



Londonderry Conservation Commission  
Tuesday, November 28, 2006  
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**Present: Deb Lievens; Gene Harrington; Mike Speltz; Mike Considine; Ken Henault; Paul Nickerson and Mark Oswald, Town Council Liaison and voting alternate**

Call to order

November 14, 2006 minutes- G. Harrington clarified that on page three of the public session minutes, under the heading “SNHPC land use plan,” he did not state the plan was ‘incorrect’ regarding its classification of a particular area of Londonderry but instead merely questioned that classification. **K. Henault made a motion to approve the minutes of the November 14, 2006 public session as amended. M. Considine seconded. The motion was approved 4-0-3.** (D. Lievens, M. Considine and P. Nickerson abstained as they had not attended the meeting).

**G. Harrington made a motion to approve the minutes of the November 14, 2006 nonpublic session as written. M. Speltz seconded. The motion was approved 4-0-3.** (D. Lievens, M. Considine and P. Nickerson abstained as they had not attended the meeting).

Land Conservation Investment Program (LCIP)- Steve Walker of the LCIP met with the LCC to review their responsibilities concerning easements in Londonderry protected under this program. He explained that the LCIP attempts to meet with town Conservation Commissions every three years and tries to visit the actual sites every five years. He also noted that the LCIP has expanded to become “Conservation Land Stewardship,” which will add another 70,000+/- easements to the 50,000+/- that they currently oversee.

Much of the discussion centered around the Plummer easement located on map and lot 8-1. Since the original file for this easement was misplaced amongst Town Hall records years ago, S. Walker presented the LCC with a copy of both the LCIP’s field and office files (see more about these and related topics below).

In 2003, S. Walker had accompanied D. Lievens and G. Harrington on their annual walk of the Plummer easement. At that time, an abutter on Chandler Drive had constructed a fish pond which seemed to lie partially within the easement. After discussing the issue with the homeowner and attempting to resolve exactly where the boundary line is, an agreement was reached where the pond could remain but that the owner was made aware that no further encroachment would be allowed. D. Lievens informed S. Walker and the other members, however, that the pond has now been replaced by an inground pool, surrounded by a fence. While the new pool does not infringe any further onto the easement than the pond did, the veracity of the pool’s location being outside of the easement is still unknown. S. Walker noted that it is the easement holder’s responsibility to enforce the terms of that easement and added that the LCIP is willing to assist in any way. To give one landowner the ability to encroach in any way opens up the potential for any other landowner to demand a similar agreement, which can then snowball even further. He asked D. Lievens to note the issue on her upcoming annual report in order to formally establish the issue with the LCIP. M. Speltz suggested asking Planning Department staff to review their maps and see if a determination of the boundary can be made. He also volunteered later on in the discussion to look into the matter himself sometime after the beginning of the new year.

D. Lievens reported that a tree house is currently under construction on another abutting lot on Chandler Drive and that it is wholly within the easement. P. Nickerson added that it is being constructed with pressure treated lumber. S. Walker advised that while traditional simple tree houses consisting of little more than a few pieces of plywood may have been allowed in the past, today’s more complex structures need to be removed. It may simply be a situation where the landowner is unaware of the easement and/or its restrictions. After verifying through the deed that tree houses are not permitted, however, the landowner will have to come into compliance. Again, a snowball effect can develop



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because of elements associated with tree house activity, such as trash and any vehicles being used within the easement to gain access. It would also be in the best interests of the owner to comply because of potential liability issues. D. Lievens will be returning to the site next week and speaking with the owner's son-in-law. S. Walker said he would give the situation some more consideration, review the easement and speak with her again before she goes out.

The office and field files mentioned above can also be provided for any other easement connected to the LCIP. While the office file provides a relatively complete record of the easement, including photographs and CD's, the field file contains less information so that the official record does not need to be taken out to the site. S. Walker inquired as to how the LCC organized their various files and D. Lievens explained that not only are they organized and color coded as the LCIP happens to prefer, but that an intern had updated the required monitoring data for all their easements in great detail. S. Walker remarked that as towns like Londonderry obtain more and more conservation land and rely on volunteers for stewardship activities, hiring a part or full time staff member becomes more and more essential. He also mentioned that at some point next year, submittal of the required monitoring reports to the LCIP can be done electronically.

