



CITY OF DOVER

## CONSERVATION COMMISSION MINUTES

Meeting Type: Regular Meeting  
Meeting Location: Council Conference Room – 288 Central Ave, Dover, NH  
Meeting Date: **Monday, July 6, 2009**  
Meeting Time: **5:30 pm**

Commission Members Present: Tom Fargo, Chair; Bill McCann, Vice Chair; Marcia Gasses; Lauren Jacobi.

Commission Members Absent: Alban Lobdell; Chris Hunt

1. Approval of minutes from May 4, 2009 meeting.

**Deferred without objection to the next meeting.**

2. RE: Tax Map 7, Lot 1, Update on an application by Debra W. Ford, 3 Boston Harbor Road, Dover, for a State of New Hampshire Wetlands Bureau Permit by Notification to repair an existing rock retaining wall within the tidal buffer area of Little Bay at a private residence located at the subject address.

Action by the Commission: Chairman Fargo described the history behind this application through references to past meeting minutes as attached to the agenda and these minutes (below). Fargo stated that the past action of the Commission recommended that the applicant complete the repairs and also pursue a more permanent solution to the perennial problems associated with the collapsing sea wall. Fargo indicated that based on discussions with NHDES staff and Ms. Weiss-Ford, that an application for amend the 2007 State permit to reinforce the sea wall and make it more durable would be forthcoming. Fargo stated that he had signed the Wetlands Bureau Permit by Notification indicating the Commission had no objection to the repairs, based on previous votes documented in Attachment A.

3A. RE: Tax Map M, Lot 1; Further consideration an application by Lydia V. Scott 2002 Trust, 220 Back Road, Dover (agent :McEaney 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 and the repair of same.

Action by the Commission: Chairman Fargo noted that the Commission had tabled its review of this item at the July 7, 2008 meeting, as documented in Attachment B to the agenda and below. **Bill McCann made a motion to remove this item from the table, seconded by Lauren Jacobi, all in favor.**

Kevin McEaney, of McEaney Survey Associates, briefly described what had taken place over the past 364 days. The reason for the tabling action, the lawsuit has been resolved out-of-court. Fargo described the permit issues as having two components: 1) the after-the-fact permit application associated with the constructed stair structure , and 2) the applicant's plans to repair the cracked foundation visible in the photographs reviewed by the Commission. After further review of testimony presented in July 2008 and discussions about the application, Chairman Fargo made the following motion:**1) The Commission can't find a compelling reason for the applicant to modify or remove the existing structure, and 2) The Commission endorses applicant's plan to perform maintenance work on the cracked foundation as long as the this work is done at low tide and any excavated soils are removed to an area above the tidal range. Motion was seconded by Bill McCann, and passed with unanimous approval.**



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- 3B. RE: Tax Map M, Lot 1; Considering an application by Lydia V. Scott 2002 Trust, 220 Back Road, Dover (agent :McEneaney Survey Associates) for a Conditional Use Permit and NHDES Standard Dredge and Fill Permit to fill 1,714 square feet wetlands to construct a shared driveway for two of four lots proposed for a residential subdivision at the subject address.

Action by the Commission: Kevin McEneaney, of McEneaney Survey Associates, briefly described the proposed configuration of the proposed four-lot subdivision. The proposed driveway crossings are located to avoid and minimize wetlands impacts to the maximum extent possible. Potential for on-site mitigation is limited as the development plan already includes lands protected under a conservation easement. Mr. McEneaney suggested that the total wetland area impacted could be decreased to about 1,200 square feet if the Planning Board waived the 20-ft driveway width requirement requested by the Fire Department.

**Chairman Fargo made a motion that the Commission endorses the application with the recommendation that the Planning Board waive the 20-ft driveway width in the areas of the wetlands crossings. This motion was later amended to clarify that if such a waiver was not granted, the Commission would still endorse the application. Amended motion was seconded by Marcia Gasses, passed with unanimous approval.**

4. RE: Tax Map 20, Lot 13; Considering an application by Cricket Brook Condo, Henry Law Avenue, Dover (agent :Wayne McKay Construction) for an NHDES Standard Dredge and Fill Permit to perform a maintenance dredge of the storm water detention pond at the subject address (Reference: NHDES File #2009-1303) *Chairman's note: This application does not require a City of Dover Conditional Use Permit.*

