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CONSERVATION COMMISSION  
375 MERRIMACK STREET  
LOWELL CITY HALL  
LOWELL, MASSACHUSETTS 01852  
**February 12, 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).

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

**Members Absent:** Commissioner Dillon

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

**CALL TO ORDER**  
7:12p.m.

**ORDER OF BUSINESS**

**CONTINUED BUSINESS**

**Notice of Intent**

City of Lowell  
375 Merrimack Street  
Lowell, MA 01852  
DEP# 206-0797

Project Location: Old Ferry Road/Varnum Avenue Intersection 01854

A Notice of Intent has been filed by the City of Lowell for the roadway intersection improvements by constructing a roundabout at the Varnum Avenue and Old Ferry Road intersection with associated drainage, sidewalk, and landscaping improvements. The proposed project will affect Bordering Land Subject to Flooding.

**On Behalf:**

Christine Clancy, DPW Commissioner, City of Lowell  
Eric Gerade, VHB

**Ms. Clancy** said that the City Council responded last night to a citizens petition to request a continuance of the NOI. She requested the continuance.

**Chairwoman Varnum** said that she would still accept public comments. She noted that the Commission received additional materials since the last meeting. They received a letter from Matthew Hamor, project engineer, from Mr. O'Neill. This particular engineer believes the lot abutting the project is buildable. The Commission does not have a project in front of them at this time, so she will just put it on file. She reiterated that the project on hand is the roundabout. They do not have a project for Mr. O'Neill. They cannot answer questions on that regard.

**Ms. Clancy** said that VHB is present and Market Basket in case there are any questions based on the additional information.

**Mr. Gerade** said that last hearing they reviewed the project. There were three requests: a DEP file number. They have received one. They asked for a couple revised plans: the fence detail. They provided it. They also included a driveway curb cut into the abutting property to provide access into the lot.

**Chairwoman Varnum** said that the curb cut did not affect the project and was necessary for access to that property.

**Mr. Gerade** agreed.

**Chairwoman Varnum** clarified that it's the same fence as proposed earlier.

**Mr. Gerade** said it's a basic split rail fence.

**Offered Comments:**

Steve O'Neill, Property Owner/Abutter

John Hamblet, 495 Varnum Avenue, Pawtucketville Citizens Council

Michael Kirkman, 227 Fayette Street

Jim Lamp, Market Basket's Attorney

**Mr. O'Neill** asked for the continuance along with the city. His engineer and attorney have not had a chance to look at the new plans, the curb cuts. They would like to check it out. They believe there could be some issues using city property for a private property project.

**Commissioner Biedron** asked if it's a city project.

**Attorney Lamp** said that city rights of way are used all the time. They are public rights of way. This a project between Market Basket and City. They have a memorandum of understanding to work together. Beyond what was required by Planning Board to mitigate traffic for Market Basket. He understands that there was a meeting last night about a parcel that is not before the Commission. Hopefully the city can separate the two. They are doing work in the right-of-way. They are not asking for any easements. No takings from Mr. O'Neill. The lot is recorded unbuildable. If he goes before Commission or permission to build, then that's fine. They are not doing anything to prevent that. There was discussion about the slope. It is entirely within the right-of-way. The building is under construction and ready to open. They need to have off-site mitigation. They worked with folks in Pawtucketville to come to best solution for over two years. It's above and beyond what's required for mitigation. They are getting tangled up in affairs that have nothing to the project. If they can't get the roundabout, then they would return to a signal. The majority of people working with Market Basket and the city have wanted the roundabout. He requested a vote on the flood plain storage.

**Mr. Kirkman** questioned the viability of roundabout versus a traffic signal. A roundabout has three separate areas where traffic needs to yield, which may lead to traffic accidents. With signals, traffic comes to a stop.

**Mr. Hamblet** said he is very unhappy with recent discussion about looking at alternatives to the roundabout. They have worked with the city and Market Basket to get this roundabout. He believes that Demoulas family is

donating in excess of \$300,000 to build a traffic circle that will process traffic more efficiently, that is a major concern of theirs with this particular intersection. He is disappointed and opposed to looking at any other alternatives other than the roundabout.

