



TOWN OF MERRIMAC
CONSERVATION COMMISSION
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Conservation Commission Meeting Minutes

Tuesday February 28, 2023

Merrimac Public Library – Library Meeting Room

Members Present: Jon Pearson, Chair; Jerome Mathieu, Vice Chair; Greg MacLean; Greg Hochmuth; Bill Andrulitis (arrived at 7:06 PM), Alternate Commissioner Charlie Covahey participating by phone (left the meeting at 8:46 PM); and Michelle Greene, Conservation Agent

The meeting was called to order at 7:01 PM.

Public Hearing: Notice of Intent (under Wetlands Protection Act only) (continued): 0 West Main Street, Map 49-1 Lot 7 (across from Kenoza Vending), The Flats @ Merrimac Square, Applicant: Ray Cormier – AA @ Merrimac Square LLC, Re: Construction of a main access road, secondary access road, grading and infrastructure including underground utilities, parking areas, apartment building, and installation of stormwater management features, DEP# 045-0315

Applicant Ray Cormier appeared before the Commission along with the project's engineer, George Chadwick. Also participating was the project's consultant Bob Golledge by phone.

Mr. Pearson went over the updated documents which were submitted to the Commission (MCC) on 2/22/2023, he noted that there has been no response by the applicant to the last peer review done by Horsley and Witten (HW) and that 4 days is not adequate time for the MCC to review documents.

Mr. Golledge indicated he would be filling in for the project's wetland scientist Bill Manuell tonight. Mr. Golledge said he fully understands and respects the MCC's position that the materials were submitted on short notice but that tonight the filing is just being reviewed under the state Wetlands Protection Act (WPA) and regulations thereunder and he believes that all information requested by the MCC has been submitted.

Mr. Golledge indicated there has been two major changes made to the proposed project. First, the retaining walls have been moved closer to the wetlands and are proposed to be shorter. This is because as the project purpose is a 40B rental apartment project the applicant needs to consider costs and constructability of the project. Because of this the retaining walls as previously proposed were reviewed by a construction cost estimator and it was determined that the cost to build those walls would make the project uneconomical. Second, the previously proposed ADA compliant walkway has been eliminated. This was done to balance out the impacts in the buffer

zones from the walls encroaching closer to wetlands. Mr. Golledge indicated that this is not a fully equal balance.

Mr. Golledge inquired what the continuing concerns and questions of the MCC are on this project and added that he believes HW has reviewed and approved the proposed stormwater system. Mr. Golledge stated that HW and MCC had made suggestions including reviewing proposed access to the site from Mountain View Ave. Mr. Golledge advised the WPA requires that the project avoid, minimize, and mitigate wetlands impacts making this access infeasible. He continued that HW had asked that the proposed amenities be reviewed and relocation to uplands be considered. The architect has advised that the currently proposed location of the amenities is the best location for them when considering circulation and safety at the site. Mr. Golledge advised that Mr. Chadwick can present the modifications to the stormwater design which were made because of questions raised during the amenities review. Mr. Golledge indicated that the applicant's overall goal is to close the public hearing and issue an Order with appropriate conditions indicating he wouldn't be opposed to a condition which required the certifiable vernal pool to be certified. Because he believes that all information and documents for the MCC to make their decision has been submitted, he would like the MCC to advise specifically what additional information they need to make a decision and why. He added that the project is in the buffer zone only and that there are specific sections of the WPA regulations that discuss how to address this so if the MCC is unable to close the hearing and issue an Order, the applicant needs to know the specifics of what is needed and why but that their preference is to close the hearing and have an Order issued.

Mr. Pearson stated that HW distributed a peer review on 10/19/2022 and there has been no response received from the applicant on this. Regarding the separate hearing with the ZBA for the comprehensive permit, Mr. Pearson indicated that the MCC still has not been provided with a list of what waivers to the wetlands bylaw and regulations are sought and why. Mr. Golledge responded that the applicant is requesting all necessary waivers to build the project but understands why the MCC has recommended the ZBA do not issue the waiver based on this request to which Mr. Pearson corrected that the ZBA has not yet made any decisions.

