

**Atkinson Conservation Commission Minutes**  
**Monday, May 6, 2019**  
**Atkinson Town Hall**

Approved June 3, 2019

**Members Present:**

Paul Wainwright, Chair  
Denise Legault, Vice Chair  
Pete McVay, Secretary-Via Phone  
Dan Kimball  
Dennis Krause  
Jeff Nenart, Alternate (voting)  
Tim Dziechowski, Alternate  
Scott Kukshel

**Others Present:**

Timothy Lavelle, Lavelle Associates  
Bill Steele

**1) Call to order, attendance**

Chair Wainwright called the meeting to order at 7:28 PM, Monday, May 6, 2019. Chair Wainwright reviewed the attendance list and declared that a quorum was present. Chair Wainwright also announced that Secretary McVay was attending via speakerphone because of medical issues, as allowed by RSA 91-A:2 II.

**2) Wetland setback variance request: Map 16 Lot 4, 4 Industrial Way**

Timothy Lavelle addressed the Commission and provided plans [the same plans as were presented on April 1 – see those minutes]. He stated that it was requested at the last meeting that he confirm there were no wetlands violations because the property had been logged. Mr. Lavelle stated that the owners filed an intent to cut, and they followed all protocol and went a step further and hired Jim Gove to flag the property before cutting. Mr. Lavelle stated that he walked the property and stated that everything was in order, and that they did cross an area where there was a previous crossing and nothing was disturbed.

Chair Wainwright stated that his concern was looking at the aerial photographs that showed the property was cut.

Mr. Lavelle stated that the proposal is to build an industrial building on the front of this lot. Chair Wainwright asked for confirmation that the proposal is for the plans that were originally given to the Commission at the last meeting. Mr. Lavelle confirmed that was the case, and invited the Commission to walk to property.

Chair Wainwright set a time for 8:00 AM Saturday, May 11, 2019 for a site walk and invited any Members who would be available to join him. Chair Wainwright stated that his only concern is that the proposed building would be very close to wetlands and that Mr. Lavelle will be asking for a very large variance. Mr. Lavelle concurred and stated that they would

want to go within about 30' of the wetland and he stated the septic would be out by the road so they would not need a relief for the septic.

Chair Wainwright stated that he doesn't have a clear idea if this is typical for the neighborhood. Mr. Lavelle stated that the site was pretty rough when it started and they moved and created wetlands.

Chair Wainwright asked Scott Kukshel if he had any history when he worked on the Commission about Industrial Way. Mr. Lavelle interjected that this lot was not part of the original Industrial Way. Roger Plouff and George Goulden bought the piece from GEX and this was the back land of a Salem subdivision and this was leftover Atkinson land. Mr. Lavelle stated that they created the lot by doing a lot line change and created frontage.

Scott confirmed that in the past, they treated the wetlands on Industrial Way like any other wetlands in town. Chair Wainwright stated that it is a very large variance. Mr. Lavelle stated that it is because of their efforts not to cross wetlands and go out into the back. Mr. Lavelle informed the Commission that they haven't submitted it to the Zoning Board yet, he wanted to bring it before this Commission first. Chair Wainwright stated that the Commission would most probably not give a comment until they see the actual plan that goes before the Zoning Board.

Mr. Lavelle stated that they did received a variance in 2002 to go 33' from the wetlands. Mr. Lavelle stated that he has researched this before coming before the Commission. Chair Wainwright stated that he will try to form a quorum at Saturday's site walk so as to enable the Commission to give their input at the time of the site walk.

Scott asked for clarification on the history of the property and asked for confirmation that it was Salem in the past. Mr. Lavelle stated that there was a subdivision off of Haverhill Rd., and this was Atkinson backland. He explained the history of the lot on the plan. Scott stated that it seems like they purchased the land knowing it was all wet. Mr. Lavelle stated that there is a good sized building envelope and demonstrated on the plans. He stated that Bill Ermer from Palmer Gas is looking at this for equipment storage.

Chair Wainwright asked if it was logged for revenue. Mr. Lavelle mentioned that Mr. Ermer might be willing to put a conservation easement on the back, and stated that it was all logged. Member Nenart stated that [a conservation easement] would prevent something being developed in that area in the future. Chair Wainwright asked if anything has been growing back. Mr. Lavelle stated that, as of a month ago, nothing has grown back yet. Chair Wainwright stated that the Commission will plan a site walk with four Commission members present on Saturday May 11, 2019 at 8:00 am.

### **3) Election of Officers**

Postponed until Selectmen do appointments.

**4) Review and approval of minutes: April 1, 2019**

Chair Wainwright requested a motion to approve the minutes of the April 1, 2019 public meeting of the Atkinson Conservation Commission, as written.

