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CONSERVATION COMMISSION  
LOWELL, MASSACHUSETTS  
September 9, 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](http://www.LTC.org).

Due to the COVID-19 pandemic, this meeting was held virtually using Zoom.

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

**Members Absent:** None

**Others Present:** Jared Alves, Senior Planner

**CALL TO ORDER**

7:00 PM

**CONTINUED BUSINESS**

**Enforcement Order**

Douglas Quist  
1345 Lawrence Street  
Lowell, MA 01852

Violation Location: 1345 Lawrence Street 01852

Tree cutting and fill dumping within the 100-ft buffer zone to bordering vegetated wetlands without permission from the Lowell Conservation Commission.

On Behalf:

Douglas Quist, 1345 Lawrence Street

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Chairwoman Varnum said that they spoke with Mr. Quist at the last meeting and he was going to explore what he could do with the stuff dumped there. Apparently it was material that was there for a quite a while

Mr. Quist said he made two trips to a yard in Chelmsford, but the yard is now full. They are hoping to sell some of the woodchips in September. He would then be able to dispose of more of the logs.

Chairwoman Varnum said he has made some progress. She asked if there is much left to remove.

Mr. Quist said there is a pile of logs and there is also the stumps from the trees that he had cut up and the grass clippings from over the years. He knew he needed to get it out eventually. He is starting to move it. There is still plenty of work to be done back there. He is a little concerned about getting it finished before the winter.

Chairwoman Varnum said that most yard work is of that variety is that you have to keep after it. It is a lot of work. She appreciates that he has made a start.

Commissioner Lovely said that progress is great. They will keep the Enforcement Order (EO) open and get an update as needed depending on when Mr. Quist believes he can make some progress. They can continue the discussion to a meeting in October.

Chairwoman Varnum asked if that's acceptable to Mr. Quist. He would provide an update. If there is anything to report they can include him on the next agenda. She hopes he can draw some of the material from the wetlands, even if he can't remove it entirely from the property.

Mr. Quist said he appreciated the leniency. He apologized for letting it pile up. He is happy to finally start removing it from his property. When he spoke with Community Tree they sell the woodchips for energy, when natural gas is expensive. He is only apprehension is that they may not open their yard up again this season. All the other businesses that he looked into are much more expensive. He needs them to sell there chips so that he can get rid of it. Once they open their yard again he can make several trips and get rid of a majority of it.

Chairwoman Varnum said winter is coming so there may be more of a demand. Commissioner Lovely suggested leaving the EO in place. They will keep in touch. Mr. Quist should call into the office in about six weeks to report the status.

Mr. Quist said that's okay. He asked if someone can send the appropriate phone number.

Motion:

None

## **NEW BUSINESS**

### **Request for Determination of Applicability**

Fair Dermody Consulting Engineers c/o

Keolis Commuter Services

470 Atlantic Avenue, Ste. 500

Boston, MA 02110

Project Location: MBTA Right-of-Way Operated by Keolis Commuter Services

A Request for Determination of Applicability has been filed by Keolis Commuter Services to renew the wetlands map along the right-of-way (ROW) in order to continue vegetation management activities as outlined in the proposed 2021-2025 Vegetation Management Plan. **The applicant has requested a continuance to the October 14, 2020 meeting.**

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

None

Motion:

W. Lovely motioned and K. Dillon seconded the motion to continue the hearing to the October 14, 2020 meeting. The motion passed unanimously, (6-0).

**Order of Conditions Extension and Modification**

Christopher Hayes c/o

City of Lowell

50 Arcand Drive

Lowell, MA 01852

DEP# 206-0773

Project Location: Merrimack Riverwalk Phase II 01852

The City of Lowell is seeking an extension to November 14, 2023 to an Order of Conditions issued in November 14, 2017. The Order of Conditions is to extend the Merrimack Riverwalk, including lighting, railing, a ramp, a bridge, hardscape and landscape, and a cantilevered outlook within Bank and Land under a Waterway associated with the Merrimack and Concord Rivers, Bordering Land Subject to Flooding, and the 100-ft. Buffer Zones to these resource areas. Further, the City is seeking approval for a minor modification for a revised tree removal and replacement plan. **The applicant has requested a continuance to the September 23, 2020 meeting.**

On Behalf:

None

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

None

Motion:

B. Buitenhuys motioned and W. Lovely seconded the motion to continue the hearing to the September 23, 2020 meeting. The motion passed unanimously, (6-0).