Mr. Hochmuth advised that it is important for the MCC to understand how the wetlands will be protected during construction; he understands a stormwater pollution prevention plan (SWPPP) will be done but has concerns over the slopes at the site and the proximity of work to wetlands. He asked if the work will be phased. Mr. Chadwick responded that there is no SWPPP yet and that he is working with Mr. Cormier's construction estimator to determine how to phase the work in an economical way. The retaining walls along the wetland would be built first, then fill would be brought in and the areas needing fill would be filled and the remaining retaining walls would be constructed at the same time as filling. Regarding the change to retaining wall locations, the original May 2022 plans proposed walls within approximately 5' of wetlands. After HW reviewed the plans, the walls were moved back an additional 5' away from wetlands but after the economic assessment, the walls had to be moved closer to the wetlands which reduces their height. The reduction in height cuts costs by approximately \$1 million. Although the walls are closer to the wetlands, the walls are still further away than what was proposed on the original plan in May 2022. Mr. Chadwick continued that he has done multiple projects where the limit of clearing (LOC) shown on the approved plans was able to be realized in the field so he is

confident that the LOC shown on these plans will be the actual LOC in the field during construction. He added that he has worked in projects with 30' tall walls within 4' of wetlands and that no work occurred beyond the LOC. Erosion controls will be installed first and no encroachment beyond the erosion control will occur. He continued that if adjustments are needed they will make sure they are done further from the wetlands, not closer and that they will not be back in front of the Commission to ask for any additional impacts during construction.

Mr. Chadwick indicated that changes had been made to the drainage in the backside of the clubhouse which originally sheet flowed to wetlands but now will have gutters which will direct water to the stormwater management structure under the driveway. This gets the stormwater away from the certifiable vernal pool and should address concerns previously raised by HW. Mr. Chadwick said he will look at the 10/19/2022 HW peer review as he thought all comments were addressed but is unsure why a formal response letter was never done, which he indicated would have been the responsibility of Mr. Manuell to complete.

Mr. Chadwick said tonight he'd like to hear the concerns of the MCC with what has been submitted and what could he do to address those concerns, adding he needs specifics. Regarding how retaining walls will be constructed, he stated that the LOC is the limit and it doesn't matter what type of wall is constructed as the impacts to wetlands will not change, the LOC is the limit and it will not be crossed.

Regarding what the MCC needs from the applicant:

Mr. Hochmuth advised the MCC is waiting for HW to review the plans submitted 2/22/2023 and Mr. Pearson added that an additional \$4,000 is needed for the escrow account to get the peer review done.

Mr. Pearson stated that in September, the applicant advised that the face of the wall then proposed would not change but now the walls are even closer, he wants the final location of the walls put in writing. Mr. Chadwick responded that this can be done and needs to be done for economics.

Mr. Pearson stated that details of the walls need to be added to the plan; the MCC can't approve the walls without their details. This was requested by the MCC from the applicant in September and still has not been provided. Mr. Chadwick asked why the wall details matter. Mr. Golledge added that they need to know exactly what details the MCC wants in the plan and why they are necessary. He added that he had just reviewed HW's 10/19/2022 letter and their only outstanding issues were access off Mountain View Ave, which he believes has now been addressed, and issues related to the local wetlands bylaw which is being handled by submitting a request for all necessary waivers to the ZBA because the applicant does not want to submit waiver requests incorrectly for the various applicable sections. Mr. Pearson responded that as a practicing engineer, the plans need to show the width and height of the proposed walls, locations of any drainage, details of proposed footings, subgrade preparations, treatments of hydrostatic drainage, etc. Mr. Chadwick asked how that would change the buffer zone impacts. Mr. Pearson responded that the applicant claims that treatment of hydrostatic drainage would be appropriate but that is MCC's job to determine. Mr. Golledge asked how this is relevant to the buffer zone. Mr. Pearson responded that when the designer gets involved often the footprint changes and this can lead to

