

Littleton Conservation Trust
43 Foster St.
Littleton, MA 01460

Ms. Maren Toohill, AICP
Town Planner
Planning Department and
Planning Board
Town Offices, Room 303
37 Shattuck St
Littleton, MA 01460

April 17, 2020

RE: LCT Comments and Recommendations on the Healy Corner – 195 Tahattawan Road Open Space Subdivision Development Proposal

Dear Maren,

Please submit the following project commentary and recommendations into the public record and distribute to Planning Board members in preparation for the next Planning Board meeting on Thursday, April 23, 2020.

Thank you and best regards.

Donald MacIver, president
Littleton Conservation Trust

~~~~~ attached submission ~~~~~

**Foreword:**

The Littleton Conservation Trust (LCT) is providing comments on the Healy Corner (HC) development proposal at 195 Tahattawan Road, as an abutter and a long term open space owner, advocate, and land steward in the Greater Newtown Hill Area. At the request of area neighbors and other open space advocates, the LCT has been requested to weigh in regarding the HC development proposal both as to its impact on Natural Resources and the overall Open Space Vision for the Greater Newtown Hill Area, which encompasses this property and its surrounding area bounded by MA Route 2 to the south, Foster St to the west, Harwood Ave and Tahattawan Rd to the north, and Newtown and Boxboro Roads to the east.

**Historic Background, Open Space Vision, and Intent**

The Littleton Conservation Trust (LCT), is a direct abutter to the HC property and has extensive experience in the Greater Newtown Hill Area, owning some conservation land parcels there,

facilitating permanent conservation protection of others, providing ongoing land stewardship over many parcels, and being identified as a potential CR grantee yet to others. In order to acquire and otherwise protect open space land in this area, LCT has worked over decades, with area private landowners, the Littleton Conservation Commission (LCC), and the Sudbury Valley Trustees (SVT). SVT is a public interest, nonprofit staffed regional conservation land trust with demonstrated roots in the Littleton community, including ownership of conservation lands (e.g., Smith Property), fund raising for acquiring town owned conservation land (e.g., SVT wrote a successful \$500,000 LAND grant for Littleton to acquire the Yapp Conservation Land), and holder of several Conservation Restrictions (CR)/permanent protective easements over other open space lands (e.g., Anthony/Herget Trail Corridor and Yapp Conservation Land).

LCT helped fund and assisted the municipal LCC in acquiring and protecting some local conservation lands (e.g., Williams and MAS DOT Land at Boxboro Rd.) and helped SVT acquire and permanently protect other lands, including a CR now held by SVT (e.g., Anthony/Herget land with Trail Corridor at 204-206 Foster St.). LCT and SVT have invested considerable effort to protect contiguous open space lands and interconnect trails in the Greater Newtown Hill Area. The LCT, along with the LCC and SVT, look forward to working together with the HC land owner, and local area landowners, to continue this protection of contiguous open space for both nature and people, with publicly accessible corridors and an interconnected trail network, including a long-sought after pedestrian/ bikeway trail leading to the commuter rail station. This is envisioned to be a direct benefit for the local neighborhood and the town at large.

### **Context of HC Subdivision Development**

The HC subdivision proposal at 195 Tahattawan Rd., located in the Greater Newtown Hill Area, spans some 43+ acres of varied landscape with extensive wetlands. It is also the missing gap in the publicly accessible, permanently protected, natural open space area, with some 8 contiguous parcels on the west side (with access point from Foster St.) and some 9 contiguous parcels on the east side (with access points from Boxboro Rd and Newtown Rd). Three town/LCC properties directly abut the HC project on the western border; two LCT properties directly abut on the eastern border. Currently, the town is in negotiations with landowners for acquisition of the 23+ acre Mary Brown lands (119 Tahattawan Rd., spanning through to Harwood Ave, abutting on the north border of the above described town open space lands and in very close proximity to adjacent HC land.)

The HC development proposes to retain the historic family homestead dwelling which requires no waiver of any rules and some 16 new construction dwellings for the remainder of the property. New construction development provides considerable latitude in layout design and consequently rarely merits significant rule waivers.

### **Overall Assessment, Commentary, and Recommendations**

The currently proposed Density Yield Plan (DYP), retaining the existing single dwelling and adding 13 newly constructed dwellings, reflects what the developer states they could develop under the conventional subdivision rules. It appears to be overly ambitious and not in conformance with the Planning Board and Conservation Commission rules. Furthermore, under

the Open Space Development (OSD) proposal, the developer proposes building an additional 3 “bonus lots” in the back land away from the scenic street frontage, justified by the claim that they are preserving significant scenic street frontage. Given that the scenic street frontage is greatly diminished, this does not seem to be in conformance with the intent of the OSD bylaw. Public comments and peer review commentary challenge the viability of some of the claimed dwelling lots in both the conventional and OSD subdivision proposals. ( see comments for Peeke, Gallagher, Green, and Green International peer review).

