

OFFICIAL CONSERVATION COMMISSION MEETING MINUTES

February 8, 2016

S. Couture called the meeting to order at 4:00 p.m.

Attendance: Steve Couture, Chair; Deborah Miville, alternate; Phil Fitanides, member; David Hess, member

Excused: Cindy Robertson, Vice-Chair; JoCarol Woodburn, member; David Ross, Town Council Rep.; Todd Lizotte, alternate

Public Input

None.

Meeting Minutes

P. Fitanides: In the first paragraph, the last sentence where I'm being addressed, I meant the Council minutes of 2003-2006. I'm not sure of the year, but that's where all the information is. I was a member of a Committee that had a series of questions for the Rowing Club. It should read, "I don't know where in the past Council minutes from between 2003 and 2006, there is a discussion of the residents of Hooksett and the parking issue relevant to the Rowing Club of which I was a committee member."

D. Hess motioned to approve the meeting minutes for January 11, 2016 as amended. Seconded by P. Fitanides. Motion passed.

Appointments

a. Ryan Crosbie., Pike Industries

R. Crosbie: My name is Ryan Crosbie. I'm with Pike Industries. It's been a little while since I've been before the board. As you may recall, we are in the process of permitting an expansion of our existing quarry to some lots we have to the north and west of the existing quarry. As part of the permitting process we are working with the state and federal governments to put together a mitigation package. Part of that is delivering about 140 acres to the Town of Hooksett for conservation. We've had several meetings about proposed language. This is our almost final product. I tried to provide a checklist to show where we stand. Today's purpose is to go through some of this and see if you have any questions and, hopefully, have your approval to send on to the Town Council as the next step. Robert Dietel with Gallagher, Callahan & Gartrell PC is also

here. They were helpful in putting together the easement language and title search. The first document is the Phase 1 Environmental Site Assessment. I provided a summary because the document is over 300 pages long. The summary shows any concerns they may have had for the lot. The Phase 1 consisted of a site walk and records review. As you can see they have a couple items of note that were encountered. There's only one REC, which is a recognized environmental condition, and it has to do with an abandoned automobile and some solid waste located on the property.

S. Couture: The reason we have these is that before we accept a property, we want to know if there is an issue like that. In the past we've accepted some properties that we were responsible for cleaning up after the fact. Now, we want to make sure before we accept any property an issue like this gets resolved. The next step would be to resolve that issue.

R. Crosbie: The next document is the baseline documentation report for proposed preservation lands. This is a required baseline documentation that one of our consultants put together. I have the full document if you want to look at it. Something to highlight would be the last page which is a map showing the existing conservation lands in the area of the quarry.

S. Couture: Just so you're aware, the Town actually owns land near Notting Forest in Bow that will abut the proposed preservation land, although it's not shown here.

R. Crosbie: OK. The next map shows a zoomed in aerial of the conservation area, the wetlands that will be preserved and the turtle nesting enhancement project that we were required to do. We cleared the forest and roughed up the land so it's loose for the turtles to nest during the season. The last documents are the easement maps and plan sets. The descriptions that we provide for our easement language are based on these maps.

S. Couture: We hope to get four more conservation properties in that vicinity.

R. Crosbie: Are there any questions?

D. Hess: You mentioned solid waste in addition to the automobile. What kind of solid waste is that and should it be removed?

R. Crosbie: I have to look it up. In the meantime, are there any other questions?

D. Hess: In the summary when you talk about access, you don't reference any possible access from Woodhill Road. Did you look into that at all? I'm familiar with that area and I know there are at least two footpaths off of Woodhill Hooksett Road that come down into this general area.

Ultimately, they wind up in your quarry. I don't know if you explored access there in Bow or not.

R. Crosbie: No, I did not formally look into it. If our surveyor picked up on, it he would know because he walked that land. I think it is private property.

D. Hess: I believe it is private property and there are no posted signs. There is a path and it's actually a snowmobile trail.

P. Fitanides: Does the Conservation Commission have a copy of your environmental study and who obtained all that information?

