

**CONCORD CONSERVATION COMMISSION**  
**MINUTES**  
**Regular Meeting**  
**December 14, 2011**  
**City Council Chambers, City Hall Annex**  
**41 Green Street, Concord, NH**

**Attendance:**

Members present at the meeting included: Christopher Morgan; Kristine Tardiff; Jim Owers; Jan McClure; Chris Kane; Rick Chormann; Gloria McPherson, City Planner and Rebecca Hebert, Senior Planner, also attended the meeting.

C. Morgan called the meeting to order at 7:05.

**1. Minutes:**

The Commission reviewed the minutes of the November 9, 2011, meeting and the minutes were unanimously accepted with a few minor revisions.

**2. Wetlands Bureau:**

- a. Correspondence - R. Hebert reviewed the following correspondence from the New Hampshire Department of Environmental Services (NHDES):
- Letter from the NHDES regarding the approval of the City's "Notification of Forest Management or Timber Harvest Activities having Minimum Wetlands Impact" for the Penacook Lake timber sale;
  - Letter from the NHDES regarding the approval of the "Notification of Forest Management or Timber Harvest Activities having Minimum Wetlands Impact" of Michelle Richards at 76 Hutchins Street;
  - Letter from the NHDES regarding the approval of the "Notification of Forest Management or Timber Harvest Activities having Minimum Wetlands Impact" of Donald Stever off of Graham Road; and
  - Letter to Hilary Harris regarding the approval of an Alteration of Terrain Permit for Evolution Rock + Fitness, LLC.

The Commission discussed the correspondence. R. Hebert explained that Donald Stever is clearing land off of Graham Road to re-establish the agricultural use of the property. She explained that the land historically contained open fields, but has reverted back to forest. The access would be through an existing woods road across from Julie Drive.

**3. City Council/Planning Board Action:**

R. Hebert explained that the City Council referred the communication from James Taber regarding the access to West Locke Road to the Conservation Commission. The email was distributed to all of the City Councilors and was also printed in the Concord Monitor.

She said that Mr. Taber is concerned with the City's management of the gates on West Locke Road and does not believe it is fair that the airplane club has the combination to the gate and is allowed to drive down the road to access the sod fields. He also is concerned that the gates block access to the land for people with disabilities.

The Commission discussed the new ADA ruling regarding access to public open space and trails. R. Hebert said that Trails Committee suggested posting a sign at the gate with a number to contact if accommodations for accessibility were needed. A suggestion was made to have the gate locked at dusk and opened at dawn on the weekends. The group decided that this would be difficult to manage.

R. Hebert agreed to send an email to the group with links to informational websites explaining the new ADA requirements. The Commission also asked staff to contact the easement holder, executory interest holders, and the City Solicitor for advice. The Commission agreed to discuss this again next month and report back to the Council in February.

The Commission discussed the proposed Forest Society conservation easement on the Gully Hill Road agricultural land and decided to bring this back to the City Council in February. J. McClure and C. Morgan agreed to meet with some of the Councilors prior to the meeting to review the details of the conservation easement.

G. McPherson reported that the City Council held a public hearing on the proposed rezoning request of Delta Dental for property off of Commercial Street. The Council voted to refer the matter back to the Planning Board so they could review new information provided by Delta Dental. She explained that the proposal includes a conservation easement on approximately 8 acres and also removed the previously proposed playing fields.

She explained that the final survey also included more land than what was originally noted in the deed. The proposal would involve the construction of a 15,000 sq. ft. office building/wellness center and associated parking. The conservation easement reserves the right to direct and treat stormwater within the buffer/easement and ultimately downhill to Wattanummon Brook.

J. McClure said that Tom Raffio also agreed to an extension of the TIF District to include this parcel. The building would either be taxable or Delta Dental would pay a PILOT if the TIF District was not extended. The proposal also includes a buffer improvement plan to re-vegetate the land adjacent to the brook. She said that Delta Dental presented the argument that the City would have more control over how the land was used if the property was in Institutional District.

The Commission discussed the proposal and agreed that any institutional use of the property in the vicinity of the brook would be of a higher intensity than uses permitted in the RO District. The group discussed spot zoning, negative impacts of additional impervious surface to the brook and surrounding natural resources, and whether or not it would be possible for Delta Dental to expand on their existing property on Delta Drive. A discussion ensued regarding the use of the existing Delta Dental facility, portions of the building are leased to another organization and they provide incubator or small shared office space for nonprofits. The Commission questioned whether or not it would be possible for Delta Dental to expand northerly into the adjacent soccer field.

