still practicable. Martindale summarized the Commissioners' unanimous agreement as to their satisfaction with the latest shift in the basin. Martindale further suggested leaving the hearing open so that Cademartori and Jones can craft an OOC for review at the August 20, 2019 LCC meeting, the Planning Board can review the most recent opinions of the ConCom and provide input in their July 31, 2019 Planning Board meeting, the Town Engineer can review the plan changes, and Commissioners have time to review Jones' 79-point narrative. (Martindale further added that any other comments from Commissioners about Jones' report, or pertaining to elements Commissioners would like to see added can be emailed to Cademartori.)

On a motion duly made by Lovell and seconded by Thompson the LCC voted (6-0) to accept placement, size and design of the stormwater basin as it appears on the plan dated July 2, 2019.

On a motion duly made by Solomon and seconded by Gentile the LCC voted (6-0) to continue both hearings until the August 20, 2019 LCC meeting.

COC/Other Requests

8:52pm - Request for Certificate of Compliance – 5 Ramsdell Way DEP File #209-0559

Applicant: Steve & Michelle Crafts

Project: Driveway, utility installation, grading & landscaping associated with new single-family home

Paul Marchionda of Marchionda and Associates was present for the request. Patrick McDonald, Field Inspector conducted a site visit July 16, 2019. Some areas of concern had been shared with the owner and engineer by Cademartori:

- Need confirmation that if there is a well associated with the irrigation system, that it is outside the 100 ft buffer (per Condition #29). **There is no well.**
- Per Conditions # 39 & 56 determination if the Phragmites control successful? We never received the required monitoring reports in 2014 or 2015. **The replication area now appears free of Phragmites.**
- Per #63, permanent conservation markers were required, but not installed. **Markers are now installed, and the final silt fence was removed July 16, 2019.**
- It appears that the lawn extends further than the originally permitted limit of work in some areas.

Roof infiltrators are required for all the lots in the Ramsdell Way subdivision. It is unclear if all the following requirements were met.

- Intended to capture the entire roof for a 2 year event, no details on the size of system provided. **Marchionda confirmed the size and compliance of the infiltrator.**
- There are downspouts labeled, "typical"- but it is unclear if they all connect to the system. **Marchionda confirmed that they were connected.**
- Is there any proof of maintenance or cleaning ? Are there proper leaf screens on the gutters? No maintenance reports have been submitted. **The leaf screens are now installed as designed on the gutters.**
- Infiltrators were required to be installed (and maintained) for ALL buildings. I see that there is a stand alone garage which is different from the original plan. Does the garage have its own infiltrator? **The garage run-off infiltrates to the ground/grass and does not go to the street, and Cademartori is satisfied.**

Cademartori also added that the grass is very well established, there is no erosion, arborvitae plantings look “beautiful” and she sees no reason not to grant the COC for 5 Ramsdell Way.

On a motion duly made by Gentile and seconded by Lovell the LCC voted (6-0) to issue a COC for 5 Ramsdell Way.

8:58pm - COC Request - 259 Summer Street

This property was subdivided in 1995 to create Elizabeth Way. The house at 259 Summer remained intact. The COC burdened the deed, but there were really no conditions relative to this lot. In the process of the sale, the attorney noted the burden and the homeowner wishes to clear the deed.

On a motion duly made by Lovell and seconded by Gentile the LCC voted (6-0) to issue a COC for 259 Summer Street.

9:00pm - Request for Extension Grandview Estates

Cademartori provided the update for the request. Work is ongoing, entirely outside of the buffer zone, however construction BMPS and stormwater system requirements are ongoing. Some of the corrective measures from last season need attention, especially the sufficiency of the loam & seed and slope stabilization measures. The owner has been told and has started corrective measures. Cademartori believes the extension should be granted and she will continue to monitor the progress.

On a motion duly made by Gentile and seconded by Thompson the LCC voted (6-0) to issue a 3-year extension for the OOC for Grandview Estates.

Updates/Correspondence

9:07pm - Boston Clear Water Violation - 165 Lowell Street

Attorney Richard Nylén, representing the applicant, and Paul Marchionda of Marchionda & Associates were present. Atty. Nylén opened the discussion by addressing the points enumerated in the enforcement order. He noted; 1) he has served on a ConCom board in Ipswich and has “been in your shoes”, 2) the LCC chair has visited the site, 3) DEP has been to the site and has found no disturbance, 4) he has indicated to Town Counsel that no work will be done until receipt of the final OOC. Further, in looking at the enforcement order 1) the applicant has complied with everything, 2) the applicant has located all the trees on a plan and so the allegation in the enforcement order that there was destruction of trees surrounding the bench installation activity bears no support 3) there is no sign of disturbance around the placement of the benches as they were placed by hand by the applicant - without equipment, there are no footings below the benches, 4) when the cross was placed on the top of the hillside, the trees that are down have been knocked down over time and not as a result of this activity (there is only brush and vegetation up in that area).

Nylén said that he is hoping to have the enforcement order rescinded and a better level of communication established so that the applicant can inform the commission when activities are taking place, and consequently, when the commission hears of a complaint from an abutter, Paul Marchionda or the owner can be contacted and “we don’t have to go through this where we are forced to appeal to Superior Court” and spend “seemingly unnecessary monies...In all my years of doing this, I’ve never asked a commission to rescind an enforcement order, because usually it is very clear that there has been work done in violation, but I don’t see it and don’t see anything that you have presented to us to support this.”

Martindale responded by saying that he prepared a letter dated July 16, 2019 in response to Nylén’s letter of July 12, 2019. He then proceeded to read the letter in its entirety into the record. It is attached here as an addendum to these minutes.

