

City of Dover Conservation Commission
Minutes for April 4, 2005 Meeting
5:30 pm, City Hall, Council Conference Room

Members present: Tom Fargo, Chair; Marcia Colbath; Ed Millman; Bill McCann; Alban Lobdell; Dona Layton;

Member absent: Susan Eisler

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

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

Al Lobdell made a motion to approve; seconded by Marcia Colbath. Motion approved with Dona Layton abstaining because she was not at the March meeting.

2. RE: Tax Map G, Lots 19D, 24J, and 24K-3, considering an application by Tolend Road Properties, LLC. Tolend Road, Dover, for a Standard State of New Hampshire Dredge and Fill Permit and a City of Dover Conditional Use Permit to impact 22,686 square feet of wetlands to construct a 73-unit residential housing project located off Tolend Road between the Spaulding Turnpike and Columbus Avenue. Applicants propose to fill 12,735 square feet of wetlands to construct roadways and site access. An additional 9,951 square feet of temporary wetlands impact is proposed to construct sewers and other utilities.

Discussion

Attorney McNeil started discussions by summarizing the project's previous review by the Planning Board and City Council. The plan required rezoning a portion of the site and the sale of City owned land. The developer will provide sewer to the area that will facilitate the development of industrial land adjacent to the site. Members of the Conservation Commission and Planning Board completed a site walk on January 8, 2005. The Commission conducted a preliminary review of the project on February 3, 2005.

Barry Keith, wetlands scientist representing the applicant (David Sears), described the impacts as outlined in the NHDES Wetlands Bureau permit application. Copies of site development and wetlands impact plans were reviewed by the Commission. The site encompasses approximately 57 acres. Areas of wetlands were pointed out by Mr. Keith, as well as locations where crossings are proposed. Mr. Keith noted how the development plan avoided wetlands impacts as much as possible. Since the wetlands impact is greater than 10,000 square feet, the NHDES will require mitigation. Mr. Keith explained that mitigation can be through wetland creation, restoration, or permanent preservation of land area at least ten times greater than the impact. Land preservation is the proposed mitigation. 5.2 acres of approximately 50% upland, 50% wetlands would be the minimum area necessary to satisfy the NHDES. According to Mr. Keith, the applicants will set aside approximately 40 acres as open space, with approximately 15 acres designated as the mitigation area.

Chairman Fargo stated he had been following this application since the original Technical Review Committee (TRC) review. One issue is the City's desire to develop a ballfield (to be accessed from Columbus Ave) within proposed wetlands mitigation area. The amount of area required by the ballfield and associated parking has not yet been defined. Fargo stated that he felt the ballfield and parking area should not be considered as a part of the mitigation area. The Commission agreed. Marcia Colbath and Alban Lobdell stated that public access should be allowed to open space areas. This sparked discussion about where the public should be allowed access and where the privacy of the residents needed to be protected. David Sears proposed that the public could have access to the western portion of the site's open space and he drew a preliminary boundary on a site plan for the purpose of discussion. The Commission generally agreed that limiting public access to the area within the sketched bounds would be appropriate. The Commission acknowledged a willingness to accept responsibility for a conservation easement on the mitigation area.

Chairman Fargo stated that he had identified additional issues that he wanted to state for the record. The plan includes a 50-foot right of way along the parcel's eastern boundary with the Spaulding Turnpike. Fargo noted that there are wetlands that would be impacted should this access be constructed. Both Fargo and the applicants noted that using this right of way would be much less desirable than gaining access to the adjacent industrial parcel from Littleworth Road via the Cambridge Tool property. Fargo stated that he would like to see an agreement worked out now for future access from Cambridge Tool, so that the issue of the 50-foot right of way (and the potential wetland impacts) could be disposed of at this time. It was agreed that wetlands permitting associated with the future use of the right of way would require a separate permit.

Fargo also stated that he had concerns about “temporary” impacts associated with the sewer line installation. The City will need to perform periodic maintenance of the sewer line and will need large vehicle accessibility to each manhole. Fargo stated his concern about potential un-permitted wetlands filling between manholes over time. He suggested that future truck access for maintenance be evaluated and accommodations be planned and addressed in the wetlands application. Also regarding the sewer line, Fargo noted that shallow bedrock exists at the site and blasting may be necessary. Excavating in rock and backfilling with granular materials poses the potential to alter the hydrology that may impact wetlands. Fargo suggested that the use trench breaks (segments of low permeability clay backfill) be considered to minimize alteration of the existing hydrology near the sewer line.

