



CITY OF DOVER

## CONSERVATION COMMISSION MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Conference Room – 288 Central Ave, Dover, NH  
Meeting Date: **Monday, September 8, 2008**  
Meeting Time: **5:30 pm**

Commission Members Present: Tom Fargo, Chair; Bill McCann, Vice Chair; Alban Lobdell; Marcia Colbath; Chris Hunt.

Member Absent: Britt Schuman

Also Present: Dean Peschel, Dover Environmental Program Director

1. Approval of minutes from August 4, 2008 meeting.

Bill McCann made a motion to approve; Marcia Colbath seconded; motion approved unanimously.

2. RE: Map 21, Lot 5: Considering an application by KPRP/165 Henry Law Ave, LLC. 28 Meadow Lane, Rochester, NH, 03867, for a City of Dover Conditional Use Permit to re-grade a 2,219 square foot area with slopes greater than 20% as part of a nine-lot residential subdivision development at 165 Henry Law Ave.

John Berry was present to give an overview of the project. The Commission needs to review the project to provide input on a Condition Use Permit application necessary because of planned re-grading of a area with >20% slope. Mr. Berry explained that the sloped area adjacent to the existing garage would be re-contoured as part of the development. The applicant will develop and implement a soil erosion and run-off control plan as part of the NHDES Alteration of Terrain permit. This permit will also satisfy the application requirements of the City of Dover Conditional Use Permit. Chairman Fargo asked about the proximity of the proposed houses to the 50-foot wetlands setback areas on lots 5-6, 5-7, and 5-8. The Commission discussed the limited area for future landscaping and use of back yards on these lots. This discussion followed concerns recently addressed at 10 Nantucket Court (see August 4, 2008 meeting minutes).

After further discussion, the Commission agreed that a site walk with the Planning Board would be in order. Chairman Fargo requested a motion to place the application from the table. **Bill McCann moved, Marcia Colbath seconded, to place the application from the table pending a site walk with the Planning Board. The motion passed unanimously.**

3. Other Business:

- Discussion of Commission's work with the Planning Board Environmental Subcommittee regarding possible changes to Dover zoning regulations. The meeting scheduled for Thursday, September 4<sup>th</sup> at 10:30 AM in City Hall was not held.
- Update on efforts to designate the Cochecho River into the NH Rivers Management and Protection Program. Chairman Fargo reported that the NH Rivers Management Advisory Committee met and endorsed the application. The DES Commissioner will then review the application and make a recommendation whether a bill should be submitted to the NH General Court (Legislature) to include the Cocheco River in the NH RMPP.
- Opportunity for Conservation Commission members to attend training offered by NH Local Government Center on September 20<sup>th</sup>. See: [http://www.nhlgc.org/LGCWebSite/PDFDocuments/Flyers/ClerksWorks\\_Flyer\\_web.pdf](http://www.nhlgc.org/LGCWebSite/PDFDocuments/Flyers/ClerksWorks_Flyer_web.pdf)
- Chairman Fargo added an item to the agenda. He was recently asked by the NH



**CITY OF DOVER**

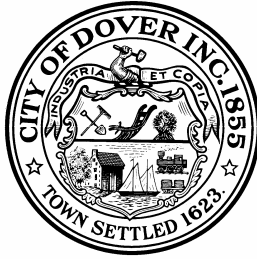
## CONSERVATION COMMISSION MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Conference Room – 288 Central Ave, Dover, NH  
Meeting Date: **Monday, September 8, 2008**  
Meeting Time: **5:30 pm**

Department of Transportation to discuss with the Commission plans to place a conservation easement on the Day property on County Farm Cross Road & Sixth Street and to also allow water supply development on the parcel. Chairman Fargo asked the Commission for authorization to write a letter to the NH Department of Transportation regarding the compatibility of combining natural resource protection and water supply development. Chairman Fargo described the safeguards that would protect both land uses. The Commission agreed. **Bill McCann made a motion to authorize Chairman Fargo to write a letter as discussed; Al Lobdel seconded; the motion passed unanimously.** *Chairman's Note: The letter is reproduced below.*

### 3. Adjournment:

The Commission voted unanimously to adjourn at 6:20 PM.



c/o City Planner  
288 Central Avenue  
Dover, NH 03820  
(603) 516-6008

## **City of Dover, New Hampshire**

### **CONSERVATION COMMISSION**

October 15, 2008

Mr. Christopher Waszczuk, Chief Project Manager  
New Hampshire Department of Transportation  
P.O. Box 483  
Concord, NH 03302-0483

RE: Compatibility of Wetlands Impact Mitigation and Water Supply Development

Dear Mr. Waszczuk:

This letter is to address concerns you expressed about including language in the wetlands impact mitigation conservation easement for the Day property that would allow the City of Dover to some day develop a water supply source on the property. As we discussed, there are two reasons why the Dover Conservation Commission recently endorsed a motion stating that these two conservation purposes are not necessarily incompatible. That motion, approved at the September 2008 Conservation Commission meeting, also recommended that the Commission request the NHDOT to include provisions for future water supply development in the Day conservation easement agreement.

