

**Atkinson Conservation Commission Minutes**  
**Monday, February 5, 2018 7:30 PM**  
**Atkinson Town Hall**  
(Approved March 5, 2018)

**Members Present:**

Paul Wainwright, Vice Chair  
Denise Legault  
Pete McVay, Secretary  
Dan Kimball  
Mark Hertrich

**Others Present:**

Tim Lavelle, Lavelle Associates  
Bob Malo, Maple Ave Map 9 Lot 29  
abutter  
Cheri Malo

**1. Call to order, attendance**

Vice Chair Wainwright called the meeting to order at 7:35 PM, Monday, February 5, 2018. Vice Chair Wainwright informed the Commission that Chair Dziechowski is ill and unable to attend.

**2. Guest Business and Plan Reviews:**

Tim Lavelle seeking recommendations on wetlands variances at Maple Ave, Map 9 Lot 29, and 15 Hemlock Heights Road Map 22 Lots 9-1&11.

**- 15 Hemlock Heights Road Map 22 Lots 9-1 & 11**

Mr. Lavelle appeared before the Commission to answer questions from the previous meeting. The application is for a proposed addition for property located on the corner of Hemlock Heights and Chase Island Roads. Mr. Lavelle stated that there was a question brought up regarding drainage and he informed the Commission that there is extensive drainage at that location. There are a couple of catch basins on Hemlock Heights Road that drain into this property. There is a drain manhole and a catch basin. Mr. Lavelle has shown all drainage on the plan. The only question is a pipe coming into the catch basin and then going out. He could not find the other end, it must be buried somewhere. The proposed addition as shown would not affect present drainage. He will contact the Road Agent about the catch basin. It seems to be newer pipe. He spoke to the owners regarding the location of the garage and they do not have a problem, because they want the drainage. Member Legault asked about the wells and Mr. Lavelle informed her that the applicant planned to go with the old well, it has been tested and has plenty of water. Member Legault asked about plantings because there will be more runoff. Mr. Lavelle informed her that there will be a lawn and some shrubs around the house. The existing driveway will be removed and a new driveway will be moved to the area of the proposed garage. It will probably be shorter than the old driveway. Vice Chair Wainwright asked about a plan to divert water from the roof. Mr. Lavelle informed the Commission that gutters and a dry well are proposed next to the proposed addition. It will be approximately a 3-foot drywell with stone around it.

The Commission had no more questions.

- **126 Maple Street**

Vice Chair Wainwright asked about 126 Maple Avenue wetlands mitigation. Mr. Lavelle informed him that the plan will be signed tomorrow, which would be February 6, 2018. Mr. Lavelle is meeting with Evan Lewis from the State.

- **Maple Ave Map 9 Lot 29**

Mr. Lavelle presented information continuing from the February Conservation Commission meeting. He is working with a new soil scientist, and will have enough information to complete the proposal by the March Conservation Commission meeting. The earliest construction date is midsummer, and the request has been continued at the Zoning Board.

- Blunt's Pond Abutter Presentation - Bob Malo, father of abutter Cheri Malo, presented objections to the proposed Blunt's Pond building variance request. The presentation is an attachment to these minutes. Vice-Chair Wainwright stated that flagging of the wetland boundaries needs to be done before any plans are advanced.

In brief, the Malo family objects to the proposed plan to build on the lot. Mr. Malo explained that his daughter purchased a house abutting Maple Ave Map 9 Lot 29. The Malo family had concerns about Blunts Pond when purchasing the lot and went to Town Hall to research the property. The property is roughly 8 acres of which about 7 is the pond. There is a narrow strip of land along Maple Avenue. They were concerned about attempts to build. The present owners were making attempts to draw up plans. Mr. Malo made an offer to purchase the land because they wanted to retain it as conservation land but were assured that it could not be developed. According to Mr. Malo, the lot was created and designated as wetlands around 1957 and has not been changed.