There are four factors that could reduce or otherwise affect the number of proposed new single family dwelling lots that the developer can build.

The four factors:

### **1. Littleton’s Local Wetland Bylaw and its 50 Foot No Disturb Area (NDA)**

Under the state Wetland Protection Act, the Conservation Commission can condition and limit development activity within the 100-foot buffer area bordering water resources and within 200 feet bordering perennial rivers and streams. Additionally, under the Littleton local Wetland Bylaw which was written to meet the town’s specific needs, the Conservation Commission maintains a strict 50-foot No Disturb Area (NDA) bordering water resources. The developer has requested that the Conservation Commission grant a NDA waiver for its new construction dwelling lots. The Conservation Commission has indicated that this is highly unusual to do so for new construction. While waivers can be a relief valve from rules, there does not appear to be any unusual circumstances or compelling reason to warrant a NDA waiver given the extensive land area, sensitive wetlands, new construction, and the strictly held NDA rule. This appears to be an engineering design issue suggesting inadequate layout or excessive number of proposed dwelling lots. The proposed encroachment on NDAs appears in a variety of locations including that for locating dwellings, storm water basins, septic system soil absorption system fields with associated fill grading, and access roads. The Conservation Commission’s resolution of the developer’s requested NDA waivers and other wetland issues need to occur prior to the Planning Board’s determination of the exact number of viable dwelling lots for both conventional development and the derivative OSD.

### **2. In the Field, Accurate Soil and Percolation Testing, Needed for Each DYP and OSD Lot**

According to OSD bylaw under section 173-104 (A), the developer must “certify that each lot identified on the Density Yield Plan can support the placement of an on-lot septic system for a four bedroom residential dwelling, as evidenced by soils and percolation tests, consistent with Title 5.” This is a first step before determining any potential bonus lots under the OSD process.

Being an extensively wet site with variable topography there is great potential to affect on site percolation testing results. Percolation drainage testing indicates whether the land site is likely to pollute nearby sensitive water resources. Many abutters have insisted that in the field accurate soil and percolation testing needs to be performed on each lot to prove their viability. This needs to be resolved before an accurate DYP can be determined.

### **3. Planning Board, at its Discretion, May Award Bonus Lots for Compliance with OSD**

According to OSD bylaw under section 173-104 (B), "The number of dwelling units that may be constructed in an Open Space Development may be increased by the Planning Board if it finds that the developer has incorporated into the Open Space Development *significant areas of scenic woodland or agricultural lands along public road frontage* that may otherwise have been developed into "Approval Not Required" (ANR) lots

The property's current scenic frontage along Harwood Ave./ Tahattawan Rd., undergoing development spans approximately 800 feet. The developer proposes to leave a frontage of approximately 150 feet adjacent to an approximate 50 foot driveway easement which is proposed to become a common driveway under the OSD plan. The remnant with approximately 150 foot scenic public road frontage doesn't appear to qualify as "*significant areas of scenic woodland or agricultural lands along public road frontage*".

Many abutters contest the quality of the remnant road frontage being scenic enough to justify the awarding of three additional bonus back lots. Green International states that it is dependent upon the discretion/interpretation of the Planning Board as to whether the development proposal adequately meets the standards required by the Planning Board to award bonus lots.

### **4. OSD Bylaw Awards OS Set Aside Land and Creates a Mandatory CR which the State Needs to Review and Approve**

The OSD requires the creation of an open space set aside land parcel (here Parcel A on the perimeter) to be held by a qualified conservation entity, which is mandated to be permanently protected with an overlaid Conservation Restriction (CR)/ easement, to be held by another qualified conservation entity. The developer has additionally proposed two more CRs which are located on private lot 15. Though both are disjointed from each other, both are contiguous with open space parcel A. These two elective CRs are proposed to retain rights for hunting by the private owner and neither provides for any public access. Proposed CRs with their varied property rights and prohibitions must be assessed for providing conservation advantage and serving public interest, with final approval by the Division of Conservation Services (DCS) within the state environmental offices

Given the unusual configuration of the three CRs, with two of them private but adjacent to the public open space land set aside, it is prudent to obtain preliminary review and conceptual approval through DCS. DCS may require modifications of the terms of the proposed CRs in order to meet public interest and provide adequate conservation value. The submittal, refinement, and final state approval of proposed CRs often takes months.

#### **What is Missing**

> What is missing is:

