

**Town of Newington, NH**  
**CONSERVATION COMMISSION**  
Meeting Minutes, Thursday, December 8, 2022

**Call to Order:** Chair Jane Hislop called the December 8, 2022, meeting at 6:30 PM.

**Present:** Vice-Chair Derick Willson; Andrew Meigs; Laura Rogers; Jim Weiner; Alternate Member and Recording Secretary, Jane Kendall; and Town Planner, John Krebs

**Absent:** Alternate Member, Bill Murray

**Public Guests:** Gregg Mikolaites; P.E with August Consulting, PLLC; Bob Clark, Allen and Major Associates; Denis Hebert, Planning Board Chair; Board of Selectmen, Brandon Arsenault

1) **Landscape Review for Zero West Park Realty Trust** to redevelop the existing Moko Japanese Steakhouse into a Drive-thru Chick-Fil-A restaurant on property located at 2060 Woodbury Avenue, Tax Map 27, Lot 20.

Town Planner, John Krebs introduced Bob Clark, Allen and Major Associates, civil engineers, surveyors, and landscape architects representing Torrington properties developers' treatment for the 94-seat restaurant with 25 employees.

Mr. Clark informed the Commission that they would be pulling pavement away from the wetlands, and increase green space with 85 new tree plantings that would reduce the amount of impervious surface.

Mr. Clark said they would upgrade the 1980's stormwater treatment where drainage would flow to the detention pond across the street.

Mr. Clark added that everything on the existing lot would be removed, and a two-foot loam planting depth would be added. Gregg Mikolaites; P.E with August Consulting explained that there had been no drainage on the existing site, so they were raising the planting areas for drainage.

Chair Hislop asked if the plantings would be irrigated. Mr. Clark replied that they would install irrigation sleeves in all islands, and the contractors would own the trees for the first two years, and guarantee survival or replacement.

Chair Hislop asked how they would protect the trees in the island from snow. Mr. Clark replied that there would be curbing, and room to put snow on the edge of the lot.

Vice-Chair Willson asked about protection of trees in the snow storage areas. Mr. Clark said there was a 3-1/2-foot drop all around the site, and the trees would be raised up. Mr. Clark added that there also was a 60-foot green space behind the site with another abutting lot that would be developed as well.

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Mr. Krebs said they would probably need to use a bucket loader to place snow in an appropriate place because there were not a lot of places to store snow on this lot with reduced parking spaces to allow traffic flow.

Chair Hislop commented that there was a constant traffic jam at the Chick-Fil-A in Nashua. Mr. Clark responded that they would provide lanes for the cueing of 46 vehicles so there wouldn't be a buildup. Mr. Mikolaite said a traffic engineer had studied other facilities in operation, and there would be one way into a stacking lane with staff outside taking orders, and car or window delivery that would go around, and out to avoid redundancy.

Mr. Mikolaite informed the Commission that Torrington owns Newington Park and bought the Fox Run Mall as well, so there would be additional landscaping on the 87 acres. Mr. Mikolaite said they were planting 80 trees to dress this entry site up to draw interest for future development.

Commissioner Jim Weiner said the New Hampshire Department of Transportation (DoT) installed a median in front of the Fox Run Mall along Woodbury Avenue that has been turned over to the Town, and wondered if Chick-Fil-A would have a policy to do beautification or maintenance. Mr. Mikolaite said that question would be bigger than a Chick-Fil-A would take on, but could be a consideration for future development of the mall.

Chair Hislop noted that Woodbury Avenue and the detention pond could accumulate a lot of trash build up, and wondered if staff would pick up from their site. Mr. Mikolaite said he couldn't speak for Chick-Fil-A leasing, but he had heard they were meticulous.

Planning Board Chair, Denis Hebert commented that the incoming hotel across the street and would probably clean up the briars there, and the corner lot on Woodbury Avenue and Piscataqua Drive would probably be developed, and cleaned up soon.

*Jim Weiner moved to recommend landscape plan to the Planning Board. Derick Willson seconded, and all were in favor.*

**2) Conditional Use Wetlands Application:** Review for **Zero West Park Realty Trust** to redevelop the existing Moko Japanese Steakhouse into a Drive-thru Chick-Fil-A restaurant on property located at 2060 Woodbury Avenue, Tax Map 27, Lot 20.

Bob Clark showed the Commission where wetlands had been flagged on the site. Mr. Clark said they had pulled pavement back another five feet from the existing site.

Mr. Clark stated that there was no stormwater management on the existing site, so they would direct stormwater to the detention pond across the street after being filtered.

