



Town of Weare

Conservation Commission

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Conservation Commission

Andrew Fulton, Chairman
Stephen Najjar, Vice Chair
Wendy Stevens, Secretary
George Malette, Member
Jeff Jackson, Member
Chris Tuck, Member
Lisa Purington-Grolljahn, Member

CONSERVATION COMMISSION – OCTOBER 8, 2014 DRAFT MEETING MINUTES

Present: Andy Fulton, Steve Najjar, Wendy Stevens, George Malette, Jeff Jackson, and Lisa Purington-Grolljahn.

Guests: Ralph Jiminez, Steve Colombo, Lori Palm, Sean Madigan, Tom Carr, Dave Ward, Craig Francisco, Wally Wood, Scott Wood, Jeff Wood, Kathleen McKenzie, Charlie McKenzie and Helen McKenzie.

I. CALL TO ORDER

Chairman Fulton called the meeting to order at 7:07 pm.

II. ITEMS FOR DISCUSSION

a.

TRAPPING PERMISSION

Sean Madigan stated he is looking for permission to trap fur bears on the the Weare Town Forest off of Felch Farm. and the beaver pond land off of Mountain Rd. at Eben Paige Rd. He stated he trapped three seasons ago. Chairman Fulton stated he could give approval to trap on one location but needed more information about ownership regarding the Mountain Rd. area. Ms. Stevens asked how the habitat was looking at Ferrin Pond and he stated there are many young beavers in that area and he was charged by a moose. Mr. Najjar made a motion to allow trapping on the Felch Farm forest. Mr. Malette seconded the motion. All were in favor and the motion passed.

WOOD FAMILY FOREST DISCUSSION

Scott Wood came forward and stated three weeks ago he came across the atv trail onto his grandmother's property and when attempting to exit the property by Bolton park, he discovered it was blocked with snowfencing, locks and No ATV signs. He stated he was surprised by that. He contacted Naomi Bolton and she informed him that there had been some degree of vandalism and he would need to bring it to the Conservation Commission. He called Delayne Brown and Delayne stated if he was to use that property in any form or fashion he would be subject to arrest and seizure of his ATV. He asked why has this happened and what can he do to have access?

Chairman Fulton stated there is a fundamental understanding that the family no longer owns it and there has been vandalism and the town does want to limit vehicle traffic. Ms. Stevens asked if Scott had contacted the Weare Winter Wanderers? He stated he is going to visit their next meeting. He stated it was not his family's intention to block ATV use. Ms. Grolljahn stated there has been truck damage on the trail. Mr. Najjar stated he feels it is a compassionate argument and from a legal basis, his family sold the land and therefore sold their legal rights to it. He added that the Snowmobile Club had the foresight to put an easement on there and they could have done that as well. He does not think it is remotely fair to give special access to the family unless it is given to everybody. ATVs are not written into the Town Forest Management Plan. He agrees with the way Mr. Wood is using it, but we need to look at the bigger picture. Mr. Najjaar stated that the Woods Family Forest officially became a town forest very recently, it

was not in 2004 and it is a manageable forest, and the 2004 Town Forest Management Plan does not apply to this parcel. Chairman Fulton asked for a formal letter from Mr. Wood regarding his request, it would be the next step for the Conservation Commission to consider. Ms. Grolljahn asked would his intent be for only his family to access the property? He stated no, he would have to have it open to everybody. Mr. Najjar stated again that his grandmother severed her rights and the town now owns the property. Mr. Wood stated he would be happy to have a key to the gate.

Jeff Wood spoke about it being deer season and his desire to have ATV access to the road, and he thinks Weare should be taking advantage of ATV recreation and open up their trails to connect with the statewide trail system.

TRAILS SUBCOMMITTEE UPDATE

Dave Ward stated the trail subcommittee suffered a loss this month with the loss of a member. The minutes are posted on the web site, and with the board's permission they would like to do a project on Eastman. The subcommittee would like to do a kiosk similar to the one at the Wood property and at the next meeting they will have budget information on that as well as signage details. They may need a bridge out there as well.

He stated there was a person caught at the Woods Family Forest in a full size pick-up truck and there was police activity there. Weare Winter Wanderers have been contacted as far as using their drag for cross country trails on Eastman and they don't have any objection and will develop a cost structure. Chairman Fulton recommended contacting the Eastman abutters who have groomed those trails in the past.

Mr. Najjar stated we have to develop a plan and submit it to the Piscataquog Land Conservancy, so if there are culverts on wetlands, etc., this needs to be formally presented.

