

City of Dover Conservation Commission
Minutes for March 7, 2005 Meeting
5:30 pm, City Hall, Council Conference Room

Members present: Tom Fargo, Chair; Marcia Colbath; Ed Millman; Bill McCann; Alban Lobdell; Joyce El Kouarti

Members absent: Dona Layton; Susan Eisler (Alternate)

Also present: Dean Peschel, City of Dover Environmental Program Manager & staff liaison

1. Approval of minutes from February 7, 2005 meeting.

Marcia Colbath moved, seconded by Ed Millman to approve the minutes. Chairman Fargo noted the need to amend the minutes regarding the date in the header. Minutes as amended were approved with all in favor. Joyce El Kouarti and Al Lobdell abstained because they were not at the February meeting

2. RE: Tax Map M, Lot 90D-10, Considering an application by Nelson Miles Cook, 14 Deborah Lane, Dover, for a Standard State of New Hampshire Dredge and Fill Permit and a City of Dover Conditional Use Permit to fill 254 square feet of wetlands to construct a 965-foot driveway, a single family home with attached 4-car garage, a 700 square foot swimming pool, and a 120-foot long fixed pier, ramp and dock at the subject parcel located on Issac Lucas Circle.

Discussion

Chairman Fargo started discussions by stating the original permit applications for this project were prepared and submitted to the NHDES and City of Dover by Crown Point Survey in the December 2004 and January 2005, respectively. Adele Fiorillo, of New Hampshire Soil Consultants, representing Mr. Cook, introduced Mr. Cook's Attorney Malcolm McNeill. Mr. Mac Neil questioned the "presumed" jurisdiction of the Conservation Commission, stated that the Building Inspector had the authority to grant a permit up to 75' of the mean high water mark. Attorney McNeill stated that the lot was approved in 1986 as part of Brickyard Estates and is therefore "grand fathered" with respect to current Conservation District dimensional requirements. In March 2002, Mr. Cook was granted a lot line adjustment to expand the lot and, according to Mr. McNeill, such action should not change the status of the existing lot. It was Mr. McNeill's contention that Mr. Cook was only appearing before the Commission to provide information relative to the State Wetlands application and that the next step in the City's review process was with the Building Inspector.

Ms. Fiorillo then made a presentation on the wetlands issue involving the driveway. She stated that a triangle of land added by lot line adjustment in 2002 was added at the corner near the beginning of the driveway, which reduced the wetlands impact of the project. The adjustment allowed the driveway to be routed along an existing woods road.

Ms. Fiorillo then presented information on the 'highest observable tide line' and her findings for locating this reference line on the site. She said she wanted to work with her boundaries to establish locations on the plan to comply with the state's Shoreland Protection Act. She also described her delineation of the 'mean high water' reference line used as the standard for building set back in the Dover Conservation District ordinance. She said she used the Dover tax map and aerial photographs to do this. Dean Peschel pointed out that tax maps are a reliable source for this type of information. Ms. Fiorillo stated that the mean high water line shown on the tax map seemed to coincide with observable top of bank feature at the site and therefore she considered this data source accurate indicator for mean high water in this instance. Joyce El Kouarti pointed out that the tax map contained a disclaimer that cautioned against interpretation of the map for any purposes other than tax assessment.

There were questions regarding the topographic contour lines depicted on the map and what the labeled elevations referred to (ranging from 498 to approximately 520). The elevations are apparently tied to an arbitrary datum. Chairman Fargo stated that before the meeting he had discussed with Ms. Fiorillo his desire for the applicant to provide a specific elevation for mean high water based on tidal gages located both upstream and downstream of the site. Ms. Fiorillo asked if this request for information was consistent with other projects before the Conservation Commission. Atty. McNeill stated that requesting this information went against past practice within the City on this type of project. Chairman Fargo concurred based on his seven years experience on the Commission. Ms. Fiorillo then explained how difficult it would be to get the mean high tide elevation data requested since it would involve reviewing 19 years of tidal data. Ed Millman asked: What is the elevation difference between mean high water and highest observable tide? Chairman Fargo stated that, as depicted on the site plans, the difference in elevations is about 4 feet.

