

New Hampshire Council on Resources and Development

NH Office of Energy and Planning
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FINAL MEETING MINUTES - April 2, 2012

MEMBERS PRESENT

Joanne Morin, Chair, Director, NH Office of Energy and Planning
Robert Beaulac, Designee for NH Department of Administrative Services
Timothy Drew, Designee for NH Department of Environmental Services
Elizabeth Muzzey, Designee for NH Department of Cultural Resources
Marta Modigliani, Designee for NH Department of Safety
Edward Murdough, Designee for the NH Department of Education
William Ray, Designee for NH Housing Finance Authority
Mark Sanborn, Designee for the NH Department of Transportation
Thomas Sloan, Designee for NH Department of Agriculture, Markets and Food
Bob Spoerl, Designee for NH Department of Resources and Economic Development

OTHERS PRESENT

Allen Brooks, Esq., Senior Assistant Attorney General, NH Department of Justice, representing CORD
Evan Mulholland, Esq., Assistant Attorney General, NH Department of Justice, representing the
Department of Fish and Game
Glenn Normandeau, Executive Director, NH Department of Fish and Game
Jeff King, NH Department of Fish and Game
Kevin Gagne, P.E., Senior Principal Engineer, Fay, Spofford & Thorndike, representing Fish & Game
Tom Hubert, NH Fish and Game Commission
Justin Richardson, Esq., Upton & Hatfield, representing Town of Newbury
Gregory Smith, Esq., McLane, Graf, Raulerson & Middleton, representing Lake Sunapee Protective
Association
Thomas Richards, Esq., representing Lake Sunapee Protective Association
June Fichter, Lake Sunapee Protective Association
Jeff Brillhart, Assistant Commissioner, NH Department of Transportation
Bill Oldenburg, NH Department of Transportation
Ridgely Mauck, NH Department of Environmental Services
Darlene Forst, NH Department of Environmental Services
Don Clarke, Sullivan County Sportsmen
Tracey Boisvert, NH Office of Energy and Planning
Susan Slack, NH Office of Energy and Planning

I. ROLL CALL

The meeting was called to order at 1:30 P.M. by Joanne Morin, who explained that CORD was meeting to consider the NH Department of Fish and Game proposal to construct a public boat launch and parking facility on Lake Sunapee in Newbury on property acquired by the state under the former Land Conservation Investment Program (LCIP). Chairperson Morin explained that representatives from Fish and Game would first present the details of the proposal, and would be followed by comment from representatives of the Town of Newbury and the Lake Sunapee Protective Association. Following questions from CORD members, public input would be invited, after which CORD would begin its deliberations, giving direction to staff for a motion to be considered at a deliberative meeting to be held on April 9, 2012 at 1 p.m. at the Office of Energy and Planning.

CORD members were introduced, as were the parties representing the Town of Newbury and the Lake Sunapee Protective Association, followed by others present.

Ms. Muzzey disclosed that her office, the State Preservation Office of the Division of Historical Resources, had a role in approving the boat launch project, but that she felt that did not present a conflict in her participation in the CORD process. She asked if any of the parties had any objection to her participation. No objections were raised.

II. WILD GOOSE BOAT LAUNCH AND PARKING FACILITY PROPOSAL

Attorney Richardson, representing the Town of Newbury, raised a concern that the CORD meeting was improper and that a public hearing, including notices to interested parties, was required under RSA 162-C:6, IV and V and RSA 229:5, III-a and RSA 230:45-47, involving layout of limited access highways. He submitted a letter and "Memorandum on CORD Authority" explaining the position of the Lake Sunapee Protective Association (LSPA) and the Town of Newbury.

Chairperson Morin said the purpose of the CORD meeting was to assess whether the Fish and Game proposal was compliant with RSA 162-C, and asked for consultation with Senior Assistant Attorney General Brooks. Mr. Brooks said the meeting should be held as is, that the issue is one of management of CORD property and that CORD was free to decide the question of the boat launch facility, balancing conservation interests with public access needs. He said the fact that CORD had provided notice of the meeting to the parties and that the parties were being given an opportunity to comment complied with the requirements for a public hearing, if one were in fact required.

