

**Bellingham Conservation Commission
Municipal Center
Bellingham, MA 02019
Minutes of the meeting of June 20, 2018
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Project: 105-815 & BWP-182
CNOI

Project Description:
161,166,169,174 Maple Street –
Stormwater management system- response to EO

Applicant:
LMP Properties LLC, Will Doyle
PO Box 28
Dover Foxcroft, ME 04426

Representative:
GZA GeoEnvironmental, Dan Nitzsche
1350 Main, Suite 1400
Springfield, MA 01103

Plans: NOI & Site Plan “Site Plan 161,166,169 and 174 Maple St., 9 Sheets, 8/3/17; Stormwater Management Report 161,166,169,174 Maple St. 8/3/17, Peer Review VHB Memo 05/02/2018, Ltr Kimberly Kroha (BBB) 6.11.18, BCC Ltr responding to Kimberly Kroha 6.13.2018

Continuation time: 7:30 PM

Present were Kimberly Kroha (attorney for the applicant), Will Boyle, Dan Nitzsche (GZA), Town Counsel Amy Kwesell and James Kupfer, Town Planner.

After Cliff Matthews opened the hearing, he stated that this meeting was scheduled to provide an opportunity for discussion on the three issues raised by the applicant’s attorney in her letter dated June 13th and to ensure that the project would move toward completion.

Ms. Kroha stated that she questioned three issues in her letter regarding the peer review letter for the project as submitted by VHB. She stated that VHB claims that 1) the properties are not a redevelopment and the pre-2008 conditions as a wooded area should be used as a baseline; 2) that a Multi-Sector General Permit for Stormwater Discharges is required; and 3) that the wetlands delineations underlying LMP’s plans of 8/3/2017 could not be used. Dan Nitzsche added that commission members and he were on site twice to verify the revised wetland flagging which would be applied to a new site plan. He added that a survey of the toe of the slope on the southern side of the lot and the north side of the lot would also be added to the survey. He is contending the limit of work has not changed.

Cliff stated that the new delineation is appropriate for the new filing and should be shown on the new plans. He added that the federal MultiSector Permit does qualify but is not a direct jurisdictional issue. Dan Nitzsche added that the MultiSector Permit is included in WPA Standard 5 of the Stormwater Standards and would have to be evaluated.

On the issue redevelopment issue, Cliff stated that the original Order of Conditions (OoC)(DEP#105-634) of 2008 permitted the construction of a building for motocross facility and associated stormwater management system consisting of four underground infiltrators, septic system and associated parking. That project was never constructed and the current applicant continues to use the property as an unpermitted mulch facility. The stormwater management system was never constructed. Neal Standley agreed that the project permitted under the original Order of Conditions was never constructed and questioned how something that was never constructed can be a redevelopment.

Kimberly Kroha (KK) stated that her understanding is that the original OoC included clearing of the property therefore the development was partially done. She added that an Enforcement Order was issued before expiration of that original Order after the property transferred hands.

Cliff responded that the Commission understands that criteria for redevelopment projects under Stormwater Management Standards, indicates that the system only needs to meet the Standards to the greatest extent practicable. The original project included four underground infiltrator basins. Those basins were never constructed. There is no stormwater management system on the site.

Dan Nitzsche (DN) responded that the applicant does not intend to do otherwise. He argued that the starting point in the design should be current site conditions and not pre-2008 conditions.

Cliff stated that the applicant should understand that the commission is not being adversarial. The NOI hearing has been opened since November of 2017 and very little progress has been made on this project. It is the Commission's intention to protect the resource areas using the Standards in review of a viable plan. DN did agree that the original plan is lacking in permitability.

Cliff asked Town Counsel, Amy Kwesell, to comment. Ms. Kwesell stated that KP Law does not agree with the arguments of the applicant. This is not a redevelopment project. Clearing of a property does not qualify as adherence to an OoC. The original OoC does not allow for only clearing but for the development of the site. Clearing is merely a prerequisite to completion of the permit. The original applicant (Cobb) came before the Conservation Commission in 2008 with a proposal to construct a motorcross facility and associated stormwater management system and was issued an OoC by the Commission to do so. That project was never constructed. The only means of removing that recorded OoC from the deed is to issue a Certificate of Compliance and checking off the Invalid Order of Conditions box that states that the project was never built. She stated that there is no way that the previous OoC has any validity because it now has expired. The fact remains that the use currently being conducted on the site has not been reviewed or permitted by the Conservation Commission. A stormwater management system must be included in a new OoC. The three year statute (of the OoC) has expired and the current conditions of the property therefore cannot be the baseline but rather the baseline is the predevelopment condition. The Enforcement Order issued in March 2017 required the applicant to file a NOI to address the stormwater issues.

Cliff reiterated that the original OoC permitted a building and stormwater management system that was never built. The property is currently being used for an unpermitted activity and therefore the existing conditions does not qualify.