The Commission then turned its attention back to the site plan. Fargo noted that wetland impact areas “B” and “E” represent fill for development not meeting the intent of only filling to provide access to developable upland. He stated that the proposed filling of all of “B” is largely a landscaping issue. The proposed filling of “E” is to allow the construction of units #38 and #39. Fargo stated that the proposed fill is minor (2,187 square feet) and that he didn’t have a particular problem because the site plan, as a whole, does a good job of minimizing and avoiding wetlands impacts. Fargo stated that he felt comfortable leaving the decision on filling wetlands areas “B” and “E” to the NHDES Wetlands Bureau. Ed Millman asked about the appropriateness of incorporating deed notations recognizing wetlands on individual properties and alerting the homeowners to their associated land-use limitations. The Commission reviewed the site plans and found that wetlands areas are generally contained within the open space to be held in common by the homeowners’ association. Individual lots do include land with the City’s 50-ft. wetland setback and the applicants agreed that deed notations could reflect this.

Bill McCann moved, seconded by Marcia Colbath, the following motion:

The Commission endorses the application with the following recommendations:

- **The Commission also recommends that the open space area reserved for future ballfield(s) be defined and not be included in any wetlands impact mitigation area. The wetland impact mitigation area would include at least 5.5 acres of contiguous open space located on the western portion of the site, the boundaries of which to be defined subject to reasonable satisfaction of Conservation Commission Chair.**
- **There will be limited public access to the open space associated with the wetlands mitigation area.**
- **Finally, the Commission recognizes that development of a access road along the 50-foot right of way adjacent to the Spaulding Turnpike would require a separate wetlands permit.**

The motion carried with all in favor.

3. RE: Tax Map L, Lot 111C, Considering an application by Robert Gifford, 306A Dover Point Road, Dover, for a Standard State of New Hampshire Dredge and Fill Permit to reconstruct an existing deck and pier and add a 3 ft. by 24 ft. ramp and a 10 ft. by 20 ft. floating dock at the subject address.

Discussion

Prior to the meeting Chairman Fargo had discussed the work with Glen Normandeau of Pickering Marine. Mr. Normandeau stated that the work is a replacement in kind with significant no changes in dimensions. Fargo stated that Mr. Normandeau has been before the board on numerous occasions and has an extensive knowledge of river conditions. Mr. Normandeau designs and constructs docks that minimize environmental impact while meeting the expectations of the NHDES and clients.

A motion was made by Al Lobdell; seconded by Ed Millman to endorse the project as depicted in the application, as it is a replacement in kind with no dimensional changes. Motion carried with all in favor.

4. RE: Tax Map L, Lot 41, Considering an application by Patricia Meloney and Norma Bell, 157 Spur Road, Dover, for a Standard State of New Hampshire Dredge and Fill Permit and a City of Dover Conditional Use Permit to construct a 14 ft. by 11.5 ft. deck and a 12 ft. by 20 ft. addition to the house at the subject address. The proposed additions are located within the State Shoreland Zone and City of Dover Conservation District (within 100-feet of tidal waters).

Discussion

Chairman Fargo started discussions by passing around a copy of the NHDES Wetlands Bureau application for the Commission to review. Fargo introduced the applicants Patricia Meloney and Norma Bell who were present to describe their project.

The applicants propose to construct an addition to the house, which is currently 51ft. from tidal waters. With the addition, the building would be 43 ft. from tidal waters. Marcia Colbath and Bill McCann noted that this would be contrary to the 50 ft. primary building setback requirement of the Shoreland Protection Act (RSA 483-B:9 II (b)). Marcia stated that at a recent NHDES workshop, Conservation Commission members were advised to not endorse applications that proposed to expand existing structures closer than the 50-ft. requirement, with the exception of decks as specified in RSA 483-B:11 I. Chairman Fargo noted that the Shoreland Protection Act allows municipalities to waive the setback requirements in areas where the Planning Board “finds that special local urbanization conditions exist”(RSA 483-B:12 I). The municipality can also make regulations more restrictive than the state’s. On undeveloped sites, the City of Dover’s zoning regulations establish a primary building setback from tidal waters of 100 feet, with the Building Inspector authorized to relax this to 75 feet. The applicants stated that Frank Richardson, NHDES Wetlands Bureau supervisor, had visited the site and expressed no reservations about the proposed addition.

Marcia Colbath asked if the proposed addition could be relocated. The applicants stated that they had looked at the possibility of expanding on to either the sides or roadside front of the existing structure, but had decided that such options were unworkable. Several Commissioners expressed concern regarding setting precedent.

Chairman Fargo noted that the Commission is an advisory board and that the ultimate decision regarding the approval of proposed construction would be made by the Planning Board and the NHDES Wetlands Bureau. The responsibility of the Commission (to the City) is to “provide a written review of the environmental effects of the proposed use” as outlined in the Conservation District zoning ordinance. Fargo stated that if both of those boards approve the construction, the Commission should prepare recommendations as to how to accomplish the construction with minimal impact to the environment. Fargo noted that another requirement of the Conservation District ordinance requires the applicants to submit a “soil erosion and sediment runoff control plan”. Fargo stated that the NHDES had prepared a guidance document outlining best management practices for this purpose. He offered to provide a copy. Fargo also stated that the applicants might consider offering mitigation such as planting diverse non-grass vegetation along the shorefront.

