



CITY OF DOVER

CONSERVATION COMMISSION MINUTES

Meeting Type: Regular Meeting
Meeting Location: Council Conference Room – 288 Central Ave, Dover, NH
Meeting Date: **Monday, December 1, 2008**
Meeting Time: **5:30 pm**

Commission members present: Tom Fargo, Chair; Bill McCann, Vice Chair; Britt Schuman; Alban Lobdell; Marcia Colbath; Chris Hunt.

Also present: Dean Peschel, City Staff Liaison & Environmental Program Director

1. Approval of minutes from November 3, 2008 meeting.

Chairman Fargo stated that since he had to leave the November 3rd meeting early, he did not have a summary of discussions about the River Street pump station upgrades. He requested that Dean Peschel prepare a summary of this agenda item so that the minutes could be completed before the next meeting. The Commission agreed to defer the review and approval of the November 3rd meeting minutes.

2. RE: Map I, Lot 94-C: Considering a request from Scott Coughlin, 10 Hidden Valley Drive, Dover, for a preliminary review of a proposed wetlands impact for a subdivision roadway crossing for a development and possible land protection project located off Piscataqua Road.

Summary of Application:

Mr. Coughlin was advised seek input from the Conservation Commission regarding Dover's Wetlands Protection District Zoning Regulation 170-27.1 which requires a Conditional Use Permit from the Planning Board to waive the requirement that: *"any construction altering the surface configuration of the land, shall be set back at least fifty (50) feet from a Wetlands Protection District."* (170-27.1 G (1)). *"The Planning Department shall notify the Conservation Commission of all projects and construction proposed in wetlands districts for the purpose of allowing the Commission to make recommendations prior to approval"* (170-27.1 D (2)).

Testimony Received:

Kevin McEneaney (of McEneaney Survey Associates) described the proposed development plan. The plan includes nine residential and one commercial lot on the approximate 50 acre parcel. The development plan also includes protected open space to potentially be transferred to the Nature Conservancy. A proposed shared driveway for two (?) of the residential lots would need a State NHDES Wetlands Permit and City Conditional Use Permit for a wetlands and wetlands buffer impact, respectively.

Findings of the Commission:

The Commission acknowledges the proposed wetlands impact as depicted in the preliminary development plan. A formal application will be forthcoming.

Recommendation(s):

The Commission has no recommendations at this time.



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3. RE: Tax Map G, Lot 13; Further consideration of an application by David and Susan Eisler, 344 Washington Street, Dover, for an **after-the-fact** City of Dover Conditional Use permit to construct a one-foot high, 50 ft \pm long temporary dry stone curb along their property line, perpendicular to the bank of an unnamed tributary stream to the Cochecho River to prevent seasonal flooding of their home.

Summary of Application:

The Eislers were requested by the Planning Department to submit an application to the Conservation Commission for a review in accordance with Dover's Conservation District Zoning Regulation 170-27 which requires a Conditional Use Permit from the Planning Board for: *“altering the surface configuration of the land”* (170-27 C (2)) in *“those areas within a minimum of fifty (50) feet of the mean high water of any stream, brook, or other freshwater body”* (170-27 B (2)). The Commission is responsible for providing the Planning Board with: *“a written review of the environmental effects of the proposed use upon the area in question”* (170-27 C (2) (c)).

Testimony Received:

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David and Susan Eisler provided the Commission with a map of their property, photographs of the constructed “temporary dry stone curb”, and photographs of the area during periods of flooding. They stated that the flooding of their home and property is being made worse, in magnitude, duration, and frequency, by inadequately engineered and un-permitted modifications to the driveway and stream culvert on the abutting property owned by Mr. John Penaskovic and Ms. Diane Dewyngaert. The purpose of the installed “temporary dry stone curb” is to divert the floodwaters away from the house back into the stream. The Eislers also described conditions and activities that they have observed upstream of their property that they say contributes to the flooding.

Chairman Fargo made a motion to suspend consideration of this application until a site review could be completed. Motion was seconded by Vice-Chair McCann; all were in favor.