In any event, after presenting the Zoning Board and viewing the video from the last Conservation Commission, the Malo family was concerned that all information needed to be presented. The Malo family contacted a New Hampshire certified wetlands scientist. He spoke to the consultant for the applicant and was disappointed that he was recommending the applicant move ahead with the proposed plan.

If you look at the presentation from the wetlands scientist, it shows on the plan that the lot is 8.4 acres but proposes to put a house on .4 acres of land, none of which is near any other land on the proposed lot. According to Mr. Malo, the lot is designated as wetlands (it is listed as wetland on the tax assessment card, and is assessed at \$11,300). According to Mr. Malo, the plot plan that he obtained from Town Hall is not a valid plot plan because it has not been stamped by a certified soils scientist indicating jurisdictional wetlands boundaries. According to Mr. Malo, someone certified in the State of New Hampshire needs to put their stamp and name on it in order to validate it.

The wetlands scientist retained by the Malo Family stated that the wetlands boundary on the current plot plan may not be correct. There was a discussion about foliage at the January Conservation Commission meeting. The lot is actually heavily wooded. Mr. Malo counted 8 white pine trees, over 20 hardwood trees and a number of other, smaller trees. Building this house with a septic system, well and driveway will require most of these trees to be cut down. This will leave over one third of the Blunts Pond shoreline with practically no trees. Mr. Malo showed the Conservation Commission some pictures. Mr. Malo could not locate the stake for

the property line, but he did measure the frontage in order to find the approximate location of the property line.

According to Mr. Malo, under the proposed plan all the trees along the property line will be cut down, leaving one pine tree. This will affect trees on their side of the property line, leaving them more exposed to wind and more susceptible to storm damage. The next picture shows that the water level is 6-7 feet below the road level and the outlet can be shown as well as many of the hardwood trees. Mr. Malo showed the Conservation Commission the tree line all along the property line. Approximately one third of the property line has no trees. The next picture shows the water level and hardwood trees. The third picture gives an idea of the slope and grade. According to Mr. Malo, there is about a 15 foot rise from the water level to the proposed location of the structure. Mr. Lavelle stated that he would be able to make a more accurate measurement.

Mr. Malo continued to review the attached presentation. Item 5 of the presentation shows that removing the trees will affect wildlife, especially turtles. The previous owner informed the Town that turtles come out of the pond to lay their eggs on the proposed house lot. The hatchlings come out of the ground and go to the water in June. Vice Chair Wainwright asked if there were Blandings Turtles, an endangered species. Mr. Malo was under the assumption that Blunts Pond water is public. Further discussion among Conservation Commission members concluded that this is not true. Blunts Pond is also a stop for migratory birds. It is part of a much larger watershed that joins to Bryant Brook and eventually flows into the Little River. There is a large brook at the back of the property that drains the entire area from the pond all the way to Town Hall.

Mr. Lavelle left.

Mr. Malo pointed out that the lot is not typical of Maple Avenue. The wetlands scientist they consulted stated that the permeable surfaces, minimum lot size, drainage plan, the road next to the pond, and erosion controls are all issues that need to be dealt with. Maple Avenue is zoned for two acres. According to Mr. Malo, the proposed lot development would definitely reduce the value of abutting property. Another question is what actions or uses are allowed in the Town Ordinance for the 100 foot buffer. Vice Chair Wainwright explained that there are two types of setbacks, wetlands and shoreland protection. The lot in the proposed application does not qualify for shoreland protection because it is not a great pond. And although Blunts Pond and its surrounding wetlands are of major significance to the Town, it is not a Prime Wetland. Therefore, the State has no jurisdiction as far as the wetland setback variance application is concerned.

Mr. Malo also requested that, should the Commission approve the plan, that a site walk be performed. Vice Chair Wainwright informed Mr. Malo that the Conservation Commission does not have the power to approve, it can only make recommendations. Site walks are typically done prior to deciding whether to approve.

