

Leverett Conservation Commission

Meeting Minutes

Monday, December 7, 2015 7:30pm

Leverett Town Hall - First Floor Meeting Room
9 Montague Road, Leverett, MA

The meeting was called to order at 7:35 pm by Commission Chair, Isaiah Robison.

Commissioners Present: Isaiah Robison, Andrew Young, David Powicki, Christine Nelson, Laurie Brown

Commissioners Absent: Ralph Tiner

Public Attendees: Jonathan Thompson, Bruce Griffin, Carol Heim, Hillary Ferno, K. Miho Connolly (Commission Agent).

- Reviewed and approved November 2, 2015 minutes: unanimously approved (motion made by David Powicki and seconded by Chris Nelson)

7:38 p.m. Public Hearing: Notice of Intent for 5 Amherst Rd (Bruce Griffin for Jonathan Thompson)

- Bruce Griffin (New England Environmental, Inc.) presented a plan detailing site preparation for a single-family home on Lot 3 at 5 Amherst Rd. The property includes a manmade pond, bordering vegetated wetlands, and a perennial stream south of the pond according to USGS topographical maps. The applicant, Jonathan Thompson, is interested in acquiring this property to build said home. A site visit was conducted by Laurie Brown, David Powicki, and Isaiah Robison on December 5.
- The scope of the project includes the installation of utility poles within the buffer zone, construction of a septic system, the removal of invasive and non-native vegetation in the buffer zone and resource areas, maintenance of mowed areas, and the replacement of the existing pond outlet when necessary.
- The status of the stream was called into question. The NOI asks the Commission to consider the stream to be intermittent based on video data and observations of the lack of stream flow. The Wetlands Protection Act stipulates that a stream marked as perennial on a USGS topographical map should be assumed as such by the Commission unless evidence can be provided to the contrary as described in 310 CMR 10.58(2)(a)1.d. Most importantly, the stipulations regarding overcoming the perennial presumption are limited to streams "not significantly affected by ... impoundment, or other man-made flow reductions or diversions"; i.e., if the stream is considered to be affected by man-made flow reductions or diversions, the perennial presumption cannot be overcome. The existence of the pond and pond outlet may be considered man-made reductions or diversions. Griffin noted that the pond and pond outlet allows the stream to flow when the inlet stream is dry due to leakage from the pond through the outlet. The commission did not reach an agreement on the status of the stream.

- The status of the stream is important because regulations for perennial and intermittent streams. Perennial streams have a 200' riverfront area with more stringent regulations than those for the 100' buffer zone around intermittent streams. The proposed location of the septic system only slightly encroaches on a 100' buffer, but would be mostly inside a 200' riverfront resource area.
- Alternative locations for the septic system that may bring it out of possible 200' riverfront area were considered; however, these alternatives (including shifting the system further to the east, or to the north of the proposed house) would result in the further destruction of trees and disturbance to the environment, or would be unlikely due to previous grading that has removed topsoil to clay layer north of the house.
- The replacement of the pond outlet was discussed; the vertical portion is the piece in question. Replacement of the outlet would require drawdown of the water in the pond. Neither the applicant nor Griffin are certain of the depth of the pond or the drop in water level necessary to conduct the replacement. The possibility of classifying the pond as a fire pond to simplify drawdown was mentioned.
- The utility poles would be located along the driveway and are an exempt minor activity under the WPA.
- The current status of the property was discussed with regard to an Enforcement Order that had been filed for the property in 2005. One of the stipulations for the EO included planting native shrubs, evidence of which is not visible now. Original plans for the 2005 Enforcement Order were reviewed.
- Carol Heim, an abutter, presented the Commission with a list of questions (see attached). Her concerns revolved around the sale of illegally developed land and the possible ways for the Commission to prevent its exploitation. Since 1992 (pre-enforcement order) aerial photographs show a property that could have been considered for housing development, and because these concerns are outside the scope of an NOI hearing, the commission does not consider these concerns to be relevant to this particular meeting, but is appreciative of Heim's participation and is interested in helping with this project going forward.
- David Powicki made a motion to continue the meeting until February; seconded by Isaiah Robison.
 - A verdict on the NOI cannot be made until a DEP file number is issued and a response is received from the Natural Heritage and Endangered Species Program.
- The applicants were asked to bring in new plans that include delineation of a 200' riverfront area.

8:35 p.m. Administrative Matters

- Conservation Commission Vacancy left by Victoria Cliché: Will Sieruta may be interested in joining the commission. Christine Nelson will ask him.
- Requesting a CPA fund for trail-related costs
 - The Rattlesnake Gutter Trust would like to request a CPA fund for trail-related costs (e.g. bog bridges trail markers, signage, laminating maps, etc.)
 - David Powicki and Laurie Brown volunteered to contact the CPA and complete the paperwork for January.

- Cliff Trail on Rattlesnake Hill Trail:
 - The Leverett Trails Committee would like to close the Cliff Trail portion of the new Rattlesnake Hill Trail in order to protect nesting ravens from January - May. RGT would like to post laminated signs announcing trail closure on trail maps.
 - The Commission is concerned about setting a precedent for closing trails without an adequate framework or guidelines for when to close trails. (e.g. which species warrant protection? What kinds of hazards require closing trails?)
 - The agent will look into whether the town is liable for hazards on town land.
 - Christine Nelson made a motion to deny the request to close the trail. Seconded by David Powicki.
- FY17 Budget
 - Budget for Fiscal Year 2017 is due on January 15, 2016. A 2% deduction from FY16 was requested.
 - Foreseen costs include \$345 for MACC membership and online handbook. The ConCom budget is generally around \$5000.
 - The agent will look into the details and mechanisms for all ConCom-related accounts in order to inform the budgeting process.
- Review and vote on Rules for Hiring Outside Consultants under MGL Ch. 44 Section 53G
 - These regulations, once passed by a conservation commission, would allow the commission to require, at the expense of the applicant, an outside consultant to review a project.
 - The MACC model rules, as well as the rules in Foxborough and Rowe, were distributed for consideration. The Commission will review these models for the next meeting, when a Leverett version of these rules could be agreed upon.
 - Once a Leverett version has been drafted, it will be reviewed by the Selectboard and Chair before it is adopted.

9:03 p.m. Old Business

- FRCOG Building Permits- No resource issues
 - 30 Montague Rd
 - 72 Juggler Meadow Rd
 - 60 Hemenway Rd
- Update on 124 Depot Rd - Vista Pruning
 - The Conservation Restriction for the Mary and David Field Conservation Area allows for vista pruning with written permission from the Grantee (i.e., the Town). The Commission sent Olivia Bernard a letter granting permission for the vista pruning as representative of the Town.
 - The Commission received an e-mail from Mary Alice Wilson of the Rattlesnake Gutter Trust detailing the procedure for activity on town land for which RGT holds the CR, which would have included consulting the Trust before permitting the activity. The procedure will be noted for future activity.

9:05 p.m. New Business (Issues around Town)

- Review and Approval of Forest Cutting Plan for WD Cows, Inc. on Rattlesnake Gutter & Dudleyville Rds; on Dudleyville & North Leverett Rds.

- Eversource Yearly Operations Plan Review and Approval
 - Eversource has submitted its Yearly Operations Plan, which details vegetation management along power lines and roadsides in Leverett. The Town has a 45-day review period from date of receipt; until December 27, 2015.
 - A notice of the YOP was placed in the December Town Newsletter, and the YOP is posted to the door of the Conservation Commission Office for public viewing.

- 17 Richardson Rd tree cutting proposal
 - Terry Kayne is interested in cutting trees near Williams Brook to increase sunlight exposure on her driveway to prevent icing over. She has been granted permission from Cows to cut the trees (which are on Cows property), so long as she discusses the project with the Commission first due to the proximity of the stream. She intends on attending the January meeting to discuss further.
 - The Commission would like to know more about the intended use of the timber, once cut, and whether or not Cows could put these trees on a Forest Cutting Plan.
 - The Commission recommends that she bring a sketch of the property (including the trees, driveway, and brook, with relative distances between), as well as a formal letter from Cows granting permission for the project. A Request for Determination of Applicability is recommended.

- Other New Business not considered as of the date of the posting of this meeting notice
 - Andrew Young suggested for the Conservation Commission to become more familiar with conservation restrictions and be more active in their protection. Commission members should walk the conservation area boundaries every year.
 - The agent will create a master list of conservation areas and their respective conservation restrictions.

- Next Meeting date: Monday, January 4 at 7:30 pm. The public hearing for 5 Amherst Rd will be continued at 7:45 p.m.

- Meeting was adjourned at 9:28 p.m. (motion made by Christine Nelson, seconded by Laurie Brown).

To: Leverett Conservation Commission
December 7, 2015

My name is Carol Heim and my husband and I own our home at 13 Amherst Road in Leverett. We are abutters to the property at 5 Amherst Road for which a Notice of Intent was filed.

I am concerned that if permission is granted to build a house on the rear lot at 5 Amherst Road, the town of Leverett will be rewarding a landowner for breaking the law concerning wetlands and will be inviting others to do the same.

In 2005, an Enforcement Order was issued by the Leverett Conservation Commission to Woodland Nominee Trust for several violations including removal of trees and using heavy equipment to do substantial re-grading. These activities appear to have created the level, cleared areas upon which a house and septic field are proposed to be sited. Remediation, although not complete restoration, was required and a Certificate of Compliance was issued in 2007.

The benefit to the landowner of illegally creating a lot suitable for building could be substantial. A building lot sold in Leverett for \$79,900 in 2013 and others currently are being advertised for more. The value of a lot which cannot be built upon could be as low as \$3,000.

I would like to ask the Conservation Commission these questions:

1. If permission had been requested to undertake the activities that created the paintball court and graveled parking area prior to 2005, would the Conservation Commission have granted that permission?
2. Can the Conservation Commission take into account the original condition of the site, before it was illegally altered, in determining whether a house can be built on it?
3. If other landowners illegally cut down trees and use heavy equipment to create level areas that can be built upon in other environmentally sensitive areas, is there a risk that the Conservation Commission ultimately would not be able to deny them permission to build?
4. I plan to meet with the Select Board on Tuesday, Dec. 8 to discuss the issue of building lots being created through illegal activity and who should reap the benefit of doing so. I will use the case of 5 Amherst Road as an example and will seek to explore possibilities of a warrant article to bring to Town Meeting in spring 2016 (or other measures). A warrant article establishing a general policy might seek to return to the town any increase in the value of a lot between the date of an Enforcement Order and the date of the next sale of the property. Would the Conservation Commission be willing to discuss ideas along these lines, which would increase the costs to landowners of violating the Wetlands Protection Act?