

CONCORD CONSERVATION COMMISSION

REGULAR MEETING

MINUTES

April 10, 2019, 7:00 PM

Second Floor Conference Room, City Hall, 41 Green Street

The Concord Conservation Commission (CCC) held its regular monthly meeting on April 10, 2019 in the 2nd floor conference room at 41 Green Street.

Attendees: Chair Kristine Tardiff, Vice-Chair Jim Owers, Councilor Brent Todd, Members Jeff Lewis, Rick Chormann, Chris Kane, and Alternate Jan McClure.

Absent: Tracey Boisvert, Kathy Healey, Alternate Stefan Mattlage

Staff: Beth Fenstermacher, Assistant City Planner
Lisa Fellows-Weaver, Administrative Specialist

Call to Order

The meeting was called to order by Chairman Tardiff at 7:00 p.m.

1. Minutes

March 13, 2019

A motion was made by Mr. Lewis, seconded by Mr. Chormann, to approve the March 13, 2019 minutes, as amended, with edits that do not alter the content of the meeting. The motion passed 7/0.

2. Concord Orthopaedics requesting to amend a wetlands permit in order to contribute mitigation funds for the purchase of conservation land in lieu of providing a conservation easement at 297 Pleasant Street as approved by the Commission in 2017.

Mr. Lewis recused himself from this discussion.

Brendan Quigley of Gove Environmental, Tim Paris, representative from Concord Orthopaedics, and Ron Chorzewski CEO of Concord Orthopaedics, met with the Commission to propose an amendment to a previously approved wetlands permit for 264 Pleasant Street.

Mr. Paris stated that the prior agreement was for the disturbance of wetland buffer at 264 Pleasant St. for the construction of a parking lot. A NHDES Wetlands Permit application was approved for a conservation easement at 297 Pleasant Street proposed as compensatory mitigation for impacts to the wetlands. He explained that they have changed plans for the property at 297 Pleasant Street and therefore, the conservation easement is no longer feasible at this location. He stated that Concord Ortho will need to pay into the ARM program or toward a city project as mitigation.

Brendan Quigley provided an overview of the impacts to the stream and temporary impacts to the storm water basin, which are not included in the overall impacts as they are only temporary. The area of impact is 1200 sf of wetlands and 200 linear feet of stream. The total mitigation fee to be paid into the ARM fund is \$114,425. The Commission must grant approval of the amendment. Since the Country Hill Estates project has been vetted by the grant process, these funds could go to that project.

Mr. Owers asked where the funds would go if the Country Hill Estates project should not proceed. Mr. Paris stated that the funds could go to another project in Concord unless there was no other project. He added that Concord Ortho would prefer the funds remain in Concord. He added that they would like to begin construction in June.

A motion was made by Mr. Owers, seconded by Ms. McClure, to approve the request to amend the approved wetlands permit to redirect the mitigation funds for the purchase of conservation land in lieu of providing a conservation easement at 297 Pleasant Street previously approved by the Commission

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in 2017, with the preference that the mitigation money be used towards projects in Concord, and to send a letter to NHDES supporting the amendment. The motion passed unanimously; 6/0.

3. Public hearing to receive testimony relative to the proposed acquisition of 2 parcels of open space land off District 5 Road in Concord.

Mr. Lewis recused himself from this discussion.

Don Ross confirmed that the public hearing was happening tonight. Ms. Tardiff replied yes, it is scheduled for tonight. Mr. Ross expressed frustration with the fact that he was not personally notified of the public hearing as he claims he was told he would be at a prior meeting. Ms. Tardiff asked if a notice went out. Ms. Fenstermacher stated that a legal notice was posted. Ms. Fenstermacher apologized if there was some form of miscommunication as she recalled a discussion with Mr. Lewis confirming the attendance of Mr. Ross. He stated that they have a presentation on this project.

Mr. Woodard recalled at the last meeting it was stated that probably the earliest a public hearing would take place would be May. Ms. Tardiff stated that there are two steps involved; the public hearing scheduled for tonight which was posted and citizens are here for that. Mr. Ross stated they have more people that would be present tonight and this is truly classless. He stated that he was given the Commission's word that he would receive an email notification of when the hearing would be. He stated that a proposal was provided to the Commission and he has not received a response.

