



CITY OF DOVER

DOVER CONSERVATION COMMISSION – MINUTES

Meeting Type: Regular Meeting
Meeting Location: First Floor Conference Room - 288 Central Avenue Dover NH
Meeting Date: Monday, May 13, 2013
Meeting Time: 5:30 pm

MEMBERS PRESENT: Bill Hunt (Chair), Marcia Gasses, Lauren Jacoby, Ron Hebert, Cora Quisumbing-King, Kevin Perron, Kris Houle (arrived at 6:50)

STAFF PRESENT: Steve Bird (City Planner)

OTHERS PRESENT: Kevin McEneaney, Jeff Rowe, Rick Hebbard, Mary Hebbard, Heidi Holman, Tony McManus, others

The meeting was convened by Chair Hunt at 5:30 PM.

1. APPROVAL OF THE PRIOR MEETING MINUTES

Quisumbing-King moved to approve the April 8, 2013 minutes, Perron seconded. Vote: Unanimous

2. OLD BUSINESS

A. Discussion on NH Fish & Game Plans Related to City Parcel (J-3) off Garrison Road

1. Request for Release of New England Cottontail Rabbits Onto Parcel

Hunt asked Holman of NH Fish & Game if she had any comments she wanted to make about the project.

Holman: NH Fish and Game has discussed the landowner liability issue with the NH Attorney General's Office. First of all the likelihood of killing a cottontail rabbit during mowing is very low. State law does have a civil suit section so that means there is no private liability, so it would only be Fish and Game that would have the ability to make a judgment on this issue. We would expect that it would be very unlikely for someone to be prosecuted by Fish and Game for hitting a New England Cottontail rabbit. Each incident would have to be analyzed and if it was not a premeditated act, it would be very unlikely. Hunting is prohibited.

Hunt: Would you say that it would be like someone who hit a rabbit crossing a road with a vehicle?

Holman: Exactly.

Hunt: We are being asked for a recommendation to the City Manager regarding the release.

Gasses: I support this but I would want to see in our recommendation to the City Manager that any farmer that is performing farming operations and a rabbit is harmed, that the landowner is not held liable.

Holman: How would you like to see that clarity?

Gasses: I would be more comfortable if there was something in writing. I don't want to put any restrictions on the landowner that are not there now.

Holman: It is difficult to issue such a letter as it is such a rare occurrence. There is no need for a landowner to modify their mowing practices.

Gasses: I want to stipulate that someone that is conducting mowing is not liable. What is the big deal about putting it in there?



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Hunt: It is a reflection of the litigious society that we live in.

Hebert: Will the land be closed for hunting?

Holman: No it is closed for hunting of the NE Cottontail already since 2008, other hunting is allowed. It is up to the City.

Perron: What is the benefit to us for reintroducing the cottontail?

Holman: The benefit is that we will recover the species and prevent it from disappearing. If we are successful it will prevent it from being federally listed. NH decided to add this rabbit to the list of endangered species. That was a collective decision. They are a canary in the coalmine.

Hebert: What happens if there is an excessive amount of these rabbits?

Holman: We want more of these rabbits, that is the goal of the program.

Houle arrived at 6:50 pm.

M. Hebbard: We didn't have this information at the April 10th meeting. There was a Fish & Game person at that meeting that said he doubted that a judge would find you guilty if it was an accident. I am concerned about the language in the CAAA. If you sign this agreement you will be protected but you will be limited in what you can do with your land. All landowners in the area should be protected.

Holman: If you don't want the rabbits on your property then don't create the prime habitat. The restrictions only apply to landowners that voluntarily agree to enroll in the program. Rabbits are capable of avoiding tractors.

M Hebbard: The Fish & Game person would not agree to release a letter limiting liability.

Rowe: There were rabbits in the area in the past 60 years. My concern is that I don't want to be held liable for accidentally killing a rabbit. I don't want more hunting down there. The rabbits have monitoring radio collars and I don't want to be liable for damaging one of those. I don't want the threat of prosecution.

Holman: I don't have the authority under the rules to issue a hold harmless agreement. It would have to be a premeditated act with intent for us to prosecute. We would not worry about the equipment.

Rowe: Why don't you just release them on all the state land down there?

Holman: We do have plans to release them there but the habitat now is not ready yet. If we do get permission to release on the City lot we will continue to release on our property.