Chairman Fargo stated that most of the previous discussion was in response to questions he had raised about the application originally submitted by Crown Point Survey. The original application did not contain data regarding mean high water, the regulatory reference line for the City of Dover. During his review of the original application with City of Dover Codes Enforcement Officer and Planning Department staff, several inconsistencies were found between the application and the lot line adjustment plans submitted in 2002. His efforts to date had been to resolve these inconsistencies and clarify the City's requirements relative to applicable setbacks from mean high water. Chairman Fargo then observed that if the mean high water reference line presented by NH Soil Consultants is accepted, the City's 100-foot building setback from this line and the state's 50-foot setback from highest observable tide would roughly coincide. The proposed building position would essentially meet both the state's Shoreland and the City's most stringent building setback requirements, with the exception of a portion of the driveway and the walkway on the south side of the house that encroaches into the City's 100-foot setback. With this observation, the Commission's concerns regarding the proposed building's location and applicable setback requirements appear to be resolved.

Chairman Fargo then stated that he had three additional concerns about the proposed construction. First, the management of soil during construction and stabilization of disturbed areas after construction would need to be addressed. The Conservation District ordinance (Section 170-27 C 2a) requires: "*A soil erosion and sedimentation control plan is submitted to verify the planned avoidance of erosion along bodies of water*". Chairman Fargo stated that construction of the pool and house foundation would require the management and stockpiling of large quantities of soil very close to tidal waters. This would require special consideration in the plan and during construction. Secondly, Chairman Fargo expressed concern about providing access from the house to the proposed pier and dock. An effort should be made to minimize disturbance of the forested buffer during construction and use of this pathway. Finally, Chairman Fargo noted the requirement of the Shoreland Protection Act limiting the removal of trees to 50% of the basal growth within a twenty-year period and requiring the maintenance of a healthy well-distributed stand of trees. He advised the applicant to pre-plan any tree removal for water views.

Ed Millman expressed some concern regarding the construction of the fence around the pool, with regard to the Conservation District ordinance and Conditional Use Permit. Fargo noted that fences are considered structures and are subject to the ordinance restrictions.

Dean Peschel expressed concerns about the presence of steep slopes greater 20% on the site, as these would need to be specified in a Conditional Use Permit application to the Planning Board. Ms. Fiorillo said that there were slopes greater than 20% in the area of the proposed garage.

Ed Millman moved, seconded by Bill McCann, the following motion:

- **The Commission is satisfied that the proposed construction is set back 50-feet from the highest observable tide reference line (State requirement) and essentially 100-feet from the mean high water reference line (City requirement).**
- **The Commission also recommends that the applicant prepare and follow a plan to minimize soil erosion and run off during after construction (as required by Conservation District ordinance 170-27 C 2a). Any areas of construction and re-grading within 100-feet of mean high water, as well as areas with slopes greater than 20%, included the fencing, walkway, and the garage as shown on the plan, shall be addressed in a Conditional Use Permit application to the Dover Planning Board.**
- **Finally, the Commission endorses the small wetlands impact (254 square feet) associated with the driveway construction.**

The motion carried with all in favor.

Chairman Fargo deferred the Berthiaume application to later in the meeting, since the applicant was not present due to illness.

4. RE: Tax Map F, Lots 15 & 17A, Considering an application by Thomas and Carol Walsh, 164 South Shore Road, New Durham, NH, 03855, for an environmental review regarding construction of a roadway within the 50-foot setback from wetlands in a proposed 37-unit residential Open Space Subdivision (Emerald Woods Phase III) located off Littleworth Road. A portion of the site lies within a secondary groundwater protection zone.

Discussion

Doug La Rosa, of Tritech Engineering (representing the owners) presented an overview of the plan. Also present to represent the owners was Barry Gier, with Tritech. The Commission reviewed site plan CU-1 dated February 23, 2005. The development consists of two parcels totaling 73.8 acres. The development plan calls for 37 lots on 25 acres, keeping approximately 48 acres in open space. There are no wetlands impacts associated with the development, but there is an area where the proposed roadway encroaches into the City's 50-foot setback from wetlands in an area totaling approximately 6,000 square feet between proposed lots #17 and #18.

