

1 APPROVED MINUTES  
2 NEW CASTLE PLANNING BOARD  
3 MONDAY, MARCH 21, 2016  
4  
5

6 BOARD MEMBERS PRESENT: DARCY HORGAN, CHAIR, KATE MURRAY, MARGARET SOFIO, LORN BUXTON  
7 AND RICH LANDRY  
8

9 MEMBERS ABSENT: DAVID MCARDLE and TOM HAMMER  
10

11 OTHERS PRESENT: LYNN MCCARTHY, CHAIR OF NEW CASTLE CONSERVATION COMMISSION, TRACY  
12 DEGNAN, ROCKINGHAM COUNTY CONSERVATION DISTRICT, STEVE MILLER, CHAIR OF PORTSMOUTH  
13 CONSERVATION COMMISSION, JAY DIENER, CHAIR OF HAMPTON CONSERVATION COMMISSION, JULIE  
14 LABRANCHE, ROCKINGHAM PLANNING COMMISSION, ABBY GRONBERG OF PISCATAQUA REGION  
15 ESTUARIES PARTNERSHIP (PREP)  
16

17 RESIDENTS: Tom Smith of Secret Pond, Tom and Marion Clough of 95 Main Mast Circle, David Borden of  
18 40 Walbach St, Jim Burns of 87 Abigale Lane, Brad Jones of 18 Winnicut Rd, Stratham, NH, Alex Vailas of  
19 217 Wentworth Rd, Ann McAndrew of 27 Steamboat Ln, Carol White of 40 Vennard's Ct, Bill Stewart of  
20 100 Walton Rd, Dave McGuckin of 141 Cranfield St, and Terri Golter of 17 Locke Rd.  
21

22 Chair Horgan called the March 21st meeting to order at 6:07 pm and advised that the voting members  
23 would be Margaret Sofio, Kate Murray, Rich Landry, Lorn Buxton and Chair, Darcy Horgan.  
24

25 1. Review and approve minutes to the meeting on February 24, 2016.  
26

27 *Lorn Buxton MOVED to approve the February 24, 2016 minutes as amended; this was seconded*  
28 *by Rich Landry and APPROVED unanimously.*  
29

30 2. Review and approve minutes to the joint meeting of the Planning Board and Conservation  
31 Commission on March 16, 2016  
32

33 *Rich Landry MOVED to approve the March 16, 2016 minutes as written; this was seconded by*  
34 *Kate Murray and APPROVED unanimously.*  
35

36 3. Ordinance changes

37 Chair Horgan - We have 5 separate ordinance changes and we will do a separate public hearing for each  
38 one. When the Planning Board votes, we are voting to take the ordinance as it is written or as amended  
39 and voting to put it on the ballot for a vote at the town meeting in May.  
40

41 First ordinance change has to do with the maximum building area on a lot. Chair Horgan read the  
42 proposed ordinance:  
43

44 **EXISTING ORDINANCE:**  
45

46 Sec 4.2.1.5 "Maximum Building Area: The maximum building area permitted in a dwelling unit  
47 shall be limited according to the following schedule....."

1  
2 **Amend Section 4.2.1.5 of the New Castle Zoning Ordinance relating to maximum Building**  
3 **Area as follows (Changes in italics):**

4  
5 Sec 4.2.1.5 "Maximum Building Area: The maximum *Building Area* permitted *on a Lot* shall be  
6 limited according to the following schedule....."

7  
8 Explained the change from the existing ordinance which is "maximum building area permitted *in a*  
9 *dwelling unit*" was requested by the Zoning Board to eliminate confusion on some applications they  
10 had seen.

11  
12 For consistency with the above proposed ordinance change, the chart on Z-20 needs to be  
13 amended.

14  
15 **Amend Table 1: Density and Dimensional Regulations, New Castle, NH on Page Z-20 of the**  
16 **New Castle Zoning Ordinance**

17  
18 "Maximum Building Area per Dwelling"  
19 TO  
20 "Maximum Building Area per Lot"

21  
22 Chair Hogan opened the public hearing at 6:13 pm  
23 No public comments. Closed public hearing 6:15 pm

24  
25 Planning Board members had no further discussion on the proposed ordinance change.

26  
27 *Chair Horgan MOVED to accept the changes to Section 4.2.1.5 as described on Exhibit A dated 3/21/16*  
28 *and to have it appear as a warrant article on the ballot to be voted on at the Town Meeting on May 10,*  
29 *2016. This was seconded by Margaret Sofio and APPROVED unanimously.*

30  
31 Chair Horgan presented the second ordinance which is for an application fee for a conditional use  
32 permit (Exhibit B) relating to development of steep slopes and wetlands conservation district.

33  
34 **Amend the provisions of Section 5.2.3.3 of the New Castle Zoning Ordinance relating to**  
35 **Development of Steep Slopes, Required submissions as follows:**

36 A. Add subsection h. as follows:

37 h. The applicant shall pay, at the time the application is filed, an  
38 application fee in an amount set from time to time by the New Castle  
39 Board of Selectmen to cover internal costs. In addition, the applicant  
40 is responsible for required legal notices and may be responsible for  
41 other outside costs incurred by the Town."

