

Town of Newington, NH
CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

- Call to Order:** Chair Jane Hislop called the July 16, 2020 outdoor meeting at 7:06 p.m.
- Present:** Chair Jane Hislop; Vice-Chair Weiner; Commissioners Andrew Meigs; Ann Morton; Jim Tucker; Alternate Jane Kendall; Town Planner, John Krebs
- Absent:** Alternate Bill Murray
- Public Guests:** Attorney Monica Kieser; Alex Ross, P.E. with Ross Engineering; Mark Jacobs, Wetlands Scientist; Tom Cowgill; Robby Woodburn with Woodburn Landscaping; Jack McTighe with TFMoran; Steve Leonard, construction representative

I) Requests for Recommendations:

- A) Informational discussion on expansion of property owned by **Thomas and Margaret Cowgill**, located at **288 Fox Point Road, Tax Map 10, Lot 01.**

Vice-Chair Weiner stated that the Zoning Board of Adjustment (ZBA) was scheduled to meet on Monday, July 20, 2020 at 4 p.m. regarding variance requests for the former cider mill that was on ¼ of an acre beside Knight's Brook, and that this was an informational meeting. Chair Hislop said that the Commission would hear the proposal and take comments before making a recommendation to the ZBA.

Vice-Chair Weiner stated that he had introduced himself to the owner, Tom Cowgill, and that Mr. Cowgill had met with former Town planner, Gerald Coogan and Building Inspector, Kevin Kelly on three or four different occasions regarding electric connection to the structure before submitting his ZBA application.

Vice-Chair Weiner said he understood that it would be difficult for working residents to attend the 4 p.m. ZBA meeting, but urged Conservation Commission members to attend to contribute comments, as he was concerned that granting the variance would set a serious precedent.

Commissioner Andrew Meigs noted that the leach field was near the wetlands setback. The applicant's legal counsel, Attorney Monica Kieser responded that the

Town of Newington, NH CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

existing, non-conforming setback was 38.2 feet where zoning required a 40-foot setback, and that was the reason they were asking for relief from the ZBA.

Commissioner Meigs asked if any towns required a bond or endowment. Attorney Kieser said she had not heard of performance bonds for other things, but not for a private residential septic system.

Commissioner Meigs asked if they would discuss the size of the septic in relation to the number of bedrooms. Attorney Kieser replied that they were proposing an advanced clean solution pretreatment system for the proposed bedroom, bathroom, kitchen and studio art.

Attorney Kieser added that they were also asking for a variance to expand with the addition of a retaining wall, stairs, and a balcony, as well as the septic system, and that they would present their justification with the five criteria required by the ZBA.

Attorney Kieser went on to say that she wanted to discuss the environmental aspects and the septic system with the Commission. Chair Hislop asked why they didn't come before the Conservation Commission to discuss converting the cider mill to a residential structure that didn't meet regulations considering that it was within the wetlands setbacks, and would have runoff and effluent that would drain into Great Bay. Attorney Kieser responded that they had been working with the Cowgills for a year, and Alex Ross, P.E. with Ross Engineering, had been working with Mr. Coogan, and Mr. Kelley as well before the COVID-19 pandemic shutdown. Town Planner, John Krebs stated that he only knew that the ZBA would want the Conservation Commission's comments, and that he wasn't familiar with the conversations between Mr. Coogan and Mr. Kelly.

Chair Hislop asked if they had applied to the New Hampshire Department of Environmental Services (DES), and Attorney Kieser replied that they would for the septic system if the building was to be occupied. Attorney Kieser went on to say that the existing building did not meet the structural setbacks, and although a leach field would not meet the structural setback from the lot line and wetlands setbacks either, Mark Jacobs, a certified soil and wetlands scientist had determined the best location for the leach field.

Mr. Ross presented the plans for the pretreatment septic design, and showed photos of clear effluent that would go into leach field. Mr. Ross stated that Rockingham County Septic Inspector, Mike Cuomo did the perk tests that passed on November 27, 2019.

Mr. Ross stated that Mr. Cuomo provided a letter of recommendation for the best location of the leach field that was 10 feet from the State's front setback requirement, and was approvable by the State.

Mr. Ross added that he had been working with septic installer, Cosmas Iocovazzi, who reviewed the architectural site plans, and Mr. Cuomo's letter, and submitted a letter of recommending that the Town approve the application.