S. Couture: We will get a copy and it is part of the permit.

R. Crosbie: We can make that available to you. The Baseline Documentation Report has all that information. We have a wetland scientist that performed the wetland delineation and they've been out there several times. Every five years we will update the delineation. I'll let Rob talk about the easement language and the results of the title.

R. Dietel: As Ryan mentioned, my firm was engaged to help satisfy the Conservation Commission's condition of getting a title opinion prepared in keeping with the NH Bar Association standards. You have a copy of the opinion with all the exceptions. As you'll see there are a number of items listed on the exceptions, but the overarching conclusion is that Pike does hold good title to the premises and they are able to convey the conservation land being discussed this evening. I want to provide some context on the exceptions. We laid this out in different blocks titled A-F. The different blocks refer to the difference parcels. There is some overlap because we rely on the Registry of Deeds and include everything in the chain of title. Sometimes we have things that come into multiple lots because they are all held by Pike. The takeaway is that there is some overlap in the exceptions of the individual sections. Another aspect I want to highlight is Section F, which relates to items that are encumbrances that were granted by Pike. These are items whose location can't be definitely ascertained. Part of the reason for that is given the size of Pikes operations in Hooksett and the number of properties that are owned, sometimes we find things going into the chain of title that aren't necessarily tied down to the specific individual lot. However, because they do show up, we list them on the table of exceptions. So that's the context for the Commission as you're looking at this. The last item to note is about what these exceptions represent. They represent anything that pops up in the chain of title. They aren't necessarily to be interpreted as an encumbrance or burden on the property. There are references in here to business dealings over the years with different partners and quiet title actions that have been resolved. Even though they've been resolved, sometimes they do show up in the chain of title. Sometimes you'll find things in the table of exceptions that may not

relate to the conservation easement. There are some large parcels with very little area that have easement areas on it. Things will show up on the chain of title but they don't necessarily relate to the easement land. We determined that there weren't any encumbrances that would preclude the conservation easement. I want to highlight a few things on the exceptions. The first are conveyances to the Hooksett Village Water Precinct. For example, in E4 it says "subject to easements for dam maintenance, flowage and access to the Hooksett Village Water Precinct." Because of the history there, we don't deem this being an encumbrance that would stop the conservation from being granted. Similarly, there are a number of conveyances to NHDOT. Those conveyances (D1) often take the form of slope releases. That was recorded in 1977. We don't view this as related to the conservation easement. A lot of these things are just common sense but I want to highlight as examples for you. The two substantive things that we discovered, which we will be taking some actions to resolve, were two mortgages from the 1980s (B4 and C10). It's not uncommon to see a reference like that. Due to the context and amount of time that's passed those have probably been discharged but we will make sure. In conclusion, we've done an exhaustive search and these are the things that we've found. Are there any questions?

S. Couture: We should probably wait on the easement until you look into B4 and C10. Then we can bring it forward as an entire package knowing it's clean and ready to go.

D. Hess: We need Mark Dunn to look at this. I'm not concerned about the references to utility easements but those two mortgages jumped out at me. There are a couple terms in here that are very unclear. A3, 4, and 5 state, "subject to easements, conditions and notes on plan." We don't know what those are until we look at them. A5 is subject to maintain a buffer strip and reserving a right of entry. That's a major point we need to find out about. In C13 and 14, it says "subject to conditions shown on plan." It doesn't say what the conditions are. C14 is subject to a title and boundary dispute, but it doesn't say if that was resolved.

R. Dietel: C14 is a good example. This pops up in the chain of title and refers to court records. Under the Bar standards, we wouldn't necessarily go into looking up those court records if the title is otherwise consistent. The purpose of the opinion is to bring to bear our experience on it in terms of Bar standards. When we give the opinion that we believe Pike has clear title to grant this conservation easement, it's because we have looked at them individually in the context of the chain of title and we have found no encumbrances that would prevent Pike from granting the easement to the town. I've also given you copies of the conservation easement deed language, which you've seen before. We added the metes and bounds.

