

Conservation Commission Rules and Regulations

ARTICLE I: AUTHORITY

SECTION 1.1: *State Authority*

The Commission was created under the authority provided to municipalities under M.G.L. Chapter 40, Section 8C and enforces M.G.L. Ch. 131, S. 40 and 310 CMR 10.00, all as amended. These rules and regulations are promulgated under M.G.L. Chapter 40, S. 8C.

SECTION 1.2: *City Authority*

The Commission enforces the City of Lowell Wetlands Ordinance, Chapter 280.

ARTICLE II: PURPOSE

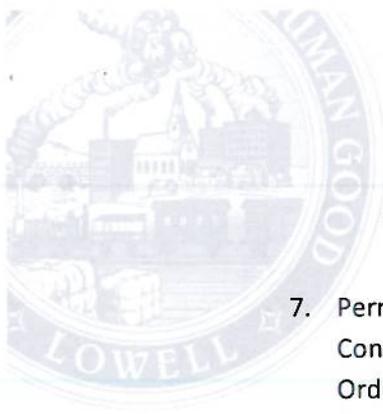
SECTION 2.1: Purpose

The purpose of the Commission is to protect the natural and watershed resources of the City of Lowell, as defined in 310 CMR 10.00 as amended, and engage in land conservation planning and programming. The Commission will implement certain federal, state and local environmental protection regulations. In addition, the Commission engages in land conservation activities and open space planning.

ARTICLE III: KEY TERMS

SECTION 3.1: Definitions

1. 310 CMR: Code of Massachusetts Regulations, Department of Environmental Protection;
2. Application: A submission for review of an activity or area to the Commission under the Wetlands Protection Act or Ordinance. Submissions may be, but are not limited to, Request for Determination of Applicability, Notice of Intent, Abbreviated Notice of Intent, Abbreviated Notice of Resource Area Delineation or Request for Certificate of Compliance.
3. Resource areas: All areas regulated by the Commission and identified in Section 2 of the Ordinance.
4. M.G.L.: The General Laws of the Commonwealth of Massachusetts.
5. MassDEP: Massachusetts Department of Environmental Protection, typically the Wetlands Division.
6. Ordinance: The City of Lowell Wetlands Ordinance, Chapter 280, Section 1 to 13 of the Code of Ordinances.



7. Permit: A decision issued by the Commission limited to one of the following: Order of Conditions, Extension Permit for Orders of Conditions, Determination of Applicability, Order of Resource Area Delineation, Notice of Non-Significance, or Certificate of Compliance.
8. Commission: The City of Lowell Conservation Commission.
9. Stream: A body of running water, including brooks and creeks, which moves in a definite channel in the ground due to a hydraulic gradient, and which flows within, into or out of a resource area defined in Section 2 of the Ordinance. A portion of a stream may flow through a culvert or beneath a bridge.

ARTICLE IV: POWERS AND DUTIES

SECTION 4.1: Membership

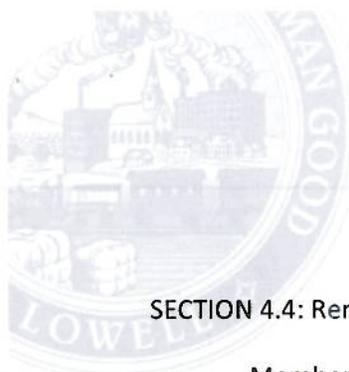
The Commission shall be comprised of seven (7) members as provided under M.G.L. Ch. 40, S. 8C. Members shall be appointed to three-year terms by the City Manager. Any vacancy may be filled by appointment by the City Manager. Such appointment shall be for an unexpired term. Per City of Lowell Ordinance Chapter 56, S. 30 all members of the Commission shall be residents of the City of Lowell.

SECTION 4.2: Elections

The officers of the Commission shall be elected from the membership annually in the first meeting of the calendar year. Special elections, if necessary due to an officer leaving the Commission before an election, may be called by any two (2) members of the Commission and will be publicly advertised pursuant to M.G.L. Ch. 30A, S. 18-25 and 940 CMR 29.00.

