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CONSERVATION COMMISSION
375 MERRIMACK STREET
LOWELL CITY HALL
LOWELL, MASSACHUSETTS 01852
January 22, 2020

Note: These minutes are not completed verbatim. For further detail, video recordings are available at the Pollard Library, second floor reference desk or online at www.LTC.org.

Members Present: Chairwoman Varnum, Commissioner Lovely, Commissioner Dillon, Commissioner Biedron, Commissioner Buitenhuys, and Commissioner Downs

Members Absent: None

Others Present:

Jared Alves, Associate Planner
Fran Cigliano, Assistant Planner

CALL TO ORDER

7:04p.m.

ORDER OF BUSINESS

K. Biedron motioned and **W. Lovely** seconded the motion to discuss the Varnum Ave/Old Ferry Round Roundabout NOI item first during the meeting. The motion passed unanimously, (6-0).

CONTINUED BUSINESS

Enforcement Order

Benjamin Rivera
172 Eighteenth Street
Lowell, MA 01854

Violation Location: 172 Eighteenth Street 01854

Property owner removed existing wall along the perimeter of the rear property line. The rear property line essentially delineates the edge of the Bordering Vegetated Wetlands. The applicant relocated the rock wall to create a "pathway" further into the wetlands.

On Behalf:

None

Offered Comments:

None

Discussion:

None

Motion:

K. Biedron motioned and **W. Lovely** seconded the motion to continue the Enforcement Orders for 172 Eighteenth Street and 211 Plain Street until additional information is provided by the violators. The motion passed unanimously, (6-0).

Enforcement Order

RB Lowell Meadow Brook LLC
211 Plain Street
Lowell, MA 01852

Violation Location: 211 Plain Street 01852

Tree removal along River Meadow Brook without a permit

On Behalf:

None

Offered Comments:

None

Discussion:

None

Motion:

K. Biedron motioned and **W. Lovely** seconded the motion to continue the Enforcement Orders for 172 Eighteenth Street and 211 Plain Street until additional information is provided by the violators. The motion passed unanimously, (6-0).

NEW BUSINESS

Notice of Intent

Norse Environmental Services Inc.
92 Middlesex Road Unit 4
Tyngsboro, MA 01879 c/o
Paul Mercier
6 L Street
Hampton, NH 03854

Project Location: 51 + 57 Shirley Avenue 01854

A Notice of Intent has been filed by Paul Mercier for construction of a single family home located on the 100-year floodplain.

On Behalf:

Steven Eriksen, Norse Environmental Services, Inc.

S. Eriksen distributed updated site plans.

Offered Comments:

S. Eriksen: Build new structure on high beams. Gravel driveway. Compensatory flooding.

Discussion:

L. Varnum: We have extensive history on this parcel for previous proposals concerning this particular lot. The issue was compensation, generally. There were details we were looking for that may or may not have been addressed. Just looking at the compensation proposed here, the lot is entirely in the flood plain. Highest elevation approximately 97, unless you include a certain mound of dirt on one edge. We made a requirement for plants and trees after most of the trees were cut down. Some have not survived at this point. Just focusing in on the mound, it appears that the compensation relies entirely on that mound, we were reluctant to consider compensatory, as was DEP. I am not seeing any compensation if you disregard the mound. Without that mound of material I don't see compensation on this particular property.

S. Eriksen: Compensatory in the mound. DEP approved, we have compensatory storage, meets WPA.

L. Varnum: We have a letter saying the mound is not compensatory storage. The particular lot has not changed, requires trees to be planted. No change to elevation or situation out there. Serious deficiencies in the plan. Seems almost identical to the last plan. Now they are asking to use the mound as compensation.

S. Eriksen: This was approved on appeal by DEP.

L. Varnum: We have to look at the plans in front of us.

S. Eriksen: I have no idea when the mound got there. But it's there. It's compensatory storage.

W. Lovely: I remember us denying construction at the time. We started noticing the violation first due to trees being cut. Similar to the Buddhist temple, Market Basket, we spent a lot of time discussing the mound. Maybe we should hire an outside engineering professional, looking at what the applicant provided and the DEP letter -- the most was to fairly come to a conclusion.