**Request for Certificate of Compliance**

Hancock Associates c/o

Heritage Properties

100 Merrimack Street, Ste. 401

Lowell, MA 01854

DEP# 206-0778

Project Location: 770.1, 850, 852.5 Lawrence Street 01852

Heritage Properties is seeking a Certificate of Compliance for an Order of Conditions issued in March 2018 to convert an existing industrial mill building to residential apartments with associated utilities, infrastructure, and parking, portions of which occur within 25-ft. Riverfront Area, Bordering Land Subject to Flooding, and the 100-ft. Buffer Zone to Inland Bank associated with the Concord River.

On Behalf:

Brian Geaudreau, Hancock Associates

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Chairwoman Varnum said she was out at the site today and is curious about the extent of the planned landscaping. She doesn't think it's quite ready for a Certificate of Compliance (COC).

Mr. Geaudreau said that as part of the original Order of Conditions (OOC) they had specific condition to inventory trees and provide a replanting plan. That was done back in the spring 2018. They review the plan and issued it. For restoration, they came up with a clean-up of the area from the top of the slope down to the granite wall. They then spread a wetland seed mix. In June with Ms. Cigliano and Mr. Alves they walked the area and reviewed the stormwater management system, erosion control lines, etc. They believe that they have achieved the appropriate measures.

Chairwoman Varnum said that the inventory of the trees was a big discussion item. There were many invasive plants and trees. Trees were bad condition. Trees were coming out of the river wall. After the inventory it was her feeling that they were still going to have a treed slope along the river. As of now, the section that is under Heritage Ownership has only five trees and one is in bad shape. They have a steep slope held together with a mesh. It's a terrible year to try to get anything to grow. The grass hasn't even filled in the mesh. They haven't had rain lately, but she is afraid that they will see a start to erosion. The hope was with trees that there would be a root system to hold the slope together. It is heavily treed further down the property, which isn't Heritage's property. She had hoped that some trees or shrubs would continue this line.

Mr. Geaudreau presented the landscape plan. There were approximately 80 or so trees removed. As part of the restoration, they had proposed wildlife conservation mix without shrubs or trees specifically. More towards the canal side they had proposed plantings where there are pedestrians. They also proposed reestablishing the fencing in the area to replace the dilapidated fence along the edge of the Concord River. When they evaluated the trees and clearing and retained the five that the Commission wanted, they had also developed this plan. He feels that they have met the intent of what was proposed and discussed.

Chairwoman Varnum said that she can see that the wall behind the building would be a candidate for a grassy area, but along the area where the retention area is located is where she is concerned about erosion. She can't see that planting would be prohibitive there. She isn't sure what mix exists there today but it's mostly crabgrass that has been able to hang on.

Mr. Geaudreau said he understands the Chair's concern about erosion. He said it can be part of ongoing maintenance. He believes that they have gone through the process as prescribed by the OOC. He believes that they have completed the plan as proposed.

Chairwoman Varnum said that maybe it was hard to visualize.

Commissioner Lovely asked if Hancock's position is that the area is performing as intended by the OOC.

Mr. Geaudreau said that the conditions are in perpetuity. If there is an erosion issue, then they have to address it. It's on Heritage to replace plantings. It's not something that the Commission doesn't have enforcement order. The COC request is specific to the plan and the process. He thinks they have planted according to the plan. If there are areas that need sprucing up, then they can revisit them in the springtime. The entire island falls within the jurisdiction of the Commission.

Commissioner Lovely asked if the existing and approved Operations & Maintenance (O&M) plan has those provisions to maintain the integrity of what was constructed along that canal bank.

Mr. Geaudreau said that it's routine maintenance and work to prevent erosion if necessary.

Commissioner Lovely said he is wondering if they can look at the plantings as an episodic event and the long-term maintenance as guided by the O&M plan. By issuing a COC, the owner cannot walk away in event of degradation of vegetation along the bank, decay of trees, erosion and the like.

Commissioner Standish said that Chairwoman Varnum visited today and in her eyes, it was not sufficient. He wonders maybe it warrants a site visit.

Chairwoman Varnum said she visited today. Basically, before you see the three trees in a clump, one somewhere else, and one basically dead you say wow they took down all of the trees. In her mind there would have been trees along the river. She asked who is planting the trees.

Mr. Geaudreau said the planting was by Pit Pipeline. They worked outside the limit of work and worked with the City of Lowell and Concord River Greenway (CRG) landscape architect to develop an enhancement for the area. That was more for the CRG and not the site proper.

Chairwoman Varnum said it's such a distinct stoppage, from trees and landscape to when it isn't. She is not talking about as many trees that were put in there for a park like atmosphere. She is thinking a tree every 15 ft. may eventually spread their roots and add some aesthetic. Right now it looks like a canal behind the building. It doesn't look like a river because of the starkness of the landscape.

Mr. Geaudreau said if the Commission is amenable to the ongoing maintenance, then strong preference could be put in to plant more trees. They went through the Notice of Intent (NOI) and OOC process to get where they are today. Heritage Properties owns the building. They are apartments not condos. There is a certain level of pride. They will be able to address any issues.

Commissioner Buitenhuys said he also visited the site. Given the condition of a few of trees and the minimal number of trees. He would like to look further into how the slope was treated. He wouldn't be comfortable treating this a finished project worthy of a COC. Trees need to be replaced. The plants need to be alive and well. The health of the landscaping is a concern. He is not happy with the way that they are left with these plants. If a COC is granted it's more of a maintenance issue rather than finishing a construction project properly.

Commissioner Standish asked if there is a survival rate in the OOC.

Chairwoman Varnum said they normally look for two years.

Commissioner Lovely said he agrees that it makes more sense to get more things done upfront. He is empathetic to say what they want upfront prior to issuing a COC and just make sure that the provisions in the O&M plan are to their satisfaction. That way they are not waiting for two more years before issuing a COC.

Commissioner Buitenhuis said he doesn't hate that idea, but he doesn't have a problem not issuing a COC for two years. They are then guaranteed the level that they absolutely expect. A major developer has a site right on the river. It is right around a bunch of city work that is focused on the way that we as a city want this river to look. It is critical. He drove by the Heritage Property's traffic island at Aiken Street on the Boulevard. The median strip is not what he would want this place to look like. He is not confident in the O&M plan.

Mr. Geaudreau said it sounds like there are concerns. If they could let Mr. Alves and Ms. Cigliano know which trees are of concern, then they could walk the site again with staff and see if there is a medium. With Zoom there is not an easy way to sidebar with his clients. They could continue to the next hearing.

Commissioner Lovely said that might be a good approach. Hearing the discussion, he is empathetic but he would not want to grant a COC tonight. That might be the most prudent course of action, to continue and give them a chance to chat with staff. They could conduct a site visit.

Commissioner Buitenhuis said he would definitely like to meet on-site. He wants to look through the plans together. He wants to address Chairwoman Varnum's concern about the slope as well.

Chairwoman Varnum said that looking at the site in person makes it easier to explain what needs to be done. She is not looking for the extent of landscaping that is occurring further down river. But she would like to see that landscaping tapered off so that it's not forest to desert.

Motion:

W. Lovely motioned and B. Buitenhuis seconded the motion to continue the hearing to the September 23, 2020 meeting. The motion passed unanimously, (6-0).

**Request for Determination of Applicability**

Hay Kim

67-69 Pratt Avenue

Lowell, MA 01851

Project Location: 67-69 Pratt Avenue 01851

A Request for Determination of Applicability has been filed by Hay Kim to construct a deck within Bordering Land Subject to Flooding.

On Behalf:

Hay Kim, 67-69 Pratt Ave

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Chairwoman Varnum said that it's the Middlesex Village area. She took a peek there.

Ms. Kim said that they have a side deck that they want to reconstruct. The wood is falling apart.

Chairwoman Varnum said that she didn't see the deck.

Ms. Kim said that it's on the side of the house towards the back.

Chairwoman Varnum thought the proposal was right at the back of the house. She clarified that it's a reconstruction of a deck.

Ms. Kim said yes.

Chairwoman Varnum asked if take down completely and make changes.

Ms. Kim said that they will make some changes. They will make it more level.

Chairwoman Varnum asked if there will be a set of stairs going up to it.

Ms. Kim said that on the first level there are stairs and then stairs leading from the first level to the top floor.

Commissioner Lovely asked if they are intending to reuse the footings.

Ms. Kim said the footings will be a little longer.

Commissioner Lovely asked if they will do any further digging.

Ms. Kim said they will not be doing any new digging.

Commissioner Buitenhuis said they she also said it would be bigger.

Ms. Kim said it would be about 12x16-ft.

Commissioner Buitenhuis said that they would really prefer... the deck sits on the back door to the house and the wooden posts come out the corners of the deck and sit on blocks of concrete on the ground. They don't want them to add concrete to the ground and dig for them. Even if the deck increases in size, they want them to use the existing concrete footings.

Ms. Kim said that makes sense.

Commissioner Lovely said that the reason is because part of the project is in Bordering Land Subject to Flooding (BLSF) they cannot have any loss of flood storage capacity. If they are doing no digging, then it is neutral with respect to the floodplain impacts.

Ms. Kim said okay.

Motion:

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

### **Request for Determination of Applicability**

Marchionda & Associates, LP c/o  
Christopher Karabatsos  
48 Eleanor Drive  
Lowell, MA 01854

Project Location: 48 Eleanor Drive 01854

A Request for Determination of Applicability has been filed by Christopher Karabatsos to construct a deck and a carport within Bordering Land Subject to Flooding and the 100-ft. Buffer Zone to Bordering Vegetated Wetlands.

#### On Behalf:

John Barrows, Marchionda & Associates, LP

#### Speaking in Favor:

None

#### Speaking in Opposition:

None

#### Discussion:

Chairwoman Varnum said she was also at this property. It is a very neat and developed property that has a fence on all sides, but the front. Just over the fence is the wetland vegetation, alive and well and thriving. The proposal does not appear to impact the wetland at all. It will be constructed over a current driveway, a paved area. The resource, Clay Pit Brook appears to be a little further away. The wetland may have been created in part by the storm drain at the end of the street.

Mr. Barrows said the proponent wants to build a 10x20 carport. It will be placed over existing pavement. They are planning on using helical posts to support the carport. If you look at the last page of the request submission it gives a picture of them. They are screwed into the ground until you get to a point where it supports the structure. They are also proposing to put a wood deck behind it at the level of an existing three-season porch. It would have stairs down to the back lawn area. There are presently stairs coming off of the existing three-season porch down onto the driveway. These would be reoriented to go back to towards the lawn area. The proposed deck would be 10x12-ft. in size.

Chairwoman Varnum asked about tree removal.

Mr. Barrows said the carport would be on top of existing pavement. New deck is on a manicured lawn area. No tree removal.

Chairwoman Varnum said the wetland area appears to be off the property.

Mr. Barrows said that's correct. Norse Environmental flagged the wetlands in the submitted plans.

Chairwoman Varnum said that it doesn't look concerning. The wetland is thriving. You would need a machete to get through it.

Commissioner Buitenhuis said he doesn't take exception to the project.

#### Motion:

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

### **Request for Determination of Applicability**

Waldemar Poletto  
140 Swan Street  
Lowell, MA 01852

Project Location: 140 Swan Street 01852

A Request for Determination of Applicability has been filed by Waldemar Poletto to construct a deck and shed at 140 Swan Street. The deck and shed would be within the 100-ft. Buffer Zone to Bordering Vegetated Wetlands.

#### On Behalf:

Waldemar Poletto, 140 Swan Street

#### Speaking in Favor:

None

#### Speaking in Opposition:

None

#### Discussion:

Chairwoman Varnum said that it appears that construction is well underway.

Mr. Poletto said he just replaced the shed and they decided to do a platform. They did another roof on top. They called it a deck next to the shed.

Chairwoman Varnum said that she understands that the shed doesn't meet the zoning setback. She asked if it can be moved easily.

Mr. Poletto said that it's on blocks of concrete.

Chairwoman Varnum said that it's not really their say... it's a zoning issue. It could be that the shed might need moving a bit. The fence that's there is the one that he is asking to construct.

Mr. Poletto said they replaced the fence. The old fence was wood. They made a new one using plastic.

Chairwoman Varnum confirmed that it's already constructed.

Mr. Poletto said yes.

Chairwoman Varnum said that the wetland near the shed... Bigelow Street had a family that wanted to construct a garage next to a tiny stream. They gave permission to leave it there because the stream seemed well contained. They granted permission. She doesn't have concern about this particular shed. But on the other side of the property is another wetland. He has a lot of concerning things on the edge of that wetland. She saw a pile of loose gravel. There were a lot of construction pieces right on the edge of the wetland that he needs to pull back. That wetland as well needs protection.

Mr. Poletto said okay. He said he just put the pile out there. He wanted it out close to the street because water comes and gets in his way.

Chairwoman Varnum said her concern is that the slope of the driveway is eroding and that all of that sand could end up in the wetland. It would then cause trouble for people on the other side or even for him. He might be able to put a small curb in. Some of that material that he stored needs to be pulled back.

Commissioner Lovely said it was hard from the figure to get a sense for how far from the resource area that the shed would be constructed.

Chairwoman Varnum said it's close to the little stream, maybe 20-30-ft. That's further than the next property where the garage is right next to it.

Commissioner Lovely said it's not inconsistent. Given the scale of the project, he isn't concerned. He just wants to be consistent with no disturb zones and what was done in the past. He's hearing that it would be consistent based on what they have done with the next-door property.

Mr. Poleto said they also replaced a shed.

Commissioner Buitenhuis confirmed the shed is on concrete blocks and asked about the deck.

Mr. Poleto said the deck would use concrete blocks too. He wouldn't dig anything.

Commissioner Buitenhuis said that if it's all floating then he's fine.

Motion:

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

**Request for Determination of Applicability**

Marilyn Rivera c/o

Angel Irizarry

38 E Aldea Street

Lowell, MA 01851

Project Location: 38 E Aldea Street 01851

A Request for Determination of Applicability has been filed by Angel Irizarry to construct a 20 by 10-ft. shed on Bordering Land Subject to Flooding.

On Behalf:

Marilyn Rivera, Applicant's Representative

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Chairwoman Varnum said they have received plans and photos. It appears to be a replacement shed, replacing two that were there and now it would be one. It backs up against a neighbor's shed. It may or may not have been legal. They are now asking for permission to finish the shed.

Ms. Rivera said that is a replacement of the previous shed that was there.

Chairwoman Varnum asked it is taller than the previous one.

Ms. Rivera said that is about the same, they will shorten the height of it. It was brought up when they came over to take photos.

Chairwoman Varnum asked if it's on blocks.

Ms. Rivera said yes.

Chairwoman Varnum said it's a reasonable request in that every house in the neighborhood seems to have a shed. On blocks she is not too concerned about it becoming a permanent structure taking up space in the floodplain.

Commissioner Lovely said he agrees.

Motion:

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

**Notice of Intent**

Meisner Brem Corporation c/o  
Talladge LLC c/o Melmar Properties LLC  
45 Merrimack Street  
Lowell, MA 01852  
DEP# 206-0802

Project Location: 4 Tamarack Street 01851

A Notice of Intent has been filed by Tallage Lincoln LLC c/o Melmar Properties LLC to extend Tamarack Street and construct a single-family home in a vacant lot. The lot is located fully within the 100-year flood plain.

On Behalf:

John Cox, Applicant's Attorney  
Jeffrey Brem, Meisner Brem Corporation

Attorney Cox said the goal is to intend Tamarack Street another 140-ft. to a vacant lot with the hopes of building a vacant home. The City has pointed out several things and one of the most important is to come before the Commission for a NOI. They will have a better water and sewer line down Tamarack. Princeton Blvd. has recently been paved and it's under moratorium by MassDOT, but they will follow that process fully.