Assistant Attorney General Mulholland, representing the Department of Fish and Game, gave an overview of the boat launch project, noting that the project had received Department of Environmental Services (DES) wetland and shoreland permits. He said that an alteration of terrain permit had been denied but a new application had been submitted under the new DES alteration of terrain rules. Mr. Mulholland said the footprint for the current boat launch and parking facility hadn't changed from Fish and Game's July 2011 proposal. He said it was a low-impact development proposal for two boat ramps, a dock, parking with shielded down lighting, and a portable toilet on a cement pad. Mr. Mulholland referenced RSA 162-C and the Final Report of the Land Conservation Investment Program (LCIP) and said that under LCIP, the state and private partners purchased property during a development boom in the 1990s to preserve farms, lakeshore parcels, forest land and other resources. Some parcels were purchased to provide lake access, as was the case with the Wild Goose property, he said.

Mr. Mulholland introduced Kevin Gagne, the project engineer, who explained the details of the proposal. He distributed a Project Proposal Summary and displayed site plans of the proposed facility as well as numerous photographs of the current conditions on the 3.3-acre site. Mr. Gagne said the proposal includes dual 12-foot wide and 40-foot long boat ramps made of interlocking concrete planks separated by an 8-foot wide central floating dock. He said parking will include 13 car top spaces, one of which will be reserved for law enforcement and two for handicapped users, and 31 spaces for vehicles with boat trailers, including two handicapped spaces. The project is designed for night-sky downcast lighting, which may be automatically dimmed to provide overnight security level lighting.

Mr. Gagne said the former Wild Goose Lodge was located on the property since at least the 1950s, and included approximately a dozen cabins and an 8-room motel. The structures were demolished in the 1990s after LCIP acquisition and assignment to Fish and Game. A chimney and gravel loop road as well as some stone rubble and stonewalls remain on the site. Mr. Gagne showed numerous photographs depicting the property's current conditions. A single wetland of approximately 180 square feet is located on the site 30 to 35 feet from the shoreline. It is isolated hydrologically from Lake Sunapee and is fed by groundwater runoff and seepage. Mr. Gagne said it will not be disturbed by the proposed project. He said field studies did not discover any rare plant or animal species, or state or federally listed threatened or endangered species.

Mr. Gagne reviewed the specifics of several large color site plan schematics depicting the location of parking spaces, the boat ramps and center dock, pervious and impervious surfaces and vegetative areas. He described the project as one of low-impact design (LID) and read from the Environmental Protection Agency definition of LID. He described the several best management practices (BMPs) designed into the project to control stormwater runoff, including the use of porous surfaces, a sand filter treatment layer and bio-retention swales. Mr. Gagne said the BMPs are inter-connected and that grading is designed to divide the site into small watersheds that collect and treat stormwater locally and prevent runoff velocity. He added that the various BMPs are designed to provide redundancy in stormwater treatment. He said stormwater will be treated as a resource used to water the site's vegetation, rather than treated as a waste product.

Mr. Gagne said the site will be landscaped with native vegetation selected for specific areas, such as slopes and bio-retention areas. He said parking areas will be screened from view by boaters on the lake and that fertilizer will not be used on the site following initial construction.

Mr. Gagne described the DES permits required of the project. He said a wetlands permit had been granted to allow dredging of about 125 square feet (10 cubic yards) of bank and 1500 square feet (56 cubic yards) of lakebed for ramp construction, which will also require 21 cubic yards of fill. A DES shoreland permit has been granted. Mr. Gagne said about 6% of the parcel that is within the protected shoreline will be covered with impervious surface.

F&G is applying for an alteration of terrain permit under the new DES rules. Mr. Gagne said the total area of disturbance from the project will be about 80,000 square feet and about 56% will be covered with porous paved surface.

Mr. Gagne, Mr. Normandeau and Mr. Mulholland answered questions from CORD members about the number of parking spaces proposed. Mr. Mulholland said the number of parking spaces is the maximum that can be accommodated without development within the 50-foot buffer from the shoreline.

CORD members also posed questions about lighting, stormwater runoff, beach accessibility, the proposed dock, impact of traffic on neighboring residences, and milfoil and other invasive weeds.