The following motion was made by Marcia Colbath, seconded by Al Lobdell:

- **Commission declines to endorse the expansion of the house, as proposed, because this would result in non-conforming structure under RSA 483-B: 9 II (b)**
- **In the event of DES and Planning Board approval, the applicant needs to provide a plan for erosion and sediment runoff control in accord with Dover Zoning Ordinance 170-27 C(2)(a)**

The motion carried with all in favor.

5. RE: Tax Map 31, Lot 4-D, Considering an application by Summit Land Development, P.O. Box 186, Dover, NH, for a Expedited Minimum Impact State of New Hampshire Dredge and Fill Permit and a City of Dover Conditional Use Permit to fill 1,145 square feet of wetlands to construct a 16-unit residential development along the Cochecho River between third and fourth streets. Development also impacts Dover’s Conservation District for development on slopes greater than 20% and within a 100-foot setback from the river.

Discussion

Doug La Rosa, of Trittech Engineering (representing the owners) presented an overview of the plan. Also present to represent the owners was Barry Gier, with Trittech. The Commission reviewed site plan CU-1 dated March 18, 2005.

Chairman Fargo started discussions by stating that he had attended the TRC review of the project and had investigated the local 100-year flood elevation and reference line elevation. The FERC approved spillway elevation at the Cochecho dam downstream is 37 feet. The 100-year flood elevation is 47.5 feet. The Cochecho River is classified as a fourth order stream so the development site falls within the state’s Shoreland Protection Act jurisdiction. There was discussion between Fargo and Mr. LaRosa about applicable regulations regarding the reference line elevation, shoreland and wetlands setbacks, etc. Fargo summarized that it was determined at TRC that the City’s Conservation District ordinance would apply to the site. The ordinance (170-27C2) states that the Commission needs to provide “a written review of the environmental effects of the proposed use” and that the applicant needs to prepare “a soil erosion and sedimentation control plan to verify the planned avoidance of erosion

along bodies of water". Fargo stated that erosion control during construction and stormwater management after construction should be the primary concerns.

Barry Gier pointed out, in the site development plans, specifications for erosion control during construction. Fargo noted that at TRC, changes to the stormwater management system were discussed, including construction of a plunge-pool type of structure at the main outlet between buildings #5 and #6. Mr. Gier responded that details of the engineering of the stormwater management system are being revised. Dean Peschel indicated that a stormwater system inspection and maintenance plan should be incorporated into the approvals.

Fargo turned the discussion back to the proposed wetlands impact. He stated that the existing wetland may appear to have little natural resource value, but it appears to have a functional value relative to retaining stormwater. Mr. LaRosa indicated that this function would be maintained by constructing deep-sump hooded catch basins. Fargo remarked that the proposed filling appeared to be intended to allow development. Mr. LaRosa responded that the site's access (driveway) is proposed to be constructed over the location of the wetland, therefore the DES policy is being followed. Fargo stated that mitigation might be offered relative to eliminating invasive species along the river, including on the City-owned land, and improving the landscaping along the river frontage and on the southern portion of the site.

Fargo also reiterated his earlier comments to the TRC regarding potential regulated substances in previously landfilled areas at the site and City's plans to develop a public trail on the City-owned land between the development and the river. Fargo noted the up to 15-foot elevation difference between the existing land surface and the basement floor level that would be constructed as a retaining wall. Mr. Kageleiry, the owner, replied that he had hired an environmental consulting firm to investigate any potential contamination. He also stated that he was willing to work with the City to provide aesthetically pleasing façade on the river side of the development.

A motion was made by Ed Millman; seconded by Marcia Colbath; that the Commission endorse the plan for the wetland impact to NHDES. The Commission recommends that the applicant provide a stormwater management system inspection and maintenance plan to the City of Dover as part of the soil erosion and runoff control plan required by 170-27 C2a. Motion carried with all in favor, Al Lobdell abstained, as he owns property in the area.

6. New Business:

- Discussion of stormwater management and non-point source pollution prevention.

Fargo described the UNH CSTEVE research facility and its relevance to proposed development projects in Dover. The Commission will try to attend a workshop scheduled for June 1st. Dean Peschel suggested that NHEP might be able to provide registration fees. Fargo to investigate.

- Distribution and discussion of "NH Association of Conservation Commissions" handbooks.
- 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.
- Concerns of the Commission (*Open to input from all Commission members.*)

7. Adjournment:

Motion to adjourn by Alban Lobdell, seconded by Ed Millman, motion carried all in favor. The Commission adjourned at 7:42 PM.