

Town of Newington, NH
CONSERVATION COMMISSION
Meeting Minutes, Thursday, January 12, 2017

- Call to Order:** Co-Chair Jim Weiner called the January 12, 2017 meeting at 6:30 PM.
- Present:** Co-Chair Jim Weiner; Sandy Devins; Ann Morton; Alternate, Jane Kendall; and Planner, Gerald Coogan
- Absent:** Co-Chair Jane Hislop, Commissioners Cynthia Gunn and Bill Murray
- Public Guests:** Kimberley Peace and Michael Rogerson with Hoyle and Tanner Associates; Maria Stowell with Pease Development Authority; Lynn Hinchey, Deputy Director and General Counsel for Pease Development Authority; Margaret Lamson, Pease Development Authority Airport Committee Board Member; Town Wetlands Consultant, Mark West; Planning Board Chair, Denis Hebert; Lulu Pickering; John and Meg Ripley

1) Wetlands application for removal of trees along Pease runway flight path: Update

Kimberly Peace with Hoyle and Tanner Associates, representing Pease Development Authority (PDA) appeared before the Commission to review their proposal to clear cut trees near the airport runway flight path.

Ms. Peace stated that they did a study in 2009 and presented their findings to the Federal Aviation Administration (FAA). She said the FAA looked at the impacts of wetlands versus the impacts of navigation. Ms. Peace said there were impacts to property in both Portsmouth and Newington, with just 1.76 acres of impacts to Newington.

Ms. Peace said they looked at the surfaces from the side of the entrance and exit of the airfields and were now presenting a plan on the trees they thought needed to be removed. She said they were not filling the wetlands, so there was no true impact to their functions and values. Ms. Peace stated that they submitted wetlands permit request and because there were some of the impacts that crossed a certain threshold, the Department of Environmental Services (DES) was requesting comments. She said that a wetland scientist had reviewed the area and conversion plan and included a report in the application.

Ms. Peace said DES also asked them to go to each town to see if there were any projects for mitigation opportunities.

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Ms. Peace said they also talked with DES regarding the uplands that would be converted to a maintainable surface with a lawn so they wouldn't have to keep cutting the trees.

Co-Chair Weiner asked what the mitigation numbers were and Ms. Peace replied that they had submitted a table of impacts with the area and mitigation ratio that was based on a conversion sum of 3.42 to .5 acres, equaling a payment of \$75,000 to the Aquatic Resources Mitigation fund (A.R.M.).

Ms. Peace said she asked Lori Summers at the DES Wetlands Mitigation Bureau if the funds could go toward the Ripley or Boynton conservation easements along the Knight's Brook corridor, but Ms. Summers said the Ripley easement was already under consideration for Eversource's transmission expansion project and the Boynton property didn't meet A.R.M.'s fund requirements. Ms. Peace said DES would be looking for a mitigation project that would mimic the impact or it could be considered as part of another project.

Co-Chair Weiner asked Ms. Peace if she requested an outline of the mitigation criteria and Ms. Peace said that she did not. Co-Chair Weiner replied that the Commission and Town couldn't address the mitigation request if they didn't have any criteria to follow.

Ms. Peace responded that it was a chicken and egg scenario where, DES requested a mitigation proposal, but didn't accept the Ripley or Boynton easement proposals and asked for another, but were also looking at a deadline. Ms. Peace said the DES rejected the City of Portsmouth's proposal to establish trails in one of Great Bay's marshes, but accepted the planting of trees as mitigation for cutting trees. Co-Chair Weiner asked if the restoration of a vernal pool might be acceptable and Ms. Peace said it could be.

Margaret Lamson, Newington's representative on the PDA Airport Committee Board stated for the record that she did a site walk with the Town's forester, Charley Moreno, and PDA Board member, Peter Loughlin went out later with Maria Stowell with Pease Development Authority.

Ms. Lamson commented that Boiling Springs near Little Bay Road was a prime wetland and asked how many acres were being cut. Ms. Peace replied that they were proposing to cut three acres.

