

CONSERVATION COMMISSION

LOWELL, MASSACHUSETTS

February 23, 2022

**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](http://www.LTC.org).

**Due to the COVID-19 pandemic, this meeting was held both in person and virtually using Zoom.**

**Members Present:** Chairwoman Varnum, Brad Buitenhuys, Kevin Dillon, Weston Standish (Zoom), Stephen Laput, Perry Downs (Zoom)

**Members Absent:** William Lovely

**Others Present:** Francesca Cigliano, Senior Planner

**CALL TO ORDER**

**ORDER OF BUSINESS**

**CONTINUED BUSINESS**

**Enforcement Order**

Duel State Investments LLC  
15 Mannion Pl  
Littleton, MA 01460

Violation Location: 25 Clifton Street 01852

Outstanding EO for construction activity within/adjacent to the 100-year flood plain without permission from the Lowell Conservation Commission. Received Conservation Commission approval via an Order of Conditions issued on 1/20/2022 to construct new single family home at the subject property. Now seeking to rescind EO.

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum explained that this project is now being regulated by the OOC, so there is no longer a need for an enforcement order.

Motion:

K. Dillon motioned and B. Buitenhuis seconded the motion to rescind the enforcement order. The motion passed unanimously, (5-0).

**Notice of Intent**

Aravind Srinivasan  
34 Arcola St  
Lexington MA 02420  
DEP #206-0809

Project Location: 87 Lafayette Street 01854

A Notice of Intent has been filed by Anka Homes, LLC to construct a single-family home and driveway within the 100-year floodplain.

On Behalf:

Michel El-Ashkar, Ashkar Engineering

M. El-Ashkar said that he had followed suggestions from the Conservation Commission and provided compensation. He is accounting for everything that will be built. He was also asked to address the runoff from the proposed structure.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum said the solution being proposed she is not sure is going to work. The Commission approved a similar underground tank in another location in Lowell and their decision was overturned by MassDEP. If you have a tank below the floodplain level, it becomes full before the flood rises. It is not considered compensation for other displacement on the lot.

M. El-Ashkar said that he had met with the City Engineer and LRWWU. This is the solution they came up with. L. Varnum said that the concern is that the flooding will worsen at other properties. This tank will be full before the displacement happens. Your displacement is above the level of land. If a flood comes the tank will be filled first and flooding will not be mitigated.

M. El-Ashkar said he does not know how else to address. L. Varnum said that MassDEP had overruled them in the past. Compensation under the flood elevation is not acceptable. L. Varnum would suggest a peer review. Even with a peer review, it could still be overturned. She explained the peer review process. L. Varnum is not comfortable with this particular solution and said that it may look reasonable on paper but they do not accept underground tanks below the flood elevation.

B. Buitenhuis said the Commission could wait for updated comments from Engineering and LRWWU. He agrees with L. Varnum. L. Varnum feels that a peer review is more valuable than additional City comments. L. Varnum noted that this neighborhood is extremely flood prone.

B. Buintehuys said that his understanding is that the requirement is to provide fill at each interval level to make up for the cut provided by the structure. This lot is not able to do that because the entire lot is within the flood plain. Foot by foot compensation is required.

W. Standish noted that an unrestricted hydrological connection is required.

Alan Paz, 104 Alma Street

A. Paz and his wife spoke to the flooding issues in the neighborhood

Lynn Scanlon, 106 Lafayette Street

L. Scanlon asked whether this house would be on stilts. L. Scanlon added that she is also concerned about flooding. She is very concerned that this will affect her home and her neighbors'.

W. Standish said that it would be useful for the applicant to directly reach out to MassDEP for guidance.

Motion:

B. Buitenhuys motioned and K. Dillon seconded the motion to continue to March 9. The motion passed unanimously, (6-0).

**Request for Determination of Applicability**

Chantha Mo

138 Martin Street

Lowell MA 01854

Project Location: 138 Martin Street 01854

A Request for Determination of Applicability has been filed by Chantho Mo to repave and expand their driveway which was previously expanded in the 100-year floodplain without Conservation Commission approval. The applicant is also seeking approval to reconstruct and expand a deck which has fallen into disrepair within the 100-year floodplain.

On Behalf:

Vun Lieu, the Applicant

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum said that the applicant was asked to design a drainage area for their parking.