Action by the Commission: Mr. McKay described the proposed work to dredge the storm water detention pond. With him was a representative of the Management Company (name not recorded) and Laurie Downes, resident and Cricket Brook Condo Association member. Mr. McKay and Ms. Downes described problems experienced with flooding and sediment accumulation in the detention pond. Mr. McKay described the development of the work plan including input from City of Dover Planning, Community Services, and Engineering staff. Ms. Downes described frustration with the City's inaction to address active erosion on Dover Housing Authority property upstream that is contributing, in her view, to the rapid filling of the pond necessitating frequent dredging.

**Chairman Fargo made the following motion: 1) The Commission endorses the application for the NHDES Standard Dredge and Fill Permit to perform a maintenance dredge of the storm water detention pond, recognizing that the applicant proposes to repeat the dredging operation perhaps biennially during the 5-year period that the permit will be valid. 2) The Commission recommends that the applicant seek resolution of the active erosion problem with Jack Buckley, Director of the Dover Housing Authority. Motion was seconded by Bill McCann, passed with unanimous approval.**

5. Other Business:



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**Chairman Fargo made a motion that without objection a late addition would be made to the agenda. No objection was voiced by those present.**

RE: Tax Map J, Lot 1 and Map I, Lots 81B & 27A: Considering an application by Public Service Company of NH, P.O. Box 330, Manchester, NH 03105-0330, for a State of NH Wetlands Bureau Permit by Notification and a City of Dover Conditional Use Permit to temporarily impact 11,566 square feet of wetlands, and permanently impact 137 square feet of wetlands to reconductor Transmission Line M-183, which requires repair and replacement-in-kind of existing utility structures in wetlands.

Action by the Commission: Ian Trefrey, of NH Soil Consultants, gave an overview of the project. With him was Laura Games (PSNH – Siting and Permitting Specialist) and Larry Morse of NHSC. It was discovered Marcia Gasses is an abutter to the project. After discussions regarding potential conflict of interest, **Chairman Fargo made a motion that Marcia abstain from voting, but also that the Commission conclude that she had no fiduciary interest and could therefore participate in the review to maintain quorum. Motion was seconded by Bill McCann and passed 3-0-1.**

Mr. Trefrey described the work to be done within wetland areas and the precautions that PSNH would take to minimize damage. He reviewed the work plan provisions to restore any impacted wetlands. Reference was made to a NHDES Wetlands Rules that gives special consideration to utility line maintenance activities.

**Chairman Fargo made a motion to not intervene in the State of NH Wetlands Bureau Permit by Notification process, seconded by Bill McCann, passed 3-0-1.**

After further discussions regarding specific areas where temporary wetlands would be managed **Chairman Fargo made a motion to endorse the City of Dover Conditional use permit with the understanding that wetlands impacts would be avoided to the maximum extent possible but they occurred the impacts would be restored according to the specifications in the application. Motion was seconded by Bill McCann and passed 3-0-1.**

6. Adjournment:

### **Attachment A to July 6, 2009 Dover Conservation Commission Agenda**

**From:** Thomas Fargo [mailto:thomasfargo@comcast.net]  
**Sent:** Monday, February 04, 2008 12:18 AM  
**To:** dwiggin@des.state.nh.us; dprice@des.state.nh.us  
**Cc:** 'Bird, Steve L.'; 'Parker, Christopher G.'; 'Clark, Thomas L.'  
**Subject:** NHDES File #2007-02841 - Debra W. Ford, 3 Boston Harbor Road

Regarding NHDES File #2007-02841 - Debra W. Ford, 3 Boston Harbor Road

The Dover Conservation Commission reviewed the application referenced above on January 7, 2008. This is the second time that the applicant has been before the Commission with an



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application to repair the shorefront retaining wall. On August 23, 2004 the Commission reviewed an NHDES Permit by Notification application to repair damage to the existing retaining wall in-kind. The Commission made a rather prophetic observation that the repairs proposed at that time would likely not last and suggested that rip-rap reinforcement be evaluated (see highlighted sections of August 23, 2004 meeting minutes below).