**Mr. O'Neill** responded to Jim Lamp. He said the Planning Board okayed it with traffic signals. He didn't see the roundabout plan until May. When they returned to Planning Board to enlarge the Market Basket, they said they needed the roundabout. The peer engineer said that the roundabout is most advantageous way for traffic mitigation. It's what's better for Mr. Demoulas, not for the citizens. He believes the roundabout is because of the Dunkin's for the drive through. He believes the proposed slopes will affect his property regarding water. Mr. Demoulas is using the City's land for flood storage. If it's a private development, then Demoulas' should be doing it without the City. He doesn't even know if the \$300,000 was accepted by the City Council to do this or if the City Council accepted to use City property for flood storage. Even a donation of equipment for a little league has to be accepted by the Council. He is more concerned with the 6' barrier, 4' high fence, right up to the edge of his property. It's creating more water. There will only be one extra catch basin. It's unprecedented for the petitioning party asking for a continuance to be denied a continuance. That's why he is not totally prepared for the rest of the questions. He is concerned about the water coming off the slope and into his property. He hopes the Commission will grant the continuance.

**Attorney Lamp** said it is a private-public project. There is no money given to the city. The project is getting constructed at a cost to Market Basket. The City is obligated to relocate utilities and obtain easements. There is no additional drainage going onto Mr. O'Neill's land. It will be about half as much as it is today because how water will be relocated. The city is the applicant because the work is done in the right-of-way. That is how it's done for mitigation projects with work in the right-of-way.

#### Discussion:

**Chairwoman Varnum** said the Board is charged with discerning whether the wetland features are being addressed. They did get a curb cut proposed at the last meeting for Mr. O'Neill. She does not have a problem personally with postponing it for two weeks. She is curious about what could possibly happen in two weeks or what it might be. She also has no problems with the plans. They have been well engineered. She remembered when that part of Ferry Road next to Mr. O'Neill's property was paved and a street. It was a V. The City is not suddenly using land that they never used before. It was land before Old Ferry Road was relocated to have a squared intersection.

**Commissioner Biedron** said the filing for the NOI has been made by the City. She is considering it a City project. They have the deed for the property. In exhibit A, it states that it is not a buildable lot. As an engineer, she does not believe it is a buildable lot. They asked for a letter from a Professional Engineer. Matthew Hamor is not a Professional Engineer. She is not convinced that the lot is buildable. The deed states that because of the approval in 2003 for the two houses. They needed to keep the area not buildable to account for the two houses. She is confident in VHB's stormwater and design calculations. There will be less drainage on the property. Money or no money, a roundabout is way more expensive than a light. That is super generous of Market Basket. She will motion to continuance based on the City's request.

**Commissioner Lovely** amplified Commissioner Biedron's comments. Regarding the legal questions, if there is an executed Memorandum of Understanding between city and Market Basket then that's valid. They have worked out an agreement. This Board is here to whether the project complies with the Wetlands Protection Act. They are not here to discuss concerns outside of the scope of the Board. This project meets the requirements of the Wetlands Protection Act, notwithstanding what Commissioner Biedron just said about the adjacent lot. Even if there is speculation that the lot is buildable, putting in a curb cut preserves access to the property should an engineer come to a different conclusion with technical facts to support it. Any project supported by a city needs good public outreach. This project has had that outreach. He agrees with the continuance but he doesn't see the outcome changing.

**Motion:**

K. Biedron motioned and W. Lovely seconded the motion to continue the hearing to the February 26, 2020 meeting. The motion passed unanimously, (5-0).

**Enforcement Order**

TRS Chous & Tao Realty Trust  
26 Sheldon Street  
Lowell, MA 01851

Violation Location: 535 Pawtucket Boulevard 01854

Removal of trees within the 100-year floodplain without a permit from the Lowell Conservation Commission.