Chairman Fargo stated that the development plan has not been to the Technical Review Committee (TRC) or the Planning Board and that he considers this review by the Commission as preliminary, since the plan may change as it progresses through the City's reviews. Chairman Fargo noted that a portion of the site is within the City's secondary wellhead protection area associated with the Bouchard well located on French Cross Road. Mr. La Rosa responded that the plan, as drafted, would include only 6% impervious surface cover, well below the 20% limit associated with residential development. Mr. La Rosa stated that the development would be serviced by city water and sewer.

Joyce El Kouarti asked about how the open space area would be protected. Mr. La Rosa stated that the intent is to protect the open space through deed restrictions managed by a homeowner's association. Joyce inquired about access to the open space, noting that owners of units in the central portion of the development would not have direct access to the open space. Mr. La Rosa stated that there are existing trails in the designated open space and suggested that some accommodations might be made for limited public access to the trail system.

Chairman Fargo stated that he considered 37 units on 25 acres to be intense development. Fargo pointed out the Dover Natural Resources Master Plan recommended that the Subdivision and Site Plan Review regulations be amended to provide for submission of an Environmental Impact Analysis (EIA) for large developments (reference recommendation #12). The Master Plan also identifies high-value habitat areas adjacent to the development site. The Master Plan recommends that the City's regulations incorporate a wildlife impact study for developments located in such areas (reference recommendation #13). Fargo noted that these changes have not yet been made in the regulations, but the characteristics of this development might warrant such investigations. There was discussion of an EIA and a Wildlife Impact Study. Dean Peschel asked what would be the purpose of such studies. Fargo indicated that if adverse impacts are identified, mitigation might be proposed.

Joyce El Kouarti moved, seconded by Bill McCann, that the Commission endorse the approximate 6,000 square feet of encroachment as presented, with the additional recommendation that an EIA and wildlife impact study be undertaken and a mitigation plan be proposed if appropriate. The Commission requests that access to the existing trail be maintained as part of the development provided. The above recommendations assume that there will be no substantial changes made to the development plan as it progresses through the TRC and/or the Planning Board review. All in favor. Motion carried.

5. RE: Tax Map B, Lot 18, Considering an application by Tay Tav Partnership, LLC, for an amended Standard State of New Hampshire Dredge and Fill Permit (and an amended City of Dover Conditional Use Permit ?) to temporarily impact 3,800 square feet of wetlands to install a sewer line to service the Cornerstone Crossing residential subdivision.

Discussion

Luke Hurley, of Gove Environmental Services, was present to represent the project. Also present was Jim Taylor, of Tay Tav Partnership. Mr. Hurley gave a brief overview of the site plan prepared by Jones & Beach Engineers, dated 2/25/05. Mr. Hurley described the areas where wetlands impact was previously approved, and where the proposed new 3,800 square foot temporary impact would be located. Mr. Hurley described the impact area as a rather low-value grassy wetland. The construction plan is to

remove the sod in large chunks, install the sewer, and replace the sod with as little impact as possible. Ed Millman asked how long the impact area will be relative to manholes. Mr. Hurley said than manhole placement had not yet been addressed. It was agreed that the impact area is approximately 180-feet long. Dean Peschel stated that the City requires no more than 200-feet between manholes. Therefore, if properly designed, no manhole would be necessary in the wetland area.

Chairman Fargo started discussions by stating the original permit applications for this project were approved by City of Dover and NHDES Wetlands Bureau in the 2003 and 2004 time frame, respectively. The amended application to Wetland Bureau is related to providing city sewer service to the latest phase of the development. An amended City Conditional Use Permit may not be required. Fargo reminded Commission members of the sewer line extension discussed relative to the Haven Farm project amendment discussed in February 2005. This project amendment is to allow Cornerstone Crossing, previously proposed to be serviced by a community septic system, to tie into the same sewer line extension. Fargo asked Mr. Taylor whether the existing homes, that are now on a community septic system, would be connected to the sewer. Mr. Taylor responded that this is being negotiated.

Fargo noted that the most recent wetlands application review was contentious because several residents believed that the additional septic systems would exacerbate problems they are having with stormwater runoff and wet basements and yards. Curiously, the original development plan (in the late 1980's) for Cornerstone Crossing had delineated no wetlands on site.

Joyce El Kouarti moved, seconded by Marcia Colbath, to endorse the application as presented. Motion carried with all in favor.