Mr. Brem presented the site plan. The property is 100% in the floodplain. Tamarack Street is also partly in the floodplain. Today Tamarack transitions from pavement to a narrower dirt roadway. The property is currently a vacant lot, just over 7,000 sq. ft. It is basically a buildable lot. The primary issue is that Tamarack Street needs to be extended and they are working in the floodplain. The only fill will be the foundation itself. They are proposing four smart vents at various elevations, two on each side. Essentially, a smart vent is a hole in the concrete. It seals up the holes in time of no flood. When there is a flood it allows water to enter the basement temporarily during the storm. There are no heating systems within the floodplain. It's just an open basement. The concrete itself is fill. To mitigate that, they have a several system program. First, they have roofed infiltration drains into CULTEC system that. They are proposing a bioretention rain garden. These go into two chambers. The flood would go into the chambers which would store the flow during a flood. The chambers plus the bio retention plus the CULTEC allows them to have 100% mitigation of any flooding on the property. Some of the loss of floodplain is in the roadway and in the building itself. They have 664 ft<sup>3</sup> of loss and they are adding 700+ ft<sup>3</sup> across the incremental elevations, net gain of 56 ft<sup>3</sup>. They are extending the water line. There are no flood issues with that. Extending the sewer line. Adding a hydrant. They will tie any properties not tied into the sewer. Replace the 1-inch water line with a 4-inch line. The end of Tamarack is a dumping ground, puddles form. All of that will be resolved.

Speaking in Favor:

None

Speaking in Opposition:

None

Discussion:

Chairwoman Varnum asked about the drainage out of the tanks.

Mr. Brem said it's an overflow pipe to the street.

Chairwoman Varnum clarified that it will go into the storm sewer.

Mr. Brem said that's correct.

Chairwoman Varnum asked if that's constant.

Mr. Brem said that only when it fills. They are also maintaining a positive grade of 0.5%. They are doing a little extra filling to avoid a low point so all existing flow will go to the existing catch basin.

Chairwoman Varnum asked about the level of groundwater.

Mr. Brem said the building is basically being built up from the ground. If the groundwater is below the ground it will just be at the footing.

Chairwoman Varnum asked about the tanks.

Mr. Brem said he hasn't done buoyancy calculations. They are heavy concrete tanks. They start right near the surface. They go down about 5.5-ft.

Chairwoman Varnum asked if they are perforated.

Mr. Brem said they are. So at the end of a storm they will drain out. There is a core, not a perforation.

Chairwoman Varnum again asked about the groundwater regarding the tanks.

Mr. Brem said that with the core they will not have buoyancy problem.

Chairwoman Varnum said the tanks could be filled by a foot or more at all times.

Mr. Brem said they checked the flood elevation of the river. He could verify that the floodplain is below 93.3-ft.

Commissioner Lovely asked if the sizing of the storage tank considers water table elevations so that they are not losing storage capacity. When they are no longer in flood stage, the water level has to be sufficiently low enough for free drainage of the tank into the aquifer below. He said the level is important.

Commissioner Buitenhuis agreed.

Chairwoman Varnum asked about maintenance plan.

Mr. Brem said they are just concrete tanks. They have a 30-40 year life. They could condition an inspection.

Commissioner Lovely asked about siltation hindering the free drainage.

Mr. Brem said he doesn't. The only issue would be if the rain garden filled up with silt and spilled into the tank. The maintenance is for the rain garden. They have an O&M plan.

Commissioner Lovely asked about the outfall. He asked if the area complies with the MS4 permit requirements.

Mr. Brem said that's correct.

Commissioner Lovely asked if Lowell allows them connect discharge to existing stormwater and not manage on-site.

Mr. Brem said that's the bio retention facility. When fills up to two feet it goes into tanks and then drains out. The tanks eliminate the connection to the city during normal storm events. During heavy storms and when the river backs up, they use the stormwater system as overflow.

Commissioner Lovely asked about overall recharge area and impervious surface.

Mr. Brem said it depends on the storm. They are supposed to do annual recharge. They meet that requirement.

Commissioner Lovely said de minimis increase in flood storage capacity. They are not running counter to the City's MS4 requirements. The system is sized large enough for typical storm and maybe a more intense storm.

Mr. Brem said they need to take a half inch of rainfall and make sure they meet annual recharge.

Chairwoman Varnum asked if all the additional pavement is accounted for.

Mr. Brem said yes.

Chairwoman Varnum asked if there would be a point to getting pervious pavement for the driveways.