Mr. Owers commented that he does not recall anything about someone's word and asked if the notice was properly posted. Ms. Tardiff replied that the public notice was done properly. Mr. Woodard stated that they are directly affected by the acquisition and they were not notified. Mr. Ross stated that that they made it publicly known that some people do not receive the newspaper and that is why they were supposed to receive a direct email. Ms. Tardiff stated that the public is present tonight and she explained that anyone present tonight will be allowed to give their testimony tonight. Mr. Ross stated that not everyone is present to support their position. Ms. Tardiff replied that the meeting was publicly noticed and they are present tonight. This is the first step of two; the next step is the second public hearing, which is to be held by City Council where additional testimony can be given. Mr. Ross stated that this is a cloud in the public eyes and it may be best to table the hearing a month as was said at the previous meeting. Ms. Tardiff stated that two months ago the Commission was waiting for additional survey information, which is why a public hearing was not held sooner. This information has been received.

Mr. Lewis referred to the March meeting minutes where Ms. Fenstermacher reported that the City Surveyor would be hoping to meet with Peter Holden within a week or so, relative to the property lines and a public hearing would be held off until that information was received from Mr. Holden. Mr. Lewis stated that it was not known how long it would be until the information was received. He added that if someone was to notify the Ross's of the hearing by email or in person, and that did not occur, he feels it would be disingenuous to close the hearing tonight.

Councilor Todd asked about notification requirements for public hearings. Ms. Tardiff replied that a butter notification for this hearing is not required. Councilor Todd suggested opening the hearing tonight and continuing it to next month. Ms. Tardiff stated that the meeting could be continued to May 8 and then City Council will address this at their May 13 meeting and will set their public hearing for June.

Mr. Owers stated Council will determine to appropriate the funds.

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Mr. Woodard asked for clarification that the Conservation Commission's job is to provide recommendations to City Council regarding the purchase and funding. Ms. Tardiff stated that the hearing tonight is relative to the proposed acquisition of the properties. The Commission will be voting to forward the item to City Council.

Jan McClure stated that she feels that it is difficult for staff to notify individuals. She asked how a citizen becomes aware of public meetings, hearings, and information and mentioned that notices are posted on the City's website, and library. Ms. Fellows-Weaver added that notices are also posted on the first floor of City Hall, and the kiosk between City Hall and the police department. Mr. Ross commented that he appreciated being made aware of the notice information and added that he did not take that opportunity as he was told he would be notified; however, he will now know this and will make more of a point to be aware.

Mr. Woodard stated that it seems to him that an abutter should be notified because it involves them and basically the Commission is independent and has no obligation to notify abutters of what is going on adjacent properties. Ms. Tardiff explained that the Conservation Commission follows City processes for public notices. Mr. Owers stated that this is different than a variance or other types of projects. Mr. Woodard stated that they would check into this and there may be some legal ramifications.

Ms. Tardiff opened the public hearing at 7:29 p.m.

Ms. Fenstermacher provided an overview explaining that there are two parcels at the end of District 5 Road, approximately 240 acres. The City was approached by the current owners approximately one year ago. Last year the Commission applied for and received an ARM grant for the purchase of the land. There are high quality wetlands on the property that the City is interested in protecting for wetland and watershed protection, which is the sole purpose of why the Commission is moving forward with the acquisition. The budget is \$704,000. \$350,000 has been received through the ARM fund. The City will contribute \$240,000 if the Concord Orthopaedics project goes through.

An updated survey from Peter Holden was received today. The city surveyor identified potential discrepancies on three locations on the property boundaries. A requirement of the ARM grant is to resolve any discrepancies identified. Mr. Holden's office researched and provided some clarifications as to the discrepancies. The plan was reviewed. Ms. Fenstermacher noted that the discrepancies along the west side of the property were identified and have been resolved. The original Holden survey incorrectly showed where the public right of way ended when District 5 Road was discontinued in 1953. The ROW ends 100 feet from the center line of Old Dimond Road. The previous survey showed the right-of-way ending 231 feet into the property where it is actually only 65 feet. Beyond the 65', the abutting properties then own to the center line of the old District 5 Road as it continues into Hopkinton.

Mr. Ross commented that this is not what the Woodard deed shows. Ms. Fenstermacher requested that Mr. Ross not interrupt.

Ms. McClure asked if the appraisal needs to be revised to account for the difference. Ms. Fenstermacher replied no as the appraisal was based on the fact that the road was 65 feet and any developer would build a road. She added that Mr. Woodard has indicated that he owns to the northern stone wall along the discontinued District 5 Road; however, after researching the deed, Mr.

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Woodard's deed indicates that he owns to the southern line. She noted that Holden Engineering will be working to correct the deed for the Country Hill Estates property.

Mr. Owers asked if there is a right of way over the discontinued District 5 Road. Ms. Fenstermacher replied yes and stated that the City would have a right of way when ownership of the Country Hill Estates property is purchased. Mr. Holden and Mr. Gendron have agreed to that. Ms. Fenstermacher added that this will also be reviewed by the solicitor's office. Copies of a memo from Mr. Gendron summarizing the right of access were provided and reviewed.

Rebecca Ross, abutting land owner, stated that she is not prepared for the hearing as they did not receive any notification. She is very disappointed and especially when there were prior communications held with the City. There will be a more formal presentation for next month. She stated that it does not appear that the Commission is explaining the most recent corrective deed on file. She recommended that the Commission look into that for her father's property. She stated that this is on record. She cautioned the Commission, as they were told by one of the sellers that the issue was resolved; it is not correct. It is inaccurate and would be a clouded title and likely they would have to pursue that in order to protect their rights.

Mr. Owers asked for the area of the discrepancy. Ms. Ross replied they disagree with representation of the ownership of District 5 Road from the land that is the Woodard and Country Hill Estates boundary. She explained that the Woodard property owns up to the northern stone wall. She stated that further explanation will be presented at the next meeting. They believe that the information is inaccurate and incomplete and it would be detrimental to the City and tax payers to move forward on something with a clouded title. It is not in the City's best interest. Mr. Owers asked when the corrected deed was recorded and who it was from. Ms. Ross replied recently, that it is from the estate that the Woodard property was acquired from. She added that they believe that the City will have a difficult time obtaining a corrective deed when the grantor is deceased. She stated that their deed is accurate.

Mr. Owers asked about the right of way. Ms. Ross stated that there is a right of way and there should be more discussions held. Mr. Owers asked what kind of discussion they would like to have. Ms. Ross replied that this was her opportunity to speak. She will be more prepared next month. They wanted the City to know that they are concerned; it is not good for the City, the neighborhood. She added that they will protect their rights.

Mr. Kane asked if a person would be able to comment again at the next hearing. Ms. Fenstermacher replied yes if they have new information to provide. Ms. Tardiff explained that if people are here tonight and want to testify tonight they will be heard tonight. The purpose is not to have people provide testimony twice on the same matter. However, she stated that the people present tonight noted at the outset that they were not prepared and will be speaking at the next hearing.

Mr. Owers stated that if there is a corrective deed he would like to see that information prior to next month's meeting.

With no further comment, the hearing was recessed at 7:46 pm to May 8, 2019, at 7 pm.

4. NHDES items

Gove Environmental Services, on behalf of Interchange Development, LLC for a Major Impact Dredge & Fill Application for the proposed impacts to 31,765 sf of wetlands associated with a

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proposed commercial and industrial development at 1 Whitney Road.

Mr. Lewis recused himself for this project.

Brendon Quigley of Gove Environmental represented the application along with the owners of Interchange Development, Laurie and David Rauseo.

Mr. Quigley stated that the project is to impact 31,765 sf of wetlands for a proposed commercial and industrial development at 1 Whitney Road, which requires a dredge and fill application. He explained that the site is 43 acres and is located in two different zoning districts, Gateway Performance District and Industrial. The only existing development now is a convenience store and gas station, built five years ago.

Mr. Quigley provided an overview of the property noting the brook and the steep ravines. He explained that there are five different areas of wetland impacts that were created from a prior excavation project associated with the construction of the I-93 exit ramp. Mr. Quigley pointed out the area of development and the locations for the main and secondary access drives. He indicated that the development will be over 100' from the ravine, providing a larger buffer between the resource areas and the development than is required. A site walk was conducted last month.

Mr. Quigley stated that they are hoping to do a similar proposal as suggested by Concord Orthopaedics and request to contribute mitigation funds for the purpose of land preservation for wetlands restoration.

A discussion was held regarding the resources in the area and wildlife. Mr. Quigley stated that there is not only a small amount of hydric soils on top of gravelly soils; it is not a high quality wetland habitat.

Additional discussion was held regarding the recharge areas for stormwater runoff from the propose development. Mr. Quigley stated that the drainage plan is being developed. The drainage will be infiltrated and is not being shunted off to the brook. Ms. Fenstermacher stated that this is just a concept plan at this time, and Engineering staff will review the drainage plans. Mr. Rauseo added that the lot coverage will not be near the 85% maximum and estimated it to be at 50%. Mr. Owers stated that the ravine and buffer were looked at during the site walk and the impression of the property at that time was that the wetlands are not those of high value and the project makes sense. Discussion ensued and Mr. Chormann expressed concern relative to the treatment of stormwater and water quality issues from the paved areas, snow storage, salt, and roof runoff. These items must be addressed and there must be a focus for recharge to preserve groundwater and water quality. Mr. Quigley explained that the snow will be put into a treatment area or into a basin, or removed, or placed in a designated area. All issues will need to be addressed when the stormwater details are being designed for the site.

Ms. Tardiff stated that this is a disturbed site already and she does not see any real concerns as a result of site walk. The area along the bluff is a beautiful area and she suggested to pull the development back from the bluff area and recommended less parking. She added that it would be a nice place for a trail.

Mr. Chormann stated that the bluffs area very sensitive areas. He expressed concern with accelerating the development process and requested that the applicant be mindful of the bluff settings.

A motion was made by Mr. Chormann, seconded by Ms. McClure, to send a letter to NHDES

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recommending approval for the Major Impact Dredge & Fill application for the proposed impacts to 31,765 sf of wetlands associated with a proposed commercial and industrial development at 1 Whitney Road, noting that the Commission is concerned with runoff and groundwater impacts in the area and that interest should be taken to protect the existing bluffs. The motion passed unanimously; 6/0.

Mr. Lewis returned to the Commission.

5. Reports

a. Trails Subcommittee

Mr. Lewis attended the Trails Subcommittee meeting and provided a synopsis for the Commission. He stated that recent hikes have had great attendance. He reminded folks of the upcoming hikes.

The spring trail checks are ongoing. He anticipates an update at next month's meeting. He noted that there is a full group of trail stewards to cover all of the trails.

A meeting was held last week with Ms. Fenstermacher, Mr. Knight, Mr. Klemarczyk, Scott Rolfe from NHDNCR, and the residents of Walker Reserve. Mr. Lewis explained that there seems to be some mis-communications. A discussion was held regarding the location of the three proposed trails through Walker State Forest and the surrounding areas. The State was contacted regarding formalizing the trails that led to Little Pond Road and the response was that the State is only amenable to the trail that connects to Walkers Reserve with the condition that the other two trails were abandoned. The residents do not like these trails so close to their homes. Ms. Fenstermacher explained that the existing easement allows for public access and gives the City the right to access and maintain these trails. The residents asked that the trail connection through Walker State Forest not be built into the subdivision and Ms. Fenstermacher and Mr. Knight agreed. She noted that at this time the existing Walkers Reserve trails are not maintained and are in need of maintenance. She and Mr. Knight were under the impression that the residents do not want the City to maintain these trails.

Lack of parking in the area was discussed. The State indicated that they did not approve the connections that connected to Little Pond Road because there was no parking available. Ms. Fenstermacher indicated that the Walkers Reserve neighbors expressed concern about cars parking on their narrow roads. She will look into the parking matter and determine how the parking area was designated.

Ms. Fenstermacher stated that without State approval to go through Walkers State Forest, the Winant connector would be a loop trail and stay on City-owned property. Any changes proposed would go through the trails committee. Discussion ensued regarding giving up the trails within Walkers Reserve. Ms. McClure stated that the trails were negotiated as part of the common space at the time of the subdivision because the trails already existed and were well established. Mr. Chormann stated that he does not want to give up on potential opportunities that may come in the future. Mr. Owers stated that he would still like to see the trail connection through Walker's State Forest that comes out on Little Pond Road by Via Tranquilla. Mr. Owers suggested contacting the State again to appeal the decision. Mr. Lewis added that he is not assured that the residents understand and it is not clear if they want the trails or not. He stated that the Trails Committee requested that the home owners association send a letter to the committee as to their desires with these trails. In addition, he suggested that Mr. Knight and Mr. Owers work together on this and report back to the trails committee in May.

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Mr. Lewis reported that Don Ross has expressed concern with trespassing on his property. He indicated that Don reported there was some vandalism and damage to his property yesterday. Don has requested more signage restricting access to the fields and has offered to put them up. Ms. McClure explained that the land is designated as “forest legacy land” and that designation allows people to access anywhere on the property.

Ms. McClure asked for clarification regarding the Trails Committee motion in the March minutes supporting the acquisition of the Country Hill Estates property for the purposes of preserving the West End Farm Trail connection. Mr. Lewis explained that the condition was the compromise based on comments from Mr. Knight and Mr. Talmadge, Mr. Talmadge was not in support of the acquisition for the purpose of just trail protection without some further understanding of what was being proposed.

Ms. Fenstermacher stated that she has made several attempts for clarification from the State regarding the City’s responsibility for providing signage, and for approval of Mr. Ross’ suggested language. She indicated that the State offered to meet with the property owner to look at the impacts to the fields and there has been no response to the offer. The State of NH is the easement holder and the City holds the executory interest for the property. Mr. Kane stated that the property owner is encroaching on the public rights.

Mr. Lewis stated that the Trails Committee discussed the possibility of temporarily closing trails this time of year specifically the wetter trails. The Committee will work on this over the next few months and will address prior to next spring.

b. Forestry

The Forester’s report was circulated. Ms. Fenstermacher stated that the Penacook Lake watershed salvage has been completed. No additional discussion was held.

c. Concord Tree Committee

Ms. Fenstermacher reminded members of the upcoming activities and events planned for the Tree Maintenance Workshop at the Community Center on April 11th, and Arbor Day plantings, April 19th at Abbot Downing School. She also explained the Tree Committee goals.

d. Local River Advisory Committees

Mr. Chormann reminded members of the bug nights sponsored by UMLAC.

6. City Open Space

7. City Council/Planning Board

Timber cut access request - Dennis Drive and Guay Street

Councilor Todd stated that there was a request received from a property owner to access a landlocked parcel via City-owned land off Dennis Drive and Guay Street for a timber sale. Council tabled this item pending additional discussions with the neighbors.

Merrimack River Greenway Trail Committee

As a result of a discussion held at the February meeting, Councilor Todd suggested inviting MRGT Committee to come to a future meeting. He stated that this would be a great time to look at

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opportunities to give council direction to make future plans for CIP items for trails. He mentioned several options noting the Pan Am railway and Terrill Park. He suggested that TPAC and RPAC be contacted for comments as well.

Energy Committee

Ms. Fenstermacher stated that the Energy Committee stakeholder meeting was held on March 27, 2019. Mr. Lewis attended at the request of the Committee requested a member of the Conservation Commission attend, he will forward the information from the meeting to the Commission. Ms. Fenstermacher provided a flyer for three upcoming public information sessions, several members expressed interest in attending. Councilor Todd stated that it is important for the public to come and comment at these sessions. Mr. Lewis stated that he is planning to attend. Ms. Fenstermacher stated that a member from the Energy Committee will be presenting at the May meeting.

Solar Follow Up

Ms. Fenstermacher stated that the Planning Board motioned to approve the solar ordinance and forward it to City Council.

8. Follow-up/On-going Items:

a. Stickney Hill Avenue Property – Five Rivers

Ms. Fenstermacher provided an update of this project. She stated that Five Rivers provided a budget as requested by the Commission. The total project is \$20,000, which includes survey costs, deed research, title insurance and title review, stewardship fees, staff and operating costs. Five Rivers is requesting the Commission donate \$5,000 towards these costs. She noted that Five Rivers indicated that a reverter clause will be added to the deed, meaning if anything happened to Five Rivers or they did not meet the obligations of the conservation deed, the property ownership would revert to the City.

A motion was made by Mr. Kane, seconded by Mr. Owers, to approve donating \$5,000 towards legal and operational costs to Five Rivers for the Stickney Hill Avenue Property. The motion passed unanimously; 7/0.

b. Agricultural Lease – Request from Alan Bartlett

Ms. Fenstermacher stated that per direction of last month's meeting, she contacted the City Manager regarding the request from Mr. Bartlett to renew his lease at \$20 per acre instead of \$30 per acre. The City Manager did not support \$20 per acre, and approved remaining at \$30 per acre.

In addition, the City Manager indicated that since Morrill Farm is requesting a larger reduction in cost, that request needs to go to City Council. This item will be addressed at the June meeting.

c. Update Bylaws - continued to future meeting

d. Easement enforcement policy discussion - continued to future meeting

e. Conservation Easement Standard Templates - continued to future meeting

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9. Other Business - None

10. Non-public session for the discussion of the acquisition of conservation property in accordance with RSA 91-A:3, II(d).

Mr. Owers made a motion, second by Mr. Kane, to enter into a non-public session, per RSA 91-A:3,II(d). By a roll call vote, the motion passed by a unanimous vote at 10:01 p.m.

Mr. Chormann made a motion, second by Mr. Kane, to come out of non-public session at 10:47 p.m. With a roll call vote, the motion passed unanimously.

Mr. Kane made a motion, second by Mr. Chormann, to seal the minutes of the non-public session, per RSA 91-A:5, IV. With a roll call vote, the motion passed unanimously.

Mr. Owers made a motion, second by Mr. Chormann, to approve up to \$3,600 for the Murray lot and \$2000 for legal fees. The motion passed unanimously.

Mr. Owers made a motion, second by Mr. Chormann, to approve two appraisals for the Devoid parcel; one appraisal for the entire parcel and another appraisal for the area from the hammer head and to the water tower. The motion passed unanimously.

Adjournment

There being no further business, Mr. Owers made a motion, second by Mr. Chormann, to adjourn the meeting at 10:55 p.m. The motion passed unanimously.

Respectfully submitted,
Lisa Fellows-Weaver
Administrative Specialist