increased impacts in the buffer zone. Mr. Pearson also questioned if the Wetlands Protection Act allows the Commission to consider project costs when considering wetlands impacts indicating that the applicant previously proposed plans with less buffer zone impacts and now plans have been revised and show more impacts with walls moved closer to wetlands. Mr. Golledge responded that the Act does allow cost considerations for the purpose of alternative analysis and the project purpose takes into account both costs and practicalities. Mr. Person asked Mr. Golledge to send the citation to where this is stated in the Act. Mr. Golledge advised it is in section 10.04 of the regulations which defines “practicable”. Ms. Greene commented that the Commission needs to be able to condition the work being proposed within the buffer zone so that it does not impact wetlands. Without having plans to review, the Commission is unable to make a determination if wetlands impacts will or will not occur and condition the project appropriately.

The Commission asked additional questions about the proposed walls including what the slopes will be – on the wetlands side of the walls they will not be greater than 2:1; What the highest point of the walls will be – about 10’; What will be done with the clay pipe which currently connects the two wetlands – nothing it will be left in place with a stormwater structure added with a weir to ensure that the ponding in the certifiable vernal pool does not increase; Where will the runoff from the amenities will go – the roof run off will be drained into the stormwater system and the area will be graded to pitch runoff to the driveway; What will be done with water drained from the pool – it will be drained into a truck and disposed of offsite and this will be added to the O&M Plan; Has MA DEP’s initial comments on the project been responded to – will address and send revised plans.

The grading shown on the plan around the amenities and the clubhouse was questioned and Mr. Chadwick responded that he will revise the plans to show spot elevations around them. The commission advised that grading plans should be done showing current and proposed grades so the correct erosion control can be conditioned to be used in this area.

The Commission commented that the revised plans show work on Main Street for a water main but no erosion control is shown on the plans in this area. Mr. Chadwick advised the plans would be revised to show the erosion controls.

Mr. Pearson advised that the Commission is not ready to make a decision on the filing and needs to have Horsley and Witten review the revised plans. Mr. Hochmuth added that the Commission and HW will need to take a close look at the plans once updated to show grading and retaining walls details. It’s a huge project next to wetlands and it will be interesting to see it during a rainstorm. If there are breaches, they will need to be addressed under the SWPPP.

The Commission and the applicant discussed what would be needed to review and to potentially close the hearing for the Notice of Intent. The Commission will need for review revised plans showing grading around the clubhouse and amenities and retaining wall details and a cost analysis showing how the previously located walls made the project uneconomical compared to the revised walls. Mr. Chadwick advised a plan for the retaining walls is approximately 30 days out. Ms. Greene advised she will reach out to HW to better understand their turnaround times but the plan would be to receive the revised documents from the applicant by the end of March, get

that to HW to review and return their peer review letter to the Commission two weeks before the Commissions April 25, 2023 meeting, and continue the NOI hearing to that meeting to discuss the revised documents and the peer review letter.

While no members of the public were present with comments, Ms. Greene shared a list of concerns from abutter David Cressman with the applicant. The applicant requested a copy of his concerns be sent to him.

The applicant requested to continue the public hearing to the Commissions April 25, 2023 meeting.

Mr. Mathieu motioned, Mr. Andrulitis seconded, and the motion to continue the hearing to 4/25/2023 passed unanimously.

Certificate of Compliance Request: 17 Noyes Lane, DEP# 045-0146

Bob Grasso of Engineering Land Services appeared on behalf of the applicant he indicated that the as-built plan had been revised to show drainage outlets and gave a brief history of the project indicated that an OOC was issued to construct the house and then an amended OOC was issued about a month later to construct an inground pool. Ms. Greene shared that Mr. Grasso provided pictures showing that the boardwalk through the wetlands which was observed during the site walk had been removed but pointed out that the concrete apron around the pool and a gravel parking area at the end of the driveway are encroaching into the wetlands. Mr. Grasso added that the plans approved for the amended OOC showed a wetlands line indicated as being delineated by the Conservation Commission and that the line was never field surveyed, it was just eyeballed and sketched onto the previously approved plans. Mr. Hochmuth added that the amended OOC was issued in 2002 before the town had a local bylaw which included a 25' no build and 50' no disturb around wetlands.