Mr. Najjar stated perhaps the Trail Subcommittee should develop by-laws and Ms. Stevens responded she did not think that was a requirement. She added that another member has submitted her volunteer application tonight and there are two other members interested. Chairman Fulton asked for gps location/sketch of proposed trail and Mr. Ward stated he is looking for it. Mr. Najjar stated he is not comfortable with a two person subcommittee and Ms. Stevens stated last night she came to the town offices to appear for the meeting, and nobody showed up however they are working on building membership and organizing their information. Mr. Najjar stated if we put any signs proposals together, to keep forest management in mind to leave room for the equipment. Mr. Malette stated although we are working with existing logging roads, we should also check on the Natural Resources Inventory report and cross check the location of endangered species.

Mr. Malette stated he did speak with Mr. Redmond and there wasn't anything that could happen this year regarding trailhead parking at Eastman in the lower lot, but he could do something next year. Mr. Najjar asked that Mr. Turner be included on conversations regarding changes at Eastman.

Ms. Stevens made a motion to approve the Trails Subcommittee mission statement. Mr. Malette seconded. Ms. Stevens read the mission statement into the record. All were in favor and the motion passed unanimously.

CHIPMUNK FALLS/CHIPMUNK FALLS RD. DISCUSSION

Ralph Jiminez stated he sent a long letter to the board two weeks ago outlining many things that he discussed with Chairman Fulton. He is concerned with road damage, vandalism, and access issues. He has dealt with this before as a past Chairman of this Commission. He stated this is a private road that they put in at their own expense that gets minimum maintenance, solely by

him. At least one fat tire truck was out there and went through the mudhole which they have attempted to fill with stone over the years, and a rut has been created. He stated one or two vehicles like that would close road access as they don't have the resources to repair the road. He stated for the first time in 42 years, someone broke into their camp, prying the hinges. He stated it is a private road and it has always been private, and people enjoy that private type of living situation. He stated the access road from the emergency vehicle turnaround is a private road. He has contacted Attorney Mark Dunn and he directed him to DRED, and in an analogous situation in Stewartstown, the ruling was that when a government purchases a right of way, it enables access for timber management or other town use, but it does not make that road a public way for recreation or other purposes, and they are within their rights to gate the road. He added they have had people wandering about. He asked that we stop inviting people to visit Chipmunk Falls off the web site. He added that the emergency vehicle turnaround cannot be designated as a parking area. He stated the road that skirts along the marshlands closer to 114/Hemlock Dr., he thought was an old town road. He thinks a solution may be in creating access below the falls, either by that old road or a new road.

Chairman Fulton asked what was his request? His request is that an appropriate way to access the parcel is established, and that the parcel not be posted as open to the public on the town web site.

Steve Colombo stated he owns the acreage at the bottom of the falls. He asked by buying that property did they intend it to be a public road? Chairman Fulton stated not as a public road, but they assumed utilizing the way as a footpath would be an acceptable way of accessing the public property. Steve Colombo stated it is clearly problematic. Mr. Najjar stated he feels their pain, but the deed is clear, it has deeded access. Mr. Jiminez stated he would go to court. Mr. Najjar stated that they had a good conversation on the phone, the vandalism is awful, but most conservation minded people don't vandalize. He thinks they can work together and don't need to get lawyers involved. Mr. Jiminez stated he thinks our legal position is incorrect and common sense would dictate that purchasing land does not automatically make a private road a public road. Mr. Najjar stated he thinks they can encourage people to walk down the road, and Mr. Jiminez responded that he does not think that is enough. Ms. Palm stated people are walking to her property and she did not put her land in conservation and so she does not think people have the right to walk on her property, and police and fire cannot reach her place because she is very remote.

Kathy McKenzie stated if the commission takes the position that by purchasing this conservation land, by virtue the road becomes a public way, is the town then willing to maintain and plow it? Mr. Najjar stated the deed has a deeded right of way. He asked how often have problems been occurring? Mr. Jiminez stated there hasn't been that much, but all it takes is one or two trucks to create damage. Chairman Fulton asked is any public access on that road acceptable to the group? Mr. Colombo responded that he wants them to understand that coming from the bottom is a whole lot easier, and it is a solution. Mr. Jiminez added it is 100 yards from the lower paved road. Chairman Fulton summarized there is a parking issue, an issue with traversing on foot, alternative access via Old Woods Rd. off of 114. Mr. Jiminez stated the fastest way would be from Hemlock Dr. Chairman Fulton stated there is no right of way from Hemlock Dr. because there are privately owned parcels there. Chairman Fulton stated the point is mute that there should be no public invitation to a public parcel, and to return the neighborhood to their understanding of it, that it should not have any public access. Mr. Jiminez stated except for emergency vehicles. Mr. Jackson asked if we had other land locked parcels that are not advertised? Ms. Stevens answered yes, and she had no problems removing the listing from the web site, and stated it has been the desire of the Board of Selectmen to have the town's public property information readily available to the public. Mr. Najjar stated he thought they all had a right of way. Chairman Fulton asked for a letter in hand from Mr. Jiminez regarding his claims regarding foot traffic and what he desires so that they can run it by legal counsel. Ms. Palm