D. Hess: There should be no changes in the deed from the last time we saw it?

R. Crosbie: Correct.

P. Fitanides: On C14 it says “subject to a title and boundary dispute lawsuit.” Maybe we need to know the disposition of that case. Under D, those say “possibly subject to slope release and possibly subject to matters of a dispute among Manchester Sand and Gravel and Central Hooksett Water Precinct.” In F, the word “may” raises a lot of questions.

S. Couture: Those are some great questions. Instead of us going back and forth, we should allow Pike to move forward with looking into C10 and B4, and then we send it all to Mark Dunn. He can verify and then we go from there.

R. Crosbie: I found the answer to your question about the solid waste. It refers to “some waste material, a truck tire and a spring water bottle.” It was observed in the wetland area. The tire is a really big truck tire and it’s been there for a long time.

S. Couture: I think we would still want the tire removed before we accept the property. Just so you’re aware, generally when we accept the easement a stewardship fee goes along with it. We will send over the approved easement language. What about blazing the easement boundaries?

R. Crosbie: That’s a pending item. We had the surveyors blaze all the areas on the east side of the conservation area as a visual cue to operations folks. We didn’t realize the Town required the full perimeter to be blazed. This spring we will finish up blazing.

S. Couture: Can you describe the timing you’re looking for?

R. Crosbie: Our existing quarry is getting close to being tapped out. We need to start clearing as soon as possible. My hope is that with whatever conditions you put on it, this can go to the next stage with Town Council and we will wrap up conditions before that meeting.

S. Couture: Do you have permit restrictions on clearing, timewise?

R. Crosbie: The Army Corp of Engineers wanted us to limit clearing from April 1st through September unless we did a long-eared bat survey. We did that survey last summer and we didn’t find any evidence of the bat. There’s a restriction on impacting wetlands from April 1st through September, as well, unless we do some other mitigation.

P. Fitanides: Do you ever truck rocks in to process from other quarries or do you just export from your own site?

R. Crosbie: Not that I’m aware of. The only material we bring in is recycled asphalt for crushing. It comes from roads we are working on or from other construction companies.

D. Hess: I understand there are time constraints but I'm concerned about any premature approvals before we get the title reviewed. I would like to continue this to our next meeting provided we get this to Mark Dunn immediately and get it cleaned up.

S. Couture: I think that for timing, we need to follow up on the Environmental Site Assessment. We need Mark to review the title opinion. We can wait until March or we can outline the items we need certainty on, and if we get that, then the documents can be on the Town Council agenda.

D. Miville: I understand what you're saying. Are we expected to read this or does this just go to the lawyer for review?

S. Couture: For background, this has been going on for about two years, so this has been well vetted by the Commission over time. The opinion of title is new so at this point we need an attorney review. I think the baseline report is in good shape. We have two areas that need cleaning out. The maps have been finalized. Our outstanding items are final review of the conservation easement deed language by Mark Dunn, review of the opinion of title by Mark Dunn, and addressing B4 and C10 by the Gallagher firm on behalf of Pike. Should we wait for that before sending to Attorney Dunn or send it now?

D. Hess motioned that the Conservation Commission express their general support of the project subject to review of the conservation easement deed and opinion of title by Mark Dunn, clarification by the Gallagher Firm on items B4 and C10 in the opinion of title, and motion to authorize Mark Dunn to deal directly with the Gallagher Firm regarding those items. Seconded by P. Fitanides. Motion passed.

S. Couture: By the March 14th meeting, the site clean-up should be conducted and reported on.

b. Kent Brown, Brown Engineering – Bluebird Self-Storage

K. Brown: I'm Kent Brown from Brown Engineering. I'm in the process of putting together a Dredge and Fill permit. This pertains to a development we've been working on for 6 or 8 months back and forth with the Town. It's a 2-story, 80,000 square foot environmentally controlled self-storage building. It's completely enclosed. Architecturally, it's very attractive. We had originally proposed accessing this site off Route 3 but in meeting with the Town and TRC, it was encouraged to instead access from Campus Drive across from Mount Saint Mary's. That would utilize the signalized intersection so it won't cause traffic problems and safety issues. Environmentally, there are 20 feet of fill in there we would need to excavate out. In doing that, there are a couple of wetlands that have emerged over the last few years. It's at the bottom of a fairly steep slope so water has a tendency to come down and pool there. I tried to align the driveway to avoid or minimize wetland impact. On the first wetland, the impact is 750 square feet. I tried to have the driveway cross it at as close to a right angle as I possibly could. This

wetland may be two or three feet across and it's made of seasonal runoff out of the woods. The second one is an impact of 287 square feet. This is associated with fill at the construction of the common drive. I sacrificed this one to save two others.

