



Londonderry Conservation Commission
Tuesday, December 9, 2008
Minutes
Page 1 of 4

Present: Deb Lievens, Mike Considine, Ken Henault, Paul Nickerson, Mark Oswald and Mike Speltz

Also present: Ben LaBrecque, potential Commission member

Call to order; 7:35 P.M.

D. Lievens appointed M. Oswald to vote for Truda Bloom and appointed M. Speltz to vote for Gene Harrington.

Elliot Health Systems- Jim Gove of Gove Environmental Services and Ken Rhodes of CLD Consulting Engineers returned with the quitclaim deed draft for map and lot 8-22. Elliot Health Systems is purchasing the land on behalf of the Town to mitigate wetland impacts related to the next phase of their construction on map and lot 6-31.

The purposes, use limitations and restrictions of the deed were reviewed and several changes were made. To be consistent with the allowance of snowmobiling in the northerly abutting Musquash Conservation Area, it was decided to eliminate section 2.H of the draft, which prohibited motorized vehicles (see attached draft). Under Section 3, entitled "Permitted Uses," M. Speltz suggested adding language to permit such structures as bridges and trails for conservation purposes. This resulted in amending the section title to "Permitted Uses **and Structures**," and amending Section 3.C to read "Activities **and structures**..." (emphasis added). Furthermore, the following language from Section 3.B regarding forestry and agriculture was removed: "for non-commercial purposes" and "are subject to the requirements contained herein."

D. Lievens entertained a motion to authorize the Chair to write a letter to the Town Council recommending they accept the gift of the property known as map and lot 8-22 and that they approve the associated "Quitclaim Deed with Conservation and Recreation Restrictions" as revised at the December 9, 2008 meeting of the Conservation Commission, subject to review by Town Counsel and with the authorization for the Chair to approve any changes of a technical nature only as made by Town Counsel. M. Speltz so moved. P. Nickerson seconded. The motion was approved, 6-0-0.

The final step will be for the Town Council to schedule a public hearing and formally accept the donation.

Bridges in the Musquash- M. Considine reported that between the bridge built by Londonderry Trailways and those built by potential Eagle Scout Matt Saur, four new bridges were built in the Musquash this year.

Hazardous trees; Red Deer Road- The owner of 24 Red Deer Road recently contacted D. Lievens regarding two pine trees on conservation land (12-3-62) abutting his property. Because the logger working on his property informed him the trees could fall onto his land, the owner requested that the Town inspect the situation and remove the trees. Commissioner Gene Harrington offered to visit the site and confer with D. Lievens who has already been to the property. She requested authorization from the LCC to have the trees removed if and when she and G. Harrington agree that should be the course of action. She verified that since the logger involved would take the hazard trees down, the timber would not be going to waste.

M. Speltz made a motion to authorize the Chair to approve removal of the trees in question and encourage the Chair to get the opinion of one other Commissioner before doing so. M. Considine seconded. The motion was approved, 6-0-0.

Policy for urgent requests- In discussing the previously mentioned situation on Red Deer Road, the issue was raised with regard to handling requests from residents who contact Town Hall looking for immediate assistance, e.g. concerning hazardous trees, at a time when no Commissioners are readily available for consultation. The



Londonderry Conservation Commission

Tuesday, December 9, 2008

Minutes

Page 2 of 4

decision was made that situations need to be handled on a case by case basis but that if the resident feels they cannot wait for a response, the Town Manager would be the appropriate person for them to contact.

COD ordinance issue- At the November 25th meeting, a subdivision plan came before the LCC for Design Review Committee comments. A discussion ensued and the question was posed as to the whether someone could circumvent the Conservation Overlay District buffer ordinance by building a structure on a piece of land and only subdividing it afterwards so as to build the desired second building without both having to meet the COD requirements. Otherwise, if the subdivision were done first, the COD buffer would be triggered and the resulting area would only allow for a single structure. Essentially, the first building could be constructed in what would eventually become the buffer after the subdivision but would be grandfathered because it was built before any subdivision took place.

D. Lievens researched the concept and was informed by the Town Planner that such a scenario could not be prevented under the current zoning ordinance. While not a likely occurrence, it was posed that perhaps the COD ordinance needs to be amended to close that loophole.

Membership- Potential LCC member Ben LaBrecque was present at this meeting. He expressed his interest in serving on the Commission and asked to be considered for full membership if the LCC was so inclined. Typically, D. Lievens noted, the Commission asks new members to take an alternate position and give themselves the opportunity to see how well the commitment fits into their schedule. B. LaBrecque, however, still stated he would prefer full membership and felt confident that he would have no issues handling his new duties. He will be interviewed by the Town Council at their December 15th meeting and D. Lievens will update the LCC.

SNHPC NRAC- D. Lievens, an alternate representative from Londonderry to the Southern New Hampshire Planning Commission, had previously asked if an LCC member would volunteer to act as their representative for the SNHPC's Natural Resources Advisory Committee. P. Nickerson offered to fill the role. He was unsure if he would be able to attend the first meeting in February but M. Speltz noted he will be in attendance of that specific meeting anyway because of his job with the Society for the Protection of New Hampshire Forests.