asked how come they were not notified of a purchase. She added that this was a large inconvenience and they have a right to know. Mr. Najjar stated the state statutes were followed, and Chairman Fulton added they held the required Public Hearings. Ms. Grolljahn stated she lives on a Class VI road that abuts town forest, and she does deal with the same type of experiences they are dealing with and she has understanding about what they are going through, but she is also thankful that her abutting parcel is not being developed.

Mr. Jiminez stated he would have the letter done in a week and he would gather signatures. Mr. Jackson made a motion to remove Chipmunk Falls from the web site. Mr. Malette seconded. Chairman Fulton clarified that we would remove any direct listing of this property from the web site. All were in favor. The motion passed.

Ms. Grolljahn asked who is responsible for damages that occur on a private road? Such as in the case of vehicles? Mr. Najjar stated that he thought people were on their own, and they could propose signage in an attempt to prevent that from happening. Mr. Jiminez confirmed there are two signs that say Private Road.

Mr. Jiminez presented a map and mentioned acquiring Barden would better increase chances of creating lower access. Chairman Fulton stated that would be a much more enjoyable way of enjoying the falls.

WETLANDS PROTECTION PROPOSAL

Craig Francisco, Chairman of the Planning Board stated the Planning Board has zoning articles revised last year to make the aquifer protection district and driveways over 10%, so instead of needing a Special Exception from the Zoning Board, you could come to the Planning Board for a Conditional Use Permit. He stated they have had three applications in, and the Conditional Use Permit has been working well, and the reason they made this change because going to Zoning Board for a Variance does not allow for modifying designs, and it is more of a legal process and it is less like that on the Planning Board where they can make modifications and have discussions.

So that is why he would like to move the wetlands process to a Conditional Use Permit as opposed to a Wetlands Variance from the Zoning Board. He stated once you get approval from DES, it is silly to have to go before the Zoning Board. Mr. Najjar stated it does not work well on existing lots of record. He stated it encourages developers to lay out roads and big structures, whereas driveways can be pretty big lineal features, not have the right structures or reoccurring maintenance so that was the jist behind the town reviewing wetlands permissions. Mr. Najjar confirmed that the decision is being transferred from the Zoning Board to the Planning Board and he doesn't really have an issue with it. Mr. Najjar stated as he gets further into it, he will be concerned about vernal pools and smaller wetlands. Mr. Najjar stated perhaps going to SNHPC and paying monies to develop a Buffer Ordinance might be a good idea, rather than rush into ordinances. Chairman Francisco stated they may be willing to do it for free, and he is not opposed to the idea. Mr. Najjar stated he likes the idea of having it being facilitated professionally and having someone on the hook for it to make sure that it works.

Chairman Francisco brought up his second issue and is proposing something similar to what they are doing in Farmington which offers three classifications of wetlands, and three sets of buffer zones for each class. He stated he did not realize there are only two prime wetlands in town. Classification 1, prime wetlands would receive 150 ft. buffer and 200 ft. setback, classification 2, national wetlands inventory, all contiguous surface waters, a 50 foot buffer and 75 foot setback, and the classification 3 having no buffer zone and a 25 foot setback. Mr. Najjar pointed out these classifications are not supposed to be used for regulatory purposes and he thinks it could be problematic. He is not sure what we are gaining by referring to that. Mr. Najjar stated Blandings Turtles use them all – vernal pools, small wetlands, and they travel up to a half

mile in a couple of days. Regarding vernal pools, there are no fish. Dependent on the pool and pool size, Blandings will overwinter in them. They become active in April, and they will feed in those pools until June, and he has been following 30 turtles for ten years. He uses his wetlands maps to track them, so he struggles with saying any wetland is insignificant. He summarized doing the biological work is important in terms of a professional Buffer Ordinance.