Mr. Brem said that's why they have such an elaborate system. He doesn't think it's necessary. There is no discharge unless there is a flood event.

Chairwoman Varnum asked about the street width and city requirements.

Attorney Cox said that the extension of Tamarack will be built to city standards. Princeton Blvd. is a state issue. They will follow that process. Tamarack will be built to the city standards.

Chairwoman Varnum said the pavement on Tamarack Street... they are not required to have any impact on the stormwater system. They do not include all of that pavement.

Commissioner Standish said they did include it.

Mr. Brem agreed that they included the new portion of Tamarack Street.

Chairwoman Varnum said the rain garden is pretty well set forth for plantings. She asked if there are plantings for the rest of the lot. There are some trees around the edges. She asked if they are planning on planting trees.

Mr. Brem said they have not shown any landscaping. The front of the property is pretty much taken up between tanks, porch, steps, etc. On the back they could plant a few trees if that was condition of approval.

Chairwoman Varnum said that something deciduous.

Mr. Brem said that kitty corner to the property is an apartment complex. Any trees planted as a buffer would be a good thing.

Chairwoman Varnum said they received a letter of concern from the apartment owners. Some buffering there would please them.

Attorney Cox said they would certainly do whatever is requested for buffering.

Motions:

W. Lovely motioned and B. Buitenhuys seconded the motion to close the public hearing. The motion passed unanimously, (6-0).

W. Lovely motioned and B. Buitenhuys seconded the motion to issue a Lowell Standard Order of Conditions with three special conditions:

1. The applicant shall demonstrate to DPD that the sizing of the storage tanks accounts for groundwater elevations to ensure that the full storage capacity of the tanks is provided;
2. The applicant shall provide an Operations & Maintenance plan to DPD for the storage tanks;
3. The applicant shall propose a plantings plan for review and approval by DPD to buffer the shared lot lines with 65 Pratt Ave and 46 Hadley Street.

The motion passed unanimously, (6-0).

**Enforcement Order**

Liberal Raposo and Jane Raposo  
48 Perron Way  
Lowell, MA 01854

Violation Location: 48 Perron Way 01854

Cutting and removing trees within the 100-ft. Buffer Zone to Bordering Vegetated Wetlands without permission from the Conservation Commission.

On Behalf:

Liberal Raposo, 48 Perron Way  
Jane Raposo, 48 Perron Way

Speaking in Favor:

None

Speaking in Opposition:

Casey Phelan, 298 Trotting Park Road

Discussion:

Chairwoman Varnum said they have had several conversations between the office, herself, and the forestry people and the Department of Conservation and Recreation (DCR). The upshot is that the trees are down. They were off of the property line and onto the conservation area. There is a fairly well-defined drainage ditch, not a stream. She believes it connects to other pieces of wetland, which may be more than 100-ft. from this particular

taking down of trees. About five trees were removed. At least one was in tough shape with a hollow trunk. There is a little more work to be done, but the Raposo's stopped work when they received the EO. They were doing a good job removing the downed material and stacking it up away from the drainage.

Ms. Raposo said the trees were a big concern for them because of the safety of their grandchildren. Some pine trees have fallen in previous years.

Mr. Raposo said that trees have fallen down and broken his fence. They had difficulty finding out the owner of the property. They received permission from the owner of the land to cut the trees. He called the city so many times over two years.

Ms. Raposo said they thought that they received the correct permissions from the state.

Chairwoman Varnum said it appears that they did try to contact the right people. Now they are aware of the Conservation Commission. If they want to do anything else in the yard, such as build sheds or cut trees, then they will need to ask for permission.

Commissioner Lovely said that reading the material, it appears that there is ambiguity about the location of the trees.

Chairwoman Varnum said that it may be land subject to flooding from the looks of the drainage ditch. It's a very dry year so it's hard to determine the edge of wetland areas. They are definitely situated between two wetland areas. They are on a conservation parcel potentially owned by an unknown group that disbanded. She is surprised that DCR people came out. She isn't sure whether the forest took over ownership.

Commissioner Lovely said that looking at the picture it looks like the trees are well outside the resource area.

Chairwoman Varnum said that she would agree except for the well-defined not man-made drainage. Someone built a bridge over it.