D. Lievens asked for the LCIP's opinion of using digital cameras for monitoring purposes since she was told in the past that they are not preferred due to the supposed greater ability to alter the photographs. S. Walker replied that not only are digital cameras more efficient, cost effective and convenient but that for general recording purposes and for even minor issues, digital photography is actually recommended. He added that with enough effort, traditional photography can be manipulated just as much as newer, digital technology. She also asked (in view of the educational opportunities the LCIP offers), that she would be interested in any 'map and compass' workshops held in the future. S. Walker believed that one could be arranged sometime in 2007.

The main focus for any Conservation Commission, S. Walker summarized, is to consistently perform annual monitoring, not only to document potential issues before they become unmanageable or destructive but in order to demonstrate due diligence. He added that the LCC has been successful in this regard. Prioritization of easements starting with existing or potential concerns will aid in that effort, particularly for areas that afford vehicle access (i.e. those used to transport trash/junk items, ATV's, etc.) or easements with little or no buffers from residential developments.

Hall Road junkyard- Ed Dudek, owner of Murray's Auto Recycling at 53 Hall Road, presented the LCC with a conceptual plan to clean up the site and add a new structure designed to prevent further contamination caused by the dismantling of automobiles.

This nearly 6 acre lot is surrounded by wetlands on its side and rear lot lines. With the required 100 foot buffer associated with that particular wetland, there is a very small building envelope remaining in the center where any new structures can be placed. (The current structures and the business itself have been 'grandfathered in,' since they existed prior to the adoption of a zoning ordinance in Londonderry). With the aid of the State Department of Environmental Services, a cleanup of the site is planned which will involve not only the removal of the existing pad where cars are currently dismantled but also the soil itself, which will then be replaced. A new wooden barn (and a vast visual improvement to the site) will be constructed in the same footprint as the current group of smaller garages and storage trailers. The barn, however, will cover only 4,000 square feet of space where 5,000 sf is currently being occupied. While this entire project would constitute an improvement even beyond the initial cleanup since the dismantling process and it's related runoff will now be housed completely indoors, a new building will not have any grandfathered status. In its proposed location, the barn will partially impact the wetland buffer, requiring a variance be granted from the Conservation Overlay District ordinance. E. Dudek is scheduled to appear



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before the Zoning Board of Adjustment on December 20<sup>th</sup>. He is requesting that the LCC convey their support of the project to the ZBA.

Jim Pincence, E. Dudek's largest direct abutter, was also present to support the plan. He stated that it would be advantageous to grant a variance, not only for reasons already stated but because if the LCC/Town ever wants to purchase the piece in the future, the lot will have already been decontaminated at no cost to the Town. M. Speltz suggested that while the proposal will greatly improve a current threat to the wetland and is being sought by a landowner willing to achieve the same environmental results as the LCC, the most ideal scenario would involve moving the junkyard altogether. Not only would this remove a use that under today's zoning regulations would not be permitted in the AR-I zoning it occupies but it would completely eliminate the potential hazard to the wetlands and leave a newly cleaned lot. That large wetland, M. Speltz pointed out, processes runoff from the entire area of Hall Road, not just from the junkyard. K. Henault added that such a move would also benefit E. Dudek because on a industrial or commercial lot, a less expensive steel building could be built, avoiding the greater cost of a more aesthetic wooden barn that would blend in his current AR-I zone.

It was contemplated that the Town could perhaps make some sort of land swap to place the junkyard in an appropriate zone. E. Dudek could also purchase a privately owned lot that would suit his needs and purchase it with the funds from the sale of his lot to the Town. He stated that he would only need roughly three acres on which to operate his business. The first hurdle would be to see if DES would still be able to spend their grant funds on the cleanup if the junkyard were to be moved afterwards. Secondly, the Town would need to make an exception to its own regulation that no licenses will be issued for any new junkyards. M. Speltz argued that if the junkyard is simply being moved, the Town might not have to consider it 'new.'

It was eventually decided that M. Oswald would approach the Town Manager with the concept, while E. Dudek and M. Speltz would investigate whether the DES funds would still be permitted under this new scenario. If the plan could be pursued, M. Speltz added that appraisals will still need to be obtained, with any difference in price being owed by one to the other. E. Dudek will return at the December 12<sup>th</sup> meeting.

D. Lievens appointed M. Oswald to vote for the empty seat.

George property- **D. Lievens entertained a motion to authorize the Chair to expend an amount not to exceed \$130.00 from the Open Space Fund to pay for the recording of the final plan of the George property with the Rockingham Country Registry of Deeds. Paul Nickerson so moved. G. Harrington seconded. The motion was approved, 6-0-1.** (K. Henault abstained as he is an indirect abutter to the George property).

