

**Town of Newington, NH**  
**CONSERVATION COMMISSION**  
Meeting Minutes, Thursday, October 14, 2021

**Call to Order:** Chair Jane Hislop called the October 14, 2021, meeting at 6:30 PM.

**Present:** Vice-Chair Derick Willson; Jim Tucker; Alternate Member, Jane Kendall;

**Absent:** Commissioner Andrew Meigs; Alternate Member, Bill Murray and Benjamin Higgins; Town Planner, John Krebs

**Public Guests:** Duncan Mellor, P.E. Steve Haight, P.E. with Civil Works New England; Jim Gove with Gove Environmental; Joe and Paula Akerley; Justin Macek with TFMoran Engineering; Laura Rogers; Town wetlands consultant, Mark West with West Environmental;

**1) Mitigation Discussions:** Regarding local projects in lieu of A.R.M. funding for wetlands impacts on Fox Point from the City of Portsmouth water main replacement across Great Bay

Duncan Mellor, P.E. Principal Coastal Engineer with Civil Works New England provided a packet of recommendations for town mitigation projects to utilize funds from Eversource's transmission expansion project through town, and lying cable across Great Bay.

Mr. Mellor said the Commission had worked toward a conservation easement as a mitigation project, but the property owners had changed their minds, so the Town was considering other projects on Fox Point.

Mr. Mellor said he had been involved in the project since 2006, and Civil Works had worked on the Town boat launch replacement, and abutment.

Mr. Mellor said areas on the high bluff were eroding, and close to the foot path in one area. He said there was another area where the City of Portsmouth Water Department had put a new water main in, and a Public Notice had been issued by the Army Corp of Engineers (ACOE) regarding their plans to add to that line.

Mr. Mellor said Dave Price with the Department of Environmental Services (DES) had said they would only contribute to soft approaches during a consultation, but the Board of Selectmen decided not to pursue at that time.

Mr. Mellor said the City of Portsmouth's water main replacement was behind the bluff, so that looked like a good project for mitigation as it would protect the water main, but it would be an expensive project.

Mr. Mellor provided general budget estimates for engineering costs.

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Chair Hislop commented that there was a big difference in an estimate listed as \$80,000 to \$200,000. Mr. Mellor replied that covered a range, but they could do one portion at a time.

Chair Hislop asked if the estimates were for hardscape only, or a combination of softscape erosion control as well. Mr. Mellor replied that their plan involved putting down stone, and then covering with soil to protect plant roots.

Chair Hislop noted that three other properties along the bay where cottages had been placed close to the shore had done a combination of stonework, coconut fiber rip rap, and plantings, and it appeared that using blueberries and native shrubs instead of trees as recommended by DES was working well.

Mr. Mellor went on to say that they would have to cut back the trees 30 to 40 feet, and reduce the slope to work on the erosion of the bluff, but DES didn't want them to set up equipment on the beach.

Mr. Mellor stated that there was a lot of erosion near the beach salt marsh from foot traffic. Mr. Mellor went on to say that it would be an inexpensive project, and they could get a quick turnaround from DES for a Permit by Notification for trail maintenance; however, they would be required to do a report for the Natural Heritage Bureau first, and would not be allowed to go forward if there was any impact to rare and endangered species.

Vice-Chair Willson asked if erosion was affected by the type of waves in Great Bay. Chair Hislop replied that the spring run of ice tended to do the most damage.

Mr. Mellor added that wave action was undercutting the bedrock near the Town dock, and erosion was also occurring on the other side below the parking area where a large oak tree fell over and had been uprooted.

Mr. Mellor stated that the gully near the corner of the parking lot could be repaired, and protected inexpensively with landscaping, and quickly with another Permit by Notification.

Mr. Mellor said there was lots of rot and decay by the stairs leading to the beach, and Mr. Price said DES had recommended cutting the tall trees that were gradually pulling the soil away, and would not be conducive to growing grasses, but New Hampshire Fish and Game did not like the idea because they said the trees were important for perching water birds. Mr. Mellor said DES wouldn't allow riprap either.

Mr. Mellor suggested that they clean up culvert coming from what looked like an old access road, and drainage swale from the former cornfield that discharged into an intermittent gully, and do stormwater improvements.

Mr. Mellor said there were signs of runoff from heavy rains on Fox Point Road where they could consider Best Management Practices (BMP's) of plantings or paving to reduce the sediment from the gravel road. Chair Hislop replied that pavement would increase runoff, and it was not allowed on the Fox Point Conservation Area.

Mr. Mellor said there were areas in Great Bay where eel grass was coming back, and they could use rubber bungee cords with a buoy on top to replace chain mooring that carved circles on the bottom that drag that killed eel grass.