Town planner, Gerald Coogan stated that Town wetlands consultant, Mark West could look at options on deforestation. Mr. West commented that he would need to do more research, but suggested that cleanup or vernal pool restoration in the Town Forest might be a consideration for mitigation projects.

Co-Chair Weiner suggested that Mr. Coogan work with Mr. West to identify mitigations projects, and consider the erosion at the end of Fox Point.

Co-Chair Weiner asked Mr. Coogan where Newington's Town counsel and the PDA's counsel stood regarding the waiving of restrictions on setbacks along McIntyre Road. Mr. Coogan replied that it was still a work in process working toward common ground, but no decisions had been made to date. Ms. Stowell added that the conversation had gone to different groups, including PDA and Town counsel, but the PDA board of directors were the decision makers.

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Commissioner Ann Morton asked if the Town had any choices or if the PDA would proceed without consideration. Ms. Peace said the application had been submitted to DES for a decision, but they might request more information or grant with conditions for mitigations options.

Mr. Coogan added that the PDA still required comments for their DES wetlands and Alteration of Terrain (AoT) permits, which involved water quality and storm water management plans under the jurisdiction of DES Wetlands Bureau Director, Gino Infrascelli.

Co-Chair Weiner commented that the Town was willing to work with the PDA, but telling the Town that they would clear cut without compromise was not acceptable.

Ms. Peace replied that they recognized comments from the last meeting. but the FAA said the trees were obstructions that needed to be removed. She went on to say that they had been reviewing the obstructions since 2009 and they met with the Historic District Commission in 2015 and then altered their original proposal to minimize cutting.

Planning Board Chair, Denis Hebert asked which trees needed to be removed and Ms. Peace pointed to a group of on each side of the wetlands. Mr. Hebert asked why they weren't removing more trees in the wetlands at the end of the runway instead of trees to the side. Ms. Peace said the trees in the wetlands were in the setback and they had placed a hazard beacon above the tree line in the wetlands to alert pilots of the obstruction in the area.

Mr. Hebert replied that the trees in wetlands setback were higher than the beacon and if the trees both in and outside of the wetlands were the greatest safety hazard, then the beacon would be a safety hazard too. Ms. Peace agreed that the beacon was in the flight path, but she said they submitted the design to the FAA and the beacon was high enough to light but not create an obstruction. She said they wanted to be sure Historic District and homes were not affected and didn't want to set up multiple beacons.

Ms. Lamson commented that the Conservation Commission should have been informed of the beacon when they first presented their proposal in September 2016. Ms. Peace replied that they had correspondence going back to 2011 and the Town suggested they use one larger beacon setback from view of the road rather than two smaller beacons.

Lulu Pickering of Little Bay Road commented that she had attended many meetings, but felt PDA had ignored comments from the town. Ms. Pickering stated that she lived at the end of one of the longest runways in the country and wanted to feel safe like everyone else, but wondered if they could move it back 900 feet so that the Town might save a vital portion of the remaining 27% of the original township.

Michael Rogerson with Hoyle and Tanner Associates said 800 feet was the displacement of the landing threshold that was done in the late 1990's for the approach light system that extended into Boiling Springs wetlands. He went on to say that the obstructions were not obstructions to landing aircraft, but they were obstructions to fully loaded aircraft that were departing from the runway.

Ms. Pickering replied that fully loaded planes had been taking off from the 11,000-foot runway for years and never hit a tree. Mr. Rogerson replied that they were

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working with the FAA's standard operating procedures that dictated what they could and couldn't do.

John Ripley of Old Post Road asked if looked they had considered shortening the runway and Mr. Rogerson replied that they looked at the cost and determined that it would impact tax payers, but the FAA also said they couldn't. He added that it was good that there had been no accidents, but variables with temperature, especially on hot summer days were the greatest risk.

Ms. Lamson said she didn't recall any notification that the FAA found the airport to be unsafe when they did their report in 2009. Mr. Rogerson replied that he may have misspoke. Ms. Peace said the FAA had asked airports to routinely identify obstructions and the trees were identified to them as an obstruction in 2009.