Gasses: The City lot is in a fairly active area where fields are being mowed. I don't want any landowner to have to worry about the liability if they harm one of the rabbits.

Holman: The document being referred to is related to the federal program not the state program. We have no plans to control predators.

Hunt: Does anyone want to make a motion now.

Gasses: Not ready to make a motion yet but why can't we say that farmers will not be held liable. I am not reassured yet.

Perron: I don't feel that a landowner should need to incur any cost if you hurt a rabbit.



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Hebert: I think the NH Attorney General should issue a hold harmless agreement.

Jacoby: I move that we endorse a recommendation to the City Manager for the release of the NE Cottontail rabbits on the City parcel.

Houle: I second the motion.

Quisumbing-King: The abutters want to feel a level of comfort.

Gasses: I don't want the rabbit to end up on the federal list because that adds to the restrictions. I don't want my neighbors to feel nervous about mowing. I don't see the big deal to add some liability protection.

Gasses: I would like to amend the motion to ask for a statement from NH Fish & Game to the City of Dover holding abutting property owners not liable in the case of accidental death to the rabbits due to farming activities.

Houle: I second the motion.

Perron: I think we should include injury also.

Gasses and Houle agreed to add injury also to the amendment to the motion.

Hebert: Not sure Fish & Game has that authority.

Vote on the amendment: Approved 7 to 0.

Vote on the motion as amended: Approved 6 in favor, 1 abstention (Quisumbing-King)

Rowe: What about the equipment the rabbits have around their necks?

R. Hebbard: Point of order. You made a mistake by cutting off public comment. We have more to say.

Gasses: I would make a motion to clarify the prior motion to include damage to monitoring equipment also.

Houle: I second the motion.

M. Hebbard: Will this go to the City Council?

Bird: It is up to the City Manager.

M. Hebbard: The abutters are concerned about future restrictions on property owners.

Gasses: Not sure if City has any authority on that.

R. Hebbard: Incremental restrictions are coming. The rabbits don't belong here and should not restrict landowner's rights. They can't accept that. They are playing God.

Hunt called for a vote on the clarifying amendment.

Vote: Approved 7 in favor.

2. Request for Invasive Species Plant Control -Herbicide Treatment of Phragmites (Common Reed)

Gasses: I would move to endorse the request for invasive species plant control.

Perron: I second the motion.



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Perron: What is the common reed?

Bird: It is the phragmites.

R. Hebbard: Point of order. You did not vote on the amended motion.

Hunt: I think the board is clear that the motion included the clarifying motion.

Gasses: I made a motion to clarify the motion to include monitoring equipment. If it is necessary I will make another motion to include everything.

Bird: If the board feels that it is not clear on what the motion was you could make another motion.

Quisumbing-King: The board is clear on what we voted on.

Hunt: I think the board understands the motion that passed. Let's move onto the next item.

M. Hebbard: It is not clear on what these plants look like, what herbicides will be used, who was going to do the spraying, what happens if there are impacts and what the recourse is.

R. Hebbard: It is confusing that they want to take out some invasive species but not others. Why not take them all out?

Hunt: They are asking to remove a specific species. They have to use a licensed contractor and get a state permit. It is a small area that is shown on the map.

Rowe: How close will it be to me?

A map was shown to Mr. Rowe along with a color picture showing the plant.

Hunt: Spraying will be done by hand application not aerial.

Vote: Approved 7 in favor.

3. NEW BUSINESS

A. City of Dover Conditional Use Permit for STF Development Corp. (Agent: Kevin McEneaney, McEneaney Survey Associates, Inc.), Assessor's Map 20, Lot 37, zoned RMU, located at 3-5 George Street.

McEneaney was present to explain the proposal, which is to build a 6-unit residential building and parking lot that will require 3,500 sq. ft. of grading within wetlands buffer for building, retaining wall, parking lot and pedestrian walkway and 4,500 sq. ft. of grading within 20% slopes. The existing house was damaged by a fire. The proposed building is as close to Hansen Street as possible and access will be via George Street. It is a three story building. Slope disturbance is mostly fill to raise the site. All the drainage sheet flows off of Hansen Street now. The wetlands are low value. The advantage to the neighbors is that we are intercepting 80% of the existing runoff and putting it into the drainage on George Street. We have been to TRC and scheduled to go to Planning Board on May 28th.

