

Town of Newington, NH

CONSERVATION COMMISSION

Meeting Minutes for Thursday, September 12, 2013

- Call to Order:** Chair, Jane Hislop called the September 12, 2013 meeting at 6:35 PM.
- Present:** Chair, Jane Hislop; Nancy Cauvet; Julia Fijas; Jim Weiner; and Thomas Morgan, Town Planner
- Absent:** Tonia Pulkowski
- Public Guests:** Attorney F.X. Bruton; Paul Bogan, VP Operations, and John Mielke, Operations Manager of Sea-3; Stephen Haight, P.E., Haight Engineering; James Vera, Surveying & Mapping

1) Old Business: Fox Point Easement

Attorney F.X. Bruton opened the discussion by informing the Commissioners that they could make a motion to meet in closed session whenever they evoked consultation with legal counsel if they chose to.

Attorney Bruton said he had reviewed the statute regarding the assignment of a non-profit entity for the conservation easement, which would turn into a charitable trust, saying he reviewed the subject with other attorneys as well. He said there would be minimal administration, only requiring reports be filed every five years. He encouraged the commissioners to consider the options carefully because the purpose of the easement would be to protect Fox Point into perpetuity. He said alternatively, they could consider using a land trust such as Audubon or the Society for the Protection of New Hampshire Forests that would oversee the easement, and take care of the administration, potential funding, and procuring liability insurance, etc. Julie Fijas asked what the advantage of a conservation easement would be, and Attorney Bruton said an easement would be the only way to create a charitable trust that would protect Fox Point from sale permanently.

Commissioner Jim Weiner asked Attorney Bruton what he thought about naming the Newington School District as the non-profit overseer of the conservation easement. Attorney Bruton said some school districts are part of the town and others are not. Commissioner Nancy Cauvet wondered what would happen if the local school district dissolved, and Mr. Weiner suggested creating another non-profit group like "Friends of Fox Point" as a back up. Attorney Bruton said they would need to set up the "Friends of Fox Point" prior to the dissolution of the school district because there couldn't be any lapses. But to that point he didn't see why they wouldn't just go with one non-profit that would remain, and be comprised of several Town board representatives, and interested residents that would have a vested interest in protecting Fox Point. Ms. Fijas asked if the Town would be liable if anything happened a Fox Point. Attorney Bruton said the Town would not be liable if a non-profit held the easement. Mr. Weiner asked Town Planner, Tom Morgan if the non-profit could tap into the Town's umbrella coverage, and Attorney Bruton said they couldn't because of the merger issue. Mr. Morgan said the Board of Selectmen are often solicited for contributions and asked if the Town could contribute to the non-profit. Attorney Bruton said the Town is the grantor and they could contribute funds.

Town of Newington, NH

CONSERVATION COMMISSION

Meeting Minutes for Thursday, September 12, 2013

Ms. Fijas asked if land trusts would abide by their management plan. Attorney Bruton said land trusts are very restrictive. Mr. Morgan said the Town's experience with South East Land Trust holding the easement at Trickey's Cove is that they had good intentions, but they are very rigid. Ms. Cauvet said they are restrictive because of their governing guidelines. Chair Hislop said some individuals in Town have expressed concerns over restrictions. Attorney Bruton said he was not suggesting they do one or the other, just noting that some towns have chosen that option.

Mr. Weiner asked what might happen if there was a lack of participation by the non-profit. Attorney Bruton said a conservation easement would create a charitable trust, which would come under the jurisdiction of the State so it would never fall into dissolution.

Ms. Fijas said preventing the sale of Fox Point and conservation were two different things. Mr. Weiner said the primary purpose of the easement was to protect Fox Point from being sold by the Town at any point in the future. Ms. Fijas then asked how they would proceed with the management, and Ms. Cauvet said the initial management plan proposal would need to be agreed upon in consultation with the Board of Selectmen, and the non-profit entity, "Friends of Fox Point", as would any future proposals. Attorney Bruton said a conservation easement prevents some uses, and never changes by creating a charitable trust; but this would be a stripped down easement, and the management plan would be more specific to the parcel.