Chair Hislop responded that most of the moorings in the deeper channels were privately owned, where they could access their boats at any tide. Chair Hislop went on

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to say that she didn't believe that there was any eel grass where the boats were moored. Chair Hislop added that the moorings on the Town dock were shallower.

Mr. Mellor said the first priority was to seek mitigation project funds directly from Eversource to use on a Town project, and the last resort would be to apply through the Aquatic Resources Mitigation Funds (A.R.M.). Chair Hislop commented that ARM's funds were almost always pooled for larger projects in other parts of the state, and Town projects had never met their criteria before.

### 2) **Landscape Plan Reviews:**

#### A) **Subcom** landscape plan on property located at 100 Piscataqua Drive

Justin Macek, P.E. with TFMoran returned with a revised landscape plan for their expansion.

Mr. Macek said they had presented their expansion project at the September 27, 2021, Planning Board meeting, and were granted a waiver from the eight-foot planting media requirement in the parking area, and had added a second egress to allow fire truck circulation. Mr. Macek said they still had three planting islands.

Mr. Macek said they had met the Conservation Commission's requirements and conditions of confirming that the plantings would be salt tolerant, providing a maintenance plan for lawn, tree and shrub plantings, noting the longevity of the species, and providing a plan stamped by a licensed landscape designer or architect.

Chair Hislop emphasized the requirement for slow releasing, low nitrogen organic fertilizer.

Vice-Chair Willson commented that the snow storage area looked small. Mr. Macek responded that they wanted to be sure that they had good access to the alley, but snow would be stored to the side of all paved areas, and the grassy hatched area to the south, as well as in several pockets.

Chair Hislop asked if there would be protection for the pin oaks, and Mr. Macek said there was a good buffer distance between the trees.

Chair Hislop asked about the watering plan. Mr. Macek replied that the Planning Board asked for irrigation, which would probably come from an onsite pump house. He said they were waiting for final approval from the City of Portsmouth water Department.

Mr. Macek said Town Planner, John Krebs reviewed the plan, and they also sent the updates to Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering for final review.

*Derick Willson moved to approve the Subcom landscape plan on property located at 100 Piscataqua Drive with the Planning Board and Conservation Commission's conditions, including a maintenance plan for lawn, tree and shrub*

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*plantings, noting the longevity of the species, and providing a plan stamped by a licensed landscape designer or architect. Jim Tucker seconded, and all were in favor.*

**B) Joe and Paula Akerley** subdivision landscape plan on property located at 325 Fox Point Road

Steve Haight, P.E. and Mike Meaney with Civil Works New England appeared before the Commission on behalf of the applicants, Joe and Paula Akerley to discuss their landscape plan.

Mr. Haight stated that they would be planting a variety of 20 trees, including black locust, pitch pine, and red oak, and the Akerley's would like to relocate some existing trees on site, along with blue stemmed grasses because they were trying to avoid buying trees that might not survive in the soil on site.

Mr. Haight said they would be meeting with the Planning Board again on Monday, October 25, 2021.

Chair Hislop asked how they would transplant the black locust and pitch pine. Mr. Akerley responded that they would be losing five pitch pines with the road construction, but he was comfortable with transplanting some of his 10–12-foot birch, black cherry, hickory, and Norway spruce with a backhoe. Chair Hislop commented that birch trees were tough to establish, and Mr. Akerley agreed that they had to be done when small.

Mr. Akerley stated that they had some of the first lilacs to come to the country from saplings that were at the Wentworth Coolidge mansion in 1758. Mr. Akerley went on to say that it was important to keep a balance between the trees and the grasses and milkweed in the meadow.

Mr. Akerley added that many of the birds liked perching on the power lines that would be coming down, so they might put up some dead limbs for them.

Chair Hislop asked if they were going to plant any elm. Mr. Haight replied that they talked with Vicky at Robby Woodburn's Landscaping about what would work well on the site soils, and they had only listed elm as a placeholder until they discussed varieties further. Chair Hislop said she would be concerned with the longevity of elms because of Dutch Elm disease.

Chair Hislop added that she had learned that cedar trees could pass on the cedar apple rust disease to apple trees, and junipers belonged to the same family so advised against them. Mr. Haight stated that there were four types mixed in the places indicated.

*Jim Tucker moved to accept the landscape plan for the Joe and Paula Akerley subdivision on their property located at 325 Fox Point Road as presented with at least four species planted in various location as determined. Derick Willson seconded the motion, and all were in favor.*

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Chair Hislop asked if the property in was in current use, and Mr. Akerley said part of it was. Chair Hislop informed the Akerley's that there would be a tax adjustment once the property was subdivided.