Chairman Francisco stated he was attempting to do this so if somebody needed to work in a vernal pool area and it was in July, they wouldn't have to wait ten minutes before doing something. Chairman Fulton asked for the classification on the smallest wetlands? Is it to just keep the structures away from there? Mr. Najjar stated that would mean the pool is dead. He stated vernal pools should get more protection instead of less. Chairman Fulton stated the vernal pools are more vulnerable than the larger wetlands, and the classification is almost backwards. Chairman Fulton seemed to think the National Wetlands Map was remiss of many wetlands in the short look he took during the meeting, and questioned basing it for use in the ordinance. Chairman Fulton thought we needed something more accurate to make this a quality valuation of wetlands. Mr. Carr stated they do classify wetlands for clients, and you can tell if wetlands are enclosed basins, and it automatically has the characteristics of a vernal pool, and they tag that on their map that it needs to be further evaluated. He stated when you have progressive wetland buffers and setbacks, you can write into the ordinance that if it has the physical characteristics of a vernal pool, it shall be treated as such until it can be identified as not having the obligate species. So you can have more conservative setbacks and buffers, and so if it comes back as not hosting the habitat, then you can reduce the setback and buffers. He thinks that is the right way to address it, he has a project in another town, and the previous engineer did not identify it as a vernal pool, and this year when he went out there and there were 30 masses in it, so they had to call the EPA. Chairman Francisco suggested hiring Mr. Carr for the Buffer Ordinance.

Mr. Carr stated he agrees with Mr. Francisco's proposal and he believes it is better served by the Planning Board as a Conditional Use Permit, as the Zoning Board's treatment of the situation is of a legal nature. With a Conditional Use Permit, for impacts to wetlands, the permits always have certain environmental criteria that you have to meet and in every case, the Planning Board will not hear the Permit until they have written comments from the Conservation Commission. It is a mandatory comment. He stated if applications are made and drainage and drawings are not correct, the applicant is not going to the Planning Board until the Conservation Commission has submitted mandatory comment. He stated there a lot of things that are better served through the use of a Conditional Use Permit. He added if Mr. Francisco is planning on two different proposals, we could put it through this year and that it is to be handled by the Conservation Commission and Planning Board.

Mr. Carr stated the setback issue is a whole other thing to deal with, he does support progressive wetlands buffers and setbacks as all wetlands are not created equal. He is offering his time and services to be on a Subcommittee to discuss buffers and setbacks, he thinks every wetland should have a buffer and also have some type of setback attached to it, of at least 25. (i.e. 50 ft. buffer, 75 ft. setback. 25 ft. buffer, 50 ft. setback). He is not sure having SNPHC work on this is necessary. He thinks he knows a lot about this topic, and he could literally write it. He added three criteria that he finds working well are 1) acreage, 2) whether it is in an aquifer and 3) ecological integrity. These three items are new criteria he is using for his projects this year and though he was skeptical in the beginning, he is finding it working very well. He cited Amherst as their method of evaluation and he thinks it works, it is simple and doesn't take a lot of time. He recommended checking out the Amherst Zoning Ordinance, section 411. He noted they also have two types of vernal pools.

Chairman Francisco will email us something for next month. Mr. Najjar stated you really don't want long linear driveways wiping out wetlands, and sometimes that happens. This is about a

transfer of power from the ZBA to PB, and it involves professional trust. Mr. Najjar asked if PB says no, can they go to ZBA for appeal? Chairman Francisco stated yes, they can appeal the decision of the Planning Board. CF said usually the developer will come back again to the Planning Board as opposed to appealing the decision with the Zoning Board.

GIOVAGNOLI / FOTTLER, POULTRY BARN FOR A COMMERCIAL CHICKEN FARM AT 332 SOUTH SUGAR HILL, MAP 406-28 IN A RURAL / AG ZONE

Maps were reviewed. Ms. Grolljahn noted Knoxland equipment and an ATV service company located on Dunbar Rd. Chairman Fulton stated the building is 2,000 feet away from flood control and noted the large vegetative area. Chairman Fulton stated if you are 1,000 feet away from the river it is difficult to see pollution happening. Ms. Stevens gave a brief synopsis of the manure situation and tonnage, and Chairman Fulton stated you need terrain models and contour maps to really have an answer. Mr. Jackson questioned how many streams run off that property. Mr. Najjar observed the fields being flat on the GIS maps. Comments to Planning Board would be to delineate wetlands show contour maps, and soil classifications, as well as well locations. Ms. Stevens stated the Right to Farm Act and the Best Management Practices are two important items to consider. Ms. Stevens stated the abutter's concern was odor. Chairman Fulton stated odor has to be managed. Ms. Grolljahn stated they moved in next to farmland where there used to be 100 cows. Ms. Stevens stated she thought he had plans to move the operation off of Dunbar Rd. and they will utilize access from S. Sugar Hill Rd. and Chairman Fulton stated we would need to see those changes to re-evaluate.