SECTION 4.3: Officers

1. Chair: The Chairman shall preside at all meetings of the Commission at which s/he is present and may participate in the discussion and may vote on all questions. S/He shall be responsible for the implementation of the internal policies established and the actions taken by the Commission and shall have all of the powers and duties customarily pertaining to the office of the Chairman and shall perform such further duties as may be assigned to her/him by the Commission. The Chairman will direct the work of the Commission to realize the purpose stated above through setting objectives for land preservation, open space conservation and conservation management.
2. Vice-Chair: The Vice-Chairman shall, in the event of the absence of the Chairman from any meeting, or of her/his incapacity to perform any of the duties of her/his office or to exercise any of her/his powers, perform such duties and possess such powers as are conferred upon the Chairman, and shall perform such other duties as may from time to time be assigned to her/him by the Chairman or by the Commission.



SECTION 4.4: Removal

Members shall make every effort to attend all meetings. Where a member's attendance is determined not satisfactory by the City Manager then that member may be replaced by the City Manager in accordance with their authority under M.G.L. Ch. 40, S. 8C. Such removal may be made only after a public hearing, in which such member is given an opportunity to appear and be heard on the charges against them.

SECTION 4.5: Voting Procedure for Absent Members

In reference to M.G.L. Ch. 39, S. 23D, which was approved by the City Council on September 28, 2010, Commission members shall be permitted to vote on a matter where they missed one session of an adjudicatory hearing, given they have reviewed the materials presented and the proceedings of the hearing by video or audio recording where s/he was absent and certify in writing that they have reviewed the content in its entirety prior to the Commission taking action on the item.

SECTION 4.6: Staff Support

The Department of Planning and Development, the Law Department and the Engineering Department shall provide staff support to the Commission as may be reasonably required.

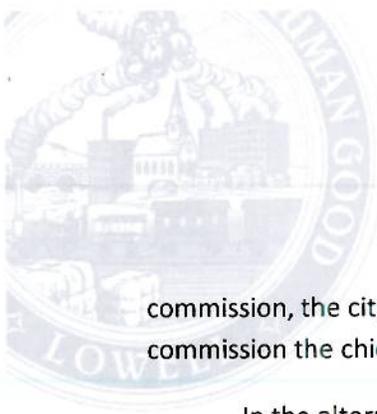
SECTION 4.7: Meetings

The Commission shall schedule at least two meetings per month put forth by a Commission vote during the final meeting of the previous calendar year. All meetings will be held in compliance with M.G.L. Ch. 30A, S. 18-25 and 940 CMR 29.00. Robert's Rules of Order shall govern the proceedings of the Commission, except in such cases as are governed by municipal ordinance or state statute when parliamentary rules shall not be construed to take priority.

Special meetings may be called by the Conservation Commission Chairman or upon request by two (2) members of the Commission, provided that notice of said meeting shall be given at least forty-eight (48) hours prior to said meeting and said notice shall be accompanied by a brief summary of the purpose of said meeting and be posted in accordance with M.G.L. Ch. 30A, S. 18-25 and 940 CMR 29.00.

SECTION 4.8: Enforcement

The commission, its agents, officers, and employees shall have the authority to enter upon privately owned land for the purpose of performing their duties under Lowell Wetlands Ordinance and may make cause to be made such examinations, surveys or sampling as the commission deems necessary. The commission shall have authority to enforce the Lowell Wetlands Ordinance and M.G.L. Ch. 131, S. 40 and 310 CMR 10.00, all as amended regulations, and permits issued thereunder by violation notices, administrative orders, and civil and criminal court actions. Upon request of the

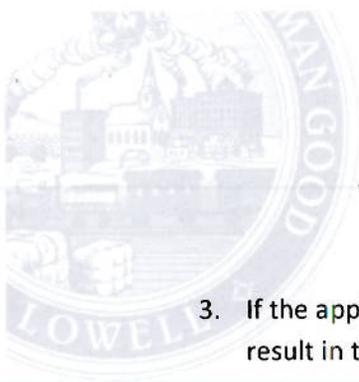


commission, the city solicitor shall take legal action for enforcement under civil law. Upon request of the commission the chief of police shall take legal action for enforcement under criminal law.

In the alternative to criminal prosecution the commission may elect to utilize the non-criminal disposition procedure set forth in M.G.L. c. 40, Section 21D. City boards and officers, including any city police officer or other officer having police powers, shall have authority to assist the commission in enforcement. Any person who violates any provision of this ordinance, regulations thereunder, or permits issued thereunder, shall be punished by fine of not more than three hundred dollars (\$300.00). Each calendar day or portion thereof during which a violation continues shall constitute a separate offense, and each provision of the ordinance, regulations or permits violated shall constitute a separate offense.

No Work shall commence until the Order of Conditions issued by the Commission has been recorded at the Registry of Deeds, Middlesex North within twenty-eight (28) days from the date of issuance and documentation certifying as such has been submitted to the Lowell Conservation Commission office. The Lowell Conservation Commission office must be notified 48 hours prior to start of work. Failure to meet these conditions will result in one of the following actions:

1. If the applicant fails to record the order within 28 days of its issuance and has not started the work, the applicant is required to immediately notify the Conservation Commission or agents designated by the Commission to act on their behalf and request a formal extension of the requirement to record the Order of Conditions. Staff may approve the request administratively if it is determined that no work has occurred at the subject property in violation of the Order, the Wetlands Protection Act, or Wetlands Ordinance. In the case an extension has been granted the project proponent shall record the Order at the Registry of Deeds, Middlesex North within fourteen (14) days from the date of approval. A copy of the recorded order shall be submitted to the Lowell Conservation Commission office. Failure to record the Order of Conditions within the extension period is a violation of the regulations and may result in the issuance of an enforcement order with a fine of not more than three hundred dollars (\$300.00) for each calendar day or portion thereof during which the violation continues.
2. If the applicant fails to record the order within 28 days of its issuance and starts the work without notifying the Lowell Conservation Commission office, it is a violation of the Order of Conditions and may result in the issuance of an enforcement order with a fine of not more than three hundred dollars (\$300.00) for each calendar day or portion thereof during which the violation continues. The applicant will be required to stop work immediately and submit a restoration plan for approval from the Commission within 14 days from the date of issuance of the enforcement order.



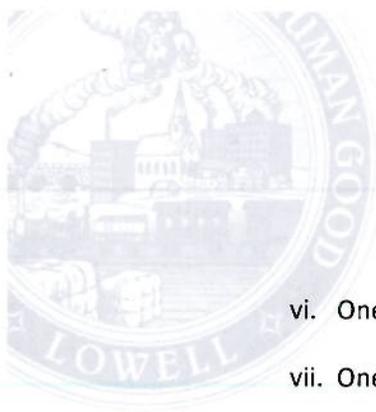
3. If the applicant fails to record the Order prior to transfer of ownership of the property, it will result in the Order becoming Null and Void.
4. If the applicant records the order within 28 days of its issuance, but starts the work without notifying the Lowell Conservation Commission office, it is a violation of the regulations and may result in the issuance of an enforcement order with a fine of not more than three hundred dollars (\$300.00) for each calendar day or portion thereof during which the violation continues. The applicant will be required to stop work immediately and seek approval from the Commission to continue the work.

ARTICLE V: APPLICATION STANDARDS

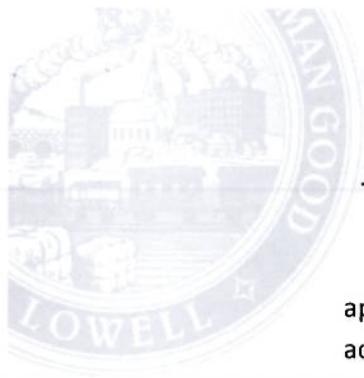
SECTION 5.1: Minimum submission requirements

To be considered complete at the time of submission, all applications for Commission review under the City of Lowell Wetlands Ordinance must provide the following elements:

1. Twelve (12) copies of all applications and site plans, of which one (1) each of the application and site plan(s) shall be signed originals. Four copies will be provided for review to the City Clerk, Planning Board, Board of Health and Building Commissioner. The number of additional copies of plans may be changed by Ordinance and/or Rules and Regulations updates and said requirements shall be implemented without changing the language of this provision;
2. A signed form, developed by the Commission and updated as needed, in which applicant(s) acknowledge submission of applicable materials to MassDEP or agree to immediately submit materials to receive a MassDEP file number. A public hearing cannot be closed without a MassDEP file number and may require the application be continued;
3. Plans signed and stamped by a Registered Professional Land Surveyor and/or a Registered Professional Engineer which conform to the following:
 - i. Sheets 24-inch by 36-inch (Size D);
 - ii. Recommended scale of 1":20' in consideration of coordination with other land-use boards, although scales between 1":10' and 1":50' may be utilized as necessary;
 - iii. One-foot topographic lines. Existing topography and proposed topography shall be clearly differentiated;
 - iv. A scale, date and north arrow;
 - v. A flood compensation calculation that defines cut and fill volumes at one-foot elevation intervals;