Mr. Malo is also concerned that a building inspector has reviewed the plans. One concern of his is the location of the proposed septic system, which is within 10 feet from the proposed house, which could cause problems with seepage. Another issue is the shadow cast by the house over the septic system will minimize evaporation. Also, the proposed septic shown on the plan is 10 feet away from the Malo property boundary, where there are some large trees (on the Malo property) which could be a problem with tree roots invading the septic. There will

be a basement with a garage in the basement. Member Legault asked about the ZBA meeting and Mr. Malo responded that it was continued. Vice Chair Wainwright explained that wetlands are determined by soil type and a surveyor will show the plot plan. Vice Chair Wainwright also stated that septic design is approved by the State, and that the Conservation Commission does not have jurisdiction over septic design or placement. Mr. Malo questioned if the approving authority not only looked at the design but also proximity to the proposed structure. Vice Chair Wainwright suggested that Mr. Malo contact the State regarding approval of the septic system.

Mr. Malo stated that one reason for approving the variance request would be increased tax revenue to Atkinson. Vice-Chair Wainwright stated that studies have indicated that, in general, tax revenue increases when vacant land is developed is, on average, offset by the need for more town services. The Conservation Commission should schedule a site walk with the Zoning Board to further evaluate the property.

Member Kimball, who is a retired biologist, presented his professional opinion on the effect of development near Blunt's pond. He is familiar with the watershed since he lives nearby. He is concerned about aging of the pond. Right now, there is a lot of development, but no development along the shoreline of the pond. The proposed building on the lot would accelerate the process of eutrophication [the process that causes a pond to fill in and eventually become a swamp]. His email on the subject is included as an attachment.

Member McVay informed the applicant that there are two types of soils on the lot, a fine sand and a coarse pebble type soil. If any are taken out, erosion will accelerate. Vice Chair Wainwright asked when the plan would come before the Zoning Board and requested the applicant inform him of the decision.

## **5. Other Business**

### **- Email from Bob Davidson to Tim Dziechowski**

Mr. Davidson informed Chair Dziechowski that he was able to go to the Town Forest and inspected the Champion Ash. He stated that there are about 15 Ash in the area that have been affected and should be treated, including the Champion Ash. There are also several ash that are heavily infested near the access point of the Town Forest that need to be removed. Mr. Davidson will appear before the Conservation Commission in March to present his recommendation.

### **- Email from Brent Ebner**

A follow on with plan to have trails marked for safety purposes. Mr. McVay stated that Murtow, the company that bid for it, is a one man operation and the resources and flexibility in his system seems to be limited. Someone who can tailor to the needs of all towns is needed.

## **8. New Business**

The \$1000 was restored to the Conservation Commission budget.

Member Hertrich reported that one scout was interested in Camp Barry, but has not heard any more. One other father emailed him. The beginning of February is the deadline. Next year, Member Hertrich will start in September.

Ms. Legault asked for a contact person for Girl Scouts. Mr. Wolff informed her that the Scouts meet at the Library.

The next regular meeting of the Conservation Commission is Monday, March 5, 2018 at 7:30 PM.

**Member Legault made a motion to adjourn the February 8, 2018 meeting of the Atkinson Conservation Commission at 9:00 PM. Member McVay seconded the motion. All members voted in favor. Vote: 5/0/0.**

## **2018\_02\_05 - Dan Kimballs Report on Blunts Pond - sent Jan 9 and discussed Feb 5**

I feel Blount Pond, though fairly advanced in the natural process of eutrophication, still offers significant benefits to our town ecosystem. It will eventually (in a few centuries?) evolve into a large reed/cattail wetland with perhaps a small stream running through it. It will still warrant protection as such a wetland would today, but it would not be as valuable as the pond is today (water storage, flood protection, water recharge, etc) A eutrophic water body is a highly productive and diversified natural community; that is what eutrophic mean (as compared to an oligotrophic water body's low productivity and lower species diversity such as a deep high mountain pond). I feel prolonging the "life" of Blount Pond by minimizing new activities that would contribute to accelerating the eutrophication process is desirable. The construction proposed there will exacerbate that process. New septic systems become old systems; impervious surfaces, lawns, maintaining grounds, etc. in very close proximity accelerate pond productivity (eutrophication rate). The fact that past land uses and construction exist (and have had an impact) is not justification of expanding the impact in some sort of "me too" logic of "rights" does not fit in my logic.