Mr. Weiner suggested including the Board of Selectmen to see if they had any suggestions. Mr. Morgan suggested the commissioners ask to get on the Board's agenda. Ms. Fijas said they should discuss the easement language and management issues first before going to the Board of Selectmen so they would have an idea of what they were talking about, and then discuss all the suggestions with the attorney. It was agreed that they would have a work session at next month's meeting.

2) New Business: Proposal by **Sea-3** to build in shoreland buffer for its terminal at **190 Shattuck Way** Tax Map 14, Lot 2; and Map 20, Lot 13) in order to accommodate liquefied petroleum gas (propane) shipments via rail, and the export of same via ocean-going ships.

Paul Bogan, VP Operations, reviewed the history of Sea-3 that started importing propane at their Newington location in 1975. However, two years ago sales competition caused their Algerian suppliers to increase their costs, which caused them to lose domestic sales drastically. They have since come up with a plan to bring domestic propane from Western Pennsylvania and West Virginia by refrigerated rail and then redistribute it overseas, and some parts of New Hampshire, and New England. In order to do this they are planning to expand their rail unloading facility on Shattuck Way. The product will be unloaded into ambient pressure storage tanks, pumped into drying towers to remove moisture, and then into chilling tanks to bring the temperatures down to - 45 degrees Fahrenheit for transportation. Mr. Weiner asked why they reduced the temperature, and Mr. Bogan said the lower temperature reduces the pressure.

Ms. Cauvet asked what the shipment route would be, and Mr. Bogan said the shipments would be coming through Rotterdam, NY to Rockingham Junction in Strafford, through Greenland, and then up to Portsmouth past Market Street and Atlantic Heights to their destination at their Newington site. Mr. Bogan said they have brought shipments in by rail before, but they would be bringing in more to make it profitable. Chair Hislop asked about the condition of the rails, and Mr. Bogan said he expected twelve rail cars a day. He said their tracks are currently rated as Class I, which allows hazardous materials to be transported at 10 mph. Engineer, Stephen Haight said they were considering upgrading to Class II that would

Town of Newington, NH

CONSERVATION COMMISSION

Meeting Minutes for Thursday, September 12, 2013

allow them to travel at 25 mph, which would enable more cars to be delivered, but that would be up to the railroad company.

Ms. Fijas asked how they lost business, and Mr. Bogan said they lost business to other suppliers, mostly from the Canadian oil refinery pipeline.

Ms. Fijas asked about stormwater runoff, and Mr. Haight said they would only be dealing with surface runoff, but no underground treatment. Ms. Fijas asked about chemical use, and Mr. Haight said the condensers and compressors were all electric, so there would be no engines with petroleum, or cleansers used. Mr. Morgan said they would want to know about the impervious surfaces, and Mr. Haight said those numbers would be provided to the state.

Minutes: *Nancy Cauvet moved to approve the Minutes for the August 8, 2013 meeting. Jim Weiner seconded, and all were in favor.*

Discussions: Ms. Fijas asked if Newington had any setback ordinances regarding the use of fertilizers, pesticides, and herbicides along the shoreline, and was told they did not, but the State does. Mr. Morgan said he recently met with the Conservation Law Foundation, and they said wastewater is still the number one cause of excess nitrogen pollution, but home use fertilizers are second, not golf courses which must adhere to stricter rules. Chair Hislop suggested they pursue public education opportunities. Ms. Cauvet suggested publicizing to people in the landscaping business as well, and teaching them that it would also be profitable and in their best interest to use organic alternatives. Ms. Fijas pointed out that even organic nitrogen fertilizers would contribute to nitrogen levels in the Bay. Jim Weiner said he advocated planting clover to add nitrogen to the soil instead of fertilizers. Jane Kendall suggested a public education outreach communication posted on the Town's website, perhaps with a brochure mailing, making the brochures available at Town Hall, at the school, and local events, and through write ups in the local papers.

Correspondence: Mr. Morgan shared a copy of UNH Professor Fred Short's letter regarding his research and the disappearing eelgrass from Great Bay as a result of nitrogen pollution, and boats tearing it up.

Adjournment: Nancy Cauvet motioned to adjourn, and Jim Weiner seconded. All were in favor and meeting adjourned at 8:30 p.m.

Next Meeting: Thursday, October 10, 2013

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