



Londonderry Conservation Commission

Tuesday, February 13, 2007

Minutes

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Present: Deb Lievens; Gene Harrington; Mike Speltz; Mike Considine; Paul Nickerson and Mark Oswald

Also present: Steven Fassi, resident

Call to order

D. Lievens appointed M. Oswald to vote for Ken Henault who was absent.

Higgins easement- Dick Higgins was present to discuss an unintended consequence of the lot line adjustment that occurred on lot 9-85 to annex a portion north of the pond and west of 9-85-1. Both lots are owned by the Higgins'.

Under the conservation easement negotiated with the Town in 2002 for lot 9-85-1, D. Higgins had reserved the right to perform a single lot line adjustment. In his letter to the LCC dated December 22, 2006, he described the reasons for doing so:

“...before any such lot-line adjustment there was a portion of Lot 9-85-1 west of 9-85 and north of the pond which was inaccessible from other portions of Lot 9-85-1. The lot line between the two properties touched the pond, thereby isolating the area [which is essentially the backyard for the Higgins' residence on 9-85]. That land also bordered Pillsbury Road, but no driveway cut existed allowing access to that area. In addition, Lot 9-85 had a small triangle of land which crossed the pond spillway, thereby creating shared ownership of the spillway,” (p. 3)

In 2003, D. Higgins went before the Zoning Board of Adjustment to build a fence along Pillsbury Road which would be within the 40 foot setback from the front property lines of both lots. When the ZBA granted the requested variance, they did so with the stipulation that it be conditioned upon the approval of the lot line adjustment by the Planning Board. While D. Higgins emphasizes in his letter that the term “lot line adjustment” was used specifically to “avoid any loss of grandfathering which a ‘subdivision’ might trigger,” (p. 3), a subdivision was considered to have occurred, activating the buffer requirements of the Conservation Overlay District. He noted that the term “subdivision,” as defined in the Londonderry subdivision regulations, does not include “lot line adjustment” in its description. Town staff informed him, however, that when the Town implemented its subdivision regulations in this case, it utilized the State’s definition which does incorporate the concept of the lot line adjustment. Hence, the Higgins’ would be precluded from mowing areas they currently maintain, including their backyard. It would also shrink the nine acre agricultural easement to approximately one acre of usable space for agriculture, much of which is also occupied by the Higgins’ leachfield. He also noted that the 100 foot buffer on that portion of the easement was incorrectly mapped, meaning that only a 50 foot buffer would actually be warranted there.

In view of this, D. Higgins was looking for the support from the LCC for his argument that this result was never the intention of the easement and its provision for the lot line adjustment. He stated that while he and his wife have always favored the conservation of that property, its valuation since the easement took effect has dropped by approximately \$400,000.00. Considering the \$200,000.00 paid by the Town for the easement, his net loss in value still stands at half of the total loss. The added impact of the wetland buffers could be as much as an



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additional \$100,000.00 to the Higgins'. The Town's interests, however would not be threatened since there would be no threat of building because the lot line adjustment did not create even the potential for buildable space. Ongoing protection would be ensured with the nine and eleven acre easements on the property. Since there was no mention that the State's definition of a "subdivision" was being used and the Higgins' believed they were protecting their interests by purposefully using the term "lot line adjustment," they are asking the LCC to support their endeavor to correct the loss of their grandfather status.

Planning and Public Works staff had mentioned the possibility of amending the ordinance in a way that would be similar to the exemption made several years ago which simplified condo conversions in the COD. D. Higgins added that his situation is more like such a condo conversion than a true subdivision.

M. Speltz stated that under Section 2.6.3.3.2.7 of the ordinance, the "production, cultivation, growing and harvesting of any fruit, vegetable, floricultural or horticultural crops, except turf grasses" are allowed uses in the buffer, although "not within 25 feet of the edge of wet of the adjacent wetland." While he felt D. Higgins would be within his rights to mow what was existing before the lot line adjustment, M. Speltz stated that he could not expand that area (i.e. cultivate more turf grass) and could mow no closer than 25 feet to the edge of wet. D. Higgins replied that he could even abide by some degree of a buffer but that the overall devaluation for resale is a true hardship he should not have to bear.

