



CITY OF DOVER

CONSERVATION COMMISSION - MINUTES

Meeting Type: Regular Meeting
Meeting Location: City Council Conference Room
Meeting Date: **Thursday, July 7, 2008**
Meeting Time: **5:30 pm**

Commission Members Present: Thomas Fargo, Chair; Bill McCann, Vice Chair; Marcia Colbath; Alban Lobdell; Chris Hunt; Jessica Hunt; Britt Schuman

Members Absent: None

City Staff Representative: Dean Peschel, Environmental Projects Manager

The meeting was recorded per City Council requirements. However, the recording is a non-digital magnetic tape recording that did not capture the discussions.

1. Approval of minutes from previous meetings (as available).

Chairman Fargo noted that minutes for the June 2008 meeting were only partially completed and asked for a motion to approve that section dealing with the **Double Diamonds Holdings South, LLC** proposed re-development site on Locust Street, as contained in his e-mail sent to the Planning Board on July 3, 2008. **Bill McCann moved to approve, seconded by Britt Schuman, approved with Marcia Colbath abstaining due to her absence at the June meeting.**

2. RE: Tax Map K, Lot 20; Considering a revised development plan for **Paolini Brothers Development, LLC.**, 54 Dover Point Road, (agent: Berry Engineering). The Commission has been requested by the Planning Board to provide input regarding changes of storm water management measures proposed after the Commission's in May 5, 2008 review

Marc Jacobs, the applicant's Wetlands Scientist, (standing in for Chris Barry, PE) reviewed the revised development plans for the above-referenced project. Mr. Jacobs addressed the comments contained in a June 23rd memo from Chairman Fargo to the Planning Board, which is partially reproduced below:

From the May 5, 2008 Conservation Commission Meeting

Discussion & Recommendations (salient points noted in **bold**):

The Commission first directed its attention to the proposed re-grading of the existing drainage ditch to create a storm water detention area at the northeastern corner of the property. After much discussion, two areas of concern were identified:

- The proposed re-grading and detention area construction includes the placement of lower permeability fill to create a buried vertical "dike" that will provide stability to the more easily erodable native soils. **The Commission expressed concern about how this feature could be constructed and the need to "armor" the area with stone and establish plantings to stabilize the proposed fill and re-grading.** The Commission noted that the residents of the proposed condos would be very close to the re-constructed swale/detention area resulting in a steep slope in their back yards. A fence was proposed to provide a safety barrier.
- The anticipated increased run-off due to increased impervious cover on the site will be discharged through the reconstructed outlet from the detention area. Plans call for the constructed erosion control measures to end at the property line. **The Commission expressed concern that erosion due to the increased run-off may occur on the adjoining property and recommended the applicant evaluate the extension of the stone "armor" in the drainage swale onto the abutter's property.**

The Commission next reviewed the proposed construction of the sewer line across the Cooper and Forget properties.



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- The Commission noted that the edge of wetlands boundary is located upslope from the topographic low where the sewer line connection will be made. This indicates that groundwater discharges to the wetland through a seepage face mid-way down the slope. The Commission expressed concern about the management of water pumped from the excavation and was satisfied with the applicant's proposal to discharge and infiltrate the water on an adjacent upland. **The Commission recommended that the backfill of the proposed sewer line include low-permeability "trench blocks or dams" along the sloped run of the sewer line to prevent the trench backfill from forming a conduit for groundwater discharge.**

The Commission then reviewed the proposed storm water management plans for both the commercial and residential portions of the development site. Initially, concern focused on the proposed bio-retention area adjacent to Dover Point Road. Storm water bio-retention areas depend on robust plantings in order to work properly. Recent experiences with the bio-retention area at the new Hannaford facility on Durham Road suggest a vulnerability of bio-retention area plantings to road salt toxicity. This led to a discussion about the management of snow piles and de-icing salts as part of the site's non-structural storm water "Best Management Practices" (BMPs).