B. Buitenhuys: You have fill in the 94-95 contour. No compensation for that. Every foot contour, foot for foot compensatory needs to be there at the least. The total value is one thing, in each contour you need to provide more cut than fill. These are the MA regulations.

S. Eriksen: I believe it meets standards of WPA. If you want to hire a consultant to provide an opinion, do that.

K. Biedron: Check your numbers before peer review.

L. Varnum: We would have a peer reviewer review the entire project, not just that one bit of compensation that's missing.

S. Eriksen: That's understood.

L. Varnum: In my mind, this proposal doesn't have too much hope of meeting the standard here. Unless there's something available here in terms of compensation that I'm not aware of, just like the last site, is below the flood line, that mound is an artificial recent addition that the DEP has said shouldn't be used as compensation. That's not the only thing deficient in the plan, but without CS there's no point in talking about the soil.

K. Biedron: Do we have DEP's letter?

L. Varnum: DEP didn't rule in the local wetlands ordinance. We found that it did not meet our local wetlands ordinance; that came from us.

K. Biedron: They don't want you to change grades. If you were going to dig a hole to use as compensatory storage then that would need to be shown in the plan.

L. Varnum: The other properties on this stretch have had the same flood plain elevation – temple property and Market Basket – both had areas to compensate that were above the flood plain. When you have a small area like this you don't have any area to compensate for the areas that you're showing here. Anyone from the public that would like to comment?

John Hamblet, Pawtucketville Citizen's Council: Strongly opposed, strongly opposed since 2012. I think two minutes of history might be interesting. You mentioned the three violations that have occurred. The basis for the appeal to Mass DEP, filed the wrong abutters list. Mr Erikson used the extra plan 21 days. The case went from 2013 to 2014, when you file an appeal you appeal city and state regulations. The only way to appeal local is through district court. Applicant never filed with district court, he had DEP approval but not approval with ConCom. I have plenty of info I would be happy to share with you but I probably have enough. If this is going to be continued, opportunity for public to speak will be continued, continue to provide evidence that this request should be denied.

K. Biedron: In the letter from the city engineer, second bullet states that applicant's own narrative says limitations related to "wetness." She was concerned that the site was so wet that a house couldn't sit on it.

W. Lovely: With that, no choice but to continue.

K. Biedron: Peer review completed? How quick does Mr. Mercier want to build this? He has to pay for it.

W. Lovely: Need time to digest and come up with questions.

L. Varnum: I'm not sure having this on the agenda for the next several meetings will be helpful. I know it is new to a couple Commissioners.

W. Lovely motioned and **K. Biedron** seconded the motioned to continue the open NOI until the peer review is completed. The motion passed unanimously, (6-0).

W. Lovely motioned and **K. Biedron** seconded the motion to send the NOI to peer review, which will include a review of the history and correspondence related to the case going back to 2012, and will hold the tolling for the NOI. The motion passed unanimously, (6-0).

Motion:

Request for Determination of Applicability

Allen & Major Associates, Inc.
100 Commerce Way
Woburn, MA 01801 c/o
Lowell Housing Authority (LHA)
350 Moody Street
PO Box 60
Project Location: 610 Market Street 01852

A Request for Determination of Applicability has been filed by the Lowell Housing Authority for maintenance repairs and site improvements.

On Behalf:

Katherine Andruchuk, Allen & Major Associates

Offered Comments:

K. Andruchuk presented the project. Proposing maintenance to parking lot and terrace with access off of Suffolk Street. Western Canal nearby. Also to remove asphalt to the face of the building, seeding it. There is no proposed work within 50 feet of the canal.

Discussion:

L. Varnum: You are removing quite a lot of asphalt. Are those parking areas, streets?

K. Andruchuk: Small strip of asphalt stripped at one point. Tripping hazard.

L. Varnum: Replace with grass?

K. Andruchuk: Yes

L. Varnum: Sidewalks replaced?

K. Andruchuk: No, not allowed to touch city sidewalk. The parking lot is used by residents. Sidewalks along terrace are used to get from Suffolk Street to the rear.

L. Varnum: To me it sounds like this is more to my liking, removing asphalt and replacing with lawn. Any other lawn areas that need to be maintained, or is lawn new to this area of the block?

K. Andruchuk: There is some off of Market Street they are hoping to remove, some has already started, its outside buffer.

L. Varnum: Thank you, comments?

W. Lovely: Always good to remove impervious surface and increase infiltration. When the time comes to vote I'd like to issue a Negative III determination.

K. Biedron: Near Olympia restaurant? Near new bridge.

L. Varnum: Any new soil being brought in?

K. Andruchuk: Some new soil, 6 inches, some new plants.

L. Varnum: I would hope you could get this stabilized as soon as possible. New soil being washed away.

Motion:

W. Lovely motioned and **B. Buitenhuis** seconded the motion to issue a Negative III determination. The motion passed unanimously, (6-0).

Notice of Intent

City of Lowell
375 Merrimack Street
Lowell, MA 01852

Project Location: Old Ferry Road/Varnum Avenue Intersection 01854

A Notice of Intent has been filed by the City of Lowell for the roadway intersection improvements by constructing a roundabout at the Varnum Avenue and Old Ferry Road intersection with associated drainage, sidewalk, and landscaping improvements. The proposed project will impact Bordering Land Subject to Flooding.

On Behalf:

Christine Clancy, DPW Commissioner, City of Lowell

Eric Gerade, VHB

Offered Comments:

C. Clancy introduced the project

E. Gerade presented the project.

E. Gerade: Off-site mitigation improvements for MB project currently under construction. Discuss project for intersection at Old Ferry and Varnum. The purpose for tonight is to get introduced. DEP has not issued a file number for the project, it will not get closed tonight, will be continued to next hearing. There is bordering land subject to flooding in that intersection associated with Merrimack River flood plain. That is why we are here tonight. The Market Basket project original mitigation included installation of a signal, originally what was required, wanted a better alternative. The roundabout was the alternative that was desired but comes with more impacts due to the size to get vehicles to turn around. Project located at the corner, utilizes city-owned land. No abutters. Owned by the fire department. The rest contained in ROW. To properly grade the roundabout, the area around it has to get raised. That area needs to get in slightly, requiring fill in bordering land subject to flooding. Project is increasing impervious area by 6,000 sq. ft. Install basin to collect and treat to reduce peak rates of flow. Impacting approximately 2,000 cubic feet, total mitigation of 7,000, 5,000 additional flood storage provided.

Discussion:

L. Varnum: Speak to detention basins a little bit?

K. Biedron: Is one catch-basin enough for that area?

E. Gerade: Correct. 6,000 sq ft of new imperv area adequately detained.

K. Biedron: Happy with the fill lines. Thank you. That one catch basin – there's already existing?

E. Gerade: Existing infrastructure there will remain and will carry the stormwater down Varnum.

K. Biedron: That one catch basin is the one new thing to the area? IT looks like it from this drawing.

E. Gerade: Correct.

K. Biedron: Not sure if this was combined sewer in this area. If this was combined sewer, would there be an issue? We are only adding one catch basin?

E. Gerade: Correct, catch basin not connected to this whole system.

C. Clancy: On the street there are two separate systems.

K. Biedron: Are all these ADA sidewalks?

E. Gerade: Correct, big improvement. There will be a wider path for pedestrian access, ADA ramps, typical design standards around the roundabout. Providing a safety net off the edge of the roadway.

K. Biedron: Why a roundabout and not a light?

E. Gerade: Provides better traffic flow for that area.

John Hamblet, Pawtucketville Citizens Council: Consistent with suburban environment we are trying to promote. Owner of Market Basket came up with a sum of money that wouldn't otherwise be affordable.

