

Littleton Conservation Trust  
43 Foster St.  
Littleton, MA 01460

June 1, 2020

Planning Board, Room 303  
Town Administration Building  
37 Shattuck St  
Littleton, MA 01460

RE: June 4<sup>th</sup>, 7:30 pm continued public hearing for Healy Corner/ 195 Tahattawan Rd.

To Planning Board Members:

The previously submitted “MacIver LCT Comments May 4” comments still remain as open issues.

**Many Economic Benefits are Granted to the Developer. What are the Compensatory Benefits for the Community?**

The developer gets many economic benefits from the Open Space Development (OSD) Subdivision Plan. The community and general public needs to benefit similarly in the OSD in this special permit transaction.

The developer is allowed to cluster together multiple single family dwelling units on small lots, and consequentially serve them by a significantly reduced access road, significantly reduced utility network, and a central nearby sanitary waste water treatment facility. Additionally, the developer may qualify for additional “bonus” lot(s). This provides substantial cost savings and economic advantages to the developer that would not be available otherwise from a conventional subdivision plan.

What benefits do the public interest open space/conservation community and public expect in return?

1. New usable open space (Not just wetlands that are already protected by state laws and local bylaws, and are clearly unbuildable/unusable for the developer. Not left over fragmented land remnants that do not fit into the community or have sustainable conservation value.)
2. Extinguishing development rights on the proposed conservation parcel other than a possible dwelling contained within a one acre home owner usage envelope
3. Public access (This is a major compelling reason for protecting open space. Sometimes public access is postponed until after life tenancy by a single land owner who may also gift the conservation land to the qualified conservation entity.)

4. Usable trails for passive recreation (perhaps requiring only minor improvements for connectivity). Often this is expressed in an a priori agreed upon trail easement over easily navigable land.
5. Protection of worthy sustainable conservation land in perpetuity through
  - a. Outright grant of deed (ownership in fee) to a qualified well-established local conservation entity that has demonstrated capability, capacity, and mission to protect the conservation parcel.  
OR
  - b. Grant of a Conservation Restriction/Easement (“CR”) to a similarly qualified conservation entity along with a priori agreed to terms and conditions that will protect the stated conservation purposes, promote its public benefit to the community, and adhere to the state’s Division of Conservation Services (DCS) best practices. (DCS is a third party to all CRs and their approval is mandatory.)
6. Terms and conditions placed upon a CR parcel, that is customized to the specific conservation land, its surroundings, conservation purposes, and the qualified conservation entity which agrees to hold it as CR grantee. (CR needs to be more than the basic CR template provided by DCS. Other than adding a lot address for the CR, the right to hunt and the prohibition for public access on the Lot 15 CR patches, the applicant has failed to provide any other terms and conditions beyond the DCS boiler-plate language.)
7. Provide financial resources to the qualified conservation entity selected to hold and manage conservation land or CR so that there is added capacity to do so. (Holding and managing conservation land or CR in perpetuity is a cost burden upon the public interest, public charitable conservation entity, even when provided with financial resources defraying costs, but if the conservation land and conservation purposes are public interest worthy, that conservation entity may elect to do so. It is not reasonable to expect the not-for-profit conservation entity to subsidize a for profit housing development.)

Good OSD examples where other developers met these expectations:

- (1) Bennett Orchard/Sanderson OSD Project: OSD designed for ready to use public access trail and connectivity with abutting conservation land (Oak Hill and Tophet Chasm). One of the land owners donated \$10,000 to the conservation entity for its conservation land management of the area.
- (2) Robert and Emily Cobb OSD Project: OSD designed for ready to use public access trail. Provided a priori agreed upon full CRs and Trail Easement CR as part of OSD application process. The three land owners donated a total of \$75,000 to the conservation entity for the land’s sustainable trail maintenance and improvements. Also, the land owners gifted additional permitted building lots for public open space use.

#### **What is needed for all proposed Conservation Areas (Parcel A, and CRs A, B, C)**

These are required recordable land real estate entities so they need:

- 1) To be defined with consistent metes and bounds (not just a sketch, which currently appears differently on various applicant plans of the same version date).
- 2) On the ground monumentation of parcel boundaries so everyone can find the boundaries, for public access, monitoring, and, if need be, enforcement from encroachment or other violation of the CR terms and conditions.