After reviewing the new information presented to the City Council, the Commission agreed to reaffirm their original position on the rezoning request and submit a letter to the Planning Board, for the following reasons: there was no compelling need for the rezoning; the property is surrounded by land in conservation or agricultural use; there is no grantee to accept the conservation easement; the proposed site plan proposes a greater impact to the buffer than the existing residential use; during the Master Planning process the RO zoning was specifically included within the Urban Growth Boundary along rivers, ponds and certain named streams, including the Merrimack River, Horseshoe Pond and Wattanummon Brook, in order to protect these resources and their buffer zones; the RO zoning is appropriate for this parcel because all adjacent land uses are agricultural or conservation; the adjacent land is protected by a conservation easement held by the Society for the Protection of the New Hampshire Forests; any increase in impervious surface beyond the existing residential use would be detrimental to the natural resources in the vicinity of the property; the proposed conservation easement includes a reserved right for the treatment and flow of stormwater drainage within the buffer and ultimately downhill to Wattanummon Brook; the Brook is an important tributary to the Merrimack River and runs from Horseshoe Pond to the river and the pond is listed as an impaired water body by the New Hampshire Department of Environmental Services and the water quality of the pond is already compromised; the property is located within the Flood Hazard District, the Aquifer Protection District, and the Shoreland Overlay Protection District; there is very little development potential because of the specific conditions of the site, including the location of the brook relative to the frontage and the large areas of wetland and floodplain; and there appears to be sufficient space for expansion on Delta Dental's existing lot, which is appropriately zoned for the proposed use.

R. Hebert explained that Delta Dental would record a covenant that would require the conveyance of the conservation easement; restoration of the buffer to the brook; and the PILOT or the inclusion of the property in the TIF District.

The Commission discussed the proposed covenant and agreed that the rezoning of property should make sense because of the inherent condition of the land without special contingencies.

#### **4. Open Space:**

R. Hebert explained that the Swope conservation easement was revised after the packet was emailed to the Commission. She distributed copies of the new easement document to the group and said that the "Breach of Easement" and "Alternate Dispute Resolution" sections have been revised to accommodate concerns of the City Solicitor and the Five River Conservation Trust's attorney. The revised language is represents a compromise, and the Legal Department has suggested using this language as a model for easements that involve the City property owner. She also said that John Swope has asked if hunting could be prohibited on the property. Hunting is also prohibited at Winant Park, and the deed to the City includes a restriction on hunting. The Commission agreed to restrict hunting on the Swope property.

R. Hebert said that the Concord Regional Solid Waste Recycling Cooperative facility would like to begin construction this winter. As a condition of their Planning Board approval, the Cooperative was required to convey a conservation easement on the land westerly of the proposed Whitney Road extension. The land includes shoreline of the Merrimack River and the bluff and buffer to the bluff. The NHDES has also required the conveyance of a conservation easement along the shoreline of Burnham Brook. The proposed easement now includes approximately 16 acres.

R. Hebert explained that the draft easement follows the form of the City's model easement for riparian buffers. The only exception would be the provision for the construction and maintenance of a shared use path with permeable pavement. The City Solicitor has also suggested that any reference to arbitration be removed from the easement document. The Commission reviewed the document and agreed the within revisions. C. Kane asked if the City had done a Natural Heritage request for this easement. He suggested it would be a good standard practice for all easements.

R. Hebert reported that she is working on the RFP for the Gold Star Sod Farm lease. She said that she has received calls from several local farmers who are interested in submitting proposals. She explained that the City has not yet gone out to bid for an agricultural lease, and she is working with the Purchasing Department to draft the RFP.

The group discussed the proposed "Conservation Land Regulations" sign. R. Hebert said that the sign would be posted at the entrance to city-owned conservation lands. She explained that the list was taken directly from the City's Code of Ordinances. The Commission suggested that we check with the Legal Department on the prohibition on carrying firearms before printing the sign.

K. Tardiff moved to enter into a nonpublic session for the discussion of possible land acquisitions in accordance with RSA 91-A:3, II(d). J. Owers seconded the motion, and the motion passed unanimously.

Following the discussion the Commission moved to exit nonpublic session and seal the minutes. The motion was duly seconded and passed unanimously.

K. Tardiff moved to authorize staff to request a restricted use appraisal of the Pierce property off of Stickney Hill Road. R. Chormann seconded the motion. Motion passed 4 to 1; C. Morgan voted against the motion.

##### **5. Other Business/Reports:**

The group discussed the need to fill membership vacancies on the Upper Merrimack River Local Advisory Committee and the Contoocook River and North Branch Local Advisory Committee.

Meeting adjourned at 10:12 PM.

A TRUE RECORD ATTEST:  
Rebecca Hebert  
Planner, Secretary pro-tem