V. Lieu said that he had gotten in touch with an engineer. They cannot afford their services. He is looking for alternatives other than ripping out the asphalt. It would cost \$4000 just for the plan. L. Varnum agrees that it is expensive. L. Varnum would be happy with a homemade swale that might benefit from research before you do it. Something is better than what you have now.

B. Buitenhuys said he is very concerned about the precedent of allowing something without proper permitting and professional design. K. Dillon agrees and says that this would not have happened had the applicant gone through the proper steps.

W. Standish said that they have approved similar projects in the past, but it is a fine line. Where would the runoff go?

P. Downs said that it is hard to say whether it would have been permitted.

W. Standish said adding a trench and removing some pavement could be a solution but they would also need to know where runoff goes.

S. Laput added that he is uncomfortable creating a design/solution. He would have a hard time voting for that. He is thinking that this was put in unpermitted. He sees the options as 1) the applicant removes the pavement and restores the area to original conditions or 2) the applicant proposes a solution using engineering services. If the fee is high, look for another civil engineer. The applicant is responsible for proposing a design solution, not the Commission.

V. Lieu asked whether he could remove the asphalt and then add gravel. W. Standish said that he would need a permit for gravel but that it has been permitted before.

Motion:

B. Buitenhuys motioned to issue a positive 5 determination. K. Dillon seconded and the motion passed unanimously, (6-0).

B. Buitenhuys motioned to allow without penalty the removal of asphalt outside of the previously existing driveway area and noted that the Commission would like to be notified before the work begins.

K. Dillon seconded the motion and it passed unanimously, (6-0).

**NEW BUSINESS**

**Notice of Intent**

Corey Schutzman  
New England Power Company  
40 Sylvan Road  
Waltham, MA 02451  
DEP #206-0812

Project Location: J162 Transmission Line Project 01852

A Notice of Intent has been filed by New England Power Company for the installation of optical ground wire (OPGW), structure replacements, and access road improvements within the 100-ft buffer zone to a bordering vegetated wetland, riverfront area, and 100-year flood plain.

On Behalf:

Alison Milliman, BSC Group, Applicant's Representative

A. Milliman presented the application. The project will meet the performance standards of the WPA. Some activities require the filing of a Notice of Intent and others are exempt. They are providing a compensatory flood storage area, expanding the flood plain into an upland area. 8 trees are proposed to be removed and they are proposing planting 11 trees. Compensation is determined by the Lowell Tree Ordinance.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

L. Varnum asked whether these are fairly large trees. A. Milliman said they are definitely full grown trees. A. Milliman pulled up photos of the trees and walked the Commission through the photos. L. Varnum said all of the trees shown can easily be replaced with trees with longer life spans.

Erik Finn, 81 Billerica Street

E. Finn said he is concerned about maintenance of the property. There is garbage and junk and it looks awful.

A. Milliman said that they have a stakeholder engagement person that deals with these types of issues.

Steve Buckjune, 42 Billerica Street

S. Buckjune is also concerned about maintenance of the property and said that the site is home to waterfowl, ducks, fish, squirrels, and small animals.

A. Milliman acknowledged that this is valuable habitat. She is not too concerned as the animals will leave during construction and then return afterward. This is the largest swath of green space in the area.

Motion:

B. Buitenhuys motioned to close the public hearing, seconded by K. Dillon. The motion passed unanimously, (6-0).

B. Buintehuys motioned to issue a Lowell Standard Order of Conditions. The motion was seconded by Weston Standish and passed unanimously, (6-0).

**Request for Determination of Applicability**

Jonathan Goldfield

Lowell Housing Authority

350 Moody St

PO Box 60

Lowell, MA 01853

Project Location: 50 Stackpole Street 01852

A Request for Determination of Applicability has been filed by Lowell Housing Authority to replace the windows at the Concord River Mill elderly housing development. The proposed project is within 100 feet of the Concord River.

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

F. Cigliano noted that the applicant's representative was not in attendance.

Motion:

B. Buitenhuys motioned to continue the petition to the 3/9 meeting. K. Dillon seconded the motion and it passed unanimously, (6-0).

**OTHER BUSINSS**

**Minutes**

1/26 meeting minutes

February 9, 2022 Meeting Minutes

K. Dillon motioned to approve both sets of minutes, seconded by P. Downs, (6-0).

**ADJOURNMENT**

S. Laput motioned to adjourn, seconded by B. Buitenhuys (6-0).