WASTE DRUMS UNDER POWERLINES/MOUNTAIN RD.

Mr. Jackson stated the drums have been removed from under the powerlines.

WETLANDS BUREAU

Chairman Fulton stated a letter was received from Fish & Game saying they have no interest in upgrades to a road to public waters up to Ferrin Pond. They are not a party to it in any way, shape or form. The letter did state that they were giving up their Road to Public waters and they do not own the road. Ms. Stevens asked how can someone legally own the road, and then just say they don't. Mr. Najjar stated the Warrant Article should lapse and we will have to get permission from Board of Selectmen to do whatever we want to do. Mr. Jackson stated that letter was important and we should put it on file. Ms. Stevens agreed. Chairman Fulton will look for the letter.

NON-PUBLIC SESSION

Ms. Stevens made a motion to enter into Non-Public session under RSA 91-A:3 section C. Ms. Grolljahn seconded. A roll call vote was taken at 10:00 pm.

Ms. Stevens made a motion to come out of Non-Public session under RSA 91-A:3 section C. Mr. Malette seconded. A roll call vote was taken. at 10:08.

Mr. Malette made a motion to seal and restrict the minutes. Mr. Najjar seconded it.. The motion passed unanimously.

TRAPPING PERMISSION

Chairman Fulton presented a trapping request from Glenn Dubois to trap in Woods Family Forest. Mr. Najjar made a motion to approve the trapping request. Mr. Jackson seconded the motion. All were in favor, and the motion passed. Mr. Najjar made a motion to grant truck access for trapping. Ms. Stevens seconded. The vote was unanimous.

POOR FARM HARVEST

The Poor Farm Rd.harvest was reviewed without comment. Mr. Jackson discussed markers and buffer zones and asked about proximity to the trail. Mr. Najjar stated Todd Carmichael of

High Tech Harvesting will need to in there with a skidder.

Ms. Grolljahn exited the meeting at 10:14pm

Chairman Fulton stated there has not been any ATV permission at Ferrin Pond Rd., that was only regarding the Class VI road. Mr. Najjar finds himself being upset that the Board of Selectmen gave permission for a tree stand on town land because it wasn't necessary and it is awkward when they give permission as Conservation Commission are the managers of the Town Forest. Mr. Jackson stated it should all go through the same channel whether it is trapping, ATV or tree stands.

STRUCTURE AT CHIPMUNK FALLS

Chairman Fulton stated he would like to wait and move forward in a motion consensus driven method in order to address the structure at Chipmunk Falls. Mr. Najjar stated we have an absolute right to drive down that road. He stated forget about a training opportunity with the fire chief – we could just hire somebody to demolish it and burn it when there is snow on the ground. Mr. Malette and Mr. Jackson thought there should be a burn permit. Mr. Malette agreed to hold off and see where we are at with the public issues. Mr. Najjar stated he thinks we need to deal with it whether it is burning it or trucking it out, and there is no stopping us from doing that. Mr. Najjar stated he would like to gather the facts from DPW and the Fire Dept and see what they think, and we can choose accordingly after that. Chairman Fulton asked if somebody would be willing to meet with them at the location. Mr. Jackson volunteered. Ms. Stevens will contact the Fire Chief.

I. DES ITEMS

Several lot line adjustments were noted without comment.

Wetlands notifications were noted without comment.

II. MISCELLANEOUS

The October 17th invitation to walk Ferrin Pond from John McCausland was well received.

Christine Tuck's resignation was discussed and due to lack of renewing her membership the commission assumes we are now a 6 member board.

An invoice from Bob Todd was reviewed regarding Brookshire. Mr. Najjar has communicated with Tina Connor regarding the matter and it is being addressed.

Mr. Malette stated he had some books to add to our library and return things he has borrowed. He stated he submits his resignation from the Conservation Commission.

III. ADJOURNMENT

Mr. Jackson made a motion to adjourn the meeting at 10:38pm. Mr. Malette seconded the motion, and the commission noted it as his last act on the Commission and he was thanked for his long tenure and all of his contributions to the Town of Weare. The meeting was adjourned.

A true records,

Wendy J. Stevens