**On Behalf:**

John Geary, Attorney for the Trust

**Attorney Geary** said he represented the owners of the trust. They purchased the property in December 2017. There was no activity until December 2019. A windstorm in 2018 caused damage to one of the trees. His client consulted with a tree removal contractor, not realizing process with Conservation Commission. He asked the contractor if there was any additional permitting process to follow. Three trees were cut down: two in front and one to the right if facing the house. The stumps are still present. The roots are still there. There is no development or redevelopment plan as of yet. The structure will likely be demolished. His client aware of the Conservation Commission process now. He is happy to listen to suggestions to resolve this matter.

**Offered Comments:**

None

**Discussion:**

**Chairwoman Varnum** said normally Enforcement Orders lead to restoration or restitution. In this case, they are in the middle of winter, and so she is not going to require replanting of trees. She asked if they plan to present an application in the near future.

**Attorney Geary** said nothing is on the table yet.

**Chairwoman Varnum** said a parcel one street over some years ago was in the same situation except there was no building in the parcel. It was the same stretch of land in Bordering Land Subject to Flooding. They required restoration of trees that were cut. If no proposal coming forward, she would want trees replanted. It doesn't make sense to keep them in the same spot if there is a proposal coming forward. It's a serious situation with floodplain on that lot. There is very little area for compensation of any building. She is not sure whether any larger or new structure would be possible unless they find some compensation.

**Attorney Geary** said the client would be happy to replant trees.

**Chairwoman Varnum** asked the owner to come in with a plan. The trees don't have to be in the same spot.

**Commissioner Lovely** said it doesn't require a high level of effort. The intent is for the property to remain stable and not eroding and impacting the resource area. He agrees with Chairwoman Varnum that so long as it's a stable lot with proposed trees that are non-invasive. No need to hire landscape engineer. This is in line with previous requests.

**Chairwoman Varnum** noted that a number of shrubs were also removed. She would like to see some shrubs proposed as well. The new trees will be much smaller than those removed, so more than three trees might be appropriate too. They usually ask for a plot plan, which can be hand drawn, type of trees, and where they will plant them. They should be equivalent mass wise to what was removed.

**Attorney Geary** said that might be difficult.

**Chairwoman Varnum** said not instantly, but not a little flowering tree.

**Attorney Geary** asked if they can handle it administratively.

**Chairwoman Varnum** said they can hand it to DPD. It's mid-winter no planting for a month or two. They need to know that they are working on it. They will ratify the Enforcement Order and it will remain in place until they reach an agreement and the work is ready to be done and then the Enforcement Order will be rescinded. There should be no other work on the property. That will require Conservation Commission approval.

**Attorney Geary** said they will work with DPD.

**Commissioner Biedron** said if they do want to build something there best bet is to keep the square footage of the existing floor area.

**Commissioner Buitenhuis** said he wants the caliper, size of the trees, height, and bucket size for shrubs.

**Commissioner Biedron** said they should wait until April to plant.

**Motion:**

K. Biedron motioned and W. Lovely seconded the motion to ratify the Enforcement Order. The motion passed unanimously, (5-0).

**NEW BUSINESS**

**Order of Conditions Extension**

One Riverfront LLC  
1 East Merrimack Street  
Lowell, MA 01852  
DEP#206-0768

Project Location: 1, 5-7 E Merrimack Street 01852

On February 14, 2017, the Lowell Conservation Commission issued an Order of Conditions to construct a mixed-use building. On February 27, 2019, the Commission approved modifications to the project. The applicant is seeking a three-year extension to Order of Conditions.

**On Behalf:**

None

**Offered Comments:**

None

**Discussion:**

None

**Motion:**

K. Biedron motioned and W. Lovely seconded the motion to grant a three-year extension to the Order of Conditions. The motion passed unanimously, (5-0).

**Request for Determination of Applicability**

Taj Engineering, LLC c/o

Hiren Patel

50 Stedman Street

Lowell, MA 01851

Project Location: 50 Stedman Street 01851

A Request for Determination of Applicability has been filed by Taj Engineering, LLC on behalf of BAPS Temple to erect a 60-ft. by 265-ft. temporary tent for a one-week religious prayer ceremony. The tent would be within the 100-ft. Buffer Zone to Bordering Vegetated Wetlands and the 100-ft. Riverfront Area of Black Brook.

**On Behalf:**

Hooshmand Afshar, Taj Engineering, LLC

**Mr. Afshar** said that the project is a temporary proposal for the month of July. The parishioners have a special meeting that month. This event is as important as if the Pope came to meet a community in town. He discussed the site plan. He said that the existing building and disturbed area is already in some of the buffer zones. The proposal is for a temporary tent to be put in the back of the building. In the back, there will be a silt fence with a mulch tube to protect any possible erosion. The tent will be up for a week. The events will be 3-4 times only. They will not be daily. Prayer sessions start at dawn through 7am or thereabout. Parishioners will have breakfast, which will be prepared inside of the building. 1-2 days before the event, the tent will be setup. Right after the event, the next day, and the tent will be removed. The original existing conditions in the grass area will be restored to the original conditions. The silt fence will be removed. The only disturbance is related to the slope. They will need to bring in some fill. It will be spread using a bobcat. It will be removed in the same manner and trucked away. There will not be any generation or waste. The kitchen and bathrooms are inside the building. If need be, a trailer toilet will be parked somewhere on the paved area.

**Offered Comments:**

Jeffrey Winward, Fire Chief, Lowell Fire Department

Rita Mercier, 221 Burnham Road

**Discussion:**

**Chairwoman Varnum** asked about the event.

**Mr. Afshar** said it's a prayer ceremony. It will take place from July 7-14.

**Chairwoman Varnum** said it's a dry season.

**Mr. Afshar** said correct.

**Chairwoman Varnum** asked about the loam amount.

**Mr. Afshar** said 40-55 cubic yards.

**Chairwoman Varnum** asked about barrier between existing and new loam to indicate what needs to be removed.

**Mr. Afshar** said they could spread tarp on existing grass. It's not a large surface it can be covered by tarp.

**Commissioner Biedron** said they could keep slips: this is what came in and came out.

**Commissioner Lovely** said that's about three triaxles of dirt.

**Mr. Afshar** said that the grass will be green, so they will see it when they reach to the original grass.

**Chairwoman Varnum** asked if they will need to work outside of the silt fence.

**Mr. Afshar** said it will all be approached from paved area from a westerly direction. It will be before the silt fence, maybe even 4-5-ft. prior to the silt fence.

**Chairwoman Varnum** asked about any vegetation that needs to be removed.

**Mr. Afshar** said some evergreens might need to be removed. If they need to, they will return them. Or they are willing to cut the length of the tent if that becomes an issue so that they don't disturb those few plants. In the northwesterly corner.

**Chairwoman Varnum** asked about accessing the tent.

**Mr. Afshar** said they will in-between the space between the building and tent.

**Chairwoman Varnum** asked if the tent would be open.

**Mr. Afshar** said there will be walls on the side. There might be an entrance on the southerly side too. That might not be usable because there could be an AC unit on a platform there. Most entrances on the easterly side.

**Chairwoman Varnum** asked about stockpiling tent poles, material in the buffer zone. Before and after construction.

**Mr. Afshar** said he doesn't think so. When the tent company comes they will set it up and remove it in one go. It's not cost effective to stockpile anything.

**Commissioner Biedron** said they will probably put it up in an hour or two and be out of there. She asked about Fire Department approval.

**Chief Winward** said they had issues with the original design because of access issues. But now they have 20' access to be able to drive trucks around the building. So long as no trucks parked in the back. They will inspect it after it is setup.

**Commissioner Biedron** said she has no problem with any of it.

**Ms. Mercier** says she is speaking as a private citizen. She supports the project immensely. She has been in their presence every year. They have given so much to the city of Lowell: Merrimack Valley Food Bank. Have had walkathons. They contributed to nature's conservancy to plant trees. Given to Senior Center. Given to cancer patients. Every year they give to someone. She attends and help. This is a very special event from July 7-14. Their religious spiritual leader is coming to the city. The existing building would not hold everyone expected to come. Their walkathons are a family event. They are a 501c3. They have done so much for the community. She is grateful for the hard work by the Conservation Commission. Chief Winward sent one of his fire engines around to confirm it could make the turn. It did.

