Gully Hill Easement Committee
September 23, 2013
Council Chambers
Draft Minutes

Meeting called to order at 6:08 p.m.

In attendance:
Council: Candace Bouchard, Fred Keach, Jennifer Kretovic, Jan McClure, Dan St. Hilaire

Conservation Commission: Jim Owers, Kit Morgan

Staff: Gloria McPherson, Jim Kennedy

Candace Bouchard asked Gloria McPherson about the process of amending conservation easements.

Ms. McPherson said that it was a difficult process and noted that she included a handbook on amending and terminating easements with the meeting notice. She said that Jim Kennedy, the City Solicitor, was here to explain the process and answer any questions.

Mr. Kennedy confirmed that it is very difficult to change an easement once it's in place and suggested that since there is currently no easement on the property, the City should be thoughtful about creating the easement it wants. He stated that some conservation easements contemplate an amendment and include an amendment clause for future change. Otherwise, amending an easement after the fact has to be done through the AG's office, by determining whether the proposed amendment is "low risk" or a more complex, difficult process. He noted that eminent domain is always an option to terminate an easement on a portion of a property.

Kit Morgan, Conservation Commission Chair, said that he spoke with Paul Doscher, the author of the handbook on amending and terminating conservation easements Ms. McPherson had mentioned, about including an amendment clause. Mr. Doscher said it was possible, provided that the future amendment supports the purposes of the easement, such as protecting agricultural soils. Mr. Morgan stated that term easements are another option but noted that the Forest Society does not accept term easements.

Jan McClure asked if the City would have to reimburse money used from the Conservation Trust Fund for the purchase of the Gully Hill properties if the land or part of the land was not used for conservation purposes. She noted that it was not bond money that was used for the purchase.

Mr. Morgan stated that use of Conservation Trust Fund money might have statutory requirements for uses that are allowed and prohibited.

Mr. Kennedy offered to look into what, if any, restrictions may be implicit with the use of Conservation Trust Fund money.

Ms. Bouchard asked about the agricultural leases and what were the expectations of the Bartletts and the Richards when they entered into the lease agreements with the City.

Jim Owers stated that they were expecting to farm the land. He noted that the leases are different with respect to renewal options.

A discussion of the leases and the proposed conservation easement ensued.

Ms. McClure and Mr. St. Hilaire agreed that they were not going to agree on the issue of the easement.

Mr. St. Hilaire stated that he was not in favor of the easement and specifically disagrees about the easement preventing the construction of permanent bathroom and parking facilities.

Mr. Morgan questioned whether the City could work it into the easement to allow one-time uses or perhaps an amendment clause for the future, if the City wants more active recreational use of the property.

Mr. St. Hilaire stated that he is not in favor of an easement and does not want the land used just for farming. He said the easement would prevent certain uses forever because all structures would have to be taken down within 10 days and there is no provision for permanent parking.

Ms. McClure stated she didn't think permanent parking was appropriate on the parcel.

Mr. St. Hilaire stated the ability to install permanent parking is important and believes that the majority of Concord residents also want the option of permanent parking at some time in the future. He reiterated that he is not in favor of the easement.

Ms. Bouchard asked how the committee could come together and compromise.

Mr. St. Hilaire stated that he is fine with the agricultural leases continuing, but not an easement.

Mr. Owers noted that there would be more flexibility with the easement as the current leases do not allow for events.

Jennifer Kretovic stated that an easement would limit the ability for events if the land isn't farmed.

At Ms. Bouchard's request, Mr. Kennedy discussed the possibility of terminating the leases, noting that they are different and one seems to be easier to terminate than the other.

Ms. Bouchard stated that she believes the committee is at a point where it should probably go back to City Council with a recommendation.

Mr. St. Hilaire expressed his concern that important stakeholders haven't been in attendance at the meetings, including Creative Concord, the Bartletts and the Richards. He stated that he would like the land to be enjoyed by Concord residents and you will never get families with kids there if there are porta potties and no place to park. He said he thought we could compromise if there is some land set aside for farming and some for events.

Fred Keach stated that while farming might be the best use for the property now, he did not want to preclude future uses, and not allowing permanent parking would preclude many future uses. He prefers a term limit to the easement, to revisit it every 20 years to see if it's still what the City wants to do.

Mr. St. Hilaire stated that in 20 years, there could be the desire for a shopping mall there.

Mr. Keach said the City could craft the language of the easement so the land would never be developed, but used for passive and active recreation, including any necessary parking.

Ms. Kretovic noted that the land was in the floodplain, which also might restrict future uses.

The committee generally agreed that a trail on the property connecting to the Heritage Trail was a good idea.

Mr. Kennedy stated that he would come back to the next committee meeting with a report about what protections, prohibitions and restrictions are inherent with the use of Conservation Trust Funds for the purchase of the property, noting that this information is important for City Council so they can make an informed decision.

Ms. Bouchard set the next meeting for October 21 in Council Chambers, with a non-public session beginning at 5:30 pm to discuss the leases and the public portion of the meeting beginning at 6:00 pm.

The only request from the committee was for the report from Mr. Kennedy.

Meeting adjourned at 7:55 pm.

Respectfully submitted,

Gloria McPherson

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