Ms. Raposo said they have not seen water there in years. It stinks like sewer water.

Chairwoman Varnum said the houses on the other side of the street are all on septic.

Ms. Raposo said they did what they were told. They took it down for the safety of her children. She has seven. They talked with John at DCR and the City's DPW guys. Everyone gave them a runaround. Now that the trees are gone it created a problem. It's unfair that no one wanted to help them before.

Commissioner Lovely suggests that... because of the uncertainty about the location of the jurisdiction area. It's more likely than not that they are. Moving forward they should file a Request for Determination of Applicability (RDA). They are aware of the requirement now. So, he's open to ratifying and rescinding the enforcement order. He doesn't think they need to submit an RDA.

Commissioner Buitenhuis said that they tried to reach out to the right people. It's unfortunately that DCR granted permission so easily. Permission was granted even if it wasn't the preferred channel. The impact was minimal. He supports Commissioner Lovely's path forward.

Commissioner Downs said they tried and they know what to do moving forward. He agrees with Commissioner Lovely's path.

Chairwoman Varnum said that they would finish the clean-up that they started.

Ms. Raposo said that they would take care of it and they would come to the Commission in the future for any further work.

Mr. Phalen said he called about the tree removal. The wetlands in his backyard... he believes it's an intermittent stream. Mr. Clausen said seven years ago for his deck that it was. He is fine with removing trees that are a danger to his yard. He is more concerned with the intermittent stream. It was the on the original plan from 2003. This year nothing is running. Most of his neighbors are on town sewer. His concern wasn't about cutting the trees down. There were no silt fences. 1 inch in rise in the intermittent stream is a couple hundred feet in his back yard. He has talked with Mr. Raposo in the past.

Chairwoman Varnum said that would be a concern but it's hard to talk about erosion when it hasn't rained for months.

Commissioner Standish said at this point the land is disturbed, it needs to be cleaned up, and now's a good time to do it considering the current dry weather conditions.

Chairwoman Varnum said that it seems that probably some things will start to grow back there. If they notice that things are taking away some of the soil into the trench, then they will need to mulch or something along that line.

Mr. Raposo said he will make it nice and clean.

Chairwoman Varnum said to keep an eye on it.

Ms. Raposo said they will.

Mr. Phalen said he is concerned about the ditch getting filled in and runoff leading to a swimming pool in his backyard. It will get wetter and wetter. His neighbor five houses down came before them to add a house. There is a lot of concern for safety and wellbeing.

Chairwoman Varnum said that they can't leave any branches in the drainage ditch.

Ms. Raposo said she has lived for 15 years and she has never seen the ditch get full.

Mr. Raposo said it rarely has water.

Ms. Raposo said all she wants to do is go back out there clean out the branches and stumps and that's it.

Chairwoman Varnum said that Mr. Phalen and the Raposo's should keep an eye on it. They should walk the intermittent stream every once and a while. If they see a blockage then they could move it.

Mr. Phalen asked about dredging it.

Chairwoman Varnum said that's a little extreme. Even leaves in the ditch can stop the water from flowing. If she was them, she would occasionally walk through there. Just removing some of the leaves every once in a while keeps everything flowing.

Mr. Raposo said the drain is cleaner than before.

Chairwoman Varnum said they don't want the soil disturbed from digging.

Mr. Raposo said he only cleans broken branches, etc. no digging.

Chairwoman Varnum said that between the two of them they can handle it.

Commissioner Lovely said that the take home message is that for any further work they should appear before the Conservation Commission to have the discussion outside of needing an EO.

Motion:

W. Lovely motioned and B. Buitenhuis seconded the motion to ratify the Enforcement Order. The motion passed unanimously, (6-0).

W. Lovely motioned and B. Buitenhuis seconded the motion to rescind the Enforcement Order. The motion passed unanimously, (6-0).

**OTHER BUSINESS**

**Minutes**

August 12, 2020

W. Lovely motioned and K. Dillon seconded the motion to approve the minutes. The motion passed unanimously, (6-0).

**ADJOURNMENT**

W. Lovely motioned and B. Buitenhuis seconded the motion to adjourn the meeting at 8:43 PM. The motion passed unanimously, (6-0).