

Town of Newington, NH
CONSERVATION COMMISSION

Meeting Minutes, Thursday October 12, 2017

- Call to Order:** Co-Chair Jane Hislop called the October 12, 2017 meeting at 6:30 p.m.
- Present:** Co-Chair Jane Hislop; Co-Chair Weiner; Commissioners Sandra Devin; Ann Morton; Bill Murray; Alternate Jane Kendall and Town Planner, Gerald Coogan
- Public Guests:** Luke Hurley with Gove Engineering Services; Thomas Backowies; Mike and Robin Patenaude; Christopher Berry with Berry Engineering; Devin Batchelder, Assistant Project Manager and Cindy Balcius, Certified Wetlands Scientist with Stoney Ridge Environmental; John and Meg Ripley

1) NHDES Permit Requests:

- a) Dredge and Fill application for installation of additional moorings by **Tyco TE-Subcom** at 100 Piscataqua Drive, Tax Map 27.

Lou Hurley with Gove Engineering appeared before the Commission on behalf of Tyco TE-Subcom to request a recommendation for a New Hampshire Department of Environmental Services (NHDES) Dredge and Fill Permit.

Mr. Hurley explained that TE-Subcom wanted to put in additional pilings and an elevated walkway to improve employee safety when receiving cables and materials from ships. He said currently employees took dinghies from post to post, which they climbed up to tie off the ships before unloading. Mr. Hurley stated that the proposal would add galvanized steel walkway with a three-sided cage above high tide to provide a solid walkway to protect employees from falls.

Co-Chair Hislop asked what they would do to prevent icing in the winter and Mr. Hurley replied that they would probably use seawater, but he not sure.

Co-Chair Weiner asked if they would modify the existing pilings and Mr. Hurley replied that the existing elevation was high enough so they would keep the new additions the same.

Mr. Hurley stated that the new structure would be parallel to the shore and would not obstruct water traffic. He said he had already discussed the proposal with Tracy Shattuck with the Port Authority and they had no issues with it.

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Town Planner, Gerald Coogan asked if the Coast Guard had signed off on the proposal as well and Mr. Hurley stated that they had already done so.

Commissioner Sandy Devins asked how often ships came in and Mr. Hurley replied that they usually came in once a week

Jim Weiner moved to recommend approval for NHDES Permit Request for a Dredge and Fill for installation of additional moorings with walkway for Tyco TE-Subcom at 100 Piscataqua Drive, Tax Map 27. Ann Morton seconded all were in favor.

b) Expedited Minimum Impact Wetlands application for tree cutting on property owned by **Thomas Backowies** that is located at 65 Nimble Hill Road, Tax Map 12, Lot 10B.

Mr. Coogan handed out the applicant's prepared plans and a narrative description of the proposal that he had received a few days earlier.

Cindy Balcius, Certified Wetlands Scientist and Devin Batchelder, Assistant Project Manager with Stoney Ridge Environmental appeared before the Commission on behalf of property owner Thomas Backowies and applicants, Mike and Robin Patenaude who had the property under agreement. Ms. Balcius informed the Commission that Mr. Patenaude was also the builder of the new, abutting home at 57 Nimble Hill Road.

Christopher Berry with Berry Surveying and Engineering stated that he was representing the applicants, Mr. and Mrs. Patenaude who were proposing to build a structure at the rear of the lot along with a pond. Mr. Berry stated that the proposed pond construction would require a minor wetlands and buffer impact. He added that the property owner had previously received a variance because the entrance of the driveway would impact 1,600 square feet of wetlands. He stated that the wetlands had been delineated five to six years prior, but they were required to update the delineation every four to five years so they reached out to Ms. Balcius to flag the wetlands.

Ms. Balcius stated that the wetlands were last delineated in 2010, adding that Mr. Patenaude, the prospective owner, had cleared the area for flagging. She said the area where the trees that were cut seven years prior by the previous owner was now thickly grown over with invasive buckthorn, multiflora rose, poison ivy and some purple loosestrife that was growing in the skid ruts from the previous tree cutting. She added that cattails, wool grass and poison ivy were native species, but the Army Corp of Engineering considered poison ivy to be problematic. She said the wetlands were low function except for songbirds because of the thick vegetation.

Ms. Balcius reviewed the proposed 15,178 square foot pond. She stated that the delineated prime wetland in the back was 650 feet from the proposed location, there were no streams affiliated with the wetlands, prerequisites would be met and there would be 8,827 square feet of wetlands impact.

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Ms. Balcius stated that the applicant would be including a planting plan to with native shrubs and wetlands stabilization species to enhance wildlife and aesthetics around edges of pond as part of their proposal. She added the invasives would continue to some degree, but the mulching and seeding of other plants would help with competition to keep them in check. Ms. Balcius said the best time to plant seeds was in the fall so that was the reason why they were applied for an expedited permit.

Co-Chair Hislop asked how deep the pond would be and Mr. Berry replied that it would be ten feet deep.

Commissioner Bill Murray asked what the length of the pond would be and Ms. Balcius replied that it would be 150 feet long.