- After further discussion, **the Commission made the recommendation that the applicant evaluate the use of porous pavement in the development plan.**
- **The Commission left unresolved its recommendations for non-structural BMPs (a storm water system operations and maintenance plan) pending the outcome of the above recommendation.**

Revisions to the development plan include the use of pervious asphalt pavement and perforated drainage pipes to reduce runoff. These changes will also allow the reconfiguration of the swale area in the northeast corner of the site, from the previously reviewed plans. There were discussions about pervious pavement maintenance/replacement and the anticipated infiltration rates through the pavement vs. the existing native soils.

It was the consensus of the Commission that the proposed changes to the development plan adequately address the previously identified issues noted above. The Commission's only remaining concern regarding the proposed pervious pavement was that the applicant should develop an operations and maintenance plan that addresses the special requirements of such an installation. It was felt that the O&M plan should include special guidelines for snow and ice removal, as "normal" use of deicing salts would likely not achieve desired results and could negatively impact the environment.

3. RE: Tax Map M, Lot 1; Considering an application by **Lydia V. Scott 2002 Trust**, 220 Back Road, Dover (agent :McEneaney Survey Associates) for an after-the-fact Conditional Use Permit and NHDES Standard Dredge and Fill Permit for a constructed stairway and deck within the NH Shoreland Zone and City of Dover Conservation District.

Kevin McEneaney presented an overview of the application. The stairway and deck was constructed in 2002 without the required permits. The structure was built around several hemlock trees to allow access to tidal water down and up an approximate 10 to 15-foot cliff on the Scott's property. The Commission reviewed photos of the structure and a "Permit Plan" dated May 19, 2008 prepared by McEneaney Survey Associates.



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Chairman Fargo reviewed the responsibilities of the Commission regarding the application. For the City of Dover Conditional Use Permit, the Commission is to provide, per Conservation District zoning regulation 170-27 C (2), a “written review of the environmental effects of the proposed use”. In addition the applicant needs to receive the necessary State and Federal permits and submit a soil erosion and sedimentation control plan. Chairman Fargo stated that since this application is after-the-fact, the soil erosion and sedimentation control plan may not be necessary. The applicant must also obtain a State of NH Wetlands Dredge and Fill Permit as the structure’s base falls within an area where tidal waters “ebb and flow”.

Chairman Fargo noted that a concrete pier for the existing structure has cracked due to apparent frost damage. He asked the applicants if there were plans to repair or replace the damaged foundation. The applicants stated that they would seek to repair the structure. Further discussion ensued regarding whether such a repair would constitute new work requiring additional permits and submittals, including the previously discussed soil erosion and sedimentation control plan for the Conditional Use Permit, the type and status of the NH Dredge and Fill Permit (after-the-fact or new permit), and the applicability of the new Comprehensive Shoreland Protection Act permit requirements.

Following those discussions, Mark Kern, Attorney representing Daniel Philbrick and Olde Forest LLC, provided the Commission with a copy of a Conservation Easement Deed dated January 25, 2008 (SCRD Book 3611, Page 0167). Attorney Kern explained that the easement agreement between the Lydia V. Scott 2002 Trust and Olde Forest LLC placed restrictions on the construction and use of the deck and stairway and that the two parties named in the easement agreement are currently in court to resolve a dispute regarding the terms of the easement. Mr. Daniel Philbrick then described to the Commission the circumstances that led to the easement agreement and the subsequent litigation. Marcia Colbath observed that the easement restrictions were placed on the property after the structure was built, therefore she thought that they should not apply. Further discussion focused on how the proposed repair of the structure might be limited by the easement deed. Mr. Philbrick stated that because of the easement deed, Olde Forest LLC has a legal interest in the property and therefore has standing in any permit application that might affect the property. He further stated that Olde Forest LLC is opposed to the permit applications before the Commission.

Marcia Colbath made a motion to table the application until the legal dispute over the easement deed is resolved, Bill McCann seconded. Chairman Fargo then asked Marcia if she would suspend her motion so that other meeting attendees could provide testimony on the application, as they had come to the meeting to do so. Marcia agreed to suspend the motion.