Ms. Pickering commented that the runway would be reconstructed in the next year for KC-46's, so she thought now was a good time to consider alternatives. Lynn Hinchey, Deputy Director and General Counsel for Pease Development Authority replied that the FAA believed removing the obstructions was imperative for the safety of aircraft and the plan met their requirements. Attorney Hinchey went on to say the PDA Board of Directors wouldn't look at altering the runway. She said that she had been working with Planning Board counsel, Attorney John Ratigan on proposals, and it would be best for the Commission to comment to DES on the wetlands application and mitigation proposal because the PDA wanted to utilize their grants and would go forward with their proposal with or without the Town's input.

Ms. Peace said the FAA would only pay for the trees to be cut once and that was why they were clear cutting. Co-Chair Weiner asked when the grant would end and Ms. Peace replied that there was no set deadline, but it was not indefinite.

Mr. Hebert commented that the trees within the wetlands were the greatest hazard at end of runway. He said he had presented a proposal to Attorney Hinchey to cut the tallest bull pines and leave the lower growing trees alone. He said the Town had never offered to remove trees in a wetland before, but they were trying to work with the PDA. Ms. Stowell replied that the PDA was proposing to cut the trees within their control outside of the wetlands and planes didn't distinguish between bull pines and other types of trees. Mr. Hebert said the Town's forester pointed out that pine trees grew the tallest and the hardwood tree heights were limited. He added that the beacon height in the wetlands was also a hazard.

Ms. Peace commented that State statute made it difficult to remove or thin vegetation from prime wetlands and that was why they placed a hazard beacon there and chose to clear cut the trees shown in their proposal. She said the FAA used models based on data from planes flying in and out of airports and it was fortunate that no accidents had occurred at Pease date. yet.

Mr. Rogerson added that most areas were cleared in the 1950's and 1960's between Arboretum Drive and Little Bay Road with temporary easements and now the trees had grown back at about the same height. He said the PDA looked at selective cutting, but the trees were homogenous in height and age. He said the point of the project was to clear cut and maintain so the trees wouldn't come back. Ms. Pickering

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suggested negotiating with the Town and planting lower growing trees to buffer noise and light.

Ms. Stowell commented that the National Historic Preservation Act required them to consider possibilities and they discussed the viewscape and lights with the HDC and they agreed that buffers would be sufficient. She said they were cutting the trees on the hill so the runway lights would not be visible.

Mr. Hebert replied that Historic District Commission Chair, Gail Pare had discussed the Historic District with them, but she didn't have authority outside of the Historic District and this was their first time presenting their plan to the Conservation Commission. He said the biggest hazard were the trees in the center of the wetlands at the end of the runway and yet they were proposing to clear cut the trees to the side and wouldn't listen. Ms. Peace said she understood the frustration with their plan, but they had already worked with the HDC, the FAA, and did the required national environmental survey and safety and liability was paramount.

Alternate Commissioner, Jane Kendall said the Town understood their safety and liability concerns, but reiterated that although they had reviewed their plan with the FAA, had done an environmental survey and negotiated with the HDC, they were now coming to the Commission requesting comments for their wetlands permit, but were not giving the Commission and town the same consideration and opportunity they had given the HDC. She said the Town understood their safety and liability concerns and had pointed out that cutting the taller growing bull pines in the wetlands would be safer by removing obstacles in direct line of the runway and would not require clear cutting.

Co-Chair Weiner informed Ms. Peace that Mr. West and Mr. Coogan would work together to identify mitigation projects and would get back to them within the next week.

Co-Chair Weiner stated that the Commission barely had a quorum and would need to take the discussion off line for further consideration. Attorney Hinchey replied that she would talk with Attorney Ratigan again.

Ms. Peace, Mr. Rogerson, Ms. Stowell and Attorney Hinchey left at this point of the meeting.

A brief discussion with Mr. West ensued. Mr. West reminded the Commission that the taller growing bull pines in prime wetlands could be cut with a permit when warranted, just as Eversource does to maintain their power lines, although it was good to leave some of the lower growing hardwood trees for habitat.