Mr. Patenaude stated that he intended to retain and reuse the soils from excavating the pond on the site as he did when building the home at 57 Nimble Hill Road. Mr. Coogan asked him why he used so much fill and put the home at 57 Nimble Hill Road on a mound. Mr. Patenaude replied that the water table was high on the site and he built the lot up for gravity flow to the septic so they wouldn't need a pump and to keep the basement dry.

Co-Chair Hislop commented that there were some residents that had created ponds on their lots and now regretted it. She asked what would happen if the next owner didn't want a pond. Ms. Balcius replied that there had been a change in the statute five or six years ago that stated once a body of water had been created, it would now be considered as an existing feature that had to remain that way.

Co-Chair Hislop asked if there would be enough water to maintain the pond during dry years and Ms. Balcius replied that the area with marine silts and eight inches of clays on the surface was ideal for a ten-foot-deep pond. She added that planting along the edge would also help retain the waters.

Co-Chair Hislop asked what would happen if beavers moved in and Ms. Balcius replied that she was not sure that there would be anything present to attract beavers.

Co-Chair Weiner commented that Ms. Balcius had done a nice job and that a pond would add to the value of the environment, but a member of the Planning Board had observed that they had crossed into prime wetland buffers that had been flagged seven years earlier and cut trees without a permit and so he felt the Town wetlands consultant, Mark West should review the wetlands delineation. Ms. Balcius replied that there would only be cattails, purple loosestrife and downed trees in prime wetlands and she had already stated that the proposed pond was nowhere near the wetlands that were shown on the Town prime wetlands map, which only showed delineated wetlands. Co-Chair Weiner commented that he was concerned that the flags had been moved and trees cut before the property had been sold to Mr. Patenaude.

Mr. Patenaude asked if it was illegal to bush hog before they received approval of their wetlands permit. Co-Chair Weiner said he was not sure whether they had encroached on wetlands until the new delineation was reviewed by Mr. West, but notification of the possibility had been reported to NHDES.

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Mr. Patenaude stated that they had already hired a wetlands scientist to do the delineation and didn't think they should have to pay the Town to have another wetlands consultant review her work since the subdivision had already been approved. Alternate Commissioner Jane Kendall explained that the Commission understood that the property had been already been approved some years before, but as stated, they were required to update the delineation and it was standard to have the Town wetlands consultant review their wetlands scientist's delineation. Mr. Coogan added that the Town required applicants to put a deposit in escrow to pay for the Town's wetlands consultant's review before a land use board could complete their approval.

Discussion continued with both Mr. Patenaude and Ms. Balcius disagreeing that the applicant should pay for the Town's wetlands consultant to review the delineation for a previously approved subdivision. Mr. Patenaude added that he believed he should be allowed to bushhog trees in wetlands. Co-Chair Weiner responded that he couldn't speak for other towns that might have different regulations. Commissioner Kendall added that it was up to an applicant to check a town's regulations before going forward and to follow the more stringent regulations when working in wetlands or buffers.

Property owner, Tom Backowies commented that he had not given permission to anyone on the Planning Board to trespass on his property and he wanted to be notified. Mr. Coogan replied that the applicant had come in a month ago and asked if there was any problem working in the wetlands. He went on to say he sent a letter to Mr. Backowies to ask for permission for Mr. West to check the wetlands delineation. He said he had not received any reply, but the Planning Board member had submitted his statement before he had received the wetlands application. Mr. Coogan stated he acted because it had been brought to his attention.

Co-Chair Hislop commented that it was worth noting that Mr. West had looked at the lot when it was owned by the Goves and he agreed that most of it was uplands and low-quality wetlands at that time so she didn't expect that the wetlands had increased in any significant way.

Ms. Balcius said she was going on vacation for two weeks, but that she could walk the property with Mr. West when she returned. Mr. Coogan asked if she would be available to walk the site as early as the next day and she said she could decide.

Mr. Coogan suggested that the Commission could make a motion for Co-Chair Hislop to sign off on the permit if Mr. West sent in a letter of agreement on the wetlands delineation.

Jane Hislop moved to recommend approval of the Expedited Minimum Impact Wetlands application for tree cutting on property owned by Thomas Backowies that is located at 65 Nimble Hill Road, Tax Map 12, Lot 10B after Town wetlands consultant, Mark West previews the plans and wetlands delineation. Ann Morton seconded the motion and all were in favor.

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3) **NH Moose Conservation License Plate Grant:** Update on application for Fox Point shoreline erosion control

Mr. Coogan informed the Commission that the application had been submitted on September 15, 2017 and that the awards would be announced on December 9, 2017.

Co-Chair Hislop announced that extremely high tides would occur around the full moon from Friday, November 3 to Monday, November 6, 2017 with the highest tide occurring at 1 p.m. on Sunday. She said the tides would reveal the type of damage that occurred at Fox Point after a heavy tide.

4) **Mitigation and Conservation Easements:**

a) Regarding purchase and sale agreement for conservation easement proposal for property owned by **John and Meg** Ripley located at 50 Old Post Road, Map 17, Lot 15.