**Commissioner Buitenhuis** asked about bollards to remove and replace. He asked if it's necessary to replace them.

**Mr. Afshar** said they are not necessary. They do not need to return them.

**Commissioner Buitenhuis** said he would rather not have them back in unless there is a need.

**Chairwoman Varnum** asked if the Conservation Commission put them in to prevent parking closer to the Brook.

**Commissioner Lovely** said he has no objection to that.

**Commissioner Buitenhuis** said they are probably there on someone's request. Far from the parking field. Inside the 50-ft.

**Commissioner Biedron** said could have a sign that says protected land.

**Mr. Afshar** said they could do the sign.

**Commissioner Biedron** said it might be cheaper than the bollards and it would look better

**Mr. Afshar** said there will not be any parking at the building during the event. Main event at Tsongas arena. This setup is just for the prayers.

**Commissioner Biedron** suggested a condition. After the celebration, they must remove any litter or trash. Someone should walk the site just before silt fence removed. She refers to the proposed conditions from Staff. She asked about the timeline to remove and restore.

**Mr. Afshar** said they will be gone within the next day.

**Commissioner Biedron** said let's do three to be safe. She said a week to restore.

**Mr. Afshar** said 7 working days.

**Commissioner Biedron** thanked them for coming in.

**Motion:**

K. Biedron motioned and B. Buitenhuis seconded the motion to issue a Negative III determination with these conditions:

1. The applicant must remove all litter or waste from the site prior to removing the silt fence;
2. The applicant must remove the tent within three days of July 14, 2020; and
3. The applicant must restore the landscape to its original condition within 7 days of July 14, 2020.

The motion passed unanimously, (5-0).

**Request for Determination of Applicability**

TEC, Inc. c/o

Lupoli Companies

280 Merrimack Street

Lawrence, MA 01840

Project Location: 330 Jackson Street 01852

A Request for Determination of Applicability has been filed by TEC, Inc. on behalf of the Lupoli Companies to construct a parking garage at 330 Jackson Street in the Hamilton Canal Innovation District. Portions of the garage would be in the 100-ft. Buffer Zone to the Bank of the Hamilton Canal.

**On Behalf:**

Rick Fryeburg, TEC, Inc.

**Mr. Fryeburg** said they are here with the first of a few exciting projects in the HCID. This is also known as parcel one. The lot is 0.68 acres. About 3,300 sq. ft. of northerly part is within 100-ft. of the Hamilton Canal. The site is presently being used for staging/stockpiling of the justice center. He understands that they will complete using it in the March-April timeframe. Roughly 500 space parking structure. Size and dimensional criteria in keeping with form-based code. Regarding stormwater, much of the garage is covered. Two separate systems. Any covered areas that don't receive normal rainwater, go through floor drains, into grit and oil separator, and then into sewer water. Rooftop, which receives normal stormwater, conveyed through floor drains into a separate system and then discharge into drainage systems to minimize stormwater in sewer system. Nearest point of disturbance to the canal is about 60-ft. Project separated from resource area by public street. Proposing to install silt sacks in all downgrade catch basins. Said they agree with comments from City Staff. He referred to comment #4 and reiterated the stormwater treatments.

**Offered Comments:**

None

**Discussion:**

**Commissioner Buitenhuis** clarified that the structure is not roofed.

**Mr. Fryeburg** said that's correct.

**Commissioner Buitenhuis** asked if there will be a trench drain on the top floor.

**Mr. Fryeburg** said it is only two trays of parking wide. The garage operates like a spiral, climbing up 6' at a time. At the bottom level of the last riser, section that is exposed will have trench train that runs across the structure. Everything else will be floor drains.

**Mr. Fryeburg** referred to comment #5 and additional inspections at silt sacks. They are amendable to. Inspect erosion controls on a weekly basis and after storm events. Regarding #6, said that it notes the absence of a construction entrance. Typical gravel construction entrance is 40' long. Alternatively, looking to propose to have regularly scheduled street sweeping to deal with any track out and migration of soils from the lot. Proposing to have the sweeping at the end of every working day.