It was suggested that the Higgins' first try rectifying the issue by returning to the ZBA in search of relief from the wetland which includes the pond. Part of their argument could be the fact that the terms of the ZBA's previous decision created the quandary. A revised plan could then be recorded, noting the ZBA determination. M. Speltz believed it would be best to try and make this particular change under the narrowest of circumstances, which would be easier to accomplish as one case before the ZBA as opposed to a revision of the ordinance. M. Oswald noted that as with another case the LCC recently supported which went before the ZBA, any favorable comments they make should come with the strong cautioning that they are not to be viewed as setting any kind of precedent.

Following further discussion, the LCC offered to write a letter and appear at the ZBA hearing to support the request. **M. Speltz made a motion that the LCC support Dick Higgins' request to exempt from the loss of grandfathered status and thus from the provisions of the COD the pond and contiguous wetlands lying south and west of the driveway as shown on the plan recorded with the Rockingham County Registry of Deeds, Book 3255, Page 1632. P. Nickerson seconded. The motion was approved, 6-0-0.**

Cross property, Adams Road CUP- Michael Gospodarek of Edward N. Herbert Associates returned with Arthur Cross to present a revised plan of a proposed subdivision on lot 6-79 where a Conditional Use Permit would be required for wetland buffer impacts. At the January 23rd meeting, the LCC had requested that the detention basin causing the 11,639 square feet of disturbance be reshaped to remove as much of the impact as possible.

M. Gospodarek was able to reshape and remove the impact completely by placing more of the basin on proposed lot 79-4. He noted that this lot would now experience the same lack of backyard that D. Lievens had pointed out previously about lot 79-5 where the majority of the basin was located before. D. Lievens noted that while lot 4 would indeed have less of a backyard, lot 5 would be gaining some space for theirs. The LCC commended him for his effort and accomplishment.



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M. Gospodarek then asked if the LCC would be willing to support a plan that would be an improvement over the original but would not use as much of lot 4 and would still result in some impact. In this scenario, the treatment swale would be removed entirely from the 100 foot buffer, pulling the basin north into only the outer 25 feet (as opposed to the outer 50 feet) but still not infringing on lot 4 and its associated value as much. M. Speltz asked if, in that case, the house and driveway on lot 4* could be moved farther north so that the house was just up against the buffer and then the basin could follow to eliminate more buffer impact. M. Gospodarek acknowledged that that could be done but noted that doing so would restrict the future owner's potential for additional construction. (*The house on lot four was originally shown on the northern side of the driveway whereas on the updated plan it was 'flipped' to the southern side).

After some discussion, the consensus from the LCC was that they still would prefer the plan that removed the impact completely. M. Speltz said he would be reluctant to make the requested exception since the LCC consistently calls for the same goal of no impact on every plan. M. Oswald agreed, stating that it would set a dangerous precedent. G. Harrington further noted that Section 2.6.3.4.2.2.1 of the COD ordinance specifically states that there has to be a demonstration that "the structure for which the exception is sought cannot feasibly, after consideration of all reasonable alternatives, be constructed on a portion of portions of the lot which lie outside the CO district." Therefore, the LCC would be bound not to support the compromise when there is a viable alternative.

M. Gospodarek could still attempt to get approval from the Planning Board without the LCC's support. D. Lievens offered that the LCC could send the Planning Board a letter reviewing the choices of plans presented and stating their support of the one showing no impact. **G. Harrington made a motion that the LCC support the subdivision plan of lot 6-79 showing the entire detention basin and treatment swale being outside of the COD buffer. P. Nickerson seconded. The motion was approved, 6-0-0.**

DRC's- (2)

1. Tower Hill Plaza site plan, 15-61-2 and 15-62

Comments:

Request removal of all parking in the buffer (-6 spaces) since they are all over required parking numbers already (+10 spaces).

Sheet 4 of 23; the wetland buffer line seems to stop, i.e. it is not shown. It appears to be correct but we would like to be sure.

Please show snow storage.

2. Tedeschi Food Shops, lot line adjustment, 15-58

Comments:

No comments except that sheet 3, note 10 has an incorrect reference to the Hillsborough County Registry of Deeds ("HCRD")

Musquash Field Day- D. Lievens commended M. Considine for his efforts at the Musquash Field Day held February 10th. She stated that the event was an overall success. M. Speltz relayed an experience where he had the opportunity to not only educate a young boy about wildlife tracks but the boy's father as well.



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Possible conservation land- D. Lievens reported that she was contacted by the appraiser associated with possible conservation to ask her some questions. The LCC had hoped to have the appraisal finished before the Town Meeting in March so that if they were still willing to pursue the purchase, they would be able to discuss it out of nonpublic session and give the voters a recent example of conservation in support of the Open Space bond. There is still hope that the appraiser will have finished before the next LCC meeting on February 27th so it can be reviewed and the LCC can plan accordingly.

Open Space bond- The LCC has recently discussed ways to make their arguments for open space known to the voters for the upcoming Town Meeting in March. The Town Council had voted only 3-2-0 to place the bond question on the ballot and voted 3-2-0 against placing their support along with it.

Aside from the possibility mentioned above regarding possible conservation land, D. Lievens stated that she and M. Speltz appeared on the local cable channel with M. Oswald to promote the benefits of the bond. She also distributed flyers that were recently made specifically for this effort. M. Oswald suggesting that each member email a copy of the flyer to those in their own emailing address book who could, in turn, pass it on, etc., etc. M. Speltz will also look into whether the Society for the Protection of New Hampshire Forests could mail a postcard (as they have in other instances) to their Londonderry members to remind them of the voting date.

M. Speltz has submitted a letter as a private citizen to the editor of the Londonderry Times. P. Nickerson offered to write a letter to the Editor of the Derry News as a citizen who experienced first hand the conservation of the Musquash 25 years ago and can therefore speak to the value of appropriating funds for open space conservation.

The use of signs in resident's yards was also discussed as well as possibly on Route 102 and even Mack's property along Mammoth Road with Andy Mack's permission. M. Oswald offered to order the signs and help pay for them. P. Nickerson offered to donate towards the cost as well. M. Oswald suggested that larger signs should be used at the polls, perhaps featuring a picture of existing conservation land in Londonderry, superimposed with the image of the kind of development that could occur on it. Such a picture would simultaneously demonstrate the cost avoidance savings and the viewshed value to the voters.

Open Space Best Management Practices- M. Speltz noted that the updated Open Space plan has shown that roughly 25% of the open space that could be protected in Londonderry is located on small, privately owned parcels throughout town. He stressed the importance of educating these land owners about the Best Management Practices that should be used on the town's green infrastructure. One way this could be accomplished would be by creating an instructional book, similar to the one the Solid Waste Department prints to teach residents how to properly recycle. The LCC's book could explain the best methods of being a good steward of conservation land on one's property.

AES easement- M. Speltz and D. Lievens met with Granite Ridge attorneys regarding this 80+ acre easement located under the AES power lines. D. Lievens asked P. Nickerson if he might be available to help her accurately locate the trails along the easement with a GPS unit before an environmental baseline study is done. M. Speltz stated that he will explain to Granite Ridge in a letter that the LCC has two issues to address regarding the land on either side of their easement



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so that they would have the right to 1) be able to cross back and forth on the easement to use the trails and 2) be able to maintain those trails (i.e. cut back vegetation).

Musquash- M. Considine said he would be forwarding a map of the cellar holes he is aware of in the Musquash to Town Forester Charlie Moreno.

Certified tree farms- D. Lievens reported that Town Forester Charlie Moreno has re-inspected both the Musquash and Kendall Pond conservation areas in order to certify them as New Hampshire Tree Farms through the year 2012.

January 23, 2007 minutes- **G. Harrington made a motion to approve the minutes of the January 9, 2007 public session as submitted. P. Nickerson seconded. The motion was approved 6-0-0.**

Moose Hill easement- M. Speltz has done additional research on the history of this easement. He still needs to contact the Town Attorney for his opinion on whether Andy Mack should keep his easement and the Town relinquish theirs or if he should be the one to relinquish and the Town assign theirs.

G. Harrington made a motion to adjourn. M. Oswald seconded. The motion was approved, 6-0-0.

Respectfully submitted,

Jaye Trottier
Secretary