Mr. Pearson asked if permanent markers affixed with no disturb placards could be installed to prevent additional encroachment into the wetlands. Mr. Grasso indicated he thought this would be a possibility. The Commission decided that posts should be installed off wetlands flag 6, one near the gravel parking area, and one at the end of the shrubs on the opposite side of the backyard. The posts shall be pressure treated 4x4's installed 3' in the ground and 3' above the ground. Once the posts are installed Mr. Grasso will contact Ms. Greene to review and she will release the COC.

Mr. Andrulitis motioned to conditionally issue the Certificate of Compliance upon conservation agent review that the posts have been installed, Mr. MacLean seconded the motion and the motion passed unanimously.

Violation Update: 0 Hadley Rd., Assessor's Map 80-1-1, Gerald F. Lay, Trustee of Hadley Properties Trust, Re: Unauthorized tree cutting in riverfront area and mapped priority habitat of rare and endangered species

Ms. Greene indicated she spoke to Mr. Lay. He did not give permission for the Commission to conduct a site walk to review the alleged violations at the property but indicated that in the future

he would contact the Commission before doing any tree clearing or culvert maintenance. Ms. Greene suggested sending a letter to Mr. Lay confirming his acknowledgement of the violations and proper procedures with NHESP cc'd and placing a copy of the letter in the file for the property and the Commission agreed.

Discussion (continued): FY24 Conservation Commission staffing and budget

Mr. Pearson provided an update on the ongoing discussions that have happened to fill Ms. Greene's role once she becomes full time in West Newbury July 1st. The town does not have the money to drastically increase the hours for the agent position however, the Commission feels that conversations with the Select Board and FinCom went well with both having a better understanding of the importance of having a qualified agent. Town Administrator Carol McLeod suggested that the Commission consider seeking to share an agent with either Newbury or Georgetown and wanted their feedback on which their preference would be. The Commission discussed this and determined that as Newbury already has an agent this is a more desirable option than sharing with Georgetown who will be advertising to hire a new agent.

Discussion: MACC Spring Conference & Fundamentals Units

Nothing

Discussion: FY22 Annual Report

The Commission approved the report to be sent with minor changes.

Approval of Warrant: MACC conference and fundamentals registrations

The Commission signed the warrant to pay for MACC spring conference and fundamentals registrations.

Other Business: Chapter 91 Waterways License Application received for review and comments

Ms. Greene advised that the DEP Waterways program sends these to the Commission for comments. The license is for the existing dock at 5 Alnette which the Commission previously issued a Determination of Applicability for. There were no comments.

Other Business:

Ms. Greene informed the Commission of two townwide bylaws proposed for town meeting, one concerning the revocation of town issued permits for failure to pay taxes and the other for recording a lien to a property for failure to pay fines or fees. The Commission determined that they wished to be exempt from both town bylaws.

Old Business:

None

Informal Discussion:

None

Community Input:

None

Approval of Minutes: November 22, 2022

Deferred

Approval of Minutes: December 21, 2022

Deferred

Approval of Minutes: January 24, 2023

Mr. Mathieu motioned to approve the revised minutes, Mr. Hochmuth seconded the motion and the motion passed unanimously.

Correspondence: New state BioMap

Ms. Greene provided the Commission with documents from Mass Fish and Wildlife on the newly updated BioMap for the state.

DEP Comments:

None

Next Meeting: Tuesday, March 28, 2023

Adjourn

Mr. MacLean motion to adjourn the meeting, Mr. Andrulitis seconded the motion, the motion passed unanimously and the meeting was adjourned at 8:51 PM.