Ann Reid and Barbara Trow, representing Great Bay Coast Watch, both informed the Commission that their organization routinely uses the Scott’s deck and stairway to obtain samples from the Cochecho River portion of the estuary as part of their water quality monitoring program. Ms. Reid thanked the Scotts for their support of the Great Bay Coast Watch monitoring activities. Ms. Trow also thanked the Scotts and urged the Commission to endorse the applications.

Marcia Colbath restated her motion to table the application until the legal dispute over the easement deed is resolved, Bill McCann seconded again. The vote was unanimous in favor of tabling.

4. RE: Tax Map 24, Lots 104 & 104A; Considering a request from **Robert Mairs**, 44 Portland Ave, Dover (agent: McEaney Survey Associates) for preliminary input on a development plan that would potentially impact a Dover Conservation District area with slopes > 20% at the subject address.



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Kevin McEaney presented an overview of the application. The proposed development plan is to construct four mixed-use commercial-residential units behind an existing building located at 44 Portland Avenue. As allowed by zoning, the units will have commercial uses on the first floor and residential uses on the upper two floors, with garages on the second level. The Commission reviewed a conceptual site plan dated June 27, 2008 prepared by McEaney Survey Associates and a sketch of what each unit might look like.

The Commission's input was requested because the site has several areas where slopes exceed 20%, therefore requiring the Commission's input on a potential Conditional Use Permit application. The site would be re-graded incorporating a retaining wall with a maximum height of approximately 16 feet. A driveway and a portion of Unit #4 would also be located in areas now exceeding 20% slope. Chairman Fargo asked if there was an indication that excavation of bedrock would be needed. Mr. McEaney stated that he thought all required excavation would be in soils. There was discussion about the re-grading for the retaining wall. It was also noted that the slope behind the proposed wall has received a substantial amount of trash and fill over the years and that during the proposed development, this area would be cleaned up and stabilized.

Tom Fargo made a motion to table discussion of the application and schedule a site walk on Wednesday, July 9th at 5:30 PM. Bill McCann seconded. The vote was unanimous in favor of tabling and conducting the site review.

Chairman's Note: During the site review Commission members suggested that some subsurface investigations might be completed, potentially as part of a Phase 1/ Phase 2 Environmental Site Assessment, to: 1) determine if contaminants or concern are present in the sloped area behind the proposed retaining wall; and 2) determine whether the water table or bedrock might be encountered in the depth range of the excavation for the proposed retaining wall.

5. Other Business:

- Chairman Fargo led a brief discussion regarding soliciting Commission input on revisions to Dover zoning regulations. He noted new reference materials on wetlands buffers; see:
<http://www.gulfofmaine.org/times/summer2008/reality.php>
http://www.kingstonnh.org/departments/Planning/ru1_reg_ord/wetlands%202008.htm
Fargo also stated that he wanted to Commission to support revisions to Dover's zoning regulations that echo the new State Comprehensive Shoreland Protection Act requirements.
- Chairman Fargo also gave an update on efforts to designate the Cochecho River into the NH Rivers Management and Protection Program. He stated that he would express the Commission's support (from May 2008 meeting) of the application at a public hearing to be held July 23, 2008 at 7:00 PM in Rochester City Council Chambers. For information see: NHDES website
https://www.des.state.nh.us/Rivers/documents/cocheco_nomination.pdf
- Concerns of the Commission (Open Forum for Commission Members)

Chairman Fargo stated that he received a request from the Planning Department Staff for the Commission to approve a not-to-exceed \$3,000 expenditure of Conservation Funds to pay for a survey of the Day property off Sixth Street and County Farm Cross Road. The NHDOT is negotiating to purchase a Conservation Easement on the property as part of the wetlands impact mitigation program for their



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Newington-Dover Little Bay Bridges Project. The NHDOT has requested that the City of Dover pay for survey, in exchange for the DOT paying approximately \$235,000 for the easement.

Tom Fargo made a motion for the Commission to authorize an expenditure from the Conservation Fund of no more than \$3,000 to pay for a survey the Day property, for the purpose of placing a Conservation Easement on that property. Bill McCann seconded. The vote was unanimous in favor.

6. Adjournment: **Chairman Fargo made a motion to adjourn. Bill McCann seconded. All voted in favor.** Meeting adjourned at 7:15 pm.