Demonstrated elimination of NDA encroachment in both the conventional and OSD plans, for dwellings, septic systems with fill grading, storm water structures and basins, and associated structures and access.

What is missing is:

> Fully verifiable in the field soil and percolation testing results for each lot site in both the conventional and OSD plan reflecting accurate actual site conditions. Lack of accurate data can lead to unexpected consequences where layouts on paper, when actually deployed in the field, may result in encroachment of areas not intended to be impacted (e.g. a recent example is the housing development at the former Couper Farm, where the sanitary leaching field with grade fill, encroaches onto abutting areas not intended to be developed.)

What is missing is:

> Demonstration of the proposed preserved “*significant areas of scenic woodland or agricultural lands along public road frontage*” to help the Planning Board and neighbors to visually assess the proposed project’s compliance with the OSD and to help determine if potential bonus lots are warranted.

What is missing is:

> Details on the open space land (Parcel A/ perimeter land) set aside and what qualified conservation entity will hold it (with land ownership in fee). Details on the three Conservation Restrictions (CRs), including that mandated to overlay Parcel A and the two discretionary disjoint CRs overlaying portions of private lot 15, and what qualified conservation entity will hold them (acting as CR grantee) and the negotiated terms. Indication from the DCS that they have reviewed and accept in concept the unusual CR arrangement and associated terms and that it adequately meets their public interest standard and provides conservation values.

## What Needs to Be Done - Recommendations

Recommendation:

> Developer needs to resolve wetland and NDA conflicts and issues with the Conservation Commission, prior to determining accurate DYP and follow on OSD dwelling lots.

Recommendation:

> Provide verified in-the-field testing results for soils and percolation for each DYP and OSD lot.

Recommendation:

> For best visualization for the Planning Board and abutters, the before and after OSD development scenarios of scenic woodland land bordering public road frontage (Harwood Ave./Tahattawan Rd.) extents, should be staked out for visual inspection. The before development scenario should show the current scenic woodland road frontage extent (approximately 800 feet), with separate indications for the claimed 150 foot road frontage ANR lot, proposed to justify additional bonus lots, and separate indications for the extent of the adjacent private driveway easement (approximately 50 feet) which is proposed under OSD to become a shared multi dwelling driveway access. The after OSD scenario should delimit the proposed extent of scenic woodland road frontage that would remain.

**Recommendation:**

> Developer needs to resolve issues with the publicly accessible Parcel A open space set aside property and the CR grantees. Recommended that Parcel A be granted to the town under the control, custody, and care of the Conservation Commission, given that the majority of Parcel A abuts current town owned conservation land. Recommend that the CRs be granted to Sudbury Valley Trustees, given that the developer prefers one qualified conservation entity to hold all CRs and that SVT has considerable experience regulating hunting on conservation lands, including in Littleton. The developer needs to submit and attain preliminary approval of the set of CRs and their terms from the state DCS. If not approved, the developer needs to adjust CRs and terms to meet state approval.

**Recommendation:**

> The obligations undertaken to become a CR grantee are considerable. The responsibilities of the CR grantee and recipient of Parcel A open space extend in perpetuity, making them the sole entities whose presence on this landscape outdistances all others - developer, current land owner, regulatory boards, and future homeowners. With those responsibilities come considerable work and effort. The Conservation Commission lacks adequate funding and staff to manage Parcel A. The proposed CR grantee has offered to undertake that management responsibility for Parcel A, similar to what they perform in similar situations in neighboring communities where they also act as CR grantee. Additionally, to perform their responsibilities, the CR grantee needs the land they are to monitor and managed to be monumented so the premises are known to them and others. They also require resources to create a mandated Baseline Document Record (BDR), establishing baseline conditions for mandated successive annual monitoring, and basic resources to manage open space. This is all part of the OSD management responsibility for creating permanently preserved open space. In many similar situations in Littleton, land owners have endowed the CR grantee for its perpetual responsibility to monitor and manage open space in the range of \$10,000 to \$75,000 to help defray expenses. Open Space Management and CR grantee responsibilities on permanently protected land are a major commitment of resources extended forever. The developer needs to negotiate terms with the CR grantee, which will additionally act as open space manager, to guarantee that the final OSD serves the public as intended.

### **Overall Good and Challenges**

The landowner's intent to protect open space for nature and people, and to interconnect the open space and trails network, is positive, although development issues persist with substantiating viable lots, given the extensive wetlands and topography, lot layout design, and density issues.

Thank you for the opportunity to comment.

Respectfully submitted,  
Donald MacIver