- C) **Nimble Hill Realty Investments, LLC** subdivision landscape on property located on Tax Map 6, Lot 1; Tax Map 11, Lots 2 and 3, and Tax Map 12, Lots 4, 6 and 9

*This topic was delayed to hear the following item next.*

- 3) **NHDES Major Impact Dredge and Fill and Conditional Use Permit** for wetland buffer impacts by **Nimble Hill Realty Investments, LLC**, on property located on Tax Map 6, Lot 1; Tax Map 11, Lots 2 and 3, and Tax Map 12, Lots 4, 6 and 9.

Mike Garrapy with Nimble Hill Realty Investments, LLC said they were asking the Commission for comments on the prime wetlands, and then they would submit their application to the New Hampshire Department of Environmental Services (DES).

Jim Gove, with Gove Environmental said the total wetlands impact of the subdivision would be 7,175 square feet, including the 41-foot crossing of the stream as the entered the forested area with an eight-foot high and ten-foot-wide open bottom box culvert to maintain the flow of water, and allow wildlife passage.

Mr. Gove stated that there was an issue associated with their wetlands delineations, and the prime wetland on the Town's original maps that were done with aerial photo interpretations. Mr. Gove said they were applying to DES to alter the prime wetland boundary to match their on-ground delineations.

Town wetlands consultant, Mark West with West Engineering stated that the wetland inventory he did in 2003 using a stereoscope and aerial photos utilized the technology available at the time. Mr. West added that such maps were proximities, and were never as accurate as on ground wetland delineations.

Mr. West said he had a teleconference meeting with DES on the matter, and would finalize a report, including a table, and a letter of recommendation indicating that the wetland was the same shape and size as his original aerial interpretation, but the tax map was off by 30 feet.

Mr. West said he would create a template for others to use in the future, so they wouldn't have to go through the same difficulty with DES for adjustments.

Mr. West noted that DES was no longer enforcing 100-foot wetland buffers, but the Town still had wetlands setbacks, and the State would still enforce protection of the wetlands, and require mitigation.

Mr. Gove said they had changed the span of the culvert from 20 feet to 10 feet after talking with Town engineering consultant, Eric Weinrieb, P.E. with Altus Engineering because he was concerned with the stability of a 20-foot span, but they still

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weren't sure if DES would approve of the change. Mr. West said the applicant originally proposed a larger arch bridge, but the Planning Board expressed concern that an arched bridge would be more expensive to maintain and replace. Mr. Garrapy commented that the open bottomed culvert wouldn't cost that much less than the arched bridge, but it was what the Planning Board wanted.

Mr. Gove went on to discuss other wetlands impacts.

Mr. Gove stated that there would be 3,000 square feet of impact from the bioretention area. Mr. Gove said they placed the bioretention at the edge of the 100-foot tidal buffer because they were afraid they would have more impacts if they moved the road.

Mr. Gove said they estimated 1,510 square feet of direct impact to the prime wetlands amounting to \$8,000 mitigation fees using Aquatic Resources Mitigation (A.R.M.) calculations mitigation. Mr. Gove said they had received a list of coastal projects for mitigation from DES, but they were supposed to have project that was equivalent to the impacts such as protection or restoration of a prime wetland, so they wanted to give the Conservation Commission the opportunity to consider other things. Mr. Gove said the project would need to be monitored by the Army Corp of Engineers (ACOE) for a year or two Chair Hislop commented that \$8,000 was not very much for mitigation projects

Mr. West suggested that they consider repairing the culvert leading to the road downstream. Mr. Garrapy replied that property owner, Robert "Guy" Young was not interested.

Chair Hislop asked about dam repairs to the dam. Mr. Gove replied that the dam might be historic, in which case they would not be able to touch it.

Chair Hislop commented that Lot 10 had two wetland crossings, and asked if they might set that area aside as a reserve area. Mr. Garrapy replied that they showed no build areas on Lot 12, Sheet C5.

Mr. West said a conservation reserve area should be held by a land trust or the Conservation Commission, with monitoring so it didn't turn into a ball field over time. Mr. Garrapy responded that they would prefer to maintain no build areas as deed restrictions. Mr. West said ACOE allowed deed restrictions.

Mr. Gove said Fish and Game held an easement on the abutting parcel, and wondered if they could expand their monitoring as part of the stream channel to protect the inflow of water to the prime wetland.

Mr. Garrapy reviewed the four criteria for their Conditional Use Permit request beginning with Section 4C, Article 8 requiring that the Conservation Commission and the Planning Board concur in their approval.

Mr. Garrapy stated that direct impacts to the wetlands and buffers were the only way to get to the sizeable upland area.

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Mr. Garrapy said two accesses, one on Nimble Hill Road, and another on Coleman Drive was required for any road over 1,500 feet, and to get to the buildable areas. Mr. Garrapy said they designed the road to minimize direct impacts to the wetlands relative wherever possible, only clipping the edge of the wetlands, and two driveways.

Mr. West asked if the Ecomaster grass access roads to the bioretention areas were required for Town access. Mr. Garrapy replied that Ecomaster areas would allow the homeowner's association to maintain the areas that would be maintained according to the plans.

Chair Hislop asked how the Town could enforce maintenance if the homeowner's association didn't take care of it. Mr. Garrapy said the Planning Board required the homeowner's association to follow a maintenance schedule. Alternate Commissioner, Jane Kendall said the Planning Board would also stipulate an easement to allow the Town to do maintenance if necessary, and they would then bill the homeowner's association.

Commissioner Tucker asked if the homeowner's association would be included in the deed. Mr. Garrapy said it would be, and Town counsel would review the wording.

Chair Hislop asked if there would be mitigation for the buffer impacts, or just wetland impacts. Mr. Garrapy replied that the mitigation would just be for the prime wetland impact, and only wetland buffer impacts from the Conditional Use Permit if they met the criteria.

*Chair Hislop moved to recommend approval of the Conditional Use Permit for wetland buffer impacts by Nimble Hill Realty Investments, LLC, on property located on Tax Map 6, Lot 1; Tax Map 11, Lots 2 and 3, and Tax Map 12, Lots 4, 6 and 9 that met the criteria. Jim Tucker seconded the motion, and all were in favor.*

## 2) Landscape Plan Reviews

- C) **Nimble Hill Realty Investments, LLC** subdivision landscape on property located on Tax Map 6, Lot 1; Tax Map 11, Lots 2 and 3, and Tax Map 12, Lots 4, 6 and 9

*(This item was delayed to hear the previous item first)*

Mr. Garrapy stated that they had modified their planting specimens with cedar, yellow birch, linden, and white oaks, which were similar to the existing species on the site, and to avoid monoculture of species along the road.

Chair Hislop asked if all the species were salt tolerant. Mr. Garrapy replied that they were all supposed to be native species. Mr. West commented that their serviceberry, and viburnum were cultivars.

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Vice-Chair Willson noted that the site was an old apple orchard, and some property owners might want to plant apple trees that could be affected by rust fungus passed on by the eastern red cedar and junipers planted within 800 yards. Chair Hislop commented it didn't affect cedars, but it did affect apple trees. Chair Hislop suggested they consider balsam trees.

Mr. West said most species in the cul-de-sac were cedar cultivars, and property owners could grow something besides apple trees if they were made aware.

Chair Hislop informed the applicant they needed a planting, watering, and seasonal maintenance plan that included the use of low nitrogen fertilizers that were organic, and a stamp by a licensed landscaper.

**4)Town Property Sale:** Recommendation requested by Board of Selectmen of former off-ramp from Woodbury Avenue to Patterson Lane located on River Road

Chair Hislop stated that this was a small parcel that no longer served any purpose, so the Board of Selectmen was putting it up for bid.

*Derick Willson moved to support the Board of Selectmen's decision in sale of Parcel A, the former off-ramp from Woodbury Avenue to Patterson Lane located on River Road. Jim Tucker seconded the motion, and all were in favor.*

**5) Other Business and Discussions:**

Chair Hislop noted that Southeast Land Trust (SELT) had submitted their annual review of the Trickey's Cove easement, noting some debris.

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Chair Hislop presented the 2022 budget for review before presentation to the Board of Selectmen. The total remained the same as the previous year.

Discussion also ensued regarding the Conservation Commission Fund. Chair Hislop said she would ask the Town Administrator for the current balance to determine how much they should request in a standard warrant article as they waited for a refund from current use taxes on the Adam's Homestead, as well as the upcoming Akerley and Shackford Lot subdivisions.

*Chair Hislop moved to accept the 2022 Conservation Commission budget for \$3,518 provided that they get a \$5,000 encumbrance from the 2021 budget, for a total of \$8,518. Jim Tucker seconded the motion, and all were in favor.*

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Commissioner Kendall said she needed to know if Ben Hutchins had resigned as he had not been attending meetings, and they needed members to meet quorums.



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Commissioner Kendall informed the Commission that she had emailed Town Administrator, Martha Roy that the Commission was looking for additional members, and she had posted a notice in the Newington Newsletter. Commissioner Kendall said she also protested the same notice on the Newington Residents' Facebook page.

**Minutes:** *Jane Hislop moved to approve the September 9, 2021, Minutes. Jim Tucker seconded, and all were in favor.*

**Adjournment:** *Derick Willson moved to adjourn. Jane Hislop seconded, and the meeting adjourned at 9:15 p.m.*

**Next Meeting:** Thursday, November 4 or 18, 2021

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