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- vi. One-hundred year floodplain and wetlands delineations;
 - vii. One hundred (100) and fifty (50) foot setbacks from resource areas;
 - viii. Appropriate notes as required to describe the site and proposed work;
4. If the applicant is a corporation, limited liability company, partnership, trust, realty trust, or other entity created by law, then the representative shall provide evidence suitable to the Commission of the legal existence of the entity, together with contact information for a principal, president, trustee, member, agent, as the case may be, who has full authority to act on behalf of the entity before the Commission (In the event that said entity or its representative is a non-resident of the Commonwealth of Massachusetts, then contact information for a resident agent shall also be provided);
 5. One electronic copy of each document and plan submitted in PDF format;
 6. For applications that require abutter notification, one (1) original signed and notarized abutter list from the City of Lowell Assessor's Office;
 7. All Notice of Intent submissions shall post a sign at least one week before the public hearing is opened which shall be placed based on the following standards:
 - i. The sign shall be placed in such a way as to be fully visible and legible from a right-of-way adjacent to the parcel(s) where work is proposed. For submissions with multiple frontages or located on multiple parcels, this requirement will be satisfied by a sign clearly visible from an easily accessible section of any public right-of-way that fronts on any parcel with proposed work;
 - ii. Where a property does not front on a public right-of-way, a sign will be placed in a location so as to be fully visible and legible from the right-of-way of the nearest street or road;
 - iii. The text of the sign shall include a description of the proposed work, contact information for the City of Lowell Department of Planning and Development office and website where information may be found in person and online, and the date, time and location of the public hearing;
 - iv. Said sign shall be waterproof and maintained to be legible for the length of time specified in sub-section (v) below;
 - v. Said sign shall contain no additional advertisement or words other than that which is intended to meet the requirements herein. The sign will remain in place until the end of the appeal period for any decision of the Commission has expired. In the event an



application is withdrawn, a sign shall be removed when the Commission votes on acceptance of the request to withdraw.

8. Any requirement may be overcome through a waiver request given to the Administrator at the time of the application. If the Commission, at the next meeting, determines not to accept the waiver the application will not be complete.

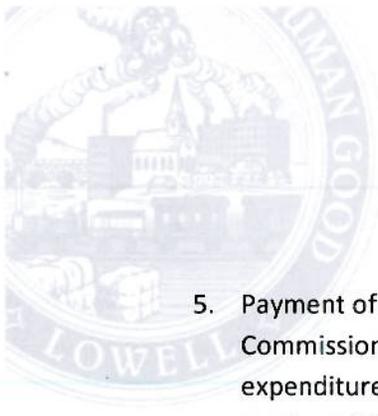
ARTICLE VI: FEES

Please see "Lowell Conservation Commission: Local Fee Schedule" included at the end of this document.

