

**Atkinson Conservation Commission Minutes**  
**Monday, June 3, 2019**  
**Atkinson Town Hall**

Approved July 1, 2019

**Members Present:**

Paul Wainwright, Chair  
Denise Legault, Vice Chair (arrived late)  
Dan Kimball  
Dennis Krause  
Jeff Nenart  
Scott Kukshel  
Tim Dziechowski, Alternate (voting, arrived late)

**Others Present:**

Karen Steele  
Josh Manning – Lewis Builders

**1) Call to order, attendance**

Chair Wainwright called the meeting to order at 7:32 PM, Monday, June 3, 2019. Chair Wainwright reviewed the attendance list and declared that a quorum was present.

**2) Election of Officers & Review of Contact Information:**

Chair Wainwright stated that he would be willing to continue serving as Chair, Denise Legault has agreed to continue as Vice Chair, and Peter McVay has agreed to continue as Secretary for the Conservation Commission. Chair Wainwright invited any other nominations. There were none.

**Member Kukshel made a motion to approve the slate of officers as presented. The motion was seconded by Member Nenart. Five members of the Atkinson Conservation Commission then present at the June 3, 2019 meeting voted in favor. Vote: 5/0/0. (Vice Chair Legault and Alternate Dziechowski has not yet arrived)**

**3) Contact Information**

Chair Wainwright asked members to review their contact information for accuracy. An updated copy of members' contact information is attached.

**4) Review of sealed minutes:**

Chair Wainwright distributed a redacted table of minutes that are currently sealed. A copy of this table is attached.

Chair Wainwright reported that all of these non-public minutes that are currently sealed involve land transactions that are still pending. No motion was made to un-seal any of these minutes.

Chair Wainwright stated that, for the sealed minutes from the non-public session on June 12, 2018, the Commission was mistaken that a “sunset” time limit on sealing minutes was required. This is incorrect. Chair Wainwright requested a motion to continue to leave the non-public minutes from June 12, 2018 sealed.

**Member Nenart moved to continue to leave the non-public minutes from June 12, 2018 sealed without a specific time limit. Member Krause seconded the motion. Five members of the Atkinson Conservation Commission currently present at the June 3, 2019 meeting voted in favor. Vote: 5/0/0**

Chair Wainwright stated that on May 6, 2019, there was a non-public session in which two issues were discussed. One was the ZBA Appeal, and those minutes became un-sealed automatically on May 17. The other topic was the wetlands issue on Page Farm. Chair Wainwright asked for a motion to un-seal “Topic B” from the non-public minutes from May 6, 2019.

**Member Krause moved to un-seal “Topic B” of the non-public minutes from the May 6, 2019 meeting. Member Nenart seconded the motion. Five members of the Atkinson Conservation Commission currently present at the June 3, 2019 meeting voted in favor. Vote: 5/0/0**

#### **5) Review and approval of minutes:**

\* Please note that Vice Chair Legault entered the meeting at 7:36 pm.

**Vice Chair Legault made a motion to approve the minutes of the May 6, 2019 regular meeting of the Atkinson Conservation Commission, as amended. Member Kimball seconded the motion. Six members of the Atkinson Conservation Commission present at the May 6, 2019 meeting voted in favor. Vote: 6/0/0.**

**Member Nenart made a motion to approve the minutes of the May 11, 2019 special session of the Atkinson Conservation Commission, as written. Member Kukshel seconded the motion. Four members of the Atkinson Conservation Commission present at the May 11, 2019 meeting voted in favor. Vote: 4/0/0.**

#### **6) Treasurer’s report and 2019 budget:**

Chair Wainwright presented the current Treasurer’s Report – a copy is attached. There were no comments or questions.

\*Please note that Alternate Dziechowski entered the meeting at 7:41 pm.

#### **7) Trails and Grants Working Group Report:**

Member Krause has been working to apply the AllTrails app to our trails. He explained to the Commission how the application works, and what it will look like. He feels the current

trail maps that he made with the app are very confusing, and the ultimate goal is to smooth them out. He would like to produce a hard copy map for each of our trails. He would like to contact the Friends of Harold Parker State Forest and see how North Andover, MA came up with their format, because it provides a lot of the information, and their format is desirable.