Mr. West added that studies had been done between 2006 and 2007 and DES did away with all the wetlands buffers prior to 2007. He said although prime wetlands were protected by the State and the Town might have more stringent wetlands buffer setbacks, the State didn't.

Mr. West suggested they consider planting evergreen red cedar for restoration as it grows slower and never grows taller than 40 feet.

Ms. Pickering mentioned that the Town forester had asked where the runoff would go once they cut the trees, knowing that grass would not soak and filter runoff as well. Mr. West replied that he would review the plan.

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2) Conservation Easements and Mitigation Discussions:

A) Update on Ripley Property easement proposal at 50 Old Post Road, Map 17, Lot 15 and 2017 Warrant Article.

Mr. Coogan said he had contacted Sarah Allen with Normandeau Environmental Engineering who was representing Eversource, asking her to put together a package for Lori Summers at the DES Wetlands Mitigation to be reviewed for A.R.M.s fund criteria. He said he hoped they would hear a response by Feb 8, 2017 and then they could work on the easement with the Ripleys.

Mr. Coogan pointed out that the easement would have to be inspected once a year. Mr. Ripley asked about pony shed. Mr. Ripley asked if they would be allowed to put up a shed or a fenced area if they wanted to keep a horse on the easement. Mr. West said they might have to meet setback requirements. Mr. Coogan said he didn't believe they could have structures on the easement, but they would work details out during another meeting.

Mr. Ripley asked when the funds would be expended and Mr. Coogan stated they would be available for expenditure in 2017. Alternate Commissioner, Jane Kendall asked when Eversource would expend their mitigation funds and Mr. Coogan said he thought it would also be in 2017. Mr. West said the A.R.M.s funds would be committed for a couple of years.

Mr. Ripley wondered if the payment could move to Jan 2018 instead of October 2017 and Mr. Coogan said it probably could.

B) Update on discussion with Jill Boynton regarding easement proposal for her property at # Old Post Road, Tax Map #, Lot #

Mr. Coogan said he had not talked with Jeff Boynton, but spoke with his wife, Jill about the possibility of putting the wetlands behind their house into a conservation easement to complete the connection of easements from the Saba easement to the Frink easement.

Mr. Coogan said the Boynton's were not interested in an easement initially, but he informed them that a Town held easement could be private and just enough to protect the waterway to protect the value of the surrounding area. He said Ms. Boynton sent an email back that her husband might be interested if the easement was small.

Mr. Ripley commented that a small enough portion could easily be funded. Co-Chair Weiner agreed that the Commission could request another warrant article for funds at the next Town meeting if they were interested.

3) Eversource's Seacoast Reliability Transmission Expansion Project: Wetlands Impact Discussion with Town wetlands consultant, Mark West, CWS

Mr. West informed the Commission that he had prepared a memo with a cursory review of Eversource's documentation to assist the Commission before finalizing his

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comments on items of the highest priority. He said he had not done site inspections, but had been on many of the wetlands in town over the years and on his on-ground experience was helpful.

Mr. West said the greatest environmental impact of the proposal would be the jet plowing through the bottom of Great Bay to run the cable from Durham to Welch's Cove in Newington. He said the Town of Durham had hired two firms to do an analysis, one of which was from the Woods Hole Oceanic Institute. He said at this point the only mitigation for the significant impact of disturbing the sediment when coming across the bay was that they would pay the oysters farmers for an entire year. He said University of New Hampshire was spearheading was pleased that the declining and oyster beds were coming back because of their oyster restoration program and there was concern that disturbance to the sediment would set them back.

Mr. West said the impact of the cement staging platforms would have a permanent impact to the tidal wetlands where the cable came to shore. He said unfortunately, the Federal Energy Regulatory Commission (FERC) would have the last say.

Mr. West went through each item of impacts that were listed in Eversource's report, noting that some impacts such as the staging areas and cutting mats through the wetlands would be temporary, whereas the base areas for the poles and pads would be more significant and permanent.