K. Biedron: Similar in size to ones in Pelham, NH?

E. Gerade: Not sure. This is designed as an inner apron for trucks to go on top and regular traffic on outside.

K. Biedron: Single-lane, not double?

C. Clancy: One in Lynn was similar, concrete apron allows larger vehicles to move around the roundabout.

B. Buitenhuis: Can't get much smaller than that.

J. Hamblet: Shouldn't be seeing hospital and Market Basket trucks on Varnum Ave.

L. Varnum: Landscaping proposed?

E. Gerade: Yes there is, pretty basic and low maintenance for the middle.

L. Varnum: Small triangular islands there. Reason for those?

E. Gerade: Better direct traffic one-way through roundabout.

L. Varnum: Will those be concrete?

E. Gerade: Granite curbing.

K. Biedron: Existing monument moved? I know it's in the flood plan.

C. Clancy: In the existing city ROW. Something in city ROW, in the flood plain, needs to be coordinated and moved.

K. Biedron: Where it gets moved, there can't be fill around the monument.

C. Clancy: Correct.

W. Lovely: Project sounds like a win-win to me. Mitigated impacts, consistent with neighborhood, extra compensatory storage

Steve O'Neill: Owns property the roundabout is going to effect. They say monument is in the right of way, its right on the line. Very close. At one point they were going to fill in my land. Take away 99% of my frontage, will only give me a little spot on Old Ferry Road. Takes away use of my property. Concerned about one drain pipe. There will be such a steep hill, I will never be able to access my property. I've been maintaining the property for over 20 years now, I have a big concern about fill going into my property and me not being able to use my land. I'm the only one being affected by it. I would have opposed it, it was for lights. Now I'm trying to rectify what it does to my property. They were actually going to use my property to fill in. Now with the elevations they are making, I will

never be able to use the exits of my property. Cuts out 95% of the use of my property. I'm concerned about the water also.

K. Biedron: Is this a buildable lot?

S. O'Neill: 10,000 s.f. Meets all zoning code. Would have to come to ConCom.

K. Biedron: Because your whole property is in the floor plain –

S. O'Neill: Not all, some has compensatory storage. I'd have to satisfy this Board, we are aware of that. I've been paying taxes for 10,000 sf lot. The last month the assessor cut the price of the property in half. I sent a letter to Planning Board, what I needed was to come back to this board and file to put a house in there.

L. Varnum: Is that a wall or a fence around the corner?

E. Gerade: Along this edge, granite curbing, slope off the back side to the right of way.

L. Varnum: Filling?

E. Gerade: Yes, a little bit of filling along that edge

S. O'Neill: Fill to hold up the roundabout.

L. Varnum: Fill on city property?

E. Gerade: Correct.

S. O'Neill: Takes away my access to Varnum Ave where my access would be much easier, I'm the only property this affects, the only one. If they were gonna build a roundabout at the Planning Board, I would have had my papers then. Won't be on my property, but won't be able to use my property because of that. Lights wouldn't affect me. That's why I didn't have anything to say at the last meeting.

K. Biedron: I wouldn't say this is a buildable lot.

L. Varnum: We denied the requests for other two houses. The MB buildings were out of the floodplain.

K. Biedron: You wouldn't be getting compensatory storage on this lot. I'd like to see the letter from the engineer at this meeting. This Board would not be granting you.

S. O'Neill: I don't disagree that you're a very smart person. The engineer that looked at it says that there's enough storage on the land. This makes it reverse condemnation.

K. Biedron: If this would get denied in front of this Board, how else would you build it? MB accepted, Temple denied years ago but bought multiple properties to get enough. I don't think you are going to get it. DeMoulas spent a lot of money to improve this intersection. This is a mitigation project for the city.

W. Lovely: My job is to make sure that projects comply to the Wetland Protection Act.

L. Varnum: Your wetlands situation isn't changing.

K. Biedron: Our job is to regulate the regulated areas.

S. O'Neill: My land is affected, the elevation toward my lands are increasing. It affects me.

B. Buitenhuys: I don't think it substantially changes the ability to build on this property. The only place to create a curb cut is preserved.

K. Biedron: I am not being insensitive, just looking at it, not enough compensatory storage. We can agree to disagree.

B. Biedron: Bring the letter from the engineer?

C. Clancy: Usually only put in a curb cut for a planned building. We could leave a curb cut to leave space for a future driveway. Isn't something shown on the plans but we could accommodate for the project.

S. O'Neill: No wall to hold up the roundabout?

E. Gerade: No. Fence will go along property line.

L. Varnum: Slope will be grass?

E. Gerade: Yes, stabilized.

L. Varnum: Will be giving your property more space, grassy area, will look like still part of your property.

C. Clancy: Anything on city ROW will be maintained by city.

L. Varnum: We try to be sensitive to neighborhood, not sure that it's possible to do anything with that slope. Sure it's been engineered quite thoroughly. Do you have any ideas about reducing fill in that area?