S. Couture: Do these qualify for the buffer setback? I know this was developed for Dredge and Fill, but there is a requirement by the town of a 40-foot buffer. It may depend on the size of the wetlands.

K. Brown: I'm glad you brought that up because if there is a requirement from the town, I want to address it.

D. Hess: Are these seasonal wetlands?

K. Brown: Yes.

D. Hess: Is the Cigna building about the same size?

K. Brown: Yes, it would be about the same size. I'll check the wetland setback. It's less than an acre so it may not be subject to the buffer.

S. Couture: Is there a mitigation fee?

C. Cronin: The buffer applies if the wetland is more than acre. If there is more than 1,000 square feet of impact a mitigation fee applies.

K. Brown: Would you be comfortable with signing an expedited permit?

S. Couture: We will take a vote.

P. Fitantes: Do you have any information on wildlife?

K. Brown: No, not in that area.

P. Fitantes: Do you have town water and sewer?

K. Brown: We have Town water. There is sewer available but we are putting in a septic system instead.

P. Fitanides: Will there be any storage of vehicles or boats?

K. Brown: No, indoor storage only.

D. Hess motioned to authorize signing the expedited application with the condition that they pay the appropriate mitigation fee per town regulations. Seconded by P. Fitanides. Motion passed.

K. Brown: I'd like to thank you all for the ability to call this morning and be heard at the meeting tonight. That's really exceptional.

S. Couture: Thanks. We appreciate that.

Other Business: Invoices, Correspondences, Etc.

a. Joe Wichert, LLS, Inc. Invoice - \$475

S. Couture: This is relevant to the Clay Pond parking area that we are trying to create.

P. Fitanides: Do we have any way to check their survey against another survey? The survey is only an opinion so how do we know if it's right?

D. Hess: You would have to hire another surveyor to do the same work.

S. Couture: It's a licensed surveyor so they put their license on it. Our attorney will look at the survey map when he does the deed.

P. Fitanides: OK, I ask because I know of a surveyor who went to court and the judge ruled that the survey was their opinion, but it was wrong.

D. Hess motioned to authorize payment of an invoice from Joseph M. Wichert, LLS, Inc. dated January 12, 2016 for field and office time for surveying services, setting iron rods, and preparing the deed description in the amount of \$475 from the Conservation Fund. Seconded by P. Fitanides. Motion passed.

b. Stantec Invoice - \$2,687.78

D. Hess motioned to authorize payment of an invoice from Stantec dated January 8, 2016 for preliminary design in the amount of \$2,687.78 from the Conservation Fund. Seconded by P. Fitanides. Motion passed.

c. Union Leader Invoice - \$176.63

S. Couture: This was for the official public notice for the bid for the trails.

D. Hess motioned to authorize payment of an invoice from the Union Leader Corporation dated January 14, 2016 for posting of a public notice in the amount of \$176.63 from the Conservation Fund because it is relevant to the Merrimack Riverfront Trails. Seconded by P. Fitanides. Motion passed.

d. Reimbursement for Workshop Drinks - \$7.49

S. Couture: This is to reimburse Carolyn for purchasing drinks for the conservation workshop that was cancelled tonight.

D. Hess motioned to approve reimbursement to Carolyn for workshop drinks in the amount of \$7.49 from the operating budget. Seconded by P. Fitanides. Motion passed.

D. Hess motioned to adjourn at 5:17p.m. Seconded by P. Fitanides. Motion passed.

Respectfully submitted,

Carolyn A. Cronin

Assistant Planner/Conservation Commission Staff Support