Gentile echoed Martindale’s words, and then provided a summary of problems stemming from the beginning of the project in August 2016 and largely highlighting Nylén’s client (the

applicant) as uncooperative, non-communicative, and in his actions “a serial violator”. Thompson noted that he saw the path as “trashed” with trees and large limbs down. Nylen responded that one large tree that Thompson identified as down was a “Greenbelt” tree that the previous ConCom agent requested to be removed from Greenbelt, but removal never took place.

Martindale then asked “what are we going to do when someone won’t comply with reasonable requests”? Nylen responded that the enforcement order included installation of granite benches, to which Cademartori clarified that until the opportunity is provided to inspect the benches to determine that there were no footings, only photographic evidence was utilized to add this element into the enforcement order. She further noted that she agreed with Martindale that there is clear disturbance within the buffer. Gentile added that the focus of the enforcement order is the path on the hillside. “And, we are left with no recourse with your client. Your client chose to litigate our decision and he lost before the Superior Court, and now he just goes back and violates it. It’s without excuse. ” Gentile then asked what type of equipment was used to perform work on the path, to which Nylen said that he did not know. No one was present who could answer Gentile’s question.

Nylen responded by saying that when he files an NOI the burden is on him to show that there is no adverse effect on the resource area. When an enforcement order is issued, the burden is on the Commission to prove that there is a violation. Concurrent with these comments, a video was playing on the screen showing the areas in question, to which Gentile indicated showed evidence of disturbance. Nylen again called into question the benches and their placement to which Gentile again responded that the benches were not the focus of the enforcement order. Nylen asked that the reference to the benches be removed from the enforcement order. Gentile responded that perhaps this would be considered but asked Nylen again how he thought the creation of the path didn’t cause disturbance to the no disturb buffer area. Nylen responded that a disturbance is one that creates erosion or a danger to a resource area, and the area in question is just leaves and dead trees and brush. Martindale responded that the brush holds the buffer area together and called for an end of the discussion.

Martindale then asked if there was a motion to begin the imposition of fines, to which Thompson made a motion which was seconded by Gentile. Martindale then proposed the steps needed to be followed in order to comply; 1) removal of the debris piles along the ridge of the hillside, 2) installation of erosion controls along the ridge until the area is revegetated, 3) installation of erosion controls at the bottom of the slope which were submitted by Marchionda as part of a plan several weeks ago, but which have not yet been installed, 4) the cleared area restored of its understory and something spread out to stabilize the bare soil area on the hillside.

Gentile asked if any work was performed on the site since the enforcement order was issued, to which Cademartori responded that the enforcement order was issued on June 18 and has reports and / or evidence that work performed on 4 dates afterwards; June 22, July 5, July 6 and July 16.

On a motion duly made by Thompson and seconded by Gentile the LCC voted (6-0) to provide the applicant one week to comply with the 4 conditions stated above or face double fines placed into effect as of July 24, 2019.

Jack Farrell, President of the Greenbelt Association, asked Nysten for clarification regarding the “Greenbelt tree”, specifically asking if Nysten had tried to contact Greenbelt regarding the tree’s removal, to which Nysten responded that the tree came from the Greenbelt property, is clearly on Boston Clearwater property, and that the applicant had asked former ConCom agent Betty Adelson to contact Greenbelt and have it removed. Farrell replied that neither he nor Greenbelt have ever been contacted about this tree. Nysten replied that this was consistent with his understanding. Abutter Bill O’Brien thanked the Commissioners for their responsiveness and for all their work. He also noted that he had pictures on his cell phone from April 18 of the property in question as proof that the property had since been disturbed. Marchionda requested a copy of the audio file of the July 16, 2019 ConCom meeting. Cademartori informed him that he needed to file a written request through the Town Clerk. Martindale added that Commissioners were waiting for the requested video surveillance footage from Boston Clear Water security cameras.

9:41pm - Partridge Island entrance

Cademartori noted that contractor Jon Whyman was now ready with free fill for the leveling of the ditch leading to Partridge Island. However, unbeknownst to all, National Grid just inserted a new telephone pole and stabilizing cable squarely in the middle of the access point. Whyman will need to consider a work-around. Martindale suggested contacting National Grid and request that the pole be shifted, to which Cademartori responded that she needed to ascertain from the Selectmen if there was any public process for installation of the pole.

9:43pm - Greenscapes

Cademartori reported that the NPDES permit compliance work with the DPW will require public education, among other elements. Ipswich River Watershed Association offers the Greenscapes program which can satisfy a number of the permit requirements.

(THE RECORDING DEVICE MEMORY FULL INDICATOR CAME ON AT 9:44 AND ALL RECORDING STOPPED)

The Greenscapes program costs \$2500 for FY2020 which Cademartori suggested to be shared as follows: ConCom-\$600, DPW-\$600, Lynnfield Center Water District-\$800, Lynnfield Water District-\$500. Commissioners were in agreement to fund this program.

9:46pm - June 18, 2019 LCC Meeting Minutes

The review of the June 18, 2019 LCC meeting minutes were postponed until the August 20, 2019 LCC meeting.

9:47pm - Hazard Tree Policy

Commissioners expressed concern that without a policy and/or bylaw and regulations, too much of their time is now being spent making decisions about trees. Thompson specifically noted that in his over 1 year term he finds it rare to actually identify a hazard tree. After some deliberation,

Martindale suggested that the board hold a special meeting to discuss this issue. Lovell will survey board members for their meeting time availability.

On a motion duly made by Lovell and seconded by Gentile the LCC voted (6-0) to adjourn the July 16, 2019 meeting, at 10:57pm.

NEXT REGULAR MEETING – Tuesday, August 20, 2019

As recorded and submitted by Jennifer Welter