E. Gerade: Function of alignment of the roadway. If we hypothetically dripped the roadway, the utilities up there would change.

L. Varnum: Change the whole project?

E. Gerade: Correct. A lot of existing infrastructure there.

W. Lovely: Trying to be mindful, but need to stay to our lane and look at the jurisdiction. Question over buildability of lot. I think the best thing the Commission can do is to leave open a curb cut for future development. Is it ideal from your perspective? No, but best for Commission to stay in our lane while being mindful of your property.

S. O'Neill: Fence for bike path? If people fell over it onto my land.

E. Gerade: 2:1 slope. It's a pretty common slope.

L. Varnum: See this in National Parks a lot.

B. Buitenhuys: I'd like to see a detail of that fence for the next meeting.

E. Gerade: Certainly.

L. Varnum: We will be continuing this. People who have concerns or questions who would like to speak tonight. Anyone with comments from the audience?

John Hamblet, Pawtucketville Citizens Council: About 60 people at our meeting. Has been posted on Facebook. I do disagree with interpretation, this was extensively discussed at Planning Board, I don't agree with that statement, week after week month after month.

S. O'Neill: The project was approved with the lights.

L. Varnum: Anyone else with a concern or comment? It will be continued because we do not have the DEP File # so we are unable to take action.

Motion

K. Biedron motioned and **W. Lovely** seconded the motion to continue the NOI to the next Conservation Commission meeting. The motion passed unanimously, (6-0).

Request for Certificate of Compliance

Weston Associates
170 Newbury Street
Boston, MA 02116

Project Location: 321 Pawtucket Street 01854

Weston Associates, Inc. has requested a Certificate of Compliance for DEP file #206-7. An Order of Conditions was issued on 12/10/1974 to construct the Raymond J. Lord Manor apartment building. Portions of the site are within the 100-year floodplain and the 100-ft Buffer Zone to the Northern Canal. Staff completed a site visit on 1/13/2020.

On Behalf:

Mark Donahue, Weston Associates

Offered Comments:

M. Donahue: Not planning any work, just title came up. Looking for Certificate of Compliance, think we have but just can't find it.

Discussion:

L. Varnum: You do not own the canal bank, there was concern about erosion that was dislodged.

J. Alves: We just noted that the chain link fence was separated, two stumps that seemed pretty old. Tree was cut down. Reminder that if they cut trees down to ask for permission.

L. Varnum: Are you concerned about condition of fence, is it your fence?

M. Donahue: I believe it is, we are looking to do some light maintenance.

L. Varnum: it was probably part of the plans. Certainly if you could fix that up that would be a good thing. Other than that, building looks in good condition still, not affecting slope down to the canal.

M. Donahue: It's a really nice quiet development.

Motion:

K. Biedron motioned and **W. Lovely** seconded the motion to issue the Certificate of Compliance. The motion passed unanimously, (6-0).

Enforcement Order

TRS Chous & Tao Realty Trust
26 Sheldon Street

Lowell, MA 01851

Violation Location: 535 Pawtucket Boulevard 01854

Removal of trees within the 100-year floodplain without a permit from the Lowell Conservation Commission.

On Behalf:

None

Offered Comments:

None

Discussion:

None

Motion:

K. Biedron motioned and **W. Lovely** seconded the motion to continue the Enforcement Order to the February 12, 2020 Conservation Commission meeting. The motion passed unanimously, (6-0).

OTHER BUSINESS

Minutes

December 11, 2019

January 8, 2020

W. Lovely motioned and **K. Biedron** seconded the motion to APPROVE the meeting minutes for the December 11, 2019 Conservation Commission meeting, with additional context added from the Buddhist Monk comment memo. The motion passed unanimously, (6-0).

January 8 minutes to be considered at next Conservation Commission meeting.

ADJOURNMENT

K. Dillon motioned and **P. Downs** seconded the motion to adjourn the meeting. The motion passed unanimously, (6-0).

Time:

8:50p.m.