Town of Newington, NH CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

Mr. Ross stated that had prepared the plans to reinforce and stabilize the building. Mr. Ross added that the existing building was in disrepair, falling down the hillside, and that it was fortunate that the Cowgills had purchased the property, and that a direct abutter and other abutters had submitted letters of support.

Chair Hislop asked how much service and maintenance was required for the septic system. Mr. Ross explained that an additional tank released extra oxygen to break the effluent down further. Mr. Ross added that they had to enter a maintenance agreement with the company that inspects and maintains the system.

Chair Hislop suggested that the maintenance agreement would need to be tied to the house even after the house was sold. Attorney Kieser responded that she had a lot of experience with the same septic system that had been approved for other homes in Rye, and it was not unusual for boards to consider a maintenance contract as a condition of approval, and include it on the site plan as a permanent record so that it would stay with the property after a sale.

Commissioner Meigs noted that the septic system was positioned under the driveway, and expressed concern with a car parked on system. Attorney Kieser said the system was designed for the site and load.

Commissioner Meigs commented that while four test pits passed, an borings and analysis on the surrounding soil had not been done, and the grade had not been marked, which could cause runoff of effluent from the leach field to the bottom of the gully.

Mr. Ross responded that Mr. Jacobs had delineated the wetlands, reviewed the grade, and witnessed the test pits with Mr. Cuomo. Mr. Ross added that no borings were required. Mr. Ross added that Mr. Cuomo agreed that the proposed septic was the best system for the site. Commissioner Meigs responded that it might be the best system for the site, but it might not be a good system for the lot.

Attorney Kieser said it was a residential lot of record, and they needed relief for setbacks for residential use, and it was inappropriate and an unconstitutional taking to say they couldn't get relief for their proposal residential use. Vice-Chair Weiner commented that the owners knew it was a cider mill when the property was subdivided, and they were asking for a high amount of relief that the Conservation Commission had the right to make a recommendation to the ZBA.

Commissioner Jim Tucker asked if the State setback was 100 feet from the water for any septic system. Mr. Ross replied that there were different setbacks for different bodies of water. Mr. Ross said this was non-tidal running water, and they met the State's setback.

Mr. Ross stated that the site had been used as a cider or grist mill for 200 years, and all the debris evidence around the building indicated that the site had intense use in the past, and that they were putting in a pretreatment system.

Planning Board Chair, Denis Hebert noted that there had been a good article about when the cider mill was built, and that a barn straddled Fox Point Road, and that

Town of Newington, NH CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

backfill may have been put in for the dam to create Mott's Pond. Mr. Hebert said they didn't know what they were dealing with as the materials used for fill at that time may not be suitable for long term success of the septic system.

Mr. Hebert stated that there was a class action suit against a developer, and Presby Systems, a similar system was outlawed in Maine because it was prone to failure. Mr. Hebert said he was concerned that the brook would cause water pressure underground, that would cause this system to fail as well. Mr. Ross responded that NHDES approved these systems for years, and were happy with the design.

Mr. Hebert went on to say that Mr. Iocovazzi would be profit from the installation, and recommended that the Conservation Commission obtain a third-party review like Eric Weinrieb, P.E. with Altus Engineering, who was also a septic designer. Mr. Ross replied that Mr. Cuomo was an unbiased third-party that worked for the Town. Mr. Krebs agreed that Mr. Cuomo who worked with Rockingham County Conservation District was licensed in New Hampshire and Maine, and he had worked with him for 25 years, and that his letter was straight forward.

Mr. Krebs added that the Conservation Commission monitor any engineering and environmental reviews themselves, rather than the ZBA.

Commissioner Tucker noted that the entire property was in the 100-foot setback of prime wetlands. Attorney Kieser responded was why they were asking the ZBA for relief from the front, side and buffer setbacks, and they would make the case that it was a lot of record that predated zoning, and therefore could be built upon.

Chair Hislop stated that regardless of the use 200 years ago, the Town needed to protect the prime wetlands that had been heavily impacted by the Pease, the highway, and Eversource. Chair Hislop said their proposal was attempting to destroy the Town's prime wetland regulations, and then anyone that wanted to build within the wetlands buffer would expect the same relief. Attorney Kieser replied that they were proposing an advanced pretreatment septic system, and they were allowed to make a legal case for residential use.

Vice-Chair Weiner commented that he didn't think that this request for relief would be granted for any other property.

Mr. Krebs stated that the septic system met the State's requirements, but not local ordinances, and so it would be up to the ZBA to determine. Mr. Krebs recommended that the Commission send their comments to the ZBA, and attend the meeting to give testimony.

Property owner, Tom Cowgill stated that his wife and he planted 165 trees for permanent habitat, had always be stewards of the environment, and intended to continue.

Discussion continued regarding recommendations for the ZBA.

Commissioner Meigs asked if it would they could recommend a bond be posted for 100 years for the maintenance of the septic system. Mr. Krebs said no one would expect a bond to be posted for 100 years, and he had never heard of a bond for a

Town of Newington, NH CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

septic system, but thought that the Commission could recommend to the ZBA to have Town counsel determine appropriate way of monitoring the system annually into perpetuity, or for the life of the leach field at the expense of the owner. Mr. Ross said they could agree to annual inspections.

Commissioner Meigs said he was also concerned with the placement of the leach field at the top of the hill, and would like to see borings, and have the Town engineering consultant review. Mr. Krebs replied that he had never seen borings done for a septic system, but they could request that Altus Engineering review the septic system.

Jim Tucker moved to deny a recommendation for an expansion of property owned by Thomas and Margaret Cowgill, located at 288 Fox Point Road, Tax Map 10, Lot 01. Andrew Meigs seconded all were in favor.

The Commission added that their comments to the ZBA should also recommend that if the ZBA determined that the application met the five criteria for granting relief, that the septic application should undergo a review by Town engineering consultant, Altus Engineering, that Town counsel would develop an annual inspection and maintenance plan, and if approved, and that a copy of the inspection report would be provided to the Town, and that the Town would follow through with the State for remediation if any failures were detected.

B) Landscape Review of proposal for a 10,000 square foot medical office building by **Newington Falls, LLC** on property located at **Shattuck Way, Tax Map 13, Lot 6-A**

Jack McTighe with TFMoran appeared before the Commission with construction representative, Steve Leonard, and landscape architect, Robby Woodburn to present the landscape plan for proposed ambulatory surgery center and medical offices with 50 parking spaces on Shattuck Way.

Mr. McTighe stated that they were doing a lot line adjustment, which would bring the impervious coverage down from 37% to 25%. Mr. McTighe said that they had pushed the building and parking closer toward Shattuck Way away from the wetlands at the back by River Road.

Mr. McTighe stated that the gravel had been placed on the lot as a laydown area for Eversource's use during the Seacoast Reliability transmission expansion project. Commissioner Tucker said the lot was very wet before Eversource used it.

Planning Board Chair, Denis Hebert said that it was farmland years ago, then trees grew in, then Mark Phillips purchased the lot from Eversource, and brought a skitter in to cut the trees, and left deep trenches without proper permitting from DES. Mr.

Town of Newington, NH CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

Hebert said they followed up with an Alteration of Terrain (AoT) permit, which allowed them to fill with proper bioretention ponds.

Mr. McTighe stated that there were no manholes for paved parking so they were creating swales, and the existing retaining pond would be used.

Ms. Woodburn presented her landscaping plan with 2-3-foot-high shrubbery of hardy, salt tolerant, mostly native shrubs to screen the parking lot, trees against the buildings, a base of boxwood, and ground cover.

Ms. Woodburn then went on to describe the planting of additional trees, lawn, and wetlands seed mixes.

Chair Hislop asked about invasives. Ms. Woodburn said it was a battle, and there was no intention of planting beyond the 25 foot no cut wetlands.

Commissioner Tucker asked where snow storage would be. Mr. McTighe replied that they planned on putting the snow along the edges of the parking lot away from trees. He added that the swales would then catch the snow melt and flow to the retention pond for treatment.

Ms. Woodburn said she would attach the operational and maintenance schedule to the plan, and stamp the plan after approval.

Mr. McTighe stated that they would file for an AoT amendment because they were changing the impervious coverage, and they would show that they were not increasing the water flow.

Andrew Meigs moved to recommend the landscape plan proposal for a 10,000 square foot medical office building by Newington Falls, LLC on property located at Shattuck Way, Tax Map 13, Lot 6-A plan as presented. Jim Tucker seconded the motion, and all were in favor.

II) Conservation Easements: Discussion with Southeast Land Trust regarding conservation easement proposal by **Robert A. Siede** for the Adams Homestead at 148 Nimble Hill Road, Tax Map 1, Lots 11, 11A and 11-13

Duane Hyde with Southeast Land Trust (SELT) passed out a hard copy of his proposal for an easement on 16.8 acres, excluding 3.7 acres around the homestead area.

Mr. Hyde stated that Bob Siede and his wife said they would sell for the property for \$350,00, but would need an appraisal for their tax purposes. Mr. Hyde said the assessment for \$500,50 was based on a conceptual development plan showing the potential for ten new houses with a cul-de-sac, but it seemed low, but it was done by an independent assessor.

Mr. Hyde said SELT would do the boundary survey, title work, have an attorney draft a baseline easement document, and environmental hazard assessment. Mr. Hyde said the total costs would be \$596,800, which included the \$200,000 in value from the

Town of Newington, NH CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

Siebes, a \$12,850 grant from Great Bay Partnership, and the Town would provide a payment of \$378,950. Mr. Hyde stated that February 2021 would be a tentative closing date. Mr. Hyde said he had drafted a purchase and sales agreement for acquisition of the easement so long as all parties were agreeable, and pending funding from the Town.

Mr. Hyde said he also put together a letter of agreement for a conservation easement similar to that done for the Baird easement, but this easement would be modified to include any agricultural buildings that would be placed out of view behind the homestead area. Mr. Hyde added that the easement would not be posted against public access, except at the discretion of the owner when necessary for agricultural, forestry, or hunting. Chair Hislop commented that the easement could be a good outlet for students if nature paths were developed, and suggested they could keep an access open across from Newington Public School.

Planning Board Chair, Denis Hebert suggested that the Town pay the fees to SELT, but they pay the purchase price directly to the property owner. Chair Hislop responded that having SELT was the owners' choice, and that SELT had done a good job with administering both the Baird Easement and Trickey's Cove. Mr. Krebs responded that it had been suggested that the Commission shop around for other organizations to administer the easement. Mr. Hebert responded that it was not unheard of to work out various arrangements with communities, and said there would be no pressure to go to others if the owner agreed. Mr. Hyde said he had never done it that way, but Mr. Siede said either way would work for them.

Jim Weiner moved to offer \$379,950 for all expenses per Southeast Land Trust's agreement for the purchase of a conservation easement on the Adams Homestead at 148 Nimble Hill Road, Tax Map 1, Lots 11, 11A and 11-13, and to have legal counsel review and authorize Chair Jane Hislop to sign the letter of agreement. Andrew Meigs seconded, and the motion passed with all in favor.

III) Announcements and Additional Discussions:

Vice-Chair Weiner reported that a bulldozer had been going into the wetlands of at 113 Fox Point Road, and he had tried to get ahold of owner on a rainy Friday, but could not do so in time. Vice-Chair Weiner said that building inspector, Kevin Kelly and David Price with DES had taken photos, and hopefully the impact would be restored.

Chair Hislop informed the Commission that Southeast Land Trust had sent a report on their annual inspection on the Trickey's Cove easement, and didn't see any concerns other than some marine debris that had washed ashore.

Town of Newington, NH

CONSERVATION COMMISSION

Meeting Minutes, Thursday, July 16, 2020

Chair Hislop informed the commission that they had also received a letter from DES that they had inspected a complaint at 518 Shattuck Way, and that the impact had been restored on May 28, 2018.

Chair Hislop informed the Commission that Town administrator, Martha Roy had sent a letter asking that they Commission keep their budget for the year down. Chair Hislop noted that the Commission had only spent 10% of the budget so far.

Vice-Chair Weiner said the Commission never overspent, and they should wait to determine what funds would be needed. Chair Hislop agreed that they should hang on to their line items for legal review of the Adam Homestead easement, and community education. d haven't spent 90% of budget. Chair Hislop said need legal review for easement, still want to hold on to community education.

Commissioner Meigs asked if the Commission might could do something for community education with the library. Commissioner Meigs said he knew of an environmental film festival that was created for fund raising with \$15 charged for a login to films that worked well.

Commissioner Tucker added that his daughter did an international webinar on gardening, and they could do speakers.

Minutes: *Jim Tucker moved to approve the Minutes for the May 14, 2020 meeting with corrections as noted. Chair Hislop seconded, and all were in favor.*

Adjournment: *Chair Hislop moved to adjourn. Vice-Chair Weiner seconded the motion and the meeting adjourned at 9:15 p.m.*

Next Meeting: Second Thursday of each month, 2020

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

These Minutes were approved and adopted at the August 13, 2020 Conservation Commission meeting.