Mr. West said his concern was that staff members fly through big projects, but he found some discrepancies in the identification of ground water. He said he thought that the stream that entered the Frink Farm from Knight's Brook was perennial, not intermittent and there were seasonal vernal pools around the Flynn Pit, which he knew to be habitat for fairy shrimp, salamanders and tadpoles. He said although part of it dried up as vernal pools did, he knew it was there because he had gone in with a kayak in the spring so they would need to issue an addendum.

Mr. West said the prime wetlands weren't shown at all even though there would be impacts where the transmission lines crossed the Frizzell property. He added that the lines would also cross the prime wetlands along Rail Road Brook where there was no mention of the presence of the endangered bulbous bittercress which he had seen there himself and was sure it hadn't gone away. He said the report said they hadn't found any endangered species, but that would be true of most rare species, adding that it would be important to look for species during the right times of the year.

Mr. West noted that there was bald eagle, osprey, Henslow and grasshopper sparrow habitat in the area, but they never did a survey. Mr. Hebert added that there were long eared bats and New England cottontail in the area as well.

Mr. West said he offered to do a report on the prime wetlands, but Sarah Allen with Normandeau Environmental said she was already aware of them. Mr. West added that they never requested more information or deadline extensions.

Lulu Pickering of Little Bay Road said there were 31 wetlands impacted in Newington. Mr. West said the number wouldn't change, but the quality of wetlands in the report would. He said they were more impacted because they were not completely considered.

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Mr. West said the report talked about restoring the temporary impacts and erosion control, but it didn't provide information on how they would be restored. Co-Chair Weiner asked if additional impacts would increase mitigation funds and Mr. West said they might.

Ms. Pickering said she thought the Town should try to work with the FCC and Congressional designation for a utility corridor for the future even if it takes Congress to sign off on it. Mr. Hebert commented that Eversource was now a private entity, not a public utility like Public Service of New Hampshire had been. Mr. Hebert said no longer public utility, but private. He asked Mr. West if he would brief Planning Board counsel, Attorney John Ratigan and testify before the site evaluation committee.

Mr. West said the New Hampshire House Senate was reviewing utilities and Governor Chris Sununu said he thought Eversource's transmission expansion would lower utility costs, but they would be passing the costs for the upgrades on to customers. Mr. Hebert agreed and said initially Eversource had considered a step-down transformer that would be flexible and bring in 210% more power, but they chose not to because it would cost 18 million dollars more. He said they would need a step-down transformer in another seven years, but ISO New England only allowed upgrades every ten years, even though there would be another project in 20-40 years with 18% more costs.

Mr. Coogan asked Mr. West to turn the memo into a draft letter. Mr. West said he would and would contact Carlos Adams, the administrator at DES Wetlands Bureau to identify who to address the letter to and to get an understanding where Eversource was in the process.

Mr. Coogan said that Town counsel, Susan Geiger would need the information in by February 8, 2017.

4) Newington Zoning Ordinance Article VIII Wetlands Overlay District: Discussion with Town wetlands consultant, Mark West, CWS

Mr. Coogan stated that the current wetlands ordinance that was written in 2005 needed a language update and so he had asked Mr. West to provide guidance.

Mr. West said he prepared a basic suggestion to bring the ordinance up to speed to newer standards and publications with a reference to the new manual on vernal ponds to identify and protect them.

Mr. West also suggested that they could reference "current" NH Wetlands Bureau administration rules in the delineation section.

Mr. West said the State had changed the Shoreline Protection requirements from no cut and no disturb buffers to cutting no more than 50% of the trees, but the Town could update and leave in some buffers because it was well documented that disturbing the forest floor leaf litter changes hydrology.

Lulu Pickering of Little Bay Road expressed concern with not being able to cut trees in a wetland area that were blown down in storms. Mr. West replied that they could add that diseased and hazard trees could be removed if necessary, especially if they were near a house.

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Ms. Pickering commented that selective cutting could be beneficial in managing preferred tree growth. Mr. West replied that agriculture was an allowed use and forestry could be protected too. He said they could also add forestry for wildlife habitat enhancement. He said the State allowed the removal of invasive species such as buckthorn, multiflora rosa and Norway maple within the shoreline without a permit.