6. New Business:

- **Joyce El Kouarti moved, seconded to go into non-public session in accord with RSA 91-A: 3 II d to discuss acquisition of land. Roll call vote:**

Colbath	yes
El Kouarti	yes
Millman	yes
Lobdell	yes
McCann	yes
Fargo	yes

Also present to act as resources during the non-public session were Anna Boudreau and Wendy Scribner, members of the Dover Open Land Committee. Both OLC members were acknowledged to be qualified to be included in the discussion of confidential information as related to OLC and Conservation Commission business.

Commission entered Non-public session at 7.20.

Non-Public Session

The Commission came back into public session at 7.35.

Ed Millman moved, seconded by Joyce El Kouarti, that the Commission authorize negotiations, by the Open Land Committee and Planning Department Staff, to purchase development rights (and establish a conservation easement) up to the amount of the City's appraisal. Motion carried all in favor.

Joyce El Kouarti moved, seconded by Ed Millman, that the Commission authorizes expenditure from the Conservation Fund, relative to an application to the Farm and Ranchland Protection Program, for an amount up to what was applied for to protect a parcel of land in Dover. Motion carried all in favor.

The Commission then returned to item # 3, which was deferred earlier.

3. RE: Tax Map 7, Lot 19A, Considering an application by Albert J. Berthiaume, 57 Boston Harbor Road, Dover, for a Standard State of New Hampshire Dredge and Fill Permit and a City of Dover Conditional

Use Permit to install rip-rap to stabilize an existing retaining wall (to fill 665 square feet of tidal buffer) at the subject address.

Discussion

Chairman Fargo started discussions by stating that the applicant could not be present due to illness. Fargo stated that he had discussed the plans with the applicant and could provide a brief overview. The plan is to install riprap in front of an existing retaining wall to protect the area from further erosion. The applicant states in the NHDES application that the rate of erosion has been increasing. There is an area of marsh grass along the western portion of the wall that will not be covered by the riprap. Ed Millman asked what are the dimensions of the proposed fill area? According to the plan, most of the fill will be in a 60-foot long by 10-foot wide area on the east side of the wall. Fargo said the plan states that the riprap would be installed at low tide, presumably by dropping it over the wall then arranging it to final configuration by hand. Dean Peschel stated that he felt the rip-rap would exacerbate the erosion problem by reflecting wave energy. He stated that the marsh grass area would likely be lost more quickly after the construction. Chairman Fargo stated that shorefront erosion is an increasing problem in New England. He quoted recent studies that suggest coastal flood elevations will increase by two feet in the next fifty years. This is described by the reports as a consequence of global warming.

Chairman Fargo stated that the Commission had previously endorsed projects of similar scope. The applicant is trying to protect his investment in his home. The wall and home are non-conforming with current state and municipal standards, i.e., they are too close to the water. That is unfortunate, but the Commission needs to consider the merits of the application, as presented.

Bill McCann moved, seconded by Joyce El Kouarti to endorse the State permit application. Motion carried with all in favor.

Chairman Fargo quickly presented remaining items on the agenda:

- Fargo stated that he would like to schedule a training workshop regarding stormwater management and non-point source pollution prevention. Copies of NH Coastal Program guides to: "Best Management Practices to Control Nonpoint Source Pollution" were distributed. Copies of the Dover Stormwater Management Plan, December 1999, will be e-mailed.
- Distribution of survey from NH Estuaries Program (earlier in the meeting)
- Announcement of a special meeting with Dover Open Lands Committee to review results of an ecological inventory of the Cochecho River watershed, April 7, 2005, 5:30 PM.
- Joyce announced that there will also be a special meeting with Dover Open Lands Committee to discuss "Drafting & Stewardship of Land Protection Agreements, March 29, 2005, 7:00 to 9:00 PM. Peter Helm and Steve Walker, with the State Office of Energy and Planning, Conservation Land Stewardship Program will guide the discussions.
- Joyce announced that after 3½ years of serving on the Commission, she has decided to resign so that others might become more involved.

7. Adjournment:

Motion to adjourn by Marcia Colbath, seconded by Joyce El Kouarti, motion carried all in favor. The Commission adjourned at 7:50 PM.