**Vice Chair Legault made a motion to approve the minutes of the April 1, 2019 public session of the Atkinson Conservation Commission, as written. Member Krause seconded the motion. Six members of the Atkinson Conservation Commission present at the April 1, 2019 meeting voted in favor. Vote: 6/0/0.**

Chair Wainwright requested a motion to approve the minutes of the special meeting of May 2, 2019, of the Atkinson Conservation Commission, as written.

The purpose of this meeting was to hire a Wetlands Scientist, which they did. Five members of the commission attended this meeting: Chair Wainwright, Secretary McVay, Member Kimball, Alternate Nenart, and Alternate Dziechowski.

**Member McVay made a motion to approve the minutes of the May 2, 2019 special meeting of the Atkinson Conservation Commission, as written. Member Nenart seconded the motion. Five members of the Atkinson Conservation Commission present at the May 2, 2019 special meeting voted in favor. Vote: 5/0/0.**

**5) Treasurer's report and 2019 budget:**

Chair Wainwright stated that there was only one expenditure for the month, which was the Recording Secretary's payment. There were no comments or questions.

**6) Brief Reports & Other Business:**

**a. Conservation Commission "Office Hours" at the Library**

The "Office Hours", which will again occur Saturday, May 11, 2019, have had a small but enthusiastic attendance, and for the residents who have attended, meaningful conversations have occurred. Chair Wainwright invited to public to attend. Chair Wainwright invited Commission members to join him this Saturday. Scott Kukshel volunteered.

**b. Scouts on trails**

Chair Wainwright informed Member Krause that the Scouts were out on the Orr Town Forest trail behind the Community Center cleaning it up, and he saw Member Krause's yellow blazes. Member Krause stated that he will continue with red blazes on some of the branch trails.

### **c. Resident Edward Rossetti**

Mr. Rossetti, who resides next to Ruth McPherson's four acre lot on Main St. was complaining about water runoff onto his lot. The Town Engineer evaluated the property and stated that it is not water runoff at all, and that Mr. Rossetti's property was excavated too much and the Conservation Commission is not responsible for Mr. Rossetti's problem, and that it is up to Mr. Rossetti to stabilize the cliff he created.

### **d. Williams #4 has been walked and reported**

"Williams #4" is a tree forest on Hemlock Heights Road, Map 22 Lot 1. It is privately owned, but has a conservation easement which is owned by the Forest Society. The Conservation Commission is required to walk it once per year. Vice Chair Legault walked it and Secretary McVay completed and delivered all paperwork.

### **e. Other Business**

Chair Wainwright invited any other business. Vice Chair Legault stated that the Foleys are requesting a 45' variance for their rear setback that was discussed at the ZBA meeting on May 8, 2019. Chair Wainwright explained the situation to the Commission and there was some discussion. He stated that he doesn't feel there is any problem at all with granting a variance, and there are no issues that the Commission has advisory responsibility for.

### **f. Next Meetings**

June 3, 2019 and July 1, 2019

### **g. Save the Date**

The NH Association of Conservation Commissions annual conference will be the first Saturday of November, November 2, 2019, and Chair Wainwright encouraged everyone to hold the date for this important educational opportunity.

## **7) Non-public session**

Chair Wainwright requested a motion to go into non-public session under RSA 91-A:3 II (I) for consideration of legal advice provided by legal counsel.

**Member Kimball made a motion to go into non-public session under RSA 91-A:3 II (I) for consideration of legal advice provided by legal counsel. Vice Chair Legault seconded the motion. All members of the Conservation Commission present voted in favor. Vote: 7/0/0.**

The meeting entered non-public session at 7:53 PM

**8) Non-public topic A - Page Farm: Administrative Appeal under RSA 676:5**

[These minutes were unsealed on May 17, 2019]

Chair Wainwright and Vice Chair Legault summarized the Planning Board meeting of April 17, 2019, in which the Planning Board gave conditional approval to the Page Farm 7-unit addition. In so doing, the Planning Board concluded that they did not need to require the applicant to seek a variance from the ZBA for the two encroachments into the perimeter buffer which we have been objecting to.

Chair Wainwright asked for discussion about whether the Conservation Commission should appeal the Planning Board's decision to not involve the ZBA in their zoning interpretation of the perimeter buffer ordinance 600:11. Since most members have been following this rather closely, there was minimal discussion.

Chair Wainwright then discussed the legal advice he has received from attorney Natch Greyes at the NH Municipal Association, concerning the process of making an appeal under RSA 676:5. Chair Wainwright also discussed advice he has received from Julie LaBranche, Rockingham Planning Commission. The Commission members reached a consensus that it appears we do have the right to appeal, but should seek additional legal advice of our own just to be sure we are not misunderstanding something.