December 6, 2008 Site Review and Continuation of the Regular Meeting

Commission members present: Tom Fargo, Chair; Bill McCann, Vice Chair; Britt Schuman; Alban Lobdell.

David and Susan Eisler showed the Commission the stream (including evidence of flood damage) and “temporary dry stone curb” they installed to mitigate future flood damage. They restated their contention that the inadequate culverts under the driveway and the recently increased height of the driveway, due to un-permitted re-grading by Mr. Penaskovic, motivated them to install the “temporary dry stone curb” to divert future flooding away from their house.



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Mr. John Penaskovic joined the discussions at the site review. He stated that he had secured permission and/or appropriate permits from the City for all modifications he has made to his driveway and the culvert. He also described conditions and activities that he has observed upstream of and on his property that he says contributes to the flooding. He stated that he objected to the Eisler's "temporary dry stone curb" for two reasons: 1) he is concerned that the "curb" will cause erosion on his property; and 2) he believed that the existing "curb" was placed in wetlands without proper permits. Mr. Penaskovic requested an opportunity to prepare and formally present his concerns about the application to the Commission.

Chairman Fargo described conversations he had with Dori Wiggin, at the NHDES Wetlands Bureau, and Tom Clark, Dover's Building inspector. Fargo stated that there are clearly "watershed scale" issues related to the flooding that need to be, and apparently will be, addressed by both the NHDES and the City of Dover. He requested all to keep focused on the issue of the Conditional Use Permit for the "temporary dry stone curb" and the charge of the Commission to review the application and provide recommendations to the Planning Board regarding the "*environmental effects of the proposed use*".

Chairman Fargo made a motion to re-suspend consideration of this application until the next regular meeting in January. Motion was seconded by Vice-Chair McCann: all were in favor.

DRAFT Findings of the Commission:

The Commission concludes, based on the evidence presented and observations made at the site, that:

1. The flooding of the stream is strongly influenced by the capacity of a 200+ foot long culvert that acts as the outlet to a pond upstream of both the Eisler's and Penaskovic/Dewyngaert's properties. The NHDES is working on an administrative solution to this problem. This watershed-scale issue is outside the purview of the Commission.
2. The hydraulic capacity of the culverts under the Penaskovic/Dewyngaert's driveway is inadequate to contain the volume of water flowing during periods of high runoff. The present slope of the driveway diverts much of the overflow toward the Eisler's basement.
3. There have been alterations to the surface configuration of the land owned by Mr. Penaskovic and Ms. Dewyngaert in the vicinity of the stream. The owners have been requested by the City of Dover to "*restore the property to its original condition or petition the Planning Board for an after the fact Conditional Use Permit.*" (see attached letter dated September 25, 2008, response October 17, 2008, and follow-up dated November 18, 2008)
4. The "temporary dry stone curb" that has been built on the Eisler's property is unlikely to provide protection from future flooding since it has many gaps and



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opening through which water may pass.

Recommendation(s):

To be formulated by the Commission on January 5, 2009.

4. Considering an opportunity to apply for a 2008 Community Technical Assistance Program grant from the New Hampshire Estuaries Project (NHEP) to hire a consultant to update Dover's GIS inventory of protected open space lands.

Chairman Fargo informed the Commission about a potential opportunity to receive a grant from the NHEP. He asked for the Commission's approval to apply.

Bill McCann made a motion to apply for the grant as described by Chairman Fargo. Marcia Colbath seconded; all were in favor.

Chairman's note: The opportunity for a 2008 CTEP grant had closed.

5. Other Business:

- Election of Officers for 2009:

Chairman Fargo noted that since this was the last meeting for 2008, election of officers for 2009 should have been included on the agenda. Fargo asked for nominations. After a brief discussion, the following slate of officers was presented:

Chairman: Thomas Fargo

Vice-Chairman: Bill McCann

Secretary: vacant – Fargo to investigate City staff support.

A motion to approve the slate of officers was passed unanimously.

- Open forum for concerns of the Commission

6. Adjournment: