



DARTMOUTH CONSERVATION COMMISSION
DARTMOUTH TOWN HALL - ROOM 103
RECEIVED MINUTES - Tuesday, June 9, 2015

ATTENDANCE: 2015 JUL 15 PM 4 20

Present: Chairman Michael Kehoe, Vice-Chairman, Richard Mallen, Richard Golen, Patricia Sweriduk, Kyle Ross, Michael O'Reilly, Environmental Affairs Coordinator, and Tina Cabral, Administrative Clerk

Absent: Jacquelyn McDonald

Mr. Kehoe entertained a motion to enter into Executive Session at 6:30 P.M. with Town Counsel, Anthony Savastano and Attorney Brian Cruise. Ms. Sweriduk motioned to enter into Executive Session, with Mr. Mallen seconding the motion.

Mr. Kehoe convened the regular meeting at 7:50 P.M.

ADMINISTRATIVE:

- Approval of the minutes of May 12, 2015 was unanimously accepted by those Commissioners present.
- Minutes of the May 26, 2015 meeting received for reading.
- Approval of the field trip reports of the May 26, 2015 meeting was unanimously accepted by those Commissioners present.

FIELD TRIP REPORTS:

1. A Request for Determination of Applicability from John and Lynn Seymour who is proposing site clean-up and vegetation control Re: Map 90, Lot 12 on Meadow Shores Road (John & Lynn Seymour)

Ms. Sweriduk motioned to waive the reading of the public meeting notice, with Mr. Mallen seconding the motion. Mr. Kehoe invited Mr. O'Reilly to comment on this request.

Mr. O'Reilly commented that this request is for spring site cleanup and he doesn't anticipate any negative impact and would recommend a negative determination.

With nothing further to be added, Ms. Sweriduk motioned to issue a negative determination, with seconding the motion.

2. A Request for Determination of Applicability from William J. Raposa, Jr. who would like to do selective clearing with loam and seed planting as well as install a boat shelter Re: Map 71, Lot 35-2 on 1193 N. Hixville Road (Ferreira Engineering)

Ms. Sweriduk motioned to waive the reading of the public meeting notice, with Mr. Mallen seconding the motion. Mr. Kehoe invited Mr. O'Reilly to comment on this request.

Mr. O'Reilly commented that he doesn't anticipate any negative impact and would recommend a negative determination.

With nothing further to be added, Ms. Sweriduk motioned to issue a negative and positive determination, with Mr. Mallen seconding the motion.

3. A Request for Determination of Applicability from Dana Pickup who wishes to construct a 26x26 garage within the buffer zone Re: Map 66, Lot 20-39 on 40 Harvest Avenue (Care Free Homes)

Ms. Sweriduk motioned to waive the reading of the public meeting notice, with Mr. Mallen seconding the motion.

Mr. Kehoe invited Mr. O'Reilly to comment on this request.

Mr. O'Reilly commented that he doesn't anticipate any negative impact and would recommend a negative determination.

With nothing further to be added, Ms. Sweriduk motioned to issue a negative determination, with Mr. Mallen seconding the motion.

APPOINTMENT:

- Boston Environmental Corporation Re: Map 72, Lots 6 & 9 on 452 Old Fall River Rd, File #15-2186 (Capping and Final Closure of the Former Cecil Smith Landfill) (SITEC, Inc.) Remand from Superior Court for further consideration pursuant to order by Thomas F. McGuire, Jr., Justice of the Superior Court, dated March 20, 2015.

Present were: Town Counsel, Anthony Savastano, Attorney Brian Cruise and Christine LeBlanc Smith.

Mr. Kehoe convened the appointment at 8:00 p.m.

Mr. Kehoe briefed the Commission on this matter. Mr. Kehoe commented that there were a couple of issues which were involving our local by-laws that were in our previous decision which involved state regulations. Mr. Kehoe explained that the Court vacated the Commission's decision under the By-Law and remanded this matter to the Commission for further consideration and a new decision. The Court further ordered that, if the Commission again determines that it will deny the approval of the Application, then the Commission shall explain in the new decision (1) specific data it requires that would be obtained from multi-level well testing at the Cecil Smith Landfill; and (2) why the data is necessary in order to make a substantive decision under the provisions of the Dartmouth Wetlands Protection By-Law.

Mr. Kehoe presented the Commission with questions regarding this issue:

- Are there any Commissioners who believe that the decision that was previously entered was erroneous and that we should have granted the requisite relief?
The Commission unanimously voted "No"
- Is there any portion of the decision which you believe should be reversed and that we should not have brought that in as an issue?
The Commission unanimously voted "No"

Mr. Kehoe entertained a motion to reaccept the conclusions of the previous decision so as not to waive any of the determinations that the Commission made knowing that the Superior Court brings this matter back to us involving only our local bylaws.

The Commission unanimously voted in favor of the motion.

The Commission discussed and determines the following:

(1) The Commission determines that the applicants have failed to provide adequate evidence that the project will not have unacceptable significant or cumulative effects upon the wetland values that are protected by the By-Law, they have not met their burden of proof under Section 12 of the By-Law. Additionally, the Commission reiterates that insufficient information was provided to it in order to allow for the determination of an appropriate bond in the event of the approval of the Application. The Commission further separately determines that regardless of the outcome of this multi-level well testing, the project will have significant and cumulative effects upon certain aspects of these wetland values and that the project cannot be conditioned in a way that would prevent such adverse effects. The Commission therefore denies approval of the Application under the By-Law for each of these separate and independent reasons. The Commission also would note that it reaffirms as well the reasons in its August 20, 2014 decision for denial of the project

under the Wetlands Protection Act, MGL c. 131, §40. The Commission does so out of concern about whether the Court's Order was intended to vacate those portions of the Commission's decision as well.

(2) The Commission determines the denial due to lack of multi-level well data. Current available data from existing wells is insufficient. The report submitted on June 18, 2013 consisted of a single round of sampling from a few limited well sources and surface-water locations that took place from May to June 2013. The sample data from the wells was provided for (1) six shallow-aquifer wells that were installed around the perimeter of the Landfill by the applicant's consultant, Haley & Aldrich (2) a single shallow and deep aquifer well cluster that was preexisting at an upgradient location at the Landfill and (3) several other shallow aquifer wells that were preexisting and scattered about the locus.

(3) The Commission determines that the data would be made available from multi-level well testing is necessary for a review of the project under the By-Law, as discussed below:

- The determination of the depths and geographic scopes of different potential aquifer levels in the overburden;
- The determination of the depth and geographic scope of potential bedrock aquifers.
- The determination of any variation in the horizontal and vertical directional flow of groundwater throughout the locus property during the course of the calendar year. The presence of a perennial stream and freshwater wetlands surrounding the landfill indicate that the groundwater flow may change direction seasonally within the overburden.
- The determination of the hydraulic and hydrologic relationship between the groundwater under the locus, and the surface water and wet areas of the surrounding perennial stream and freshwater wetlands. Specifically, it will be determined whether and how the groundwater is being recharged by, and/or is being discharged into, the surface water and wet areas, or both, including how that relationship changes over the course of the calendar year.
- The characterization of the present physical and chemical makeup of the surface water and wet areas of perennial stream and freshwater wetlands, including how that makeup changes over the course of the calendar year.
- The characterization of the present physical and chemical makeup of the groundwater under the locus in the potential shallow and deep overburden aquifers, and in the bedrock aquifer, including how that makeup changes over the course of the calendar year.
- The characterization of the present physical and chemical makeup of the water that is being discharged and/or recharged between groundwater and surface water and wet areas, including how that makeup changes over the course of the calendar year.
- The characterization of the present physical and chemical makeup of the overburden at the landfill and the surrounding resource areas, including how that makeup changes over the course of the calendar year. The sedimentary layers of which the overburden consists (silt, clay, sand, gravel, etc) directly impact the transmissibility of water (how fast the groundwater moves both horizontally and vertically)

(4) The Commission determines how the multi-level well data relates to the Wetlands Protection By-Law.

- Under Section 1.05(6)(D)(2)(a) of the regulations that have been promulgated by the Commission pursuant to Section 8 of the By-Law, requires a determination of the recharge/discharge relationship between the surface water and wet areas, and the groundwater as part of the evaluation of the potential impacts of stormwater runoff from the project. Without this recharge/discharge information, the local stormwater management obligations have not been completed. Only the comprehensive well-testing that the Commission has requested would provide this information.
- Under Section 2 of the By-Law provides the Commission with jurisdiction over any activity that alters resource areas. Only the comprehensive well-testing that the Commission has requested would provide complete baselines of the chemical and physical properties of the land, surface water and wet areas, and groundwater throughout the locus. These baselines are necessary in order to determine whether the project, with its dumping of vast quantities of contaminated soil, would elevate the naturally occurring materials in the land, surface-water, sediment and/or groundwater of the relevant resource areas, causing an alteration of those resource areas. Separately, only the comprehensive well-testing that the Commission has requested would provide a complete understanding of the groundwater.
- Under Section 2 of the By-Law it provides the Commission with jurisdiction over any activity that alters the 100' buffer zone of a resource area regardless whether that alteration impacts that resource area. The Commission has requested a comprehensive well-testing including multi-level water and soil samples, and water flow and discharge/recharge analyses.

(5) The Commission determines the lack of information for Imposition of Bond. The Commission was not provided with the previously discussed comprehensive hydraulic and hydrologic assessment of the locus. The Commission, therefore, could not develop an accurate understanding of the potential environmental damage that could result from implementation of the project nor could the Commission understand that impact of any failure of the environmental safety measures that the Applicants intend to institute at the Landfill as part of the project. Without this understanding, calculating an appropriate bond is impossible.

(6) The Commission determines additional reasons for denial that are not dependent upon further testing. Given that large percentage of the Landfill footprint that is located within the buffer zones of the perennial stream and freshwater wetlands, given the massive quantity of contaminated soils that the project would place dump upon these buffer zones as fill, and given the man-made pollutants that are found in contaminated soils, the project will have significant and cumulative effects upon the buffer zones. The Commission concludes that it would be impossible to condition the approval of the project in a way that would prevent or even substantially mitigate these serious adverse effects upon the buffer zones.

Mr. Kehoe entertained a motion for a brief recess. It was unanimously voted to recess the meeting at 8:15 p.m.

Mr. Kehoe reconvened the meeting at 9:30 p.m.

Mr. Kehoe entertained a motion to deny the Application under the provisions of the By-Law. The Commission unanimously voted to deny the Application under the provisions of the By-Law. A New Decision was drafted and circulated through each Commissioner for signatures.

ITEMS FOR DISCUSSION:

- A) Notice of Intent to Sell pursuant to Chapter 61A from Dale Zacamy Re: Map 71, Lot 56 on 780 Collins Corner Road. *The Commission voted not to exercise their option as granted under Chapter 61-A, to purchase the land due to the lack of funds.*
- B) New Business: No new business.

MEETING ADJOURNED: 9:45 P.M.