- 3) A priori agreement from qualified conservation entity to hold the OSD open space land (Parcel A) and proposed CRs.

**What is needed for Parcel A and mandatory overlying CR (“CR C”)**

- 1) The “gap filling” publicly accessible trail spanning across the entire applicant’s property uniting some 9 contiguous publicly accessible conservation parcels flanking the eastern side with some 8 similar conservation properties flanking on the western side is a major public benefit of the proposed OSD development plan and a long term held vision. It was a sudden surprise for abutters and qualified conservation entities alike to view last week’s submitted “Open Space Modified Layout with Trails May 27, 2020” which displayed two dead-ended disjointed trails, with no connectivity between them. The proposed John’s Way Trail extending southwardly from the Alfred’s Trail driveway needs to be incorporated into a usable easy to navigate trail easement that avoids wetlands as much as practical as it extends to publicly owned conservation land on the western side. As indicated in the marked up maps provided by abutter Doug Peeke there are some standing water and wetland issues along the narrow Parcel A corridor that impeded easy navigation. This navigable trail greatly benefits by extending into nearby drier portions of Lot 15 when the Parcel A peripheral corridor is so obstructed.
- 2) The applicant and qualified conservation entity selected to receive the OSD open space set aside of Parcel A, as modified to allow usable cross property easy navigation by the public (e.g., Conservation Commission), need to negotiate the modified open space boundaries.
- 3) The applicant and qualified conservation entity selected to hold the mandatory CR C (e.g., SVT) overlying the above OSD open space, need to negotiate the trail easement course within that open space corridor, and specific terms and conditions of the CR.
- 4) The applicant needs to negotiate with the above CR C grantee regarding what financial resources it will provide to help defray CR C grantee’s expenses to manage and make the provided trail navigable for the public use.

**What is needed for Lot 15 and proposed elective CR patches (“CR Area A” and “CR Area B”)**

- 1) Lot 15 with two proposed disjointed CR Area patches A and B is not a standard CR property layout according to state CR practices and may well be rejected by the DCS, and additionally rejected by a qualified conservation entity selected to be CR grantee. This “red flag” has been raised previously but has been ignored. The applicant needs to work with the proposed qualified conservation entity (e.g., SVT), and state DCS to seek agreement for a workable CR arrangement. The standard land parcel layout containing both a home owner dwelling and conservation CR, includes establishing the metes and bounds of the entire parcel’s premise and defining a one acre home owner usage envelope centered as a “doughnut hole” wherein a home owner dwelling is located, surrounded by the remainder premise (“the doughnut”) overlaid with a conservation restriction. The home owner usage envelope containing the occupied built structures is allowed separately established rights and prohibitions from that of the more restrictive surrounding conservation land.

- 2) What is the public interest benefit provided for the currently proposed private Lot 15 with two disjointed CR area patches beyond that provided by just a completely private Lot 15 without CR, as say would be provided in a conventional subdivision?
- 3) What is the public interest benefit provided for a 1.9 acre CR patch B with hunting rights tightly nestled between two home dwellings (on lots 15 and 16) and a publicly accessible trail that is impassable due to extensive wetlands? CR patch B is semi-dry and most likely will draw the public trying to use the trail, onto it in order to continue onto the remainder of the public open space Parcel A. It would make sense to dissolve patch B into the publicly accessible open space Parcel A. How much of a hunting benefit does the 1.9 acre Patch B provide to the private home owner on Lot 15, especially whereas they also have access to the extensive 14.35 acre CR patch A, with hunting benefit?
- 4) As stated above the publicly usable trail easement spanning across the applicant's property may require Lot 15 to be slightly modified to allow easy to navigate traverse by the public.
- 5) The applicant and qualified conservation entity selected to hold the CR patch areas A and B (e.g., SVT) need to negotiate the specific terms and conditions of the CR Areas.
- 6) The applicant needs to negotiate with the above CR patch A and B grantee regarding what financial resources it will provide to help defray the CR grantee's expenses to manage and monitor the CR.

Once again, it is absolutely critical that the outstanding Open Space details need to be worked out and be specified prior to the Planning Board signing off on the OSD Special Permit.

Once again, the LCT looks forward to collaborating together as needed with the OSD applicant, SVT, other abutters, and town boards to expeditiously solve these remaining problems in order to guarantee a successful OSD project for all stakeholders.

Thank you for the opportunity to comment.

Respectfully yours,

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