KK stated that there are two parts to the baseline: 1) clearing was done in accordance with the OoC and 2) it is redevelopment because it is vacant land even though it is not permitted.

Cliff stated that he does not concur. Amy Kwesell said that no Certificate of Compliance was ever issued and that unpermitted activity is taking place on the site.

Neal Standley stated that the site needs a stormwater management system, regardless of the redevelopment status. Arianne Barton stated that she stands firm that the applicant should use the 2008 baseline adding that the site is hard-packed as a result of use, is virtually impervious and that has increased the elevation of the site by several feet.

Dan Nitzsche stated that the original site limits are based on the 2008 No Disturb Zone and that new wetland flags have been established. No wetlands were filled. The limits of work were approved in the original permit. He stated that the limits of work on the site remain the same. Cliff answered by stating that the small detention structure at the northwest corner of the lot was constructed. It is now buried under ten feet of fill. This filling of the basin is field verified and is proof that the site has been expanded.

Cliff then stated that the original conditions also included a stormwater management system and it was based on a wooded lot. The Commission is trying to use the proper conditions to permit a stormwater management system and one that is based prior to the hard-packed elevated conditions of the site. He reiterated that the original stormwater management system

was never constructed. The requested survey will reveal if there has been any expansion of the site.

Arianne Barton added that the mulch facility has impacted the permeability of the site and has caused more run off site because there was no operating and permitted stormwater system in place.

KK stated that the fact is that the lot was not cleared illegally and that the owner was in conformance with the previous OoC.

Dan Nitzsche asked to clarify the baseline issue. He stated that the pre-2008 conditions have a slower runoff curve. If vegetation is removed from the site, the runoff increases and the treatment area increases.

Town Counsel, Amy Kwesell, stated that the current operation on site is not permitted. She added that the Conservation Commission's jurisdiction is 100 feet from the resource area and not just the 25 foot No Disturb Zone. The activity is taking place without a valid permit and an Enforcement Order was issued within a valid time period.

KK stated that the applicant wants to comply but also wants to use the existing baseline conditions.

Neal Standley stated that the system design has to include the amount of water leaving the site in 2008. The wetlands may be expanding. The system should minimize the stormwater leaving the site as was originally designed. The original system included infiltration basins and there is no stormwater system in place on that site. The wetlands may have expanded because of the water leaving the site and no water should be leaving the site.

Cliff then summarized. Three issues have been discussed. The new survey will show the limit of work (in the southern boundary and northern corner of the lot) and the new wetland boundary. The engineer will investigate the applicability of the NEPDES MultiSector General Permit. The last issue is what will be used as the baseline.

After discussion, Dan Nitzsche stated that he would use the pre-2008 calculations and the current post calculations to provide a revised stormwater system design that can handle the current hard packed current conditions of today. He added that GZA has not yet been engaged by the applicant for engineering design and responses to peer review. He then requested that the hearing be continued for at least a month to allow time to respond to peer review and present a revised design.

Cliff then stated that the new system design should incorporate the non-migration of mulch piles on the site so as not to impede functioning of the mechanical stormwater management components. Additionally, operation of heavy equipment currently present on the site has the potential for pollutants such as antifreeze, engine oil, hydraulic oil, lubrication oils and gas to migrate across the site and directly impact regulated resource areas and the buffer zone.

Will Boyle said that it would be too difficult to adhere to that explaining his mulch processing. Cliff then again said that pollutant management would then be very difficult due to the use of large equipment, hydraulic oil, grease, oil and other pollutants going into the ground on the site. The stormwater management system needs to address all these issues.

Amy Kwesell stated that the plan should show all proposed activity taking place in the 100 foot buffer zone including roadway paths and where materials are to be stored, etc. The Conservation Commission has jurisdiction over the entire 100 foot buffer zone. The applicant should currently be asking for permission to work in the buffer zone. Cliff stated that this should be addressed by the applicant in letter form.

KK stated that the applicant would provide a report on the requested calculations. Dan Nitzsche said that the engineers would develop a system utilizing both pre-2008 calculations and the post 2008 calculations of today.

Cliff said that responses to peer review, revised plans and documents should all be completed for review for the next requested continuation.

After agreement with the applicant, Mike Roche moved to continue the hearing to July 25th at 7:30 PM. Motion was seconded by Neal Standley and passed by unanimous vote.

Cliff Matthews stated that, per Commission members' request, Anne Matthews had sent out a draft letter on the status of the condition of the Plymouth Road/Sunken Meadow Road (Franklin) site owned by Ed Gately. Brian Norton moved to accept the letter and send it out to Mr. Gately. The motion was seconded by Neal Standley and passed unanimously.

Mike Roche moved to adjourn. Motion was seconded by Neal Standley and passed unanimously.

Attending the meeting: Cliff Matthews, Neal Standley, Brian Norton, Shawn Wade, Arianne Barton, Mike Roche, Associate Mike Coleman and Anne Matthews. Amy Kwesell, KP Law and James Kupfer, Town Planner were also present.