



Diane N. Tradd
Assistant City Manager/DPD Director

R. Eric Slagle
Director of Development Services

Shaun Shanahan
Building Commissioner

MEMORANDUM

TO: Kevin Murphy, City Manager
Diane Tradd, DPD Director

FROM: R. Eric Slagle, Director of Development Services

RE: MOTION BY COUNCILOR ELLIOTT - REQ. CITY MGR. /LAW DEPARTMENT IDENTIFY ANY POTENTIAL PRESERVATION/CONSERVATION RESTRICTIONS RELATIVE TO DOWNTOWN OPTIONS FOR LOWELL HIGH SCHOOL CONSTRUCTION PROJECT.

The Department of Planning and Development has researched prohibitions, limitations, and restrictions on parcels currently occupied or potentially impacted by any renovation or reconstruction of Lowell High School if the downtown alternative were chosen. Such restrictions are the property's inclusion in the Lowell Downtown Historic district, deed restrictions on particular parcels, state statutory protections on certain parcels, agreements entered into when accepting state or federal grants, and exclusive easements owned by third parties impacting the parcels, or other restrictions.

The parcels Lowell High currently occupies include the following:

- 38 Kirk Street, which contains the 1892 Coburn Hall and the 1922 expansion;
- 50 Father Morissette, which contains the 1980 Lord Building and Field House;
- 35 French Street, which contains the Boiler Building;
- 55 French Street, which contains the 1920 Freshman Academy;
- 68 John Street, which contains the 1938 expansion of the Freshman Academy.

Additional parcels of interest include the following:

- The former Anne Street right of way (ROW), which now contains the concrete path of Lucy Larcom Park;
- 255 Merrimack Street, which contains the asphalt path of Lucy Larcom Park;
- The Merrimack Canal between the 1800s and 1980 buildings;
- 275 Merrimack Street, between the trolley railroad and Merrimack Canal;
- 9 Dutton Street, the trolley railroad right-of-way owned by the National Park Service;
- 75 Arcand Drive, owned by Lowell Doctors Park Trust and considered as an expansion site in one of the alternatives.

The Department of Planning and Development has currently identified the following potential restrictions, special licenses needed, or other concerns:

Historic Registration

All Lowell High School is listed on the National and State Registers of Historic Places through its inclusion within both the Lowell National Historical Park & Preservation District and the City Hall Historic District. This applies to the two buildings on Kirk Street including Colburn Hall (1892) and an addition built between 1920-1922. The 1981 section of Lowell High School and related tunnels is not within either district, nor would be eligible for listing and is not historically significant.

Three nearby buildings also associated with the high school, the former Lowell Trade School (1900) at 68 John Street, the Lowell High School Annex (1939) at 55 French Street as well as the powerhouse and associated smokestack on French Street are also listed on the National and State Registers of Historic Places through their inclusion within both the Lowell National Historical Park & Preservation District and the City Hall Historic District.

Due to the federal and state historic designations, any proposed work to the buildings utilizing federal or state undertakings including funding, licensing, and permitting would require review by the Massachusetts Historical Commission in consultation with the Lowell Historic Board and the Lowell National Historical Park. If the buildings are proposed to be vacated, the Massachusetts Historical Commission could require a MOA, similar to the existing courthouses MOA, that would focus on maintenance, retention, and if the buildings are eventually disposed of, a preservation plan requirement. Additionally, if disposed to private parties, the buildings would then be under the design review, permitting, and approval jurisdiction of the Lowell Historic Board due to their location within the Downtown Lowell Historic District for any exterior work and interior work (but only if the interior work affects the exterior appearance).

Additionally, if privately disposed of, the historic properties would be eligible for both the federal and state historic rehabilitation tax credit if they were redeveloped for income producing uses. The tax credit program would also review proposed interior work and could require retention of Colburn Hall in the 1892 building and the Irish Auditorium in the 1922 building as they would be viewed as significant interior spaces. Any condominium conversion would eliminate the historic tax credits as an incentive due to NPS and IRS recapture regulations that require a project to remain in the same ownership for five years after taking the credit.

Downtown Lowell Historic District

All parcels of interest are in the Downtown Lowell Historic District. This means that any erection, demolition, or alteration of structures on those parcels require review and approval by the Lowell Historic Board and State Historical Preservation Office pursuant to 36 CFR Part 800, regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. 306108); and pursuant to 950 CMR 71.00 et seq, regulations implementing Massachusetts General Laws Chapter 9, Sections 26 through 27C.

Lowell National Historical Park

38 Kirk Street, the Anne Street ROW, 255 Merrimack Street, the Merrimack Canal, 275 Merrimack Street, and 9 Dutton Street are within the Lowell National Historical Park boundaries. Additional research and coordination with Lowell National Historical Park would be required to determine whether this presents additional limitations in use or alteration of the properties.

Chapter 91, The Massachusetts Public Waterfront Act

Activities in, under, or over a publicly-owned waterway are subject to Chapter 91, the Massachusetts Public Waterfront act, and require approval and license from the Massachusetts Department of Environmental Protection (DEP) pursuant to 310CMR 9.00. The Merrimack Canal is considered a publicly-owned waterway for

the purposes of Chapter 91 jurisdiction. Bridges qualify for a license for a water-dependent use, whereas most other structures require a license for a non-water-dependent use.

Massachusetts Wetlands Protection Act and City Wetlands Ordinance

Lands directly within a wetland resource area or within a buffer from a resource area are subject to the Massachusetts Wetlands Protection Act, and certain activities within those resource areas and 100' buffer zones outside those areas require review and approval by the Lowell Conservation Commission. All canals in Lowell, including the Merrimack Canal, are considered resource areas, and most activities within or over them and their 100' buffer zones must be approved by the Conservation Commission and would be subject to any order of conditions they set forth. This includes 38 Kirk Street, 50 Father Morissette, 75 Arcand Drive, and all the parcels between the buildings and the canal, in addition to the canal itself. The site may be the subject of previous orders of condition by the Lowell Conservation Commission as well.

Merrimack Canal

In 1986, the Commonwealth of Massachusetts Department of Environmental Management (now known as Department of Conservation and Recreation or DCR) took from Proprietors of Locks and Canals “all air rights over the canals, including the canal walls and any dams thereon, to the extent not already lawfully obstructed or occupied, for so long as such lawful obstruction or occupation continues uninterrupted in its present form,” among other rights related to the canals.

Two pedestrian bridges currently span the Merrimack Canal. The City of Lowell obtained an easement for the older of the bridges 1980 from Proprietors of Locks and Canals. Because this bridge lawfully occupied the air above the canal, it was not included in the 1986 taking. It is assumed the air rights would revert back to the DCR if the bridge were removed, but can be modified if its existing footprint does not change.

The canal walls, the canal bed, and the water and water rights within the canal are owned by Boott Hydropower, a subsidiary of Enel Green Power North America. Any structures within or impacting the canal floor, walls, or flow of water in the canal would not only require permission from the DCR, but also require an easement or other agreement with Enel Green Power North America.

Lucy Larcom Park (255 Merrimack Street)

In 1824, Proprietors of Locks and Canals conveyed 255 Merrimack Street to a newly-created trust. The deed stipulated that the trust was “to keep said lot of land as ornamental ground forever, the same being hereby dedicated and set apart by the grantor for the purpose of beautifying and ventilating the City and in trust that they, their successors and substitutes are not to suffer any building to be erected or to stand thereon and are to devote the same to the cultivation of trees, shrubs, grass, and such other things as may promote and advance the foregoing objects.”

The deed allowed an exception for Proprietors of Locks and Canals, their successors, and assigns to use the land to widen the Merrimack Canal or to build bridges for streets, passageway, and railway above the land.

In 1909, the Proprietors of Locks and Canals appointed the mayor of Lowell and the chair of the Board of Parks to be the owners in trust. The trustees now appear to be the City Manager of the City of Lowell and the chair of the Board of Parks, to maintain the park with the restrictions listed within the deed. It is unknown whether this unusual arrangement presents any complications to building over or adjacent to the property.

The City of Lowell granted the National Park Service (NPS) an easement to build, maintain, and operate a pedestrian path in 255 Merrimack Street. This is the asphalt path that runs alongside the canal. Additional research is required to know if that easement precludes any construction through or above the park.

Additional review is required to know what steps were taken to build the existing pedestrian bridges over Lucy Larcom Park and any additional steps would be required if the bridges were moved or modified.

Finally, the park was redesigned by the Olmsted Brothers Company in 1910, and the Lowell Historic Preservation Commission, a unit of the NPS, restored the park to its 1910 layout in 1991, which may afford the park additional protections beyond its deed restriction. However, additional research is needed to determine what protections this may afford.

National Park Service Trolley Right-of-Way (9 Dutton Street and 75 Arcand Drive)

The NPS acquired Boston and Maine's railroad interests in the study area in 2004, which includes a fee simple title in 9 Dutton Street and an exclusive easement for a spur that starts at the right-of-way near the Lowell Masonic Temple and curves through 75 Arcand Drive (the parcel owned by Doctors Park Trust) to Arcand Drive.

Both existing pedestrian bridges cross the right of way at 9 Dutton Street. Boston and Maine granted an easement to the City of Lowell for the 1980 bridge in 1980. In 2004, Boston and Maine granted an easement to the City of Lowell for the 1996. This was delayed because it was not discovered that no such easement existed until the proposed sale to NPS. The easement was granted immediately prior to Boston and Maine conveying their right-of-way to NPS. Both easements are now held by the City against NPS.

Any new use of the air rights over the property would require the City to obtain a new easement from NPS. Additional research and discussion with Lowell National Historical Park is required to determine any restrictions there may or may not be on utilizing the easement area owned by NPS in 75 Arcand Drive.

Next Steps

In addition to completing an initial review of deeds and districts affecting the site, full title exams on all parcels of interest may uncover other easements or deed restrictions the DPD may not be able to find. In addition, further discussion with DCR and Lowell National Historical Park is warranted, due to both parties having multiple interests in and around the site.

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03/21/2017