Member Krause feels that the AllTrails app is a little confusing because there is too much information. He stated the ultimate goal would be two phases: 1, having a hard copy for each of our trails, and 2, then follow up with implementing the seven trail systems in Atkinson on AllTrails. Chair Wainwright acknowledged that he feels that North Andover maps are simple and informative.

Ms. Steele asked if the Commission has seen Hampstead's maps and explained that different layers could be added [to the tax assessor's maps]. She stated you can go to an assessor tab and click on a plot of land. Chair Wainwright asked if it was the same system Atkinson uses. Mr. Manning informed the Commission that it is called a GIS system – Geographical Information System. Chair Wainwright stated that Atkinson tax maps are not GIS.

Member Krause stated that all the Atkinson trails are now blazed. He has used a particular color convention with the blazes, and he would like to maps to show these colors.

Member Krause pointed out that there are a lot of all-terrain vehicles, etc. activities on the trails and there was discussion that there really is no way to control that.

Chair Wainwright displayed a QR code that he created for the digital map projected that is laminated and posted at the entrance to Sawyer. A copy is attached to these minutes.

Member Krause stated that the first trail he would like to submit to AllTrails would be the Woodlock Trails. Chair Wainwright concurred that they should be called the "Woodlock Trails" – the forest is actually the Chadwick Town Forest, but people know the area as the Woodlock Recreation Area, so it would be less confusing to name them the same.

Mr. Manning pointed out a smart phone app called GAIA GPS that will give parcel information data. There are several layers that you can turn on and off, and it allows you to do limited trail mapping also. Chair Wainwright stated that the Commission uses Terrain Navigator Pro and they pay approximately \$300 a year for that service and asked Mr. Manning if there was a cost to GAIA GPS. Mr. Manning stated it's approximately \$20 per year.

Chair Wainwright asked Member Krause what the next steps were. Member Krause stated that they are:

- Improve communicating with All Trails,
- Walk the Woodlock trails to have a nice smooth trace on that.
- Use Woodlock as a pilot and work out any kinks.

- See the hard copy of Harold Parker State Forest map to see what format they used so that perhaps Atkinson can adopt that also.

Chair Wainwright asked how to get the dotted lines out of AllTrails for trails that don't exist anymore. Member Krause stated that his inputting of new trails over-rides old content. He doesn't believe they need to worry about editing out the old information.

Chair Wainwright stated that he feels people that are not on the Commission need to be recruited. Member Krause stated he would like to get some non-commission people to be active and perhaps do maintenance on the trails.

## **8) Brief Reports & Other Business:**

### **a. "Office Hours"**

The CC office hours for this month will be June 15<sup>th</sup> and Chair Wainwright is asking for volunteers to join him. Vice Chair Legault agreed to join him. Chair Wainwright stated that he will probably take August off and reassess if we would like to continue starting in September.

### **b. Installation of gates**

Member Kimball purchased two pairs of gates. The Commission is asking for volunteers to help dig holes. The gates will be installed in back of Carolyn Orr Town Forest at the end of Robie Lane, and the entrance to the Chambers Fila Town Forest at the end of Brent Ebner's driveway off of East Road at the Atkinson – Hampstead town line. There was discussion about renting a tractor attachment or tool to help dig the holes.

### **c. Town Forest Management training**

This training will be run by UNH Cooperative Extension in Fremont on June 7. Chair Wainwright stated that he will attend.

### **d. Eagle Scout Project**

Eagle Scout candidate Adam Torris is approximately half way through the canoe launch improvements. He has painted the parking berms, and has cleaned up the area. It seems that a nearby neighbor is not happy with the yellow paint. Chair Wainwright stated that he will go down to see if he can find the property lines.

Vice Chair Legault asked about placing a sign on Rt. 111. Chair Wainwright stated his is not in favor of that, but would be in favor of a sign where the road splits. Vice Chair Legault is in favor of the sign because she feels it is public access. Member Kukshel agreed that a sign on Rt. 111 would serve as an advertisement and cause traffic issues.

