

## OFFICIAL CONSERVATION COMMISSION MEETING MINUTES

November 10, 2014

S. Couture called the meeting to order at 4:00 p.m.

**Attendance:** Steve Couture, Chair; Cindy Robertson, Vice-Chair; David Hess, member; Phil Fitandes, member (5:30 pm); Todd Lizotte, Town Council Rep.

**Excused:** JoCarol Woodburn, member; Frank Kotowski, Planning Board Rep.

### Public Input

None.

### Meeting Minutes

*C. Robertson motioned to approve the meeting minutes for October 29, 2014. Seconded by T. Lizotte. Motion passed.*

### Appointments

#### a. Brendan Quigley and Ari Pollack, Pike Industries Conservation Easement

B. Quigley: I'm Brendan Quigley from Gove Environmental Services and I'm here with Ryan Crosbie from Pike Industries. We are happy to be here with something we have been working towards for a while, the conservation land associated with this project. We have been discussing it since February of 2013. We had some hurdles with the deed. We started with a basic outline we submitted a few months ago. We've worked with you, the Town Attorney and DES to come up with a draft, which has been reviewed by all parties that would presumably be acceptable and a good starting point for finalizing it. In everything we've been doing Pike has not had any issue with any comments from the Town or DES. We postponed the last meeting for full input from DES. The most significant change is the addition of some standard language on the executory interest and provision for allowance of forestry operations should the grantee want or need to – for example, for conservation purposes, if the land needed to be logged to be beneficial. The deed has now included a provision in it for that. We are hoping to discuss this tonight if you have any questions. We would also like to touch on the stewardship fee. I have some numbers that are

an extension of what we did initially. We would like to try to move towards getting a letter from the Town saying they would like to hold the easement.

S. Couture: First off, I want to compliment the process. You have listened to our concerns and addressed them. It has been very collaborative in working with you and DES. From where we started, it's in a very good place from my perspective.

D. Hess: One thing Attorney Crean was concerned about was the use of the word "infer" on page 3, paragraph C. He wasn't sure what it means and I'm not either. I am concerned about that word. Can you shed some light on why you used it or haven't changed it?

B. Quigley: Our attorney Ari Pollack is here to answer that, but basically it means that Pike is protected from any actions. I don't know if the use of "infer" is unusual.

A. Pollack: I'm Ari Pollack with Gallagher, Callahan and Gartrell. I have been working with Pike on this. We have been trying to coordinate language among three different places: Pike, the Town, and DES. If there was a desire to strike the word "infer," then I must have forgot about it. Pike has no issue with the Town using the property for recreation with public access. We weren't sure how DES would respond. We are trying to reach language everyone is satisfied with. If that word is ambiguous so that it is creating a problem, we can take it out or change it. The idea is just that Pike is the passive party granting the easement to the Town, which is responsible for who uses it, how it is used, and the recreation.

S. Couture: Does Section 6 address the same concern?

A. Pollack: Yes, it does. Those sections are duplicates. It all amounts to Pike saying they don't have a problem, but they aren't the ones sanctioning it. If you wanted to take that sentence out, the subject matter is covered later in the document.

D. Hess: The way it's written, the indemnification section sounds like it is absolute even if Pike is a contributing factor to the liability. Am I misreading that somehow?

A. Pollack: On page 5, subparagraph B, the paragraph has two portions. The first is the grantee (Town) shall indemnify and hold harmless Pike for its injuries. The second section is the reverse.

D. Hess: I'm sorry, the copy of the deed I am looking at is an outdated version and the language is different.

S. Couture: Any letter from us will say we will be supportive of the concept subject to all local level approvals. It's the Council that will accept it.

D. Hess: Ari, you did address the issue I raised, but this doesn't address joint several liability. It assumes causation is the result of one party or the other party, but not both parties and I can envision situations where it might be joint several liability.

A. Pollack: I agree that it could be clearer and we can take another stab at that if the Commission would like. That level of comparative fault would be read into that paragraph and indemnity as it is generally read into fault litigation. You only pay for the portion of the injury that you caused. The executory interest portion starts on page 6. This is what the state has added to the document. If the easement holder doesn't abide by the regulations or loses interest in holding the easement, it makes it clear that it's the state really blessing this idea as part of our mitigation package and they would step in if the Town is unwilling or unable to carry its burdens.

S. Couture: Yes, thank you. We were expecting that to be in there.

D. Hess: In Section 2, respective rights A and B regarding fishing. Is there some reason why that's in there as opposed to us using those rights?

A. Pollack: The issue is twofold. Pike wanted to reserve the right to put a limitation on if trespassing over the boundary becomes a problem or some kind of safety event becomes a problem. This area is next to an active, operating quarry, which could amount to an unsafe situation. That language was in from the beginning before the state saw it. We weren't sure the level of usage they would be comfortable with. We aren't saying you can't do it, but let's let the situation evolve before we decide those types of activities can be safely used forever.

D. Hess: Do you contemplate a fence separating the conservation area from the quarry so people know where they are not supposed to go?

B. Quigley: No, there will not be a fence.

R. Crosbie: There typically are safety berms and signage. There will be boulders to prevent vehicles from going into the quarry area.

S. Couture: I understand the intent of section A. We've only had one easement where fishing is not allowed. There may be language in consultation with the grantee, especially on the hunting side. We have always said on our conservation land that we are not going to restrict those uses.

B. Quigley: There are concerns about that within certain proximity.

S. Couture: It seems contradictory to construct trails without allowing those uses.

A. Pollack: It's the shooting that causes concern. History of dealings will help us resolve that. We didn't know what the State would think about the first draft. We have a better comfort level with the State now. I don't think they would be bothered by a qualifier there.

D. Hess: I believe we have standard language about allowing hunting but not within a certain distance of trails. We have a policy we have adopted.

A. Pollack: We were not asked to do that before, but I'm fine with that.

S. Couture: No, you weren't. We are recommending two changes: striking the sentence in paragraph C and adding a consultation qualifier to paragraph A. Are we all comfortable with that?

D. Hess: Could we add a sentence saying both the grantor and grantee are deemed to be causable and which party should be liable?

B. Quigley: It looks like the numbering is off but we will fix that.

D. Hess: Is the extent and boundaries of the CE already defined? Have there been surveys?

B. Quigley: A survey plan will have to be prepared.

S. Couture: A baseline documentation and survey will all have to occur.

B. Quigley: We need to formalize the other parts of the mitigation package. We need a letter from the Town and agreement of a stewardship fund.

S. Couture: So you don't need to include the stewardship fee in the letter to DES?

A. Pollack: It would probably be helpful to recognize it.

S. Couture: Is everyone comfortable moving on from easement language and onto the stewardship fund?

A. Pollack: We will make those changes and circulate it back through. It would help us if you would do a letter stating that you've seen the draft as of this date, you made revisions, you will recommend it to the Town Council, and the applicant will make a stewardship fee payment.

S. Couture: I intend to do that and make a motion.

B. Quigley: When this was first discussed, by using the formula from the Land and Community Heritage Investment Program, we ran into an issue with assessed value. Some of the lots were part of the quarry, so it was greatly inflated. We took the lower end of that value. It comes out to \$17,855 so that would be our proposal. That's 3.5% of half of the assessed property value.

S. Couture: I think that's reasonable.

***S. Couture motioned to write a letter to DES outlining the proposed changes that we recommended for the easement language and that we agreed upon the stewardship fee of \$17,855, and we are amenable to move forward subject to all local level approvals that need to occur. Seconded by T. Lizotte. Motion passed.***

S. Couture: We can have that to you in a week.

A. Pollack: What is the process to move forward with this from here?

S. Couture: Once the wetlands permit application package comes through we recommend to the Town Council and then they vote.

B. Quigley: Our wetlands application is pending. I will provide you with a copy of our response to their request for more information. Thank you.

**b. Jennifer McCourt, Edgewater Drive, Wetlands Permit & Special Exception**

- **(Map 1, Lots 4, 6, 8 & 9) A Special Exception is requested from Article 18, Section E of the Zoning Ordinance to permit a proposed driveway serving the subdivision which will impact approximately 925 SF of wetlands.**

J. McCourt: I'm Jennifer McCourt from McCourt Engineering Associates and with me are Peter Schauer of Schauer Environmental Consultants, Paul Scarpetti and Attorney Richard Uchida. We are here for two reasons: 1. Special exception for wetlands impacts and 2. Wetland application for the state which is an expedited permit because of the small nature of the impacts. We are asking for 925 square feet of wetland impacts. The project provides pedestrian access from south to north. We widened the road from 18 feet, which was discussed at TRC, to 20 feet with the exception of areas with wetlands impacts which would be 18 feet. All wetland impacts are on the inland side of the road. There are two existing culvert crossings and we are adding on to the existing culverts. We did a NHB review and we walked with Kim Tuttle and Mike Marchand and their biggest concern was to make sure we cut down as few trees as possible, so in the wooded area we kept the road where there is an existing road. There are probably only two trees that will have to be cut.

S. Couture: From the cul-de-sac, as the road comes out, it ends closer to the river. Is that because of the tree issue?

J. McCourt: There will be trees cut in the cul-de-sac area to keep the road out of the 50 foot buffer as much as possible, but then we had to do it to keep from cutting an extensive number of trees. It banks to the inland side to stay away from the shore as much as possible. It hugs the tree line to get away from shore land without cutting as many trees.

S. Couture: Are there five lots?

J. McCourt: When we went to Town Council originally, there were six lots. The first lot was really tight so we thought going down to five units would make a better development and be better for nature and ecology and everything else.

S. Couture: The way I understand the Council vote, this request is for the variance from the Zoning Board. We still have input when this goes to the Planning Board, so we will see this again before approval?

T. Lizotte: That is correct. It's based on if they clear all their hurdles.

S. Couture: We have two business items here: the special exception recommendation and the expedited wetlands permit application.

***C. Robertson motioned to recommend the special exception for wetlands impact. Seconded by T. Lizotte.***

D. Hess: I am going to vote against the motion because I don't think criteria 1 or 4 are met. I don't think the construction is essential to the productive use of the land. I happen to think economic advantage, alone, is the reason for the proposed construction.

J. McCourt: The reason for that is that it's in a residential zone and to get in a well, a septic, a house, and to get to the northern end of property, you need to cross wetlands. We met with the Fire Department and Public Works to try to minimize the width of the road and minimize the wetland impacts. It's a safety issue to make sure fire trucks can access it. As far as economics alone, we are putting in a very long road to get to these lots and we are looking for a variance to cluster them to minimize the impact and not do a full town road. Instead of doing more wetlands impacts, we are doing the road closer inland.

R. Uchida: I am an attorney with Hinckley-Allen Associates and I am representing Paul and Jocelyn Scarpetti. I want to note the fact that Paul and Jocelyn have looked at this property as a single lot along the river. What they found is if it's developed as a single lot along the river, an estate lot closed off to the public, it would probably go for better dollars and cents than with the smaller lots. In that sense, economics isn't driving the decision. In another sense, we are looking at this development because of the current way the property is being used by those who shouldn't even be on that property. As you know, it is being used as a dumping ground and is an area for vandalism and other illicit activities. Looking to develop in the way we propose may not be to the best economic advantage, but we think it's a better use of the property. I want to dispel the notion that this is solely for economic advantage. There is advantage to be gained in natural resources along the river. I respect David Hess's opinion, but with all due respect I don't think it's being done solely for economic advantage.

D. Hess: What do you mean by an estate lot?

R. Uchida: One way to look at developing this property is as a single house on a large property gated off. Dollar-wise that might be great but the benefit would not be great to the Town.

S. Couture: The motion on the table is still open for discussion. One item I am thinking of is this does not require mitigation by the state, but in accordance with our regulations we have the ability to collect mitigation on wetlands impacts. So I think that should be part of our motion to the ZBA as a reminder to them that it is in the regulations.

D. Hess: I don't have any problem with that. The impact is less than 1,000 feet. I notice this plan doesn't show the conservation lot or the conveyance of the existing class VI road.

R. Uchida: The area that will be part of the open space easement isn't delineated well on this plan. We will bring the content of that back to you anyway with Planning Board. We didn't show the old road bed but we have a plan to show you that.

S. Couture: As far as stream bank stability, making wetlands impacts and going through the wetlands process, are there any concerns with the existing banks as far as long-term affects? Will there be anything done to promote stability?

J. McCourt: Walking out there we saw that where the class VI road wasn't used it's coming back well. I pitched the road to the inland side to mitigate the impact to the buffer. We feel that the woodland buffers will come back naturally instead of trying to disturb the bank by planting more. There are only two wetlands where the culverts are that actually have buffer impacts to them. The road will be gravel, not paved so there won't be erosion from that.

S. Couture: Is there any other discussion or motion? I will offer an amendment. Any mitigation has been calculated by the DES calculator.

J. McCourt: Yes, but I also know there have been special exceptions that have been granted and the mitigation has not been proposed because of the storm water impacts to the buffer. We are planning on doing the same thing here.

S. Couture: Correct, that is understood and my amendment and recommendation is that the mitigation be required.

***S. Couture motioned to amend the recommendation in that the mitigation be applied per Section 5, Compensatory Mitigation Fee, as part of the consideration. Seconded by T. Lizotte.***

T. Lizotte: Can you explain the amendment, since it's such a small impact?

S. Couture: The state collects mitigation fees for impacts of 3,000 square feet or more and it is 1,000 square feet or more for our local regulations. Actually, based on that, I remove my proposed motion.

T. Lizotte: I remove my second.

S. Couture: The window of mitigation is 1,000 – 3,000 plus square feet so I stand corrected. Is there any further discussion or all in favor of the original motion?

**Roll Call:**

***C. Robertson: Yes***

***S. Couture: Yes***

***T. Lizotte: Yes***

***D. Hess: No***

***Vote 3-1 in favor. Motion passed.***

S. Couture: The motion carries and we will send a letter to the ZBA. Thank you. We now need a motion on the wetlands permit application.

***C. Robertson motioned to approve the wetlands application. Seconded by T. Lizotte. Motion passed.***

**c. Alden Beauchemin, 3A/Hackett Hill Intersection Improvements**

A. Beauchemin: I'm Alden Beauchemin from Keyland Properties and my wife and I own the property at the intersection of Route 3A and Hackett Hill Road. As you know, the Town and the State have been working for some time on this intersection. TFMoran has been working on the design. At this point, they have finalized conceptual plans and there is a meeting coming up this Wednesday at Town Council to confirm the final conceptual. We are in agreement with what they are proposing, which would most likely be a roundabout. We are affected and interested in what goes on at that intersection. We are in full support of the roundabout concept. The reason I am here tonight is that as they finalize the intersection plans, there needs to be further discussion on the pedestrian component. There has been very little discussion about pedestrian access. As we develop our property, we see potential for a future crossing to connect to the river, up to the Village and down to Tri-Town Ice Arena. We see a window of opportunity for this discussion with Council as TFMoran finalizes plans. We realize a pedestrian crossing is an additional expense, but we are willing to pay our fair



share for design and construction if it benefits us. You have in your packet what was given to the Council. It shows a pedestrian crossing through a box culvert. There are two ways to cross 3A currently: you risk your life crossing the road above or do what my tenants do in the summertime and access the river through the 8 foot by 8 foot box culvert under 3A. We realize we have no legal rights to that and as we continue to develop, we would like to have some legal right to access across 3A. We understand this may involve adding another box culvert, but again we are willing to incur some of that expense. In your packet you can see a picture of a similar pedestrian crossing under a highway.

S. Couture: This proposed box culvert would be situated somewhere in the vicinity of the Hackett Hill roundabout?

A. Beauchemin: My property has two pieces: a piece at 3A and a piece by the river. Brickyard Brook runs under 3A. TFMoran is looking at what needs to happen with the existing box culvert, either repaired or replaced. Either way we need to know what the options are. It hasn't been on the State's radar to look at pedestrian access, but if we don't look at it now we may not get another chance. If it's possible, we would support the Town in trying to make it happen.

D. Hess: That intersection can really accommodate all that traffic with a roundabout?

T. Lizotte: Yes, this will keep the traffic flowing without the hazard, but there will still be some backups.

S. Couture: As far as river access, you want to be able to connect the hamlet with this part of Town?

A. Beauchemin: I see the potential for a river walk connecting and looping around into the Pinnacle. The Town owns land that abuts us, so we could easily connect to it somehow.

S. Couture: What is the feasibility of river walk access on that side of the river up to the Village? We are having our own challenges with the conservation land trails because of the bald eagles. Significant alteration of the trees from there up to the Village might have significant roadblocks. I have nothing against the concept; I just want to think about the feasibility.

A. Beauchemin: I appreciate that and I have looked at those aspects. It's not my intent to take down any trees. Basically, this would easily connect to the ice arena but we could make it part of the way along the tree line going north and the remainder would be a small

boardwalk. It would be a beautiful way to complement the Village. We would like to see lights down there for walking at night.

S. Couture: At the Community Profile this past weekend two priority ideas that were mentioned were access to the river and trails. This concept, pending the details to be worked out, aligns with what the people said they wanted.

T. Lizotte: This is also to gain access to the potential for sea plane access, is that correct?

A. Beauchemin: Yes, as some of you are aware, we have pushed forward with our sea plane permit from the State. We need to go to the Planning Board still because we are waiting on the State approval, but we have the potential for flying out of the river to the North Country, a 3.5 to 4 hour drive minimum, in 60 minutes. That's just one idea. We have been working on lots of other ideas and sharing them: a hotel, restaurants, and a riverboat restaurant concept. There's one like this at Disney World, a boat that is permanently docked and makes for a nice restaurant. We think the same type of thing would be a nice addition to the Town as there were two riverboats on this river in the 1800s. We are making headway. We came close to deals a few times, but with the economy things took a dive. The economy is coming back slowly now, so I wanted you to see what we have been working on so you understand why this pedestrian component is so important.

S. Couture: Based on the visioning discussion this weekend, reinforcing what is already in the Master Plan, I think that if you can carry this idea to the Council highlighting the community access and trails that would be a good way to communicate.

T. Lizotte: I will carry this information forward to the Town Council.

## **Other**

### **a. Hanscom and Lambert Conservation Easement**

S. Couture: This is going to DES for their last review. That should be coming to Council in December.

### **b. Merrimack Riverfront Trail**

S. Couture: JoCarol finished up a DRED grant application for \$50,000 due this Friday. It focuses on the bridge and the initial part of the trail. It came together really well and we got letters of

support from Planning Board, Town Council and Parks and Rec Advisory Board. As far as the DOT application, we saw the draft review from the Southern New Hampshire Planning Commission TAC Committee. Manchester came in first and we came in second by only one point. It came down to socioeconomic and multimodal, but we did really well on feasibility and readiness.

**i. Warrant Article**

S. Couture: We went back and forth on the CIP with Dean Shankle and Christine from Finance. They said it's a warrant article item, so we have to draft a warrant article. It would be \$100,000 and would be an estimated 10 cent tax impact, but that is a high estimate, so it's less than that.

C. Robertson: We should get an article about it in the Banner soon.

S. Couture: We should try to draft something by December, but we need to craft it in a way that it's not an all or nothing deal. The restriction on it would be that it would be serving as match, and that would be the selling point. I will ask Christine about it though.

D. Hess: We would have to create a dedicated fund where it would sit.

T. Lizotte: It's going to be tough based on the latest school budget.

S. Couture: We will put our best foot forward if everyone is OK with that. We should have a good draft for the December meeting.

**ii. Recreation Impact Fee**

S. Couture: The Parks and Rec Advisory Board meets on the 18<sup>th</sup>. They advise on the impact fees, so getting their recommendation is important. I'm on their agenda to ask about it. They have \$250,000 in the bank for recreation impact fees.

D. Hess: Remember that the one acre plus on the south end of the Merrimack Riverfront property is not in the conservation easement. So that would be a possibility to have a park there.

S. Couture: We plan to ask for \$100,000 if you want to make a motion.

***C. Robertson motioned to ask the Parks and Recreation Advisory Board for a \$100,000 contribution from the recreation impact fee account to implement the Merrimack Riverfront property trails. Seconded by T. Lizotte. Motion passed.***

S. Couture: This isn't on the agenda but I want to let people know that I went to Planning Board last week relevant to Manchester Sand & Gravel and Carriage Hill. I made it clear I was not representing the Conservation Commission. I wanted to bring up that we need trail access there and are looking for an easement. In the end, David Campbell said that they will investigate it and if, legally possible, will find a way to allow a trail easement in Carriage Hill, if those people will allow it.

T. Lizotte: There is no homeowners association there yet because all the lots aren't sold.

S. Couture: Jo Ann Duffy and David Campbell are looking into it. The timing is important to have it all tied into the land that abuts the pond for next year so we would have legal access all the way through.

**c. Peter's Brook Conservation Area Deficit**

D. Hess: I'd like people to think about one thing, assuming we have about 50 acres to play with here; do we want it on the Allenstown border or on the Pike area? Do we expand near Hackett Hill Road or near the northeast quadrant?

S. Couture: We should look into it because we would have an access point from Summit View.

**d. Clay Pond Stewardship Plan**

S. Couture: Hopefully you all saw Mark Dunn's opinion on gates and bars, which is great and says that we can do it. Everyone saw the public meeting comments from the meeting in October. There is no legal binding agreement for ATV use on Chester Turnpike, but ATVs are allowed on snowmobile trails in the winter. Back in 2007, there was a discussion about it prior to Jericho, but that has seemed to fizzle out. We are in good shape with legally moving forward with our recommendations as far as a plan. The next step is to bring the recommendations to Council, there will probably be a public hearing, and then the plan gets formally adopted. This may happen in December. Any comments or concerns about the draft plan? It was a good process.

D. Hess: I was up in University Heights and ATVs are going around our barriers, so we need more barriers there.

S. Couture: The ATV use out there has become a lot worse in recent years and the trail is actually rutted there now.

P. Fitanides: Does ATV have any prescriptive rights there?

S. Couture: No, they don't, it's publicly owned land. I will talk to Jo Ann Duffy about it. We will get the draft Clay Pond plan to Council.

D. Hess: Is that going to Council for informational purposes only or do they take legal action? I could be wrong but I think by statute the Conservation Commission regulates use of the conservation lands. We should know where we stand on this and who decides.

S. Couture: We could present it as we want their input on it.

**e. Other business: Invoices, Correspondences, Etc.**

**i. NH Association of Conservation Commissions Invoice**

*C. Robertson motioned for payment of an invoice from NH Association of Conservation Commissions dated September 12, 2014 for annual membership dues in the amount of \$528. P. Fitanides seconded. Motion passed*

**ii. Moosewood Ecological, LLC Invoice**

*D. Hess motioned for payment of an invoice from Moosewood Ecological, LLC dated October 31, 2014 for the October 7<sup>th</sup> and 21<sup>st</sup> meetings and the Management Plan development in the amount of \$2,400. Seconded by C. Robertson. Motion passed.*

**iii. SNHU: The Quill Adjusted Invoice**

*S. Couture motioned for payment of an invoice from SNHU: The Quill Restaurant dated November 4, 2014 for the Conservation Commission celebration dinner held on October 24, 2014 in the amount of \$444.70 out of the Conservation Fund. Seconded by T. Lizotte. Motion passed.*

**iv. Acceptance of \$64.30 donation to Conservation Fund (Celebratory Dinner)**

*S. Couture motioned to accept \$64.30 in donation to the Conservation Fund from proceeds collected at the Conservation Commission Celebration Dinner. Seconded by T. Lizotte. Motion passed.*

S. Couture: Just a quick budget update, \$525,000 in our Current Use account and general carry over is \$25,000.

*T. Lizotte motioned to adjourn at 6:03pm. Seconded by D. Hess. Motion passed.*

Respectfully submitted,

Carolyn Cronin

Assistant Planner/Conservation Commission Staff Support