On January 7, 2008, the Dover Conservation Commission discussed the December 27, 2007 NHDES Standard Dredge and Fill application of Debra W. Ford, 3 Boston Harbor Road. This application was required as a follow-up to a December 7, 2007 NHDES Emergency Authorization to repair the again-failed wall. The Commission voted unanimously to forward the minutes from its August 23, 2004 meeting to the NHDES and City of Dover Planning Board as an indication that the Commission had no concerns of adverse environmental impacts resulting from the proposed repairs and as a restatement of previous recommendations.

Thomas Fargo, Chairman

Dover Conservation Commission

RE: Tax Map 7, Lot 1, Considering an application by Debra W. Ford, 3 Boston Harbor Road, Dover, for a State of New Hampshire Wetlands Bureau Permit by Notification and a City of Dover Conditional Use Permit to repair and reinforce with rip-rap 90 linear feet of an existing rock retaining wall within the tidal buffer area (Dover Conservation District) of Little Bay at a private residence located at the subject address.

### **Meeting Minutes from August 23, 2004; RE: NHDES PBN 2004-02216.**

#### Discussion

The Commission reviewed application materials submitted by Ms. Ford. The applicant was not able to be present. The applicant wishes to repair an existing stonewall located on the point of land near the south end of the Scammell Bridge. The stonewall has been damaged by wave action and frost. Per the application, the work is to be done at low tide and without machinery in the water. Chairman Tom Fargo stated that a smaller retaining wall of lesser scale in this area would have been a more environmentally sound choice, but that the present damage to the existing stonewall must be fixed.

Ed Millman noted that procedurally, the Permit by Notification would not allow the Commission any input on the application. He stated that we should not waive our right to provide comments to the NHDES regarding the proposed seawall reconstruction. There was a recognition that this project might also need approval from City through a Conditional Use Permit from the Dover Planning Board, relative to Conservation District Zoning Ordinance, 170-27 C (2).

Regarding the Commission's technical review of your project, it appears, from the materials submitted, that the plan is to reconstruct the existing seawall as close to its original configuration as possible. It appears that wave action and possibly ice damage has caused



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the wall to become undermined and collapse from the bottom upward. The Commission members discussed a long-term view of this problem and suggest that a simple reconstruction would likely result in a similar situation only a few years down the road, potentially requiring another reconstruction effort. The Commission is not only concerned about the applicant's future costs, but our primary focus is on potential impacts to the coastal environment. Coastal engineering studies indicate that seawalls tend to redirect the erosive energy of wave action toward adjoining properties and in front of the seawalls themselves. This often results in the erosion of neighbor's property and the loss of protected salt marsh areas. Neighbors of properties with seawalls are often compelled to construct their own walls to minimize their losses. This may progress to a point where most property owners in the area end up requesting permits to build seawalls out of self-defense. Although the Commission members are not coastal engineers, several recommended that the applicant should evaluate reconstructing the collapsed seawall with some type rip-rap structure. The rationale is that the destructive wave energy is more likely to dissipate through an open-framework structure and would therefore be less likely to require repeated reconstruction. The open-framework of a rip-rap retaining structure would also be less likely to reflect wave energy onto adjoining properties and toward associated tidal marsh areas.

Alban suggested that repairs to the wall should be made by placing new stones or rip-rap on against the existing wall, thereby avoiding disturbances to the soil.

**Ed motioned to endorse the application with the recommendation that repairs are made by reinforcing the existing wall, so that the soil is not disturbed. Dona seconded the motion. The vote was unanimous to approve.**

*Chairman's note: Applicant requested reconsideration based on a determination by the Planning Department and Codes Enforcement Officer that the proposed repair would not require a City of Dover Conditional Use Permit. Secondly, the applicant stated that she only has one neighbor along the coastline and because of the layout of the coastline, the wave energy is not reflected to that property. In a subsequent pole of the membership, a majority of the Commission approved action by the Chairman to forward the Permit by Notification to the Wetlands Bureau. An e-mail documenting the Commission's concerns was forwarded to the NHDES Coastal office.*

### **Attachment B to July 6, 2009 Dover Conservation Commission Agenda**

RE: Tax Map M, Lot 1; Considering an application by Lydia V. Scott 2002 Trust, 220 Back Road, Dover (agent :McEaney 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.



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Kevin McEaney 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 McEaney Survey Associates.

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.



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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.**



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