Co-Chair Hislop informed the Ripleys that the Commission was still waiting on approval of the mitigation funds from Eversource, which had been delayed.

John Ripley discussed the history of their easement proposal over the years. He also read through the letter of intent that stated that the amount of the mitigation grant from Eversource would be \$80,000 and the Conservation Commission would contribute \$100,000 from their warrant articles.

Mr. Ripley suggested that the Commission consider closing the easement with the available funds and write a promissory note into the easement that the balance would be paid at the next opportunity.

Co-Chair Hislop commented that Lori Summers, Mitigation Coordinator with DES Wetlands Bureau said they sometimes did a three-year payment. Co-Chair Weiner replied that the Commission would need to run the suggestion past legal counsel.

Commissioner Kendall commented that they needed to be aware that eligibility for the funds might depend on an open application for an easement and closing the easement might disqualify them. Co-Chair Hislop suggested that they should talk with Tracy Degnan with Rockingham County Conservation District for her advice.

Mr. Coogan suggested that Mr. Ripley send letter to the Commission regarding his interest in a promissory note that could be forwarded to Ms. Degnan.

Mr. Coogan commented that the Commission's proposed contribution would have to be encumbered into next year's budget. Co-Chair Hislop commented that the Commission often presented a warrant article request for an annual contribution to the Conservation Commission fund, which was not the same as a budget line item and was not required to be returned each year. Co-Chair Weiner replied that one portion of the warrant article was specific for this use so they might need to encumber it. Mr. Coogan suggested that they consult a higher authority on the management of the Conservation Fund.

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b) Conservation Easement Restoration: Carter's Rock

Co-Chair Weiner stated that the Town workers were supposed to work on cleaning up Carter's Rock, but he couldn't see that anything had been done yet.

Co-Chair Hislop commented that a letter was supposed to be sent out to the abutters to inform them of the work. Co-Chair Weiner agreed that the Commission had asked that the Town write a letter in previous meetings, but there was no copy of the letter in the packet. Co-Chair Hislop asked Mr. Coogan to write the letter to the abutters and have the Board of Selectmen sign it.

Discussion ensued regarding public access up to the rock and whether the fence that the Pickerings installed was obstructing public access. Commissioner Ann Morton stated that Paul Pickering put the fence up and "Keep Out" signs went up after Kenny Pickering, Sr died.

5) Regarding NHDES letter to **John Emery** regarding demolition of dwelling at his property located at 170 Fabyan Point Road, Tax Map 50, Lot 2.

No new information was received on this item since the last meeting

6) Pease Development Authority Forestry Plan

Mr. Coogan presented a letter from forester Michael Powers, who was recommended to Town Administrator, Martha Roy by the Rockingham Country forester.

Co-Chair Weiner stated that the Town had hired Mr. Powers and he had walked the planting site with him. He said Mr. Powers pointed out that the runway was elevated 30 feet from the road so the clear-cut area would not be visible from the road. He added that Mr. Powers suggested quick growing sumac for a screening option.

Co-Chair Weiner said he thought the Commission should share this information with the Town representative for the PDA. Commissioner Kendall said it was good that the Town found a recommendation for an impartial forester, but she was afraid it was too late considering the PDA's plan was already in motion.

7) Community Education Outreach: Invasive Species Presentation at September Fest 2017

Co-Chair Weiner said he thought someone from the University of New Hampshire would be there to help set the table up, but they didn't so Co-Chair Hislop did it all herself. He said she did a great job, but he wishes he had known so they could've delegated some other members to help.

Co-Chair Hislop replied that UNH had cancelled at the last minute, but DES had identified three invasive species on Fox Point and she obtained some materials on invasive species from the U.S. Forestry Service for people to see.

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8) Updates: Town Planner Report

Mr. Coogan announced the following:

- Septic Systems and Nitrogen in Great Bay on Tuesday, October 31, 2017 at 8 a.m. No charge, but registration required.
- Community discussion on the Newington Master Plan, Wednesday October 25, November 1 and Nov 15, 2017 at 6:30 p.m.

Mr. Coogan also informed the Commission that Julie LaBranche with Rockingham Planning Commission would be doing an outreach with several of the businesses along the waterfront including Great Bay Marina, Little Bay Lobster and Sprague. Co-Chair Hislop suggested she also talk with Tyco.

8) Correspondence and Invoices:

Jim Weiner moved to approve a payment of \$236 to the New Hampshire Conservation Commission Association for the annual membership. Jim Weiner seconded the motion and all were in favor.

Jim Weiner moved to approve a payment of \$746.84 to Rockingham County Conservation District for services rendered by Tracy Degnan from December 2016 to present. Sandy Devins seconded the motion and all were in favor.

Minutes: *Jane Hislop moved to approve the Minutes for the September 14, 2017 meeting. Sandy Devins seconded and all were in favor.*

Adjournment: *Jane Hislop moved to adjourn the meeting. Ann Morton seconded the motion and the meeting adjourned at 8:07 p.m.*

Next Meeting: Thursday, November 9, 2017

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

These Minutes were approved and adopted at the November 9, 2017 Conservation Commission meeting.