An international panel of scientist that made recommendations on the level of allowable high seas exploitation of North Atlantic salmon that I was privileged to serve adopted a policy called "Precautionary Approach" for decision making. It boiled down to "when the data is not adequate for the decision at hand, the guidance was to DO NO HARM. I don't have data to begin to predict the degree of impact but I can not support approval of an variance to our setback requirements in this case. I prefer to "do no harm", but the ZBA have their own procedure for decision making they must follow.

Dan C. Kimball 88 Main St Atkinson, NH 03811

**Reasons for not approving variance request for Maple Ave**  
**Map 9 Lot 29 in the RR2 Zone**

1. **Variance request is to build a house on 0.4 acres.** Land on back side of pond is not accessible except by boat.
2. **Lot recorded on tax card as wetlands.**
3. **Plot plan is questionable,** A valid plot plan requires a stamp by a certified soil scientist indicating the jurisdictional wetland boundary. The wetland line may significantly change the degree of impact to the buffer.
4. **The lot is heavily wooded (8 white pine trees over 30 feet high and over 20 hard wood**
5. **trees ranging from 30 to 40 feet high.** These trees are the highest point on the pond and building this house with septic system, driveway, deck and artesian well will require that most if not all of these trees be cut down. This will leave over one third 1/3 of the shore line with practically no trees.  
**See Pic 1 & 2 & 3 [not included]**
6. **Wildlife; turtles, historic migration occurring seasonally utilizing these south-facing**
7. **slopes.** Land disturbance, removal of trees and vegetation, along a finite distance of suitable habitat, will reduce the percentage of area for the turtles
8. **Blunts Pond is part of a much larger watershed.** The runoff, across Maple Ave joins Byrant Brook and then flows into the Little River which flows through Plaistow and Haverhill and into the Merrimack River. Upper reaches of streams and ponds are critical to the water quality downstream.
9. **The slope from the water in the pond to the high point of the triangular piece of land** (near the road where the septic system is proposed) is approximately 15 feet. Everything on that lot will rapidly flow into the pond.
10. **This lot is not typical of the lots on Maple Ave.** Impermeable surface area created, house driveway and other structures, minimal lot size, drainage plan, nutrient load to the pond, erosion control. The area is zoned for 2 acres and most homes have considerably more. This property will definitely decrease the value of the abutters property.
11. **100 Feet Buffer.** What actions or uses are allowed in this area under the town's ordinance? A variance would have to demonstrate purpose and need, alternatives, minimization of impacts and proposed buildout in entirety (Garage, lawn, removal of existing trees and vegetation?)

- 12. Should this committee wish to proceed with approving this variance,** we ask that the committee request a site visit and report from the Conservation Commission of their findings.
- 13. The outcome of this variance request will definitely give a clear signal to all area**
- 14. contractors and land owners** that our conservation and zoning laws are law and variances are granted only after very judicious consideration that the variance significantly outweighs the negative impact on our wetlands.
- 15. Has the building inspector reviewed these plans?** It would seem that there would be considerable concern about seepage of sewage to the foundation of the house (likely to have sewage odor in basement). The plan shows the house facing East- North East. By 11:00 AM the house will begin to cast a shadow on the leaching bed and by 12:30 PM it will be completely in shade (evaporation will be at a minimum). Also, the leaching bed is only 10 feet from the property line. There are large trees on the adjacent property located at the property line and the root system will most likely infiltrate the leaching bed.

**Reasons for approving variance request for Maple Ave  
Map 9 Lot 29 in the RR2 Zone**

**None**