### **e. Land Conservation Planning**

Member Wainwright stated that this is still on hold primarily due to lack of funding. The Grassroots Fund grant decision will be announced in mid-June, but Chair Wainwright is not optimistic that we will receive funding from them. The Commission is also in need of someone who is good at publicity so that we can engage the public in the formation of the plan.

#### **f. Invasives Mitigation on Sawyer**

Chair Wainwright stated that a warrant article is needed to spend money from the Forest Maintenance Fund. Therefore, removal of invasive plants from the Sawyer Town Forest won't be done until next year.

The next step is to define the project scope. Chair Wainwright suggested Greg Jordan of UNH Cooperative Extension could be hired to do this. Then we could approach qualified contractors to get bids. Based on these bids, a warrant article could be written for next March's Town Meeting.

Chair Wainwright asked for volunteers to pursue the process of hiring Mr. Jordan. None materialized.

#### **g. Girl Scouts looking for Projects**

Member Nenart was approached by the leader of Local Girl Scouts. They are looking for projects for the young teenage girls to complete. He asked for brainstorming to come up with ideas that would be appropriate for the next meeting.

The Camera operator Russ Wolfe suggested a social media campaign that they can head up.

Chair Wainwright informed the Commission that DES has a new web site called #ThisIsNH, where you can post photographs of interesting or scenic places around the state, and suggested this might be something that the Girl Scouts can look into.

### **9) Next Meetings**

Chair Wainwright took a count of who would be available if a special meeting if one is needed on June 10 to discuss the appeal. Most members stated they would be available, which would form a quorum. Chair Wainwright asked that people keep that date open in case a meeting was needed.

The next two regular Conservation Commission meetings will be Mondays July 1 and August 5, 2019.

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.

## **10. Non-public session: Administrative Appeal under RSA 676:5**

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

At our May 6, 2019 meeting, the Commission voted to authorize the chair to write a letter of administrative appeal to the ZBA, pay the application fee from our annual operating budget, and seek legal counsel on the matter. A copy of this Letter of Appeal is attached to these minutes.

Subsequent to the May 6 meeting, Chair Wainwright retained attorney Victor Manougian of the McLane Middleton law firm to assist with preparing for the appeal hearing on June 12, and to represent us at that hearing if necessary.

Chair Wainwright reviewed the discussions he has had with attorney Manougian concerning our appeal to the ZBA under RSA 676:5. Mr. Manougian feels we have a strong argument that the Planning Board's interpretation of zoning ordinance 600:11 should have been handled by the ZBA. His opinion is that applying the "original intent" of the ordinance, written in the early 1980's, to the current situation is unreasonable, since Atkinson is a very different place from when the ordinance was written. In a nut shell, his opinion is that the ordinance should have been applied to the current project without reference to what the original intent was, and that the proper interpretation of the ordinance as it applies to this case should have been made by the ZBA.

Attorney Manougian also stated that the objection raised by Attorney Bosen claiming that we do not have the right to appeal to the ZBA because this is an Innovative Land Use ordinance is simply incorrect, because the entire Rural Residential Cluster zoning described in Section 600 was not adopted pursuant to RSA 674:21, as claimed by Attorney Bosen. A copy of attorney Bosen's letter is attached to these minutes.

Chair Wainwright also discussed attorney Manougian's guidance concerning the delay of the water tank. Mr. Manougian confirmed that, since the appeal was filed prior to the Planning Board's bifurcation of the plan to separate out the water tank, the tank is, indeed, on hold until the appeal runs its course. Assuming that the ZBA rules in our favor concerning the appeal, the developer would then likely file a motion to reconsider, which, if denied, would likely result in the case going to Superior Court, which would likely take 3 to 6 months.

In addition, Chair Wainwright reported that attorney Manougian's opinion is that if the Alteration of Terrain permit is denied because of the Wetland Bureau's concern about the vernal pool they observed, then the tank would also be delayed if it is not separated from the 7-unit plan.

Chair Wainwright reported that he is working through Senator Chuck Morse's office to see if the Governor could intