

CONCORD CONSERVATION COMMISSION  
REGULAR MEETING  
MINUTES - DRAFT  
April 12, 2017, 7:00 p.m.  
Second Floor Conference Room, City Hall, 41 Green Street

Members present at the meeting included: Kristine Tardiff, (Chair), Jim Owers (Vice Chair), Councilor Mark Coen, Rick Chormann, Jr., Jeff Lewis, Chris Kane, Tracey Boisvert, Jan McClure (alternate). Assistant City Planner Beth Fenstermacher and Administrative Specialist Lisa Fellows-Weaver were also present.

**1. Minutes**

*March 9, 2017*

A motion was made by Mr. Kane, and seconded by Ms. Boisvert, to approve the March 8, 2017, minutes, with edits that do not affect the context or outcome of the meeting. The motion passed unanimously.

Jeff Lewis recused himself from the Commission for this project.

**2. Jeff Lewis, Northpoint Engineering, on behalf of Concord Orthopaedics, requesting a Conditional Use Permit for the disturbance of wetland buffer for the construction of a parking lot at 264 Pleasant St. Also, the NHDES Wetlands Permit application and the conservation easement proposed as mitigation for proposed impacts to wetlands.**

In attendance for this project was Jeff Lewis of Northpoint Engineering, Brendan Quigley of Gove Environmental, and Tim Paris, representative from Concord Orthopaedics.

Mr. Lewis provided an overview of the project and location. He stated that this CUP application is being filed due to the disturbance of a wetland buffer for the construction of a parking lot expansion at the existing Concord Orthopaedics office at 264 Pleasant Street. He stated that at this time there are 156 spaces and the proposal is to add an additional 75 for a total of 231 parking spaces.

Mr. Lewis stated that a CUP application has been submitted to the Planning Board along with the site plan application. These items are on the April 19 agenda and comments from the Conservation Commission associated with the wetland impacts are required by the Planning Board for the CUP application. He noted that the CUP is for impacts to the wetland buffer to the wetlands remaining after construction, not the wetlands that are proposed to be filled. Ms. Fenstermacher stated that if something is constructed as drainage then the wetland buffer does not apply. Additionally, if filling in a wetland then there is no longer a buffer and the regulatory buffer is only applicable to remaining wetlands.

Mr. Lewis stated that comments are also necessary for the NHDES application submittal. Mr. Lewis explained the mitigation requirements which are necessary due to the 20,000 sq. ft. of wetland and stream impacts. He stated that the mitigation is proposed to be on the land recently acquired by Concord Orthopaedics at 297 Pleasant Street and the mitigation offered far exceeds the requirements of either the Army Corps or state regulations. It was noted that the State owns the land on the parcel adjacent to the south of the proposed easement, and the City holds an easement on that parcel for the mitigation for the impacts from Langley Parkway construction.

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A discussion was held regarding the permanent and temporary wetland impacts. Mr. Quigley provided more information regarding the impacts and stated that if an impact meets certain criteria then it is counted as an impact; however, stormwater management features are not applicable to permanent impacts. Mr. Lewis added that the area has been previously impacted many times, as recent as the 1990's.

Trail connectivity on the proposed easement parcel was noted. An explanation of the conservation easement was given – total area is 27.3 acres, including 750 LF of the Turkey River, 15 acres of upland areas, and 884 LF of stream.

Mr. Chormann asked if the Concord Orthopaedics offices could have a parking share agreement with the neighboring Unitarian Church during the week and they could utilize the office space for services on the weekends. Mr. Paris replied that this has been occurring, and they still require more parking spaces.

A discussion was held regarding the uses allowed in the RO district. Ms. Fenstermacher explained that the parking area is allowed as an accessory use in this district.

Discussion ensued regarding public access for the easement. Members commented that they could envision the area off Pleasant Street being a trail head. Mr. Lewis stated that at this time the property is a single family residential lot and a trailhead may be in conflict with the residential use, but they will look into potential locations for an access easement. Mr. Paris explained that they are looking at future uses of property and are willing to look at a right of access from Pleasant Street. Mr. Lewis stated that at this time, they are looking for a formal commitment to proceed with the NHDES application, and that the terms of the right-of-way easement can be worked out while the application is under review. Mr. Lewis asked about stewardship fees, which are required under the ARM program. The Commission will look into determining the stewardship fee amount.

The Commission felt that the quality of the land is good, it is strategically placed, there is a diversity of resources, riparian resources were high quality, and the area has good wetland habitat along the river and streams.

Mr. Lewis stated that a letter from the Commission is required to be included with their wetland application. The Commission indicated that they are in support of the conservation easement with the conditions that a 20-30' right-of-way for pedestrian access from Pleasant Street be granted, and that the deed include guaranteed public access in the easement area. Ms. Tardiff will write a letter of support expressing interest in the easement.

There were no comments to the planning board for the CUP.

This item was continued to next month to discuss the terms of the Conservation Easement and stewardship fee requirements.

Mr. Lewis returned as a voting member.

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**3. Tim Bernier, on behalf of developer Christopher Knight, to discuss whether solar panels are allowed within proposed conservation open space at 393 Mountain Road.**

Mr. Bernier was present along with Mr. Andrew Knight and Mr. Jeff Knight; it was explained that Christopher Knight was out of town. Mr. Bernier stated that this is for a future 7 lot cluster development application and he is coming before the Commission to determine if they will support a solar field within the required open space for this subdivision. He provided an overview of the topography of the land noting that the lot is 27 acres with more wetlands than what was anticipated, making it difficult to meet the open space buildable area requirements. Five acres of the open space will be needed for the solar field. He stated that the solar field is a passive use, will allow the function and wildlife value to not be destroyed; overall, this is just a change of use to renewable energy. Mr. Kane asked if the contains prime agricultural soils, Mr. Bernier indicated that it was not. Ms. Fenstermacher looked at the soils map and determined that it contains soils of statewide importance. Mr. Bernier stated that this location is unique as it is not often where NH has an option for three phase power. This is a use that is not generating more traffic and will be created within a field along I-93 and the field will be preserved and mowing will be done around the solar panels. The solar panels will be serving the grid and will generate power for up to 140 homes. He stated that each homeowner of the subdivision will own 1/7 of the open space lot.

A discussion ensued regarding the location. Members felt that solar arrays are a zoning issue and this facility is an industrial use being proposed within the RO District, which is changing the use of a residential area. Ms. McClure indicated that she has only seen this allowed where the solar panel serves the primary agricultural use of a property. In addition, Commission members had concern about the precedence that this would be setting, and that the use is not allowed in our standard easement language. Further, the homeowners would be generated money from either a lease or the sale of the power to the grid; therefore, this would be considered a commercial operation for personal benefit, which is not allowed within the standard easement.

Commission members agreed that this was a zoning issue and they were not in support of the subdivision application moving forward with the proposed solar field within the open space area.

Mr. Owers suggested that the City revise the Zoning Ordinance to clarify the allowed uses within designated open space areas, specifically addressing solar.

**4. Review Draft Conservation Easement Deed, Declaration of Open Space Buffer, and By-laws for Open Space for the Strategic Contracting Hoit Road Subdivision.**

Tim Bernier of TF Bernier was present. He stated that the State subdivision approval is pending and the only other approval needed is for the Commission to approve the easement deeds.

Ms. Fenstermacher provided a brief overview of the planning board meeting where abutters expressed concern over the use of the meadow. She explained that the Planning Board does not have control over the owners to keep the meadow.

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The easement deed was briefly reviewed and several members of the Commission had concerns about the “Reserved Rights” stated within the draft deed, and the deed did not designate a Grantee. The Commission questioned whether the applicant used the standard City Conservation Easement. Mr. Bernier was not aware what template was used by the attorney. The Commission asked Ms. Fenstermacher to follow up with the applicant and provide the standard easement language, and to have the City Solicitor review the document. If the standard easement language was used, members will email any necessary comments to Ms. Fenstermacher. If it was not used, the Commission suggested that the easement deed be re-drafted and reviewed by the City Solicitor. As long as the standard language is used, they had no further comment.

This item was continued to next month, if necessary.

5. **NHDES items** – nothing to report

6. **Reports**

*a. Trails Committee*

Ms. Fenstermacher provided an overview of the Trails Committee meeting.

***Trails:***

Ms. Fenstermacher stated that two users of the Oak Hill Trails would like to change two trails in that area to make them more suitable for mountain biking. She stated that this change would move one of the trails out of a stream bed, and will help eliminate erosion and prevent future erosion. Volunteers will help Ron to do this work. Members expressed concern about whether trailing arbutus was located in the area, and requested that the trail be flagged for members to view prior to any work being completed.

***Trail Stewards:***

Ms. Fenstermacher stated that every trail is now covered and a steward report will be done bi-annually.

***Signs:***

Examples of sign options were provided. Ms. Fenstermacher stated that the signs for each trail are a work in progress.

***T-shirts:***

A design has been agreed upon for the T-shirts.

***Upcoming Hike:***

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***Trail Passport Program:***

Ms. Fenstermacher stated that the Capital Area Wellness Coalition has almost completed the trail passport, which is part of a program encouraging people to use the trails. She will share information with the group when it is completed. Ms. Tardiff suggested setting up a booth at the school spring fairs as they are a good place for distribution.

***b. Upper Merrimack River Local Advisory Committee***

Mr. Chormann stated that he has renewed his membership for the UMLAC.

***c. Contoocook and North Branch Rivers Local Advisory Committee***

Nothing to report for March.

***d. Forestry*** - A copy of the monthly forestry report was distributed for review.

Ms. Fenstermacher provided an update relative to the progress in Rollins Park. She stated that the Park & Recreation department is handling everything at this point. The public meeting has been scheduled for April 20 to discuss the plans. Ms. Fenstermacher will send out a reminder email to members.

***e. Street Trees***

Ms. Fenstermacher explained that a discussion was held with the City Planner and City Manager regarding the street tree program. It was deemed that the Conservation Commission is to address the street tree program; however, the City Council policy states that a directive should be received from City Council. Mr. Chormann recalls that City Council took ownership of street trees under a separate committee.

**7. City Council/Planning Board**

Ms. McClure has provided a draft letter that she suggests as a follow up regarding the Gully Hill Easement Committee meetings to send to City Council. Discussion ensued as members reviewed the letter. Comments and revisions were suggested. Members agreed to rework the document and Ms. McClure will finalize the letter for review and approval at next month's meeting.

Councilor Coen stated that he will look into the City Street Tree Policy and will report back to the Committee next month as to the status of the implementation of the policy.

A link for the street tree policy will be added to the agenda for May.

**8. City Open Space**

***a. Agricultural leases***

Ms. Fenstermacher noted that the agriculture leases for Hall Street and Gully Hill have been awarded and the bidders have been notified.

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***b. Riparian Plantings – Gully Hill***

Mr. Kane asked the Commission if they are okay with establishing groundcover, like a grass filter strip, within the 100' buffer at Gully Hill. Ms. Fenstermacher indicated that she requested that the buffer plantings proposed by the Merrimack River Watershed Council be revised to pull back the tree plantings and include a groundcover strip along the agricultural field at the West Portsmouth Street property. The Commission supported the idea of the ground cover to stabilize the soil and discourage unwanted vegetation. Commission members asked if we can ask the new farmer at Gully Hill to seed the buffer strip. Ms. Fenstermacher indicated that the area is outside of the lease space; therefore, we would likely have to pay the farmer. There was discussion about possible funding. Mr. Kane said that he has access to grant money to pay the farmer. It was suggested to check into the NCRS for any guidelines and to learn more about the process. Mr. Kane said he can get volunteers to mark out the limit of the 100' buffer. Ms. Fenstermacher will email the Commission if more volunteers are needed.

***c. Open Space Update***

Ms. Fenstermacher stated that she is currently working to compile the many comments provided. Additional discussions were held as the Committee reviewed the maps. Amendments were suggested and the maps will be updated accordingly.

**9. Follow-up/On-going Items:**

***a. Northern Pass***

Ms. Fenstermacher stated that the testimony continues. Hearings are beginning; however, it is unknown as to when Commission members will be called.

***b. Haller Properties***

Ms. Fenstermacher stated that the survey has been completed for this 110 acre parcel. She stated that an outside real estate attorney has been hired to help with the purchase and sales agreement due to the many owners involved.

**10. Other**

***a. Pan-Am Land***

Mr. Kane introduced a discussion regarding the possibility that Pan-Am could be selling land located along Horseshoe Pond, and this land would be a valuable connection for the Concord-Sunapee Rail Trail. Members agreed that this is something that should be looked into and pursue some of these parcels. Ms. Fenstermacher stated that the City has some easements in locations along the rail corridor. Ms. Tardiff will check into this item further.

***b. Country Hill Estates Property***

Ms. Fenstermacher and Ms. McClure informed the Commission that they met with Peter Holden, one of the owners, and they may be interested in selling this land located off of District 5 Road;

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it includes 230 + acres with approximately 65 feet of frontage. Discussion ensued as to the frontage and timber values. Based on the meeting, it seems that Mr. Holden does not agree with the amount of frontage that the lot has. The Commission agreed to clarify frontage issues prior to an appraisal be done, to obtain an opinion from NRCS regarding eligibility for the Wetlands Reserve Program, and to potentially meet with Five Rivers as well. A fee acquisition was also mentioned as an option.

A motion was made by Mr. Kane, and seconded by Mr. Chormann, to proceed with an appraisal subject to the Owner having an understanding of the frontage and development value (with something provided in writing from the Owner), and an understanding from NRCS regarding the WRP eligibility. The motion passed unanimously.

*c. 297 Pleasant Street*

Ms. Fenstermacher stated that the City Planner, Heather Shank, has submitted a letter to the Commission for review relative to the re-zoning project proposed for 297 Pleasant Street. Members will review and provide comment at the next meeting.

**There being no further business, Mr. Coen made a motion, second by Mr. Kane to adjourn. The motion passed unanimously at 10:16 p.m.**

Respectfully submitted,  
Lisa Fellows-Weaver  
Administrative Specialist