**Commissioner Biedron** asked if it makes sense to send all stormwater to the grit separator.

**Mr. Fryeburg** said that it is an option. But it has a competing goals: minimize water into the sewer system to minimize burden on the treatment plant. It's normal parking lot runoff, so typically route runoff into stormwater system.

**Commissioner Lovely** asked if that area currently has CSOs.

**Mr. Fryeburg** said that in front of them it's separated.

**Commissioner Lovely** said it's always better to remove stormwater from sewer system to avoid putting sewage into Merrimack River during significant storm event.

**Mr. Fryeburg** said they will also be presenting to Wastewater. The Conservation Commission is the first stop.

**Commissioner Lovely** said if Wastewater didn't approve it whether it will comply with MS4 requirements.

**Mr. Fryeburg** said they expect to have it approved.

**Commissioner Biedron** asked about the number of floors.

**Mr. Fryeburg** said it's about 8 floors.

**Commissioner Biedron** asked about where people will park until Justice Center will open.

**Mr. Fryeburg** said the city is also constructing a 900-space garage.

**Commissioner Biedron** said it won't be done by April.

**Mr. Fryeburg** said he shares the concern. The justice center doesn't impact their involvement in the property. The lot is in the opposite side of the canal district. Building the garage to support surrounding projects. Hope to be in front of the Commission two more times for separate projects in the HCID for separate parcels. Timeline/schedule is independent from the justice center. Directive to build the garage as soon as possible. Said they have been in discussions with the city for about two months now. Will present to Hamilton Canal group in the next 30 days.

**Chairwoman Varnum** asked about entrance to the site.

**Mr. Fryeburg** said it's from Jackson Street. It is the present and future entrance. They chose it because it's lower on the site. Easier walking distance to justice center and their planned projects across the canal. Put it furthest from the intersection too.

**Commissioner Biedron** asked about the ownership of the property.

**Mr. Fryeburg** said it is presently owned by the City of Lowell. The applicant is working to get the property under agreement with the City.

**Commissioner Biedron** said garage will be privately owned.

**Mr. Fryeburg** privately owned and constructed.

**Chairwoman Varnum** said they don't see any danger to the resource.

**Motion:**

K. Biedron motioned and W. Lovely seconded the motion to issue a Negative III determination with these conditions:

1. The applicant must inspect the silt sacks in the catch basins and other sedimentation and erosion controls weekly and after significant storms;
2. The applicant must encircle any stockpiles with erosion controls and locate them as far from the Buffer Zone as possible;
3. The applicant must submit an Operation and Maintenance plan annually to the Lowell Regional Wastewater Utility for the oil and grit separator; and
4. The applicant must sweep the streets surrounding the project site after each workday.

The motion passed unanimously, (5-0).

**Enforcement Order**

Paul and Peter Kalogerakos

74 Webber Street

Lowell, MA 01851

Violation Location: 74 Webber Street 01851

Construction of a shed on the Bank of Black Brook and within Bordering Land Subject to Flooding without a permit from the Lowell Conservation Commission.

**On Behalf:**

None

**Offered Comments:**

None

**Discussion:**

**Chairperson Varnum** said they have all seen the photos from Staff. The cited individuals asked to come to the next meeting.

**Motion:**

B. Buitenhuys motioned and P. Downs seconded the motion to ratify the Enforcement Order. The motion passed unanimously, (5-0).

K. Biedron motioned and B. Buitenhuys seconded the motion to continue this item to the next available meeting at the request of the cited individuals. The motion passed unanimously, (5-0).

**OTHER BUSINESS**

**Notices**

MassDOT Intelligent Transportation Systems – new CCTV device

National Grid Tewksbury Gas Line Corridor – Vegetation Management

National Grid Utility Maintenance on Martin Street

**Minutes**

January 22, 2020

Commissioner lovely said he has comments on the minutes that he will provide to Staff, so the minutes will be considered at the next meeting.

**Further Comments**

Staff stated that the applicant for 51 & 57 Shirley Avenue has agreed to a Peer Review and that the continued hearing will likely occur on March 25, 2020.

**ADJOURNMENT**

K. Biedron motioned and W. Lovely seconded the motion to adjourn the meeting at 8:30pm. The motion passed unanimously, (5-0).