The first reason why the Commission felt that development of a water supply would be compatible with the preservation goals is related to permit requirements for large groundwater withdrawals. As required by the NH Groundwater Protection Act, (RSA 485-C) any large capacity water-supply well developed on the Day property would require a large groundwater withdrawal permit. This statute requires that permitted large groundwater withdrawals have no unmitigated adverse impact on nearby water users or the environment. The NHDES will carefully assess any proposed withdrawal over 57,600 gallons per day and will impose permit conditions to guard against degradation of the ecological values protected by the conservation easement. However, should an adverse impact to the environment occur, NHDES rules (Env-Ws 388.04) require the withdrawal permit holder to: a) Reduce the proposed production volume of the withdrawal to a level where no adverse impacts are anticipated; or b) Design and implement mitigation measures.

Secondly, the Commission is aware that the City of Rochester owns a property, locally known as the Henderson parcel, where there is both a wetlands impact mitigation easement held by the Strafford Rivers Conservancy and a large groundwater withdrawal permit for the City of Rochester (NHDES LGWP 2008-0001). Prior to the recording of the conservation easement (October 19, 2005; SCR Book 3278, Pages 594 through 605; see attached copy), the City of Rochester, the Strafford Rivers Conservancy, and the resource agencies had in-depth discussions about the compatibility of the wetlands impact mitigation and water supply development. The parties involved with that agreement apparently agreed that the development of a permitted public water supply and the preservation of natural resource values would not be mutually exclusive.

#### **Background**

The NHDOT is negotiating the purchase of a conservation easement agreement with the George Day 2006 Revocable Trust on 39.95 acres of land in Dover, NH (Dover Tax Map B, Lot 8; see attached plan). The purpose of this easement is to permanently protect valuable wetlands and riparian areas surrounding Blackwater Brook as part



**CITY OF DOVER**

## CONSERVATION COMMISSION MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Conference Room – 288 Central Ave, Dover, NH  
Meeting Date: **Monday, September 8, 2008**  
Meeting Time: **5:30 pm**

of the mitigation package for wetlands impacts associated with the Newington-Dover project (Project # NHS-027-1(037), 11238). Obtaining a conservation easement on the Day property would satisfy the mitigation plan, outlined in Section 4.6.5 of the Newington-Dover Environmental Impact Statement, to preserve “30 to 40 acres in the Blackwater Brook area in Dover”.

In September 2006 the City of Dover secured an agreement with Mr. Day to conduct water supply investigations on the subject property. The City installed two test wells in and subsequently converted one of the test wells to a potential production well in June 2007. A preliminary pumping test of the production well indicated that it has a safe yield of approximately 100 gallons per minute, or it is capable of producing approximately 144,000 gallons per day. Anticipated groundwater withdrawal rates are therefore greater than the 57,600 gallon per day regulatory threshold. The locations of these wells are shown on the attached easement plan.

### **Proposed Easement Language**

The draft conservation easement for the Day property had a provision in the “Reserved Rights” Section that would allow the City of Dover to someday develop a water supply:

**“3. RESERVED RIGHTS”**

*“G. The Grantor retains the right to develop a community drinking water supply owned by a municipality, provided that such well development does not adversely impact Blackwater Brook, adjacent wetlands, or the unique habitat of the Property and its surroundings.”*

The conservation easement for the Henderson parcel in Rochester, which was apparently endorsed by the resource agencies, contains restrictions more rigorous than the above; see Section 3 Reserved Rights, A (pages 3 through 5) on the attached conservation easement agreement. The Henderson conservation easement requires the City of Rochester (Grantor) to obtain written approval of a “Water Extraction Plan” from the Strafford Rivers Conservancy (Grantee) prior to the commencement of any groundwater withdrawal or construction of improvements related to the withdrawal. This might be an appropriate model for Reserved Rights in the Day conservation easement. Following this model, a land trust such as the Strafford Rivers Conservancy could be designated as the Grantee. This might avoid a problem should the City acquire the property in the future for a water supply. I don’t believe the Conservation Commission could hold an easement on land owned by the City.

In conclusion, the Dover Conservation Commission requests that the conservation easement for the Day property include provisions allowing the City of Dover to someday utilize the water supply well already on the property.

Sincerely,

Thomas Fargo, Chairman  
Dover Conservation Commission

Attachments:



**CITY OF DOVER**

## CONSERVATION COMMISSION MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Conference Room – 288 Central Ave, Dover, NH  
Meeting Date: **Monday, September 8, 2008**  
Meeting Time: **5:30 pm**

Henderson Parcel Conservation Easement, SCR D Book 3278, Pages 594 through 605  
Conservation Easement Plan - Day Property, Dover Tax Map B, Lot 8

cc: Mike Joyal, Dover City Manager  
Steve Bird, Dover City Planner  
Marcia Colbath, OLC Chair  
Dean Peschel, Dover Environmental Projects Manager  
Allan Krans, Dover City Attorney  
Anna Boudreau, Executive Director, Strafford Rivers Conservancy  
James Schulte, Attorney for George Day  
Sarah Pillsbury, NHDES Drinking Water and Groundwater Bureau