Co-Chair Weiner agreed that the Town could remain more stringent while allowing selective cutting of hazardous trees and invasives. Mr. West said graduated buffers made sense because not all wetlands were the same and they didn't need to be as stringent with less important wetlands, which could be considered a taking.

Mr. West said Section 7 was written because the Commission at the time was concerned with the water quality of the surface waters that flowed to Great Bay, but the problem was with the definition of contiguous waters. He said they could still protect the shore with shoreline protection regulations and wetlands buffers, but they should probably identify the surface waters in town to avoid a guessing game.

Co-Chair Weiner said he thought mapping was a good idea. Mr. West said he had already mapped all the wetlands and could use the existing soil survey and National wetlands map to identify the surface streams and vernal pools on Ortho photos and then he would just need a GIS person. Mr. Coogan asked if he used Neat Line for GIS and Mr. West said he did and it shouldn't be a huge expense to add to what they already had depending how much was digitized.

Ms. Pickering said there was no spring in her field, but water that ran down Little Bay Road toward her field from the Town cemetery and transfer station and she tried she tried to work with the Board of Selectmen to address the problem. Mr. West said Town engineering consultants at Altus Engineering was looking at the problem. Ms. Pickering replied that they were talking about protecting surface waters, but asked what would protect her property. Mr. West said surface water defined a stream channel, not wetlands.

Ms. Pickering said she was still getting a sense of the unintended consequence from taking of more property. Mr. West replied that the wetlands were already there on the landscape and they were just talking about mapping them for identification. He said they were not necessarily talking about increasing buffers, just clarifying where they should be.

Mr. Coogan suggested that the Conservation Commission work on the project jointly with the Planning Board and the Zoning Board of Adjustment and perhaps a small steering committee. Mr. West said there were two key things they needed to do, which were to identify the areas by mapping and be clear in the protections. He said he thought he could sort out in a couple of meetings

Mr. West left at this point in the meeting.

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5) Warrant Articles:

Co-Chair Weiner read through the warrant article requesting \$40,000 toward the purchase of the Ripley conservation easement to supplement the request for mitigation funds from Eversource's transmission line expansion.

Co-Chair Weiner stated that the second warrant article would be a request to replace \$30,000 taken out of the Conservation Fund toward the purchase of the easement.

Mr. Coogan recommended that the Commission provide background information to show that the budget had been cut back in the past and they were now asking to replace the funds. Mr. Hebert said the Commission used to ask for \$50,000 to build up the fund, but they were asked to cut back in 2008 and then it never went back.

Ann Morton moved to recommend the warrant article requesting \$40,000 toward the purchase of the Ripley conservation easement to supplement the request for mitigation funds from Eversource's transmission line expansion. Jane Kendal seconded the motion and all were in favor.

Ann Morton moved to recommend a second warrant article for \$30,000 to replace the \$30,000 taken out of the Conservation Fund for the Ripley conservation easement. Jane Kendall seconded the motion and all were in favor.

5) Town Planner Correspondence and Updates:

Mr. Coogan reviewed his memo of activity and work projects with other boards in town.

Mr. Coogan added that Gail Pare had sent an email in consideration of a conservation easement on their property.

Other Business and Discussions:

Mr. Hebert asked who would pay for Mr. West's services and Co-Chair Weiner said he would ask the Board of Selectmen if there weren't enough funds in the Commission's budget.

Co-Chair Weiner informed the Commission that he had received an email from Wildlife Outreach for UNH Cooperative Extension that was interested in using the Old Town Hall on Saturday, February 18, 2017 for staging before their volunteers headed into Great Bay Wild Life Refuge for a training session on the New England Cottontail and they needed a town sponsor like the Conservation Commission so there would be no cost for using the hall.

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Minutes:

*Ann Morton made a motion to **approve** the Minutes of December 8, 2016. Jim Weiner seconded the motion and all were in favor.*

Adjournment: *The meeting adjourned at 9:21 p.m.*

Next Meeting: Thursday, February 23, 2017

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

These Minutes were approved and adopted at the February 23, 2017 Conservation Commission Meeting.