At the conclusion of Fish and Game's presentation, Ms. Morin invited DES staff to explain why the proposed project was required to obtain permits and the various permit requirements. Ridgely Mauk said the alteration of terrain requirements govern stormwater and water quality issues. He also described standard stormwater drainage practices as well as the more modern BMPs, such as bio-retention practices incorporated into Fish and Game's proposal. Darlene Forst provided background on the wetlands dredge and fill and shoreland permitting requirements. She said consideration is given to whether wetland impacts are necessary and, if so, how they can be minimized to avoid as much impact as possible. She said various ramp locations within the parcel were considered and that the site chosen would have less impact on the lake bed than providing boat access at the beach. Ms. Forst added that the site did not involve endangered species, that the site was not pristine and that the project met all the standards required for a wetlands permit. She said the requirements for a shoreland permit were also met in terms of impervious cover and other considerations.

Ms. Morin invited Assistant Commissioner Brillhart to discuss DOT's review of the project in terms of highway access and traffic. Mr. Brillhart explained that the Wild Goose site is accessed from Route 103, a state highway, via Birch Grove Road, a town road, and that although development of a public boat launch raised safety concerns about site distance involving vehicles with boat trailers turning onto the highway, DOT would work with Fish and Game to resolve the problem as they work with any developer on highway access issues.

Mr. Oldenburg explained that the grade of the town road and state highway, as well as a crest of a hill, would cause safety problems for vehicles with boat trailers turning left onto Route 103. One possible solution may be to limit access from the boat launch facility to right turns only onto Route 103 to increase the safety margin. He also said that from DOT's standpoint, a left turn lane is not warranted because of the low volume of traffic on Birch Grove Road. Mr. Mulholland said Fish and Game was committed to working with DOT to make sure access was safe.

Mr. Drew said that because DES had been involved in several permitting processes for the boat launch facility, he was recusing himself from participating in CORD's consideration of the project.

Mr. Richardson, representing the Town of Newbury, made reference to the materials he had provided in July 2011, when CORD considered the boat launch facility. He said the core of the February superior court decision on the matter was the statutory obligation under RSA 162-C, III and the former RSA 221-A to preserve the natural beauty and natural resources of LCIP properties and high quality of life in New Hampshire. He said the previous use of the property has nothing to do with CORD's decision, and said a two-acre parking lot on a three-acre site is not preservation of natural beauty. He said one of the troublesome aspects of the Fish and Game proposal is how close the development is to the property lines, as referenced in Exhibit 12 in the Town's July materials. He said a lot of the trees providing buffer around the parking facility referenced by Fish and Game are located off the Wild Goose property. Mr. Richardson provided CORD with a packet of 109 color photographs of the Wild Goose site, many taken when trees were leafed out. He said he was surprised by Fish and Game's photos, which were taken before leaf out, because they made it seem as if the project fits in with the shoreline. He said the property is incredibly steep.

Mr. Richardson said it was undisputed that LCIP intended the Wild Goose site to be used for a boat launch, but that earlier sketches from the 1990s showed 28 and 22 parking spaces and that an earlier report had said the site couldn't accommodate more than 30 spaces. He referred to a 1989 letter from Wilbur LePage of DRED (Exhibit 2-1 from the Town's July 2011 materials) stating that the site

should be kept as natural as possible. Mr. Richardson said that is the type of boat launch facility that would be consistent with RSA 162-C, and that the current proposal conflicts with what was supposed to be done. He said the abutting property owners are faced with a giant parking lot 15 feet from their property lines. He said the project might be suitable if it weren't on LCIP land, but for conservation property it is too big a project. He said RSA 162-C doesn't provide an exception for previously disturbed sites. Mr. Richardson also said there was no exception for the project just because access was imperative.

Mr. Richardson noted that the Lake Sunapee Protective Association (LSPA) was asked to contribute \$10,000 toward the appraisal of the property prior to its acquisition by the LCIP. He referred to a letter to the LSPA from Paul Bofinger of the Society for the Protection of New Hampshire Forests, which described the acquisition as an effort to protect the property. Mr. Richardson said the Lake Sunapee area and the Town of Newbury depend on people coming to the area for its natural beauty and quaint character and that's why the LCIP was created. He said if the project is built as proposed it will send the wrong message to towns and others who want to partner with the state if, 20 years later, they face the prospect of protected land becoming a parking lot. He said Fish and Game would lose credibility. He said the proposed project belongs on land not acquired for conservation. The Town doesn't oppose development of the site; it's a good site, he said. The Town supports the type of car-top facility originally contemplated for the parcel in the 1990s. Mr. Richardson said this is a proposal for a sophisticated parking lot, not one that preserves the parcel's natural beauty.

Mr. Richardson also discussed access and safety problems posed by the project. He said Fish and Game wants the town road to become one-way and asked whether it had that authority. He also raised concerns about safety issues posed by access at the crest of a hill. He said requiring a right-turn only onto Route 103 would require those wanting to turn left to travel one or two miles to a traffic circle to turn around. He noted that several seasonal homes are located on the town road. He said the Town doesn't want to be stuck with road issues and noted that DOT maintains continuous jurisdiction, under RSA 236:13, when town roads access a state highway. He said DOT could require the Town to bear the responsibility of fixing an unsafe access point, sticking the Town with a \$1 million bill.

Mr. Richardson closed his presentation by stating that creating a two-acre parking lot on a three-acre site can't possibly meet the criteria in RSA 162-C:6 of preserving natural beauty. He again stated his claim that CORD's meeting was improper and that a more formal public hearing was required.

In response to a question from Mr. Ray about Town zoning requirements for the parcel, Mr. Richardson said the underlying district is zoned for residential use, but noted the town's shoreline setback requirement of 75 feet is more stringent than the state's 50 feet. He said this is an issue involving the DES shoreland permit that the Town will appeal.

In response to Mr. Sanborn's question about the definition of "conservation," Mr. Richardson referred to RSA 162-C:3 and added that if Fish and Game were disturbing less than half of the Wild Goose site, the Town's case against the project would be more difficult. But, he said, a majority of the site is being disturbed and it could be largely natural. He said pavement is not natural, even if it is porous.

Mr. Richardson responded to other questions from CORD members about the Town's support for a smaller car-top project, highway layout issues and original size of the project.

Mr. Smith, representing the LSPA, spoke briefly, noting the 100-year history of the organization and that about half of its 800 members are not lakefront property owners. He said the LSPA takes the same position as presented by the Town and Mr. Richardson. He said the LSPA could support a project similar to a Type 4 facility, which would fit a three-acre site. The proposed project, he said,

needs more like 30 acres. The facility types were described in guidelines in the Public Access Plan for New Hampshire's Lakes, Ponds and Rivers issued by the Office of State Planning in November 1991 and included in LSPA's materials provided for CORD's July 2011 meeting.

Mr. Richards, also representing LSPA, said he thought Fish and Game had done what it could to design the project in the best way, but that low-impact applies to the management of stormwater, not to the site itself. He said public access could be anything from a path to the water to a "Wal-Mart" facility. He noted that there is no legal requirement forcing Fish and Game to build the size facility it is proposing. He said the decision was driven by the fact that Fish and Game could obtain an 80% federal match for the project, but would receive no match for a walk-in facility. He said a car-top facility would help meet a need for the exploding use of kayaks. Mr. Richards added that CORD was dealing with the public trust in considering the boat launch proposal, which was at the heart of the LCIP. He said if this project were approved for this site, the LCIP would not be worth maintaining because the state could build anything on these properties.

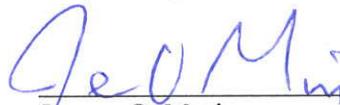
Ms. Fichter, representing LSPA, said Fish and Game's low-impact design was not low-impact development. She said that the amount of material that would be removed from the site under the proposed project would fill the equivalent of about 500 six- to eight-wheeled dump trucks. She also said that a new alteration of terrain permit was needed for the project from DES because the previous permit was rejected because it didn't allow for infiltration of water, but transferred stormwater into the lake.

Chairperson Morin thanked those in attendance for their patience for the length of the meeting. She said CORD had originally planned to begin deliberations on the boat launch proposal, but given the time, she suggested waiting until CORD's April 9, 2012 meeting. There was general consensus to begin deliberation at the April 9 meeting, which will be held at OEP's third floor conference room in Johnson Hall.

III. ADJOURNMENT

Ms. Morin closed the meeting at 4:35 p.m. CORD members then met briefly with legal counsel.

Respectfully Submitted,



Joanne O. Morin
Chair

JOM/ss