## CONCORD CONSERVATION COMMISSION

# MINUTES Regular Meeting

May 8, 2013 City Council Chambers, City Hall Annex 37 Green Street, Concord, NH

#### **Attendance:**

Members present at the meeting included: Christopher Morgan; Jim Owers; Kris Tardiff; Tracey Boisvert; Rick Chormann; and Council Representative Jan McClure. Senior Planner Rebecca Hebert attended the meeting.

C. Morgan, Chair, called the meeting to order at 7:05 pm.

### 1. Minutes

The Commission reviewed the minutes of the April 10, 2013 meeting. Kris Tardiff moved to accept the minutes of the April 10th meeting. Rick Chormann seconded the motion; motion passed unanimously.

## 2. Wetlands Bureau

- R. Hebert said there was one new wetlands application to review this month.
  - a. Minimum Impact Wetlands Permit Application of LJJ Reality, LLC.

Tim Bernier of T. F. Bernier represented the applicant, and said the proposed cluster subdivision on Mountain Road was part of a bigger project to reconfigure the church property. He noted that the church would be subdivided off as a separate parcel. He said three of the lots created as part of the subdivision would share a common driveway and the existing house would have its own driveway unless the DOT driveway permit is turned down by the state. The permit was initially denied and an appeal has been filed.

He said a fifth lot in the cluster subdivision will have its own driveway which crossed a wetland. He explained that the wetlands crossing proposed involved filling in a ditch that was constructed many years ago to help drain the cultivated field. He said the ditch and buffer were haved and mowed. He said this field had pockets of jurisdictional wetland, and said the ditch was below the groundwater table. He said the drive had been designed to cross perpendicular to the wetland and wetland buffer, and the total jurisdictional impact was 740 sf.

He explained that the driveway crossing was designed with two culverts to spread the flow out so that the ditch will not become more channelized in the future. R. Chormann asked if the ditch

held standing water. Mr. Bernier said he had stood on the ditch this spring, and water formed around his feet, but there were no channels of water, and no erosion.

Mr. Bernier also explained that the subdivision included deeding 14 acres of the cultivated fields to the adjacent property owner. Ms. Hebert said Mr. Rattee owned the 22 acre parcel to the south. Mr. Bernier said another 6 acres of open space was part of the cluster subdivision, and said there would be a covenant that it could continue to be farmed. He said the field created a nice vista for the cluster subdivision.

C. Morgan asked if there would be any less wetlands impact if the house lot was moved closer to Mountain Road. There was discussion that a house couldn't be built under the power line and utility easement.

Ms. Hebert said this was a major subdivision application, and said the determination of completeness would be done at the May Planning Board meeting, and the public hearing would be held in June.

Mr. Bernier confirmed that there was no public water or sewer available, but natural gas was available.

J. McClure said it made sense to have the open space along the road. Ms. Hebert said the 20 acres of open land would be visible from Mountain Road, and also said the layout of homes on the lots would look like the layouts of other homes in the area. Ms. Hebert noted that the cluster excluded the parcel for the church, and the zoning requires a 50-foot buffer around this parcel. She also said that the buffers are required to be part of the open space. She said it was a tough site, and said a number of possible development options had been considered.

C. Morgan said some houses in that area were set back and some were not, and said it was hard to say what was more scenic. J. McClure said it was hard to believe this was an open space development, but said with smaller parcels like this, that tended to happen. Ms. Hebert noted that the Planning Board was reviewing new open space residential development subdivision standards in May. There was discussion about some of the current cluster provisions, including the mandatory 50 ft perimeter buffer.

There was discussion about whether the city should accept a conservation easement for the proposed open space. Ms. Hebert noted that statewide it was unusual for towns to accept very small conservation easements. She said with a development like this the open space could be managed by the homeowners association with a back-up enforcement to the city. This way the homeowner association could take on the monitoring of the open space and the city would not need to accept a conservation easement on the property.

Mr. Bernier said the cluster subdivision that was designed reflected what the zoning regulations would allow. He noted that the amount of impervious area on the site after the cluster subdivision was put in would be less than what was there today, because some of the paved parking area that went with the church would be taken out. He also explained that the

subdivision was a way for the developer to generate enough revenue to fix the church and make it a viable property.

Mr. Bernier said the original piece of land was 26 acres, and the density calculations indicated that 22 units could be built there if a new road was put in.

R. Chormann confirmed that there would be public access to the open space that was created.

C. Morgan said if they got rid of the extra lot, this would avoid the wetlands impacts. But he said it was a pretty small impact that was proposed.

Ms. Hebert said comments were due to the NHDES within the 40 day review period. The Commission agreed to not object to the wetlands application as proposed.

#### 5. Easement Stewardship

Since Mr. Bernier was present, the Commission decided to discuss an easement stewardship item next. R. Hebert said certified letters had been sent to two landowners who had done some logging within the boundary of a small conservation easement off of Locke Road. She said no timber harvesting was allowed as part of the easement, which crossed three properties, one owned by the Turner Group, another owned by Steven Bradley, and a third property owned by Don Jewell. She said Mr. Bradley had responded right away concerning the logging, but said she had been unable to reach Mr. Jewell, and would try to reach him again at a new address.

She said Mr. Bradley had hired Mr. Bernier to mark the easement boundary on his property, noting that it hadn't been marked with bounds when the easement was created. She also said they met on site with Mr. Bradley to go over the restoration plan, and said he had been very cooperative.

Mr. Bernier explained that Mr. Jewell had proposed to log his property but had no curb cut, so used Mr. Bradley's driveway, and cut trees within the easement that crossed both of their properties. He said the easement was part of the Locke Road subdivision. It was noted that Mr. Bradley's deed did not mention it.

R. Hebert said this easement, which she had monitored in 2010, contained 2.62 acres. She said the logging was done when the ground was frozen, and said the ground had not been disturbed. She suggested that Commission members might want to do a site walk. She said they might want to leave the wetland area as it was, where herbaceous plants were coming in and where trees would re-sprout quickly, and focus restoration efforts on the upland buffer, which would provide more protection for the wetlands when the property is eventually developed. She said this would mean no digging would need to be done to restore the wetland.

Mr. Bernier said the restoration plan would include tree plantings in the buffer area, which mainly included hemlocks which would not re-sprout on their own. It was noted that the trees

removed from the wetland area were red maple, and since the stumps will re-sprout quickly, new plantings would have a hard time competing with them.

R. Hebert said the property owners would have 30 days to respond to the certified letter. She noted that the Fiver Rivers Conservation Trust held an executory interest in the easement, and received a copy of the letter.

R. Hebert said that funding for the part time summer job to monitor easements would likely go through. She noted that she spoke with an intern at Central New Hampshire Regional Planning Commission who sounded like a good fit for the job.

#### 2. Wetlands Bureau (continued)

- b. Correspondence.
- R. Hebert distributed the following correspondence from the Wetlands Bureau:
- Letter from NHDES on the issuance of an Alteration of Terrain Permit for the State Hospital Campus concerning parking lot improvements on Fruit Street.
- Response to NHDES from Concord Steam Corporation regarding the wetlands permit for the water uptake from the Merrimack River.

## 3. City Council/Planning Board

- J. McClure noted the presentation G. McPherson had given at the recent City Council committee meeting concerning the Gully Hill Road property. She provided details on the committee's discussion on the property.
- J. Owers also attended the meeting and said that the next committee meeting would be on June 24<sup>th</sup>. There was discussion that it would be important to provide some history on the property and its sale to the city at the next meeting. R. Chormann said the leasing of this land to Allen Bartlett to allow him to farm it was part of the original purchase and sale agreement, when Mr. Bartlett sold the property to the city. It was noted that their local dairy farm had had a big presence in the community. C. Morgan said the original land negotiations had started at Mr. Bartlett's initiative, and said that he had wanted to do a conservation easement originally.

The group discussed how the City would need to reimburse the conservation trust fund if the property was taken out of conservation use. There was discussion about whether there was a recorded lease, and whether Mr. Bartlett had the right to renew the lease as long as he wanted to farm the land. R. Hebert said there was probably a termination clause in the lease for nonpayment, but thought the agreement had unlimited renewals as long as the Bartlett family continued to farm the land. Commission members agreed that they needed to do more research on all of this. There was further discussion about what the details of the lease were. There was also discussion that some members of the Council envisioned that the land could be used as

athletic fields. Ms. Hebert noted alternative sites in Concord for active recreation along the river, including the land at the Everett Arena and Terrill Park. She said these parks were not in prime condition and both sites had land that could be further developed into playing fields. She said the Merrimack River Greenway Trail also envisioned the shared use path as being anchored between these two parks.

- J. McClure said Mr. Bartlett sold the land to the city with the idea that it would always be available for him to use for agriculture. There was discussion. C. Morgan said that this was one of the reasons the City/Conservation Commission had agreed to the lease terms. J. McClure said she had spoken to the Council about the importance of standing by the promise made to the landowner, as well the importance of being consistent with the open space goals and recommendations in the Master Plan.
- C. Morgan noted the importance of agricultural fields for food security in the future. There was discussion about the low percentage of prime agricultural soils in NH and in Concord, and that it was unique to have agricultural land like this in the city. R. Chormann spoke about the high demand for agricultural land.
- J. McClure said the Conservation Commission should provide a timeline explaining the background of the property. R. Hebert said she would speak with G. McPherson about creating an outline of the project's history. It was noted that there would be another Commission meeting to discuss this matter before the committee discussed it again on June 24<sup>th</sup>.

#### 4. City Open Space

K. Tardiff moved to enter into a nonpublic session for the discussion of possible land acquisitions in accordance with RSA 91-A:3, II(d). J. Owers seconded the motion, and the motion passed unanimously.

Following the discussion, the Commission moved to exit nonpublic session and seal the minutes. The motion was duly seconded and passed unanimously.

There was discussion on the sale of state-owned property off of Ironworks Road. It was noted that the plan was to subdivide off a four acre parcel to go with the existing farmhouse and sell that, and to keep the rest of the land as State owned property managed by DRED. It was noted that the piece the State planned to keep abutted agricultural land between Clinton Street and Ironworks Road.

R. Hebert said the Planning Division had been approached by Unitil about exercising its right to build a substation on the land off of Curtisville Road. The City holds a conservation easement on the property. She noted that the proposed location of the substation would need to be approved by the Conservation Commission. She said that Unitil's preferred location for the substation was next to the beaver pond off of Curtisville Road, and noted that the Commission had heard testimony from the public about that area as important wildlife habitat.

R. Hebert said Unitil also wanted to give PSNH the opportunity to build a substation on the property. She said that Unitil had been given legal advice that the easement allowed for the PSNH substation. They will be sending the legal opinion to staff for the Solicitor to review.

There was discussion by the Commission on other possible locations for the substations. It was noted that the easement required a 60-day notice to the Commission prior to submitting permits, and that the Commission had to approve the location. Commission members agreed that they needed a legal opinion before even considering the location. R. Hebert said that Unitil would like to bring plans to the Commission's June meeting, once the legal questions about the reserved rights have been resolved. C. Morgan said they might want to do a site walk. J. Owers said he would need to recuse himself because his law firm represented PSNH.

R. Hebert noted that the NHDES Source Water Protection Grant program was not available this year and was not included in the state's next budget, so this grant program would not be available as a leveraging opportunity for the purchase of the Haller property. She said the land has not been appraised yet. There was discussion that LCHIP funds might be available for the project.

J. McClure left the meeting at 8:55 pm

#### 5. Reports

R. Chormann said there was a public event last night hosted by the Upper Merrimack River Local Advisory Committee Merrimac regarding historical mapping of the Merrimack River. He said about 70 people attended.

R. Hebert said Jack Shields, an environmental scientist from Penacook, has submitted a request to City Council to be nominated as the Concord representative on the Contoocook and North Branch Rivers Local Advisory Committee.

K. Tardiff moved to adjourn. R. Chormann seconded the motion and it passed unanimously. Meeting adjourned at 9:00 PM.

A TRUE RECORD ATTEST:
Rebecca Hebert, Secretary *Pro-tem*