Perron: How many units in the existing structure?

McEneaney: Not more than two units.



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Houle: You are clearly increasing the impervious surface. I have a hard time with you not proposing any storm water treatment. It is all going into the City system with no treatment.

McEneaney: The only thing we are asking this board for is a recommendation on the CUP. The TRC and Planning Board handle the rest.

Gasses: We do have a say because you are impacting the wetlands buffer.

McEneaney: The retaining wall will be within the buffer. We had a report done by the wetlands scientist and I will leave a copy for you to look at.

Houle: I don't see any information on the groundwater levels.

Gasses: I would like to take a look at the site. It goes against so many of the rules. There is no on-site treatment and the runoff will end up in the river.

McEneaney: It is a ravine.

Houle: You could add a rain garden to collect the roof drainage and there is an underutilized landscape area that could handle some runoff to try to reduce the flow offsite and manage peak flow. Then you can say you made an attempt to reach the maximum extent practical.

Gasses: Green it up a little.

Hunt: What about making the building smaller? Less units would be less runoff.

McEneaney: We are limited because we got a variance for six units and the building has to be a certain size. TRC has signed off on the plan.

Hunt: You have to look at our criteria – avoidance, minimization and mitigation.

Gasses: And I don't see any of that.

McEneaney: You have to look at this as a downtown site. You have to be realistic. This is residential infill that is being promoted.

Houle: The project has not demonstrated that you have done the maximum extent possible to reduce runoff. You can add some of these green features without changing the design.

Bird: The Planning Board may want to do a site walk.

Perron: Would a site walk be needed if you incorporated some of these changes?

McEneaney: It would take some time to make the changes.

Houle: I would want another chance to review the plan.

Hunt: You should try to incorporate some of these changes before you go to Planning Board.

- B. NHDES Wetlands Permit for City of Dover (Agent: Tony McManus) for a floating fountain in the Cochecho River next to the Joe B. Parks Riverwalk Public Gardens, upriver of the Central Avenue Bridge, zoned CBD.



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McManus was present to explain the proposal, which is to install a seasonal floating water fountain in the Cochecho River.

Gasses: Is this similar to the fountain at Sawyer Mills?

McManus: Yes. I argued that a State permit might not be required. This will be a nice addition to the downtown and the Joe Parks riverwalk. I want to donate the fountain.

Hebert: I think it is a great idea with the elderly apartments right near there.

Quisumbing-King: How soon will you move forward?

McManus: As soon as I can get the permits. Peggy Carter has agreed to pay for the electricity. It will have lights that can be colored and will be seasonal.

Gasses moved to endorse the NHDES Wetlands Permit, Hebert seconded. Vote: Unanimous

Bird: Peschel will have to get some more information before you will be able to file.

McManus: I have to take this to the Cochecho River Advisory Committee.

4. REPORT FROM THE CHAIR

Hunt reminded the board about an easement monitoring scheduled for Thursday at 5:30 with the OLC. All are welcome to attend.

A. Review of Correspondence Received

Bird reported that a letter had been received from NHDOT regarding a public informational meeting for the Newington Dover bridge project. The meeting is scheduled for Thursday, May 16th at 7:00 PM in the City Hall Auditorium.

Bird reported that Karl Leinsing of 77 Spur Road has received a letter from NHDES asking for additional information. There is a problem with the size of the proposed dock because the property shoreline frontage limits the lot to 3 boat slips and he is proposing 7. Also DES has an issue with the float stops resting on the mudflats at low tide.

Bird stated that Robert Hall of 133 Spur Road and Sarah Hourihane of 135 Spur Road have sent letters to DES saying while they disagree that using swamp mats are an issue, they agree to use a barge in order to get a permit to allow them to construct this summer.

B. Report on Land Use Board Meet and Greet Meeting held on April 30, 2013

Hunt reported that the meeting went well and that four members attended. It was very informative and saw some new faces and the glass house again.

5. OTHER BUSINESS



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Quisumbing-King reported that she attended a storm water meeting and brought publications to share.

6. ADJOURNMENT

Quisumbing-King motioned to adjourn at 7:20 PM. Perron seconded. Vote: Unanimous

DRAFT