M. Oswald temporarily left the meeting.

Moose Hill easement (a/k/a Flax Field easement)- In 2006, some confusion arose as to who currently holds the easement to map and lot 6-18. Subsequent research revealed the following:

1. Andy Mack sold the conservation easement to the Town
2. A. Mack donated the land for the Moose Hill Kindergarten to the Town of Londonderry
3. The Town gave the conservation easement back in slightly altered form to A. Mack (i.e. Moose Hill Orchards)
4. The Town, in turn, gave the land with an altered description of the bounds to the School District, changing the area under easement, but not the total acreage.

Since that time, an effort has been underway to coordinate between the parties involved and find a way to have A. Mack transfer the easement back to the Town. A new deed has been drawn up which the LCC will review where A. Mack/Moose Hill Orchards will assign the easement back to the Town. This updated arrangement would free A. Mack from having to monitor the easement and give the Town back executory interest to ensure proper management of the Town's natural resources. A. Mack's right to farm the land, however, will need to be included under reserved rights of the updated deed to allow him and his successors to



Londonderry Conservation Commission

Tuesday, December 9, 2008

Minutes

Page 3 of 4

continue agricultural activities. The outcome will ensure the School District's ownership rights, the Town's monitoring and enforcement rights and Moose Hill Orchard's agricultural rights.

M. Speltz will review the document and obtain Town Counsel's input. Then the LCC can recommend to the Town Council that they accept the assignment of said easement with the purpose of taking the easement from Moose Hill Orchards and placing it in the hands of the Town.

M. Oswald returned to the meeting during the above discussion.

Merrill easement (17-6)- The Department of Environmental Services has proposed the placement of a temporary air quality station on map and lot 17-6. The land is owned by the Merrill family but is subject to a conservation easement held by the Rockingham County Conservation District. A Memorandum of Agreement has been drawn up to be reviewed and accepted by all parties involved (i.e. the Merrills, the LCC, RCCD and DES). On December 15th, the Town Manager will join the Executive Director of the RCCD, a DES representative, D. Lievens and Ken Merrill for a site walk of the area.

M. Speltz noted that if the Merrills took any kind of income tax deduction on the sale of the easement by way of any bargain sale to the Town, they should be notified that accepting the public benefit of the State paying them for the use of their land might be an issue for the Internal Revenue Service. D. Lievens stated she would mention as much to K. Merrill during the site walk and M. Speltz advised that the Merrills should be informed officially in writing as well.

Following some discussion, **K. Henault made a motion to authorize the Chair to write a letter to the appropriate authority stating the LCC reviewed the project and approves of the concept of the air quality monitoring station being constructed, namely since it is in keeping with the goals and purposes of the easement and to also write a separate letter to the Merrills to make them aware of the potential income tax issue. M. Speltz seconded. The motion was approved, 6-0-0.**

M. Oswald left the meeting and did not return.

DRC- 1. Motor Fuel Outlet (Tropic Star Development) site plan, 16-72 and 74
No comments

Intent to cut; 8-12- The LCC received a copy of a Notice of Intent to Cut Timber from the Assessor's office regarding map and lot 8-12, owned by the Londonderry Fish and Game Club. While the application stated the total area of land involved is 85 acres, 8-12 has less than 34 acres. It was believed that the cut, which is to include 80 of those acres, must actually include the Fish and Game's abutting lot 8-13 as well. Ninety thousand board feet of timber and 400 tons of whole tree chips are to be removed and the Town Council has signed off on the application.

Chase Road complaints- Two complaints were recently brought to the LCC and the Code Enforcement Officer claiming that the owner of 58 Chase Road had caused possible hydrology issues by filling a portion of Beaver Brook. DES received a complaint as well and sent the owner a letter stating he must cease any such activity and that the site will be inspected by that department shortly.

Assistant Building Inspector John Gilcreast visited the site recently and reported that piles of gravel, sand and loam were observed but did not seem to be near any wetlands. D. Lievens, however, had still questioned whether aerial maps did indeed show materials closer to the brook than they should be.



Londonderry Conservation Commission
Tuesday, December 9, 2008
Minutes
Page 4 of 4

November 25, 2008 minutes- **M. Considine made a motion to approve the minutes of the November 25, 2008 meeting as written. K. Henault seconded. The motion was approved, 2-0-3 (P. Nickerson, K. Henault and M. Speltz abstained as they had not attended the meeting).**

P. Nickerson made a motion to go into Non-Public Session for the purpose of discussing possible land acquisition per RSA 91-A:3. K. Henault seconded.

Roll call vote: Aye, Deb Lievens; Aye, Paul Nickerson; Aye, Ken Henault; Aye, Mike Considine; Aye, Mike Speltz

P. Nickerson made a motion to go out of Non-Public Session. K. Henault seconded. The motion was approved, 5-0-0.

P. Nickerson made a motion to seal the minutes of the Non-Public Session indefinitely. K. Henault seconded. The motion was approved, 5-0-0.

M. Speltz made a motion to offer a Purchase and Sale agreement as discussed in the above non-public session and that the agreement be contingent, among other things, on approval by the Town Council and approval of the LCC at public hearings. K. Henault seconded. The motion was approved, 5-0-0.

The meeting adjourned at 10:05 PM.

Respectfully submitted,

Jaye Trottier
Secretary