42  
43  
44 **Amend the provisions of Section 9.2.5.2 of the New Castle Zoning Ordinance relating to**  
45 **Wetlands Conservation District, Conditions as follows:**

1 A. Add subsection j. as follows:

2 j. The applicant shall pay, at the time the application is filed, an  
3 application fee in an amount set from time to time by the New Castle  
4 Board of Selectmen to cover internal costs. In addition, the applicant  
5 is responsible for required legal notices and may be responsible for  
6 other outside costs incurred by the Town.  
7

8 Chair Horgan read the proposed ordinance and opened the public hearing at 6:18 pm. She explained  
9 the town has not required a fee for applications for a conditional use permit in the past, yet there is a  
10 fee for applications to the Historic District Commission and to the Conservation Commission so this is in  
11 keeping with covering costs of secretarial work and publication.  
12

13 Question on whether it is a flat fee or a percentage. It is a flat fee. Chair Horgan closed the public  
14 hearing 6:19 pm and opened the discussion to the board. Chair Horgan had a change as to where it  
15 should be placed. When it was written up, the board was proposing to put the addition under Section  
16 5.2.3.3 h. and Chair Horgan proposed to put under Section 5.2.3.4 c. which will put it under a section  
17 called "fees". The amendment to addition of fees for the Wetlands Conservation District in Section  
18 9.2.5.2 j. is in the correct place.  
19

20 *Chair Horgan MOVED to amend the location of the proposed ordinance change from 5.2.3.3 h. to 5.2.3.4*  
21 *c. –Sofio SECONDED; UNANIMOUSLY APPROVED.*  
22

23 *Chair Horgan MOVED to accept the changes to Zoning Ordinance Section 5.2.3.4 and 9.2.5.2 to approve*  
24 *the application fee for a conditional use permit as outlined in the proposed ordinance change labeled*  
25 *Exhibit B dated 3/22/16 as amended, and to have it appear as a warrant article on the ballot to be voted*  
26 *on at the Town Meeting on May 10, 2016. This was seconded by Rich Landry and APPROVED*  
27 *unanimously.*  
28

29 Chair Horgan presented the next ordinance which is a mathematical calculation to determine credit for  
30 common open space. She read Exhibit C and explained that the proposed change is to add exact  
31 numbers in a mathematical formula to figure the real calculation. The calculation makes it easier to  
32 interpret this ordinance, but doesn't change anything in the existing ordinance.  
33

34 **Amend Section 6.1.4.2.d of the New Castle Zoning Ordinance relating to Credit for Common**  
35 **Open Space as follows (The change is the addition of the exact formula in italics):**  
36

37 d. **Credit for Common Open Space:** In cluster developments in the Future  
38 Development District a credit shall be made available to reflect the percentage of open  
39 space when determining the maximum lot coverage and/or maximum living area. The  
40 Credit shall be equal to the following formula which shall produce the percentage of  
41 open space allocated to each lot:  
42

$$\frac{\text{Non-Wetland Open Space}}{\text{Developable Land}} = \text{Open Space Credit}$$

45  
46 *The calculation, as developed, follows:*

1  
2 *1 + (20.43/59.54) = 1.3431 is the multiplier to determine adjusted area for*  
3 *purposes of maximum coverage and living area.*  
4

5 Where there is more than one cluster or development area in a single unified  
6 development, the Planning Board, at its discretion, may make adjustments in the  
7 allocation of common open space to accommodate features unique to the  
8 development, such as topography, boundaries, building types, and similar unique  
9 features provided:.....

10  
11 Chair Horgan opened the public hearing at 6:25 pm.

12  
13 Question: If someone has a lot, how does the amendment change the calculation? Chair Horgan stated  
14 it will not result in a different calculation. Lorn Buxton advised that the wording used in the original  
15 ordinance was because the development was still in progress in the Wentworth area. Each time there  
16 was a new building the calculation changed. The development is complete so it makes sense to put an  
17 actual number in. At this point the number will never change unless there is some change in the  
18 subdivision plan. Closed the public hearing at 6:27 pm.

19  
20 *Chair Horgan MOVED to accept the proposed ordinance change to include the new calculation in Zoning*  
21 *Ordinance Section 6.1.4.2.d as described on Exhibit C dated 3/21/16 and to have it appear as a warrant*  
22 *article on the ballot to be voted on at the Town Meeting on May 10, 2016. This was seconded by Kate*  
23 *Murray and APPROVED unanimously.*

24  
25 Chair Horgan stated that the next item, Exhibit D, is a proposed addition to the zoning code. It is written  
26 to handle emergency situations with a failed septic system within the wetland setback. It was  
27 recommended by the Building Inspector to get a new septic system approved more quickly, as the  
28 process usually takes approval by 2-3 boards.

29  
30 A. Add section 9.2.11

31 9.2.11 Emergency Sewage Disposal System Procedure

32 The replacement plan for an existing septic system or other sewage disposal system, located  
33 within the required buffers or setbacks from any Wetland, Prime Wetland or Tidal Water Lands  
34 and determined in writing to be in failure by a NH Permitted Subsurface Sewage Disposal  
35 System Designer/Installer or a GSDI Certified Septic System Evaluator, may be approved by a  
36 majority of a three person Emergency Relief Committee in lieu of appearing before any land use  
37 board. This Committee shall consist of the Building Inspector/Assistant Building Inspector,  
38 Chairman of the Conservation Commission or his/her designee and the Selectboard  
39 representative to the Planning Board or his/her designee. Any approval by this Committee shall  
40 be conditioned upon the necessary State approvals. This Emergency Procedure does not waive  
41 any applicable State law requirements, and except as specifically stated herein, does not waive  
42 any other applicable Town of New Castle requirements or ordinances, concerning wetlands,

1 tidal water lands and wetland or tidal water land buffers, or the design, installation and/or  
2 replacement of sewage disposal systems.

3 **Septic Failure Definition**

4 The Planning Board recommends amending the provisions of Section 2.3 of the New Castle  
5 Zoning Ordinance relating to Definitions as follows:

6 A. Include the following definition at Section 2.3.62 and re-number all existing definitions that  
7 follow: **“Septic Failure:** The condition produced when a subsurface sewage or waste disposal  
8 system does not properly contain or treat sewage or causes or threatens to cause the discharge  
9 of sewage on the ground surface or into adjacent surface or directly into surface waters.”

10 Margaret Sofio proposed to amend line 3, “determined in writing to be in failure” to “determined in  
11 writing to be in *Septic Failure*”.

12  
13 Chair Horgan opened the public hearing.

14  
15 David Borden – 40 Walbach Street - The State of NH does not require periodic inspections of septic  
16 systems nor do we require when ownership changes. Is there any way to require landowners to have  
17 periodic inspections?

18  
19 Chair Horgan stated that any of the newer cleaner solution septic systems that have recently been  
20 approved by the boards, most of which are being put in when replacing old systems, all have an  
21 inspection process as part of the maintenance agreement. Maintenance agreements are put on file with  
22 the town. These companies who put in the septic systems are the ones who track when inspections are  
23 due. As far as the older systems, it is unknown if there is a system to track inspections.

24  
25 Discussion on State/local responsibility for inspecting septic systems before reaching the failure state.

26  
27 Chair Horgan closed the public hearing at 6:41 pm and turned to the board for comment.

28  
29 Margaret Sofio stated the PB has seen a cluster of failed systems and to get approval, they have to go to  
30 Conservation and Planning and Zoning and there can be months of delay while the failed system  
31 continues to fail. That was the driver behind this emergency section.

32  
33 *Sofio MOVED to amend the 3<sup>rd</sup> line of the proposed Section 9.2.11 where it says “failure” and put “Septic  
34 Failure” to refer back to the definition. Buxton SECONDED, UNANIMOUSLY APPROVED.*

35  
36 *Chair Horgan MOVED to accept this proposed new section of the Zoning Ordinance of 9.2.11  
37 Emergency Sewage Disposal System Procedure as presented in Exhibit D dated 3/21/16, and as  
38 amended, along with adding the definition of Septic Failure to Section 2.3.62 and to have it appear as a  
39 warrant article on the ballot to be voted on at the Town Meeting on May 10, 2016. This was seconded by  
40 Lorn Buxton and APPROVED unanimously.*

41

1 Chair Horgan stated the next two ordinance changes/amendments have to do with expanding a 50'  
2 setback to 100' setback in 4 specific wetlands and designating Lavenger Creek as a Prime Wetland.

3  
4 Chair Horgan introduced Lynn McCarthy, Chair of the Conservation Commission, who stated that the  
5 Commission feels strongly about the discussion. Many residents are here because of the natural beauty  
6 of this island. The Commission works to preserve the natural ecology of the island. The Commission's  
7 main function is to review applications and make recommendations to property owners, provide  
8 guidance and to minimize the impact of building on shorelines. The benefits are reduced flooding,  
9 improved water quality, and protection of wildlife habitats.

10  
11 McCarthy introduced Tracy Degnan from the Rockingham County Conservation District, here to do a  
12 presentation with background information on why the Conservation Commission is asking for these  
13 amendments. McCarthy explained that Tracy Degnan has worked with the Commission for over 10  
14 years, educating and motivating to protect natural resources. The Commission feels protecting natural  
15 resources will add value to individual properties. Helping citizens be prepared for storm surges, storm  
16 water runoff and sea level rise will add value to the overall community.

17  
18 Tracy Degnan began her presentation. She stated she was here to talk about why New Castle is  
19 vulnerable. The report, "Tides to Storms" will be discussed, as well as prime wetlands delineation. We  
20 will look at four fresh water wetlands which deserve classification as Class A buffer. We need to protect  
21 these salt marshes.

22  
23 New Castle's Conservation Commission proposes designation of Lavenger Creek as a prime wetland and  
24 reclassification of buffers from 50' to 100' for 4 specific freshwater wetlands. A Class A buffer is a 100'  
25 buffer.