**Jeff Nenart made a motion to authorize the Chair to write a Letter of Administrative Appeal to the Zoning Board of Adjustment under NH RSA 676:5 documenting our objection to the Planning Board's administrative decision to allow encroachment into the perimeter buffer (as defined in Atkinson zoning ordinance 600:11) of the proposed 7-unit addition to the Page Farm Development, to pay the application fee of approximately \$320 from our operating budget, and to seek legal counsel on the matter. Pete McVay seconded the motion. The motion carried unanimously, 7/0/0**

**9) Non-public topic B - Page Farm: NH DES Wetland Recommendations**

[These minutes were unsealed on June 3, 2019]

Chair Wainwright reviewed the special Conservation Commission meeting which was held last Thursday, in which we approved the hiring of Certified Wetland Scientist Marc Jacobs to follow up on the wetland issues that were brought to our attention by Eben Lewis of the NH DES Wetland Bureau. Chair Wainwright reported that when he approached Green and Company about conducting the additional wetland studies, he was informed that members of the Conservation Commission would be charged with Criminal Trespass if they enter the property. A copy of the letter from Michael Green is attached.

Chair Wainwright then reviewed the legal advice he received from attorney Greyes concerning obtaining an Administrative Inspection Warrant under NH RSA 595-B. Chair

Wainwright stated that he would consider this only as a last resort, and would prefer to refer the wetland issues back to NH-DES first.

**Pete McVay made a motion to authorize the Chair to seek an Administrative Inspection Warrant under NH RSA 595-B, at his discretion and without further action by the Commission, to force Midland Investments to allow a certified wetland scientist of our choosing to render a second opinion about the wetlands contained in the area of the proposed 7-unit addition to the Page Farm Development, and to seek legal counsel on the matter. Dan Kimball seconded the motion. The motion carried unanimously, 7/0/0.**

#### **10) Return to public session**

**Dan Kimball made a motion to end non-public session and return to public session. Denise Legault seconded the motion. The motion carried unanimously, 7/0/0**

#### **11) Motions to seal non-public session minutes**

**Scott Kukshel made a motion to seal the non-public minutes for “topic A” until May 17, 2019. Jeff Nenart seconded the motion. The motion carried unanimously, 7/0/0.**

**Dan Kimball made a motion to seal the non-public minutes for “topic B” for 90 days. Pete McVay seconded the motion. The motion carried unanimously, 7/0/0.**

#### **12) Adjournment**

Chair Wainwright requested a motion to adjourn.

**Jeff Nenart made a motion to adjourn the May 6, 2019 meeting of the Atkinson Conservation Commission. Dennis Krause seconded the motion. All members of the Conservation Commission present voted in favor. Vote: 7/0/0.**

The meeting adjourned at 8:50 PM.

#### **Attachments:**

- Treasurer’s Report
- Trespass letter from Michael Green

**Town of Atkinson Conservation Commission 2019 Budget Tracking**

Account Number	Description	TM Approved 2019 Budget	What	Amount	Date Prepared	Date Submitted	Amount Submitted	YTD Total	YTD Unspent
40.46111.110.00	RECORDING CLERK	\$ 998.00	Minutes, Jan 7, 2019	\$82.50	1/14/2019		\$82.50	\$ 82.50	\$ 915.50
40.45111.220.00	FICA	\$ 1.00						\$ -	\$ 1.00
40.45111.225.00	Medicare	\$ 1.00						\$ -	\$ 1.00
40.46111.390.00	OTHER PROF SERVICES	\$ 2,500.00	Minutes, Apr 1, 2019 Minutes, Mar 3, 2019 Minutes, Feb 4, 2019	\$132.00 \$120.00 \$156.00	4/24/2019 3/26/2019 2/21/2019	4/26/2019 3/26/2019 2/22/2019	\$132.00 \$120.00 \$156.00	\$ 408.00	\$ 2,092.00
40.46111.550.00	PRINTING AND BINDING	\$ 1.00						\$ -	\$ 1.00
40.46111.560.00	DUES/SUBS/MEMBERSHIPS	\$ 400.00	NH Ass'n of Natural Resource Scientists	\$20.00	3/26/2019	3/26/2019	\$20.00	\$ 20.00	\$ 380.00
40.46111.620.00	OFFICE SUPPLIES	\$ 1.00						\$ -	\$ 1.00
40.46111.625.00	POSTAGE	\$ 1.00						\$ -	\$ 1.00
40.46111.650.00	CARE OF GROUNDS	\$ 3,000.00	Sign Posts (from late December) Registry of Deeds (Tim) Terrain Navigator Pro License Replacement float for Town Dock, -2% Ebner reimbursement: Junction Markers	\$37.18 \$3.00 \$361.00 \$126.89 \$103.68	3/26/2019 3/26/2019 3/26/2019 1/24/2019 1/2/2019	3/26/2019 3/26/2019 3/26/2019 1/25/2019 1/7/2019	\$37.18 \$3.00 \$361.00 \$124.35 \$103.68	\$ 629.21	\$ 2,370.79
40.46111.740.00	NEW EQUIPMENT	\$ 300.00						\$ -	\$ 300.00
40.46111.820.00	MILEAGE	\$ 74.00	Meeting w/ Eben Lewis 1/2/19 - 98 mi + \$4	\$60.84	3/26/2019	3/26/2019	\$60.84	\$ 60.84	\$ 13.16
40.46111.840.00	SPECIAL PROGRAMS	\$ 1,000.00	Barry Conservation Camp	\$315.00	3/26/2019	3/26/2019	\$315.00	\$ 315.00	\$ 685.00
40.46111.850.00	EDUCATION & CONFERENCES	\$ 250.00						\$ -	\$ 250.00
40.46111.875.00	SIGNS	\$ 500.00	Conservation Easement Boundary Markers	\$304.77	1/28/2019	1/29/2019	\$304.77	\$ 304.77	\$ 195.23
<b>TOTALS</b>		<b>\$ 9,027.00</b>						<b>\$ 1,820.32</b>	<b>\$ 7,206.68</b>