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Mr. Clark said there was an 18-inch-high water table on the site, so they were raising the site, and would use a scupper, basin, depressed location, and replace the existing drain line.

Mr. Clark said after testing the existing topsoil to determine if amendments were needed, a restoration seed mix would be used on slopes to retain the topsoil.

Mr. Clark said they would also add a sidewalk around to Woodbury Avenue, and a boardwalk to the other side.

Chair Hislop asked if there would be a sidewalk to the new hotel. Mr. Hebert said the hotel entrance would be 200-300 feet further down the street.

Commissioner Meigs commented that there were a lot of walkers from industrial area, and asked if it would make sense to have an ADA ramp from a future crosswalk. Mr. Krebs responded that Wilcox industry employees weren't willing to cross the street to parking leased on corner of Piscataqua and Woodbury Avenue, so he doubted they would walk over to Chick-Fil-A. Mr. Krebs added that a crosswalk would need to be carefully considered because there were seven lanes of traffic on Woodbury Avenue.

Chair Hislop noted that that an eBike store had just opened down the street so it would be good to consider a bike lane. Mr. Krebs said it they would have to wait and see what the future development would be like, but it would be a good idea to get it off Woodbury Avenue.

**3) Other Business:**

**A) Land Use Change Tax**

Mr. Krebs passed out copies of a legal counsel draft for a potential conservation trust formation.

Board of Selectmen, Brandon Arsenault said he had discussed the topic of creating an interest bearing, perpetual conservation trust fund at the Board of Selectmen's meeting on the previous Monday.

Mr. Arsenault said currently a 10% market penalty went into a non-interest bearing, State regulated Conservation Fund when town properties came out of current use for the development, subdivision, and construction that was established in the mid to late 1990's. Mr. Arsenault said the Board of Selectmen discussed the possibility of the Conservation Commission using the annual interest from current use tax change from a perpetual conservation trust fund to feed the Conservation Fund, rather than asking the Budget Committee and Town to build the Conservation Fund annually, or as needed.

Mr. Arsenault said current use was to encourage open space of 10 acres or more, but other residents shoulder the tax base burden, so creating a conservation trust fund could create a tax relief for taxpayers by eliminating the need for annual funding requests.

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Mr. Arsenault suggested that the Conservation Commission would be the only agents to expend funds with Board of Selectmen's project approval, or the Conservation Commission could present a warrant article for a town vote to access the conservation trust fund for expenditures of a determined amount. Mr. Arsenault said expenditures from the perpetual trust fund would take responsibility off the Board of Selectmen, and the taxpayers.

Mr. Arsenault said the interest could remain, and roll over to increase the conservation trust fund if not needed. Mr. Arsenault went on to say that they could attach rules to prevent the funds from dropping below a certain amount to protect it into perpetuity, and if many years pass without any Conservation Fund project use, a discussion, and town vote could determine how to use some of the funds.

Discussion ensued regarding how much the fund should be capped, and if there would be a cap for open space. Mr. Krebs said Newington probably has more open space than the rest of the Seacoast after the former Pease Air Force base was converted to Great Bay National Refuge, but no one would have guessed Adams Homestead or other mitigation opportunities would come up.

Mr. Hebert read Conservation Fund uses as defined by the State. Chair Hislop said maintenance was there, but the Board of Selectmen typically took care of maintenance, and the Commission had never budgeted to build anything that needed maintenance. Commissioner Weiner noted that there was a Fox Point fund for maintenance.

Vice-Chair Willson the State limited what uses could be funded by a town's Conservation Fund, so the creation of another trust fund could allow them to do more. Mr. Arsenault responded that proper budgeting would still be required to place expenditures for things like erosion or invasive species mitigation in a budget item for transparency. Mr. Arsenault added that they would file a warrant for that amount to come out of the conservation trust fund with no impact to taxation.

Mr. Arsenault said the question was what the cap in the Conservation Fund that doesn't accrue interest, and suggested something like \$35,000 once a conservation trust fund was established.

Mr. Krebs said right now 100% of the current use change tax would go into the Conservation Fund if the Shackford development lots were transferred tomorrow. Mr. Arsenault responded that it would take 18 months before payment was required.

Vice-Chair Willson asked why they couldn't deposit current use change tax to an interest-bearing checking account. Mr. Arsenault replied that the Conservation Fund and other Town budget lines were usually not in an interest-bearing account because those funds needed to be available for expenditure immediately from a checking account, whereas there would be a waiting period with a trust fund. Mr. Arsenault added that interest from an account would roll over to build more interest when needed, and would never go to the General Fund.

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Commissioner Meigs asked if the Commission would need to take money from the Conservation Fund to start the conservation trust fund. Mr. Arsenault replied that they couldn't because the Conservation Fund had to follow State expenditure rules.

Chair Hislop wondered if people could donate to a conservation trust fund. Mr. Arsenault said they could, and there were a number of trust funds in town including the cemetery, Langdon Library, and the Newington Public School trust fund.

Chair Hislop commented that the Commission could help the Planning Board talk with a property owner about creating conservation easements or open space segments in development areas.

Mr. Arsenault said it would be the Conservation Commission's business to watch the balance and interest. He went on to say that the town could vote to use some funds for other things like addressing tax base shortfall if the conservation trust fund got too large.

Mr. Krebs commented that would be unlikely as they were probably only talking about \$1,000,000, and it would be unlikely that it would ever be as high as \$2,000,000. Alternate Commissioner, Jane Kendall asked if they could establish the minimum to protect perpetual trust fund.

Mr. Hebert pointed out that two warrants would be required to pass this year, one warrant article to establish a conservation trust fund, and another to put current use change taxes directly into the conservation trust fund. Mr. Hebert said this warrant would establish a policy only because there was no money involved, so the Board of Selectmen said it would be good to bring up to the Budget Committee.

Mr. Krebs said the Board of Selectmen could bring back draft warrant article for January 12, 2023, meeting.

**B) Community Education Outreach**

Mr. Krebs provided commissioners with copies of the Adams homestead history that was written by Southeast Land Trust (SELT), and suggested it be edited down for inclusion in the town newsletter as an informational starting point on conservation areas in town. Chair Hislop suggested including a photo.

Mr. Krebs said the owners of the Adams Homestead was planning on doing some agriculture as a hobby to bring some of the history back to the site.

Discussion ensued regarding updating the open spaces map as the Adams Homestead, Baird, Hislop, and Saba easements were missing. Commissioner Laura Rogers said they also needed a legend to show what was allowed on each segment. Mr. Krebs said no motorized vehicles were allowed on any segment, except for annual maintenance, and snowmobiles in some places.

Mr. Krebs suggested making a copy for the library, and the Town Hall Library. Commissioner Meigs said it could also be scanned to be included on the Town website.

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Chair Hislop said in addition to asking UNH Professor, Ray Grizzle to do a talk on the oysters in Great Bay, she had also talked to someone with Southeast Land Trust (SELT) about doing a talk on pollinators.

**C) Project Development for 2023**

Chair Hislop recommended posting signs identifying conservation parcels and their uses.

Commissioner Weiner said the Smith Farm in Greenland said they would continue haying Fox Point once or twice a year.

Commissioner Weiner went on to say that he also hoped that they could address the invasive oriental bittersweet that was killing the trees across from his house on Fox Point. Commissioner Weiner said he used his personal utility vehicle every week to inspect Fox Point.

Vice-Chair Willson said he saw a lot of pine and cedar trees in town, and wondered if anything could be done about needle cast and cedar fungus. Vice-Chair Willson said old the Old Town Forest were all monoculture pine, and there would be nothing left once they were gone.

Chair Hislop said the trees cast off seeds for seedlings, but many seedlings were then hit with conifer beetles that makes them short and wide, and then those that grow tall get hit with needle cast. Chair Hislop said elm borers and ash borers also a problem.

Mr. Krebs said all of the ash trees at the old cider mill on the corner of Fox Point and Little Bay roads were diseased as well.

Mr. Krebs said the Old Town Forest should be managed with selective cutting to allow other species to grow back. Mr. Krebs said some clear cutting of five acres at a time was done in the White Mountain National Forest, which allowed some other species to grow back as well.

Commissioner Weiner said the Old Town Forest was planted for timber.

Commissioner Meigs asked about management of the forest on the other side of Arboretum Drive. Chair Hislop said that forest belonged to Pease, and the Old Town Forest was behind the Old Stone School, on the other side of the street between the Langdon Library and the Old Town Hall and by the cemetery. Commissioner Meigs said it seemed too small an area to log.

**Minutes:**     *Andrew Meigs moved to approve the November 10, 2022, Minutes with corrections as discussed. Jim Weiner seconded, and all were in favor.*

**Adjournment:**     *Andrew Meigs moved to adjourn. Jim Weiner seconded, and the meeting adjourned at 8:43 p.m.*

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**Next Meeting:** Thursday, January 12, 2023

**Respectfully  
Submitted by:** Jane K. Kendall, Recording Secretary