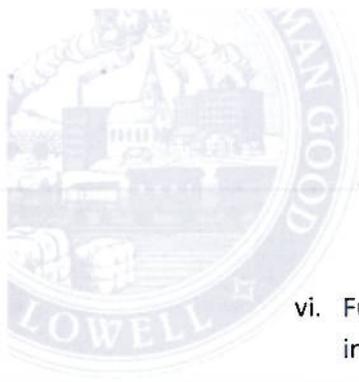
ARTICLE VII: SPECIAL FUNDS FOR THIRD-PARTY CONSULTANTS

SECTION 7.1: RETAINING CONSULTANTS

1. **Purpose:** As provided by M.G.L. Ch. 44, S.53G, the Commission may impose reasonable fees for the employment of outside consultants, engaged by the Commission, for specific expert services up to an amount determined by the Ordinance. Such services shall be deemed necessary by the Commission to come to a final decision on an application submitted to the Commission pursuant to the requirements: the Wetlands Protection Act (M.G.L. Ch. 131, S. 40), the City of Lowell Wetlands Ordinance, Conservation Commission Act (M.G.L. Ch. 40, S. 8C), or any other state or municipal statute, ordinance or regulation, as they may be amended or enacted from time to time.
2. **Applicability:** The Commission may at its sole discretion determine that a project's scale, size, complexity, or potential impacts from development activities or non-temporary work warrants input from a third-party professional consultant(s). The Commission must make a determination of need for consulting services by a majority vote during a public meeting.
3. **Consultant Services:** Specific consultant services may include, but are not limited to, resource area survey and delineation, analysis of resource area values, hydrogeologic and drainage analysis, impacts on municipal conservation lands, and legal review. Services may also include on-site monitoring during construction, or other services related to the project deemed necessary by the Commission. The consultant shall be chosen by, and report only to, the Commission and/or its Administrator.
4. **Notice:** The Commission shall give written notice to the applicant of the selection of an outside consultant. Such notice shall state the identity of the consultant, the amount of the estimated fee to be charged to the applicant, and a request for payment of said fee in its entirety. Such notice shall be deemed to have been given on the date it is mailed or delivered. No such costs or expenses shall be incurred by the applicant if the application or request is withdrawn within five days of the date notice is given.



5. **Payment of fee:** The fee must be received prior to the initiation of consulting services. The Commission may request additional consultant fees if necessary review requires a larger expenditure than originally anticipated or new information requires additional consultant services. Failure by the applicant to pay the consultant fee specified by the Commission within ten (10) business days of the request for payment, or refusal of payment, shall be cause for the Commission to deny the application based on lack of sufficient information to evaluate whether the project meets applicable performance standards in 310 CMR 10.00 and the Ordinance. An appeal stops the clock on the above deadline; the countdown resumes on the first business day after the appeal is either denied or upheld. A denial for lack of information may be based solely on the lack of the third party consultant review identified as necessary by the Commission. The Commission shall specify in its denial the nature of the information lacking which its chosen consultant would provide, e.g. the questions it needs answered.
6. **Consultant Services Procedures:** In the event the Commission has determined consulting services are required and have identified the type and scope of service necessary to provide a thorough project review, the Commission and/or its Administrator will select consultants able to demonstrate knowledge and experience related to services as required. Procurement and selection of the consultants(s) shall be in accordance with M.G.L. Ch. 30B, Ch. 149 and any other applicable procurement laws.
7. **Handling of Consultant Fees:** The consultant fees shall be deposited into a special account as set forth in M.G.L. Ch. 44 S. 53G and the following procedure shall be followed:
 - i. Outside consultants retained by the Commission to assist in project review or inspection and monitoring shall be paid from this account;
 - ii. Review fees shall be turned over to the City Treasurer by the Commission for deposit into a 53G account;
 - iii. A copy of the latest statement from the banking institution handling the 53G account shall be forwarded from the Office of the City Treasurer to the Commission office as soon as it is received for timely and accurate accounting;
 - iv. The City Treasurer shall prepare a report on activity in the 53G account on an annual basis. The annual report shall be submitted to the City Manager and City Council for review;
 - v. An accounting of an applicant's funds held in the 53G account may be request by the applicant at any time. The Commission shall respond to the request in a timely fashion in accordance with Public Records Laws;

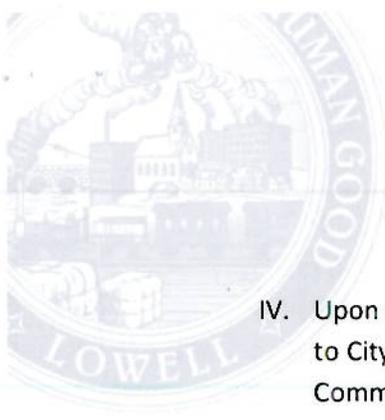


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- vi. Funds shall be expended upon receipt of a detailed invoice from the consultant(s) indicating a, itemized accounting of services rendered;
 - vii. Excess fees in the 53G account, including accumulated interest, shall be returned to the applicant or the applicant's successor in interest within 30 days from the date an Order of Conditions is issued or an application is withdrawn. Any person or entity claiming to be the applicant's successor in interest must provide appropriate documentation to the Commission.
8. Appeals: The applicant may appeal the selection of the outside consultant to the City Council, which may only disqualify the outside consultant selected on the grounds that the consultant has a conflict of interest or does not possess the minimum required qualifications. The minimum qualifications shall consist of either an educational degree or three or more years of practice in the field at issue or a related field. Such an appeal must be in writing and received by the City Council and a copy received by the Commission within ten (10) days of the date consultant fees were requested by the Commission. The required time limits for action upon the application shall be extended by the duration of the administrative appeal.