Walgreen's easement- D. Lievens reported that Town Attorney Bart Mayer has made his final approval of this easement (see November 14, 2006 minutes). At the previous meeting, the LCC had noted to recommend approval to the Town Council, subject to B. Mayer's official endorsement. The Town Council are now scheduled to vote their acceptance at their December 4<sup>th</sup> meeting.

Tanager Landing deed- Map and lot 5-10-40 was to be deeded to the Town as part of the Tanager Landing subdivision off of Wiley Hill Road. M. Speltz had previously explained that a conflict still exists within the language, since some degree of recreational use, including a small shelter structure, were supposedly intended for that lot, yet "no cutting of trees or shrub vegetation." This would make it impossible to create trails that would access any recreation or shelter area. M. Speltz added it still needs to be verified exactly what the conditions were for that approval to ensure that there is, indeed, a conflict.



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He had previously forwarded these issues to the Director of Planning and Economic Development who, in turn, suggested obtaining the input of Londonderry Trailways. D. Lievens reported that Londonderry Trailways has yet to make any comments.

Moose Hill easement- D. Lievens reported that she had performed her third of the annual monitoring to be done on this easement. (M. Considine and G. Harrington have yet to complete theirs). Using Karin Rubin's detailed report from last year, she completed the Farmland Protection Grant form, stating that there were no significant changes from last year. K. Rubin's report, however, was completed with a view towards the easement being a conservation easement, not specifically an agricultural one. D. Lievens noted that most of those items are farm debris and old stumps, things that would not necessarily be prohibited under an agricultural easement. She asked for the LCC's opinion on the subject and it was decided that those specific kind of items did not need to be removed, as long as they are not hazardous.

D. Lievens was also contacted by Mike Cross of Moose Hill Orchards to notify the LCC that some of the apple trees on the easement, located next to the driveway of the kindergarten, are no longer productive and will probably be cut down. Depending on the exact wording of the easement, D. Lievens will let M. Cross know if the LCC would require some form of official notification.

These trees were the very same that had become an issue with the impending construction of a sidewalk on Pillsbury Road (see minutes of July 11<sup>th</sup>, September 12<sup>th</sup>, September 26<sup>th</sup> and October 10<sup>th</sup>). That project would include a swale that is planned to infringe on the wetland buffer to the flax field because otherwise, those same trees would need to be cut down to accommodate the drainage structure. That is something that not viewed as prudent by Town staff since Scenic Byway grant money was used to purchase the easement with the intention of preserving the scenic quality of the Town's "Apple Way." If those trees are taken down because of their age, however, it would pose an opportunity to remove the swale entirely from that buffer.

In researching whether the Town's ability to place a swale there was valid under the easement's terms, Town Counsel, Bart Mayer, discovered that Moose Hill Orchards seems to be the owner of that easement, not the Town. (The School District owns the land). In order to allow the Town to construct the swale in the buffer, a friendly condemnation would be required, including approval by the easement owner, which LCC assumed was the Town and the landowner, i.e. the Londonderry School District, as well as Scenic and Cultural Byways who gave the grant. M. Speltz and D. Lievens both thought that the LCC held actually held and easement there since the Town, in part, purchased it.

Following some discussion, including the fact that the Planning Board previously redrew the easement line when the kindergarten was built, it was decided that D. Lievens will meet with the Town Manager to attempt to resolve the issue.

DRC's- (2)

1. Innie lot line adjustment, 11-102 and 11-102-6  
No comments
2. Baron's Major Brand Appliances subdivision, 15-97  
No comments

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



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**Roll call vote: Aye, Deb Lievens; Aye, Mike Considine; Aye, Mike Speltz; Aye, Mark Oswald; Aye, Paul Nickerson; Aye, Ken Henault; Aye, Gene Harrington.**

**M. Oswald made a motion to go out of Non Public Session. M. Considine seconded. The motion was approved, 7-0-0.**

**M. Oswald made a motion to seal the minutes of the Non Public Session indefinitely. M. Considine seconded. The motion was approved, 7-0-0.**

**M. Speltz made a motion to adjourn. M. Oswald seconded. The motion was approved, 7-0-0.**

Respectfully submitted,

Jaye Trottier  
Secretary