development • commercial • residential • brokerage

May 3, 2019

**Sent By Email and By USPS Mail**

Mr. Paul Wainwright, Chairman  
Atkinson Conservation Commission  
21 Academy Drive  
Atkinson, NH 03811

Dear Mr. Paul Wainwright and the Conservation Commission Members,

I am writing in accordance with the provisions of RSA 635:2 to put you on notice that you are not authorized to enter our private property located at Page Farm Subdivision, Off Main Street in Atkinson, consisting of all roads, Wild Pasture Lane, Webster Court, Brown's Way, Colonial Run and all property owned and controlled by Midlands Investments, LLC that is known as the Page Farm Subdivision. Specifically, you, the Conservation Commission and any outside contractors hired or directed by the Conservation Commission or its members are not authorized to enter this private property unless you are given permission by the Owner in writing and are accompanied by one of the Owner's Representatives, Michael Green or Richard Green. Also, be aware that you do not have the right to have outside contractors perform any work on this property and you do not have any right to have any work billed to the Owner, Midlands Investments, LLC

You have been observed willfully trespassing on our property bringing with you other members of the Conservation Commission, state officials and outside contractors without written permission. This is not acceptable. You are hereby officially put on notice that you have no right to enter this property. If you choose to defy this order and continue to enter the property at Page Farm Subdivision, Off Main Street in Atkinson, consisting of all roads, Wild Pasture Lane, Webster Court, Brown's Way, Colonial Run and all property owned and controlled by Midlands Investments, LLC, we will have our Attorney take appropriate action either to enjoin such conduct or to seek to prosecute you for criminal trespass. A copy of the statute is enclosed for your reference.

Thank you for your courtesy and cooperation.

Very truly yours,

Michael P. Green  
Midlands Investments, LLC



# TITLE LXII CRIMINAL CODE

## CHAPTER 635 UNAUTHORIZED ENTRIES

### Section 635:2

#### **635:2 Criminal Trespass. –**

I. A person is guilty of criminal trespass if, knowing that he is not licensed or privileged to do so, he enters or remains in any place.

II. Criminal trespass is a misdemeanor for the first offense and a class B felony for any subsequent offense if the person knowingly or recklessly causes damage in excess of \$1,500 to the value of the property of another.

III. Criminal trespass is a misdemeanor if:

(a) The trespass takes place in an occupied structure as defined in RSA 635:1, III; or

(b) The person knowingly enters or remains:

(1) In any secured premises;

(2) In any place in defiance of an order to leave or not to enter which was personally communicated to him by the owner or other authorized person; or

(3) In any place in defiance of any court order restraining him from entering such place so long as he has been properly notified of such order.

IV. All other criminal trespass is a violation.

V. In this section, "secured premises" means any place which is posted in a manner prescribed by law or in a manner reasonably likely to come to the attention of intruders, or which is fenced or otherwise enclosed in a manner designed to exclude intruders.

VI. In this section, "property," "property of another," and "value" shall be as defined in RSA 637:2, I, IV, and V, respectively.

**Source.** 1971, 518:1. 1979, 377:7. 2005, 125:1. 2010, 239:2, eff. July 1, 2010.