ARTICLE VIII: SURETY OF PERFORMANCE

SECTION 8.1: Procedures for Administering Security

1. Purpose: The section is intended to establish procedures for the Commission to require a surety of performance when the Commission determines the work permitted, including mitigation, needs to be guaranteed to protect resources area(s).
2. The Commission shall use the following procedure when a proper bond is required:
 - I. A passbook savings account shall be established in the name of the Applicant and the City of Lowell and the passbook shall be held by the City Treasurer for the duration of the project;
 - II. To determine the level of funds in the account, the applicant shall submit three quotes for the work from contractors deemed qualified by the Commission and the highest quote plus 20 percent for contingency shall represent the guarantee amount;
 - III. At the time the passbook is established, the applicant shall provide the Treasurer with four (4) signed withdrawal slips and any additional materials as required by the Commission and the City Treasurer;



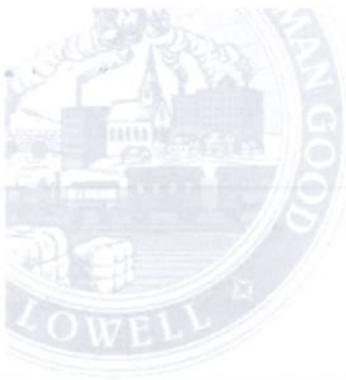
- IV. Upon receipt of the passbook, written notification from the Commission will be addressed to City Treasurer and copy the applicant with the bond information. At that time the Commission will deliver the passbook and letter to the City Treasurer;
 - V. Upon completion of all work or those portions of work for which the security was established, the applicant may file a request for a bond reduction and/or release with the required Request for Certificate of Compliance.
3. The Commission shall utilize the following procedure when a covenant is required:
- I. A covenant, conservation restriction or easement running with the land shall be reviewed by the Commission and Law Department, executed and properly recorded or registered, in the case of registered land, with the Middlesex North Registry of Deeds or its successor entity. The applicant shall pay all recording expenses and furnish a copy of the recording information for the Commission. A conservation restriction shall only be used with the consent of the applicant;
 - II. Upon completion of all work or those portions of work for which the covenant was established, the applicant may file a request for a full release for all work or a partial release with the required Request for Certificate of Compliance. A conservation restriction or easement may not be removed.
4. The Commission may accept other negotiable securities sufficient in the opinion of the Commission and the Law Department.

ARTICLE IX: AMENDMENTS

SECTION 9.1: Amendments

Any proposed amendment, repeal, or alteration, in whole or in part, of these Rules and Regulations shall be presented in writing and placed on the public agenda of the Commission for a first time at a regular meeting of the Commission. Such proposal may be considered and amended at such meeting, but shall not be acted upon by the Board until a subsequent regular meeting, or a special meeting called for that purpose. At such subsequent meeting, the proposal shall be placed on the public agenda of the Commission a second time, shall be subject to further consideration and amendment, and then or later acted upon.

Approved by the Commission on August 24, 2011 to update and replace "Lowell Conservation Commission: By-laws" revised May 1982, November 1985 and all other amendments as properly voted.



CONSERVATION COMMISSION: LOCAL FEE SCHEDULE

Request for Determination of Applicability (by use type)

Group One

- Single family home;
- Two-family dwelling;
- Undeveloped land.....\$25

Group Two

- Residences with three (3) or more units;
- Mixed-use structures with two (2) or fewer residential units;
- Educational and religious users in structures with less than 10,000 total square feet;
- Public and semi-public utilities;
- All other non-exempt uses not defined herein.....\$75

Group Three

- Institutional;
- Industrial;
- Commercial;
- Retail/office;
- Educational and religious users in structures with 10,000 or more total square feet;
- Mixed-use structures with three (3) or more residential units.....\$100

Request for Amended Order of Conditions

Each amendment request brought to public hearing review.....\$50

All Other Fees

All fees with a local component are assessed as outlined by the Massachusetts Wetlands Protection Act Regulations (310 CMR 10.00) and approved under City of Lowell ordinances.

A TRUE COPY ATTEST

Michael Q. Geary
City Clerk, Lowell, MA