26  
27 Lavenger Creek Saltmarsh – need to protect against sea level rise. This area is vulnerable as storms and  
28 flooding are increasing. We need to be prepared and vegetative buffers are our first line of defense.  
29 They are critical for all water resources, as they create protection and prevent future disturbance.  
30 Buffer areas act like sponges and absorb additional water. They prevent erosion, stabilize stream banks,  
31 and protect the wetlands integrity. Vegetative buffers are critical for water resources, minimizing  
32 impact from impervious surfaces. We want them to be able to absorb additional water because it's  
33 coming.

34  
35 Degnan reviewed a map with 28 wetland complexes set in 2005. This is what drove the Wetlands  
36 Conservation District in 2006. Five of them are classified Class A buffer which is a 100' buffer. All  
37 building activities are regulated within the wetlands conservation district.

38  
39 New Castle is vulnerable – the map highlights the inter-connectiveness of roads such as Beach Hill Road  
40 and Wentworth Road, and shows the tidal extent from FEMA. Looking at Lavenger Creek Saltmarsh with  
41 a full moon high tides you can see the absorption. Once you have wind driven rains and high tides which  
42 will affect the waves, all these things compound the problem in this area.

43  
44 Why Buffers are important - look at impervious coverage which is any structure that prevents rain water  
45 from seeping into ground – parking lots, driveways, patios etc. The graph shows an increase of over 10%  
46 in ten years, New Castle is now at 41% impervious coverage, which is not good for the wetlands and  
47 water quality. DES recommends that watersheds only have 10% impervious coverage.

1 In 2000 New Castle was at 30% and about ten years later was at 41%. The snow melt runs down these  
2 impervious surfaces and results in damage from erosion, heavy metals and pollutants as it heads to the  
3 lowest point which is the water resource.

4  
5 Degnan showed a map of Tides to Storm vulnerability assessment. It highlights the highest areas of  
6 vulnerability that is the area that bisects the island during 100 year storm. We had 100 year storms in  
7 2005 & 2006 and it could get worse with the sea level rising and could prevent people from getting off  
8 the island.

9  
10 The Rockingham Planning Commission has been working with all seacoast communities on looking at  
11 tides to storm predictions and sea level rise. Portsmouth is one of the first communities that completed  
12 a study in 2012. She presented a photo that shows what a 100 year storm event with high tide and 2'  
13 storm surge would look like – 6.8' flooding in addition to high water mark.

14  
15 Looking at wetlands, the importance of flood retention, the water quality and habitat protection are all  
16 tied to health of the marshes. Protecting the buffers and the health of the marshes increases the quality  
17 of landscape. Showed pictures of degraded salt marshes and restored marshes. Rockingham  
18 Conservation District restoration efforts included removing phragmites that is a very invasive plant.  
19 They removed about 1/3 acre, and it is a hand removal job. They have reviewed all wetland complexes  
20 and focused on Lavenger Creek to see if it is eligible to be designated as a Prime Wetland by meeting at  
21 least 6 of 10 criteria to qualify for DES designation. One of the criteria is the rare plants found in  
22 Lavenger Creek saltmarsh.

23  
24 Degnan showed a map outlining Lavenger Creek saltmarsh with a 100' buffer, She asked “what does  
25 prime wetlands mean?” It doesn't impact folks with existing structures or grandfathered, or normal  
26 homeowner activities such as gardening, lawn maintenance, etc. Prime Wetlands designation adds  
27 oversight from DES, particularly for standard dredge & fill permits.

28  
29 33 other communities have Prime Wetlands designation; all of the seacoast except for Rye have it.  
30 Degnan took New Castle tax maps and overlaid the 100' buffer. Class A remains the same because they  
31 already have 100' buffer, so there is no change in distance, just change in oversight by DES.

32  
33 Looking again at the 2005 wetlands study map, Lavenger Creek wetland and the four fresh water  
34 wetlands, the Conservation Commission is recommending the fresh water wetlands be re-classified from  
35 Class B to Class A, which would increase the buffers from 50' to 100'.

36  
37 Protecting wetlands now will reduce future vulnerability. A living shoreline is the best way to protect  
38 residents. These are not sweeping regulatory changes. The Commission is asking for these four  
39 wetlands because of vulnerability and connectability to each other and to Lavenger Creek salt marsh.  
40 The Rockingham Planning Commission is also committed to this. They will have outreach programs on  
41 April 4<sup>th</sup> and April 12<sup>th</sup> to talk about Tides to Storm data, predicted sea level rise and other information.

42  
43 The action requested tonight to the Planning Board is to move these articles forward to appear as  
44 warrant articles on the ballot for a vote at the Town Meeting in order to save the community for the  
45 future.

46  
47 Chair Horgan advised that two separate public hearings would be held. The first public hearing is for  
48 designation of Lavenger Creek saltmarsh as a Prime Wetland. The second hearing is for increasing the

1 50' buffer to 100' buffer of the four separate wetlands. She explained that a folder in the room  
2 contained maps and lots laid out with homeowner names.

3  
4 Chair Horgan read Exhibit E – Prime Wetlands, containing exact wording of the existing ordinance and  
5 the proposed changes.

6  
7 **EXISTING ORDINANCE:**

8 **9.2.3 Areas of Jurisdiction:**

9 The Wetlands Conservation District shall include all wetlands, tidal lands, Class A wetland buffers, Class  
10 B wetland buffers and Tidal Land buffers as defined herein.

11 **PROPOSED CHANGES (In Italics):**

12 The Wetlands Conservation District shall include all wetlands, *Prime wetlands*, tidal lands, Class A  
13 wetland buffers, Class B wetland buffers, *Prime wetland buffers* and Tidal Land buffers as defined  
14 herein.

15 **1. Definition of Wetlands:**

16 **PROPOSED NEW SECTION:**

17 **d.** *Prime Wetlands: In conjunction with the definition of wetlands in Section 1. , the Town of New*  
18 *Castle has also delineated a special classification of wetlands referred to as Prime Wetlands, in*  
19 *accordance with the requirements of RSA 482-A:15 and Chapter Env-Wt 700 of the NHDES*  
20 *Wetlands Bureau Administrative Rules authorizing such designation. The boundaries of the*  
21 *Prime Wetland located in New Castle are illustrated on an aerial photograph with Tax Map 2a &*  
22 *2b overlaid (RCCD, 2015), along with an accompanying report entitled Prime Wetland Report for*  
23 *Lavenger Creek Saltmarsh, February 2016, which identifies the important values and critical*  
24 *functions that are provided by the Lavenger Creek saltmarsh. The Prime Wetland map and*  
25 *report are on file at the New Castle Town Office.*

26 *Prime Wetland Complex*

27 *Lavenger Creek Saltmarsh*

28 *9.35+/- acres (as delineated in the 2005*  
29 *Wetlands Study, Town of New Castle, 10/2005,*  
*Oak Hill Environmental Services)*

30 Chair Horgan opened the public session at 7:18 pm. A resident stated the current issue of the New  
31 Castle zoning ordinance Section 9.2 is nine pages, it's very comprehensive and describes the wetlands  
32 conservation district. Question: I do not understand the benefit of Prime Wetland designation over  
33 what we have in existence. The board needs to describe the benefit more clearly.

34  
35 Lynn McCarthy stated there were two people from communities with prime wetlands designation to  
36 answer questions and asked Steven Miller, Chair of Portsmouth's Conservation Commission, to speak.  
37 Miller stated that Portsmouth did Prime Wetlands designation back in 2009. Portsmouth had 14 that  
38 qualified and designated 13 Prime Wetlands that year. It's been important as it gives a different layer  
39 of review in conjunction with a conditional use permit and wetlands permit, and it gives additional  
40 oversight from DES. The commission works very closely with them and they always listen to the  
41 Commission. It adds another layer of protection, gives these wetlands a higher status, and recognizes  
42 their value and all their functions. It is an extra tool in terms of providing protection and providing good  
43 outreach and education. In the last six years Portsmouth has had over a dozen petitions before  
44 Conservation Commission which concerns Prime , and all have been passed. There weren't any  
45 negative consequences, and it didn't take away any local control. The designation cements the  
46 importance of these wetlands that qualify for Prime and helps you protect them.

47



1 Jay Diener, Chair of the Conservation Commission in Hampton spoke. In 2008, Hampton designated  
2 over 1,000 acres of salt marsh as prime wetland. It is important as a hatchery for aquatic wildlife, as a  
3 food source, and offers residents protection from storm surges. We have not changed our local  
4 wetlands ordinances with prime wetlands designation, DES will take a closer look ensuring that the  
5 functionality of the prime wetland is not being impacted and that prime wetland is left intact. DES will  
6 help you accomplish what you want to accomplish with greater protection to the wetlands because they  
7 give more scrutiny to work proposed within prime wetland.

8  
9 Question asked if this is adding another layer of bureaucracy and more time to getting an application  
10 approved.

11  
12 Diener stated DES has a finite time limit to respond to applications, that is set by State RSA's and they  
13 cannot delay beyond that time limit

14  
15 Miller stated that in Portsmouth it did not change the timing or the process with the Conservation  
16 Commission. It sounds like there is fear in how this impacts residents and we have not seen that in  
17 Portsmouth, it's been very smooth. What it did was give us more protection and gave recognition to the  
18 value of wetlands. There were no negatives. What it has allowed us to do on Conservation Commission  
19 is to work with an applicant to minimize the impact as much as possible but DES nor the commission  
20 have ever said no to an application.

21  
22 Resident concerns are that it will add cost, more time to the application process, another layer of  
23 bureaucracy, more regulations,

24  
25 One property owner stated he is on the Planning Board in Londonderry and it has caused a lot of  
26 regulations and just adds another layer. Why can't we just work with the town? Another property  
27 owner stated he had an experience with DES where he had been working very closely with the  
28 Conservation Commission and their decision was overridden by DES. I would rather see the town do this  
29 and leave DES out of it.

30  
31 Diener stated that DES will not be involved where they were not previously involved.

32  
33 Julie Labranche with Rockingham Planning Commission said that anything actively disturbing wetlands  
34 requires a permit from DES. If it falls within a small scale project, you can get expedited notice of intent.  
35 If it's more significant, you need the dredge & fill permit. When a community initiates the process of  
36 designating prime wetlands, it has to hire a scientist to assess if it meets ten criteria – endangered  
37 species, high water quality, wildlife habitats, etc. – actually has to meet a very high bar to be designated  
38 prime wetlands. When wetlands are designated prime, and an application goes to DES, they look at how  
39 the applicant makes the least impact and ensures to implement best practices. If an application leads to  
40 additional water being added to wetlands and the temperature of the water is being affected, there are  
41 many species that are sensitive to change in temperature so DES may ask the applicant to treat and cool,  
42 or be sure it doesn't have sediment and pollutants. If building a structure, they may ask applicant to  
43 build during a time of year that doesn't affect animals. Labranche stated with regard to how this affects  
44 the length of time for the process, in most instances, an activity in prime wetland would not be allowed  
45 an expedited permit.

1 Labranche gave an example of DES' authority- if someone was proposing to put a structure at Lavenger  
2 Creek and there were rare plants present, DES may ask them to transfer the plants to another part of  
3 the wetland and protect where that plant is present.  
4

5 A resident stated that our Conservation Commission knows that and can order that, however Labranche  
6 stated that the Conservation Commission does not have that authority, they can only recommend.  
7

8 Chair Horgan reminded residents that Lavenger Creek is already Class A wetland, so it already has 100'  
9 buffer; that will not change. No board in Town has any control over docks because docks fall under  
10 State control. Prime designation is the best way to protect Lavenger Creek if we get an application for a  
11 dock. DES will look specifically at protecting the functions and values specified in the Prime designation.  
12 This is not adding another layer of regulation as DES is involved in any case. But it gives DES the  
13 guidelines in how to work with the homeowner to accomplish his/her goal while protecting the wetland  
14 for the abutters as well as the community at large. The goal is to reach a win/win.  
15

16 Bill Stewart of 100 Walton Road stated he lives on the back channel and has been on the Conservation  
17 Commission for a long time. The way this works is DES looks at it from a function value and ways to  
18 preserve those. They come up with solutions for the homeowner and I've found them reasonable and  
19 we should go forward with this.  
20

21 Labranche stated that Prime designation does not add another layer, the State looks at specific rare  
22 qualities of wetland and how best to respond to protect it. Lynn McCarthy stated she appreciates the  
23 confidence residents have in the Conservation Commission, but we are not experts. If it's a project that  
24 will impact others on the creek, it would be nice to have DES look at it under that lens, and it's really not  
25 that much more than is already done. The Commission feels it is protecting everyone. We don't want to  
26 take your rights away but if people are going to be building around the marshes, it will impact your  
27 property.  
28

29 Any new fines that DES may impose? Julie Labranche stated that no, a violation is a violation. It  
30 depends on the nature of the violation.  
31

32 Question: Does the community really think docks are a problem on Lavenger Creek?

33 Answer: There have been issues when there were a couple of dock applications primarily in the mouth  
34 of Lavenger Creek, a narrow point where putting structures in could cause an obstruction. Homeowners  
35 were asked to come up with a better solution, so they built platforms on the edge instead of putting a  
36 structure in the water.  
37

38 An owner with a house at the mouth of Lavenger Creek spoke of huge tides that come up and down and  
39 does not want another layer of bureaucracy. Discussion of wanting a dock but knowing of ones that are  
40 designed to protect the marsh. More harm is caused by slopping through grass with kayaks. Decisions  
41 on these wetland issues will certainly impact this homeowner's use of property.  
42

43 Lynn McCarthy stated that if people build a dock that will impede the flow of water going into the river,  
44 how does it affect everyone else's property? That's how we're looking at it  
45

46 Chair Horgan stated we are trying to protect the wetlands and it is a process. This is not adding another  
47 layer – homeowners still need to go through all the boards and the DES. What it does is give six criteria

1 that DES looks at specifically. That is what they are going to focus on. If we as a town want to protect  
2 Lavenger Creek, this will help us.

3  
4 A homeowner stated the difficulty is the societal benefits vs. individual benefits. We have a common  
5 environment – no one owns Lavenger Creek, certainly not abutters. This homeowner heard 2 things  
6 compelling him to the idea of creating a prime wetland — 1. We can learn a lot from the designation,  
7 we're not just given the designation. We're voting to ask to be designated but still have to be approved.  
8 2. The other thing is that DES is not the enemy. They are very skilled at dealing with these problems. As  
9 a society we need to look at Lavenger Creek as something we own as a town. Our boards try hard to  
10 mitigate but we cannot ignore societal needs and I think prime wetlands is a good idea.

11  
12 Chair Horgan closed the public hearing on prime wetland issue at 8:31 pm.

13  
14 *Chair Horgan MOVED to accept the proposed ordinance to designate Lavenger Creek as a Prime Wetland*  
15 *and to have it appear as a warrant article on the ballot to be voted on at the Town Meeting on May 10,*  
16 *2016. This was seconded by Rich Landry. After much discussion, the board voted NO.*

17  
18 Sofio said she is on the cusp and trying to evaluate the greater good. She knows how bureaucracy can  
19 be but is concerned about the ecological health of the island.

20  
21 Kate Murray stated that one of the main charges of the Planning Board is maintaining the safety and  
22 security of the island, such as protecting against floods, and the causeway has been flooded. The island  
23 could be cut off from emergency services. It is important to maintain the wetlands as they are the first  
24 protection against these things. How does it protect the entire community? It is not necessarily another  
25 level of bureaucracy but another lens, a different perspective. Overriding concern to consider is  
26 flooding.

27  
28 Rich Landry stated that he has a bit of experience with DES, having filled 55- 60 SF of wetlands. The  
29 quickest response he ever got was 27 days and the longest took 7 months. He expressed confusion  
30 about dredge & fill within the buffer. It seems overly burdensome. PB role is to put it to a warrant  
31 article but feels there needs to be more education for the public. What is the actual benefit? What are  
32 we getting out of it? Public wants clear answers to these questions. Landry's experience working with  
33 DES was that he never had a problem; the Army Corp never got involved. At the same time, more  
34 education for the public is preferable.

35  
36 Chair Horgan stated there are several public sessions already scheduled and we know things that need  
37 to be addressed.

38  
39 Buxton – I tend to agree with Rich's comments. I don't think there has been an adequate case made for  
40 the benefits to having prime designation vs. local oversight. I don't view local oversight as biased in any  
41 way; both the Conservation Commission and Planning Board represent diverse views. Potential exists in  
42 the skill of members of the committees to provide adequate oversight of wetlands. Think everyone on  
43 both boards and the audience has same objective. Difference is simply who needs to be providing this  
44 oversight. We can probably adequately and better provide it at the local level. I also agree that once  
45 these things get on the ballot, they don't get a lot of review or thought. People tend to check things off  
46 and think town administration has adequately vetted these issues and take our decisions at face value. I  
47 am reluctant to put it on the ballot at this point. Maybe we need to do a better job of communicating  
48 the benefits vs. costs.

1 Chair Horgan said the board has been listening for months and has been to a lot of meetings where this  
2 has been discussed. After PREP did their study and came back with a recommendation, it seemed  
3 reasonable to have one major wetland, one that we already recognized as a precious resource, as a  
4 Prime Wetland. It is a good thing to have the backing of the State because the Town had already  
5 worked to protect Lavenger Creek, and it would give protection at the State level. I have heard the  
6 worry from the abutters, but also listened carefully to the gentlemen from Conservation Commissions in  
7 neighboring towns. Neither stated that it was particularly onerous and one of them added 13 wetlands  
8 designated as Prime. I am willing to move it to a vote. There will be a lot of discussion in town and I  
9 highly encourage everyone to attend educational sessions and talk to neighbors & friends. Let's all get  
10 more educated. If it's a bad idea, I think it won't go through as a vote, but I'm not opposed to putting it  
11 to a vote.

12  
13 Kate Murray stated it will be a good educational experience no matter how this comes out.

14  
15 Chair Horgan stated that there is a letter from Frank Richardson of DES in the main file in the Town  
16 office. It does not address specific questions raised tonight so she will not read the full text at the  
17 meeting, but will add it as part of the record. He is supportive of the Prime Wetlands designation and  
18 increase in the buffer protections.

19  
20 Sofio stated there are a lot of good questions not fully answered. With more answers, there may be  
21 more support. Landry stated he was more confused after tonight than he was before and wondered if  
22 there was an opportunity to vote on this next month.

23  
24 The board chose to hold another Public Hearing to continue the discussion.. All abutters will be notified,  
25 it will be posted in the newspaper and on the door of town hall and on the town website.

26  
27 Town meeting is May 10<sup>th</sup> – warrant is published before the town meeting and the warrant has all things  
28 to be voted on.

29  
30 Chair Horgan moved on to the four wetlands for discussion, proposing changes to definitions of wetland  
31 buffers. She read the current ordinance and the proposed changes.

32  
33 Current Ordinance:

34  
35 Definition of Wetland Buffers: Variable wetland buffers are established for wetlands and tidal lands as  
36 follows:

37 a. Class A Wetland Buffers: Buffers of 100 feet are established from the edge of the named  
38 wetlands listed below. These wetlands are identified in the 2005 Wetlands Study ("Wetlands  
39 Survey – Town of New Castle" and "2005 Wetland Study Map"), and evaluated to be wetlands  
40 with the highest functional values and requiring a higher degree of protection:

41 Wetlands ID# 23 Lavenger Creek  
42 Wetlands ID# 22 Secret Pond  
43 Wetlands ID# 24 Quarterdeck Lane  
44 Wetlands ID# 16 Pit Lane "A"  
45 Wetlands ID# 26 River Road

46  
47 **PROPOSED CHANGES** (In Italics)

1 2. Definition of Wetland Buffers: Variable wetland buffers are established for wetlands, *Prime wetlands*  
2 and tidal lands as follows:

3 a. Class A Wetland Buffers: Buffers of 100 feet are established from the edge of the named  
4 wetlands listed below. These wetlands are identified in the 2005 Wetlands Study (“Wetlands  
5 Survey – Town of New Castle” and “2005 Wetland Study Map”, *amended 1/15/2007 adding*  
6 *Wetland ID# 28, Cranfield Street “A”* and evaluated to be wetlands with the highest functional  
7 values and requiring a higher degree of protection:

8 Wetlands ID# 23 Lavenger Creek	<i>Wetlands ID# 17 Pit Lane “B”</i>
9 Wetlands ID# 22 Secret Pond	<i>Wetlands ID #15 Wentworth Road “A”</i>
10 Wetlands ID# 24 Quarterdeck Lane	<i>Wetlands ID #21 Neal’s Lane “B”</i>
11 Wetlands ID# 16 Pit Lane “A”	<i>Wetlands ID #28 Cranfield Street “A”</i>
12 Wetlands ID# 26 River Road	

13  
14 Chair Horgan stated this is a separate warrant article to designate 4 wetlands to change from 50’ buffer  
15 to 100’ buffer. These are wetlands that are not connected, but if there is drastic sea level rise, they  
16 would be connected again. This means that from a homeowner’s perspective, adding a bump out on  
17 your garage, for example, right now, if you are within 50’ of a wetland, you have to come before  
18 Conservation Commission and Planning Board to obtain a conditional use permit. By increasing this  
19 buffer to 100’, we are saying if you want to do something within 100’, now have to request a conditional  
20 use permit. It is a way for the boards to work with you and have input on protecting resources but still  
21 allow you to do what you want. We work with homeowners to obtain a win/win so you get to enjoy  
22 your property, but we protect the wetlands by making recommendation like changing a gutter system,  
23 put in rain barrels or a rain garden – we make recommendations, we don’t want to say No.

24  
25 Open public hearing at 8:59 pm.

26  
27 Question: My lot is nonconforming and with this my entire land will be within the buffer – so do I have  
28 to come before the board to do anything on my land? Answer: If you want to do normal landscaping,  
29 brush cutting, etc, it is allowed. If you want to build a structure or add on, then you would have to come  
30 to the board. To replace the roof? No, just a building permit.

31  
32 Question on using machinery in the buffer – chain saw, weed whacker? Answer: That can be used.  
33 Heavy equipment like excavator cannot be used.

34  
35 Question: part of a property is within 50’ buffer; a proposed garage addition is outside of the setback.  
36 Do I need to go to Planning Board for that? Answer; Not if you are outside the 100’ buffer. Just because  
37 a buffer touches your lot does not mean you have to go to a land use board as long as the building is not  
38 within the buffer.

39  
40 Question: if a buffer only leaves a tiny narrow strip of property on a lot, will they not allow you to build?  
41 Answer: You will have to come before the boards for approval. There will be a lot of things to mitigate  
42 building on a piece of property like that.

43  
44 Another resident stated that her property falls within all those wetlands, and she recognizes we all have  
45 to make concessions – in the last week both NY Times & Portsmouth Herald have had excellent articles  
46 on storm surges and rising sea levels. The more impervious surfaces we have the worse it will be. It’s  
47 also our escape route to get off the island.

1 Chair Horgan stated that New Castle already has 41% impervious surfaces which is a shocking number.  
2 It's the highest % of all seacoast towns. We need to look at everything on a case by case basis, on a  
3 home by home basis to minimize impervious surfaces added. There are good new materials that can be  
4 utilized.  
5  
6 Discussion on the impact of the proposed ordinances on property values. Lorn Buxton suggested getting  
7 an opinion from the town tax assessor.  
8  
9 Some residents expressed concern that many homeowners haven't returned from winter residences.  
10 McCarthy answered that there will be three informational sessions in the weeks before the Town  
11 meeting in May. Town meeting happens every year in May, and it is always the same situation of  
12 residents still being away.  
13  
14 In order to hold public hearing it has to publish by March 24<sup>th</sup> and the last day to hold the public hearing  
15 is Monday April 4<sup>th</sup>  
16  
17 Chair Horgan closed the public hearing at 9:26 pm. Board discussion followed.  
18  
19 Chair Horgan asked "What is general consensus – do we want to move along tonight or defer to second  
20 public hearing?": Murray stated that we already have a second public hearing coming and the issues  
21 are related.  
22  
23 Rich Landry stated that we're going to be here anyway. To me they are different issues, the first getting  
24 DES involved but agreed should go to another public hearing.  
25  
26 *Chair Horgan MOVED to not vote on the change to Section 9.2.3 as described on Exhibit F dated 3/21/16*  
27 *but rather continue the discussion to the next Public Hearing. This was seconded by Margaret Sofio and*  
28 *APPROVED unanimously.*  
29  
30 Chair Horgan stated all proposed ordinance changes will be written warrant articles. You will see exactly  
31 what you are voting on. They will also be written in full in the town report.  
32  
33 Old Business: None  
34  
35 New Business: None  
36  
37 Chair Horgan MOTIONED to adjourn at 9:35 pm. Lorn Buxton SECONDED. ADJOURNED.  
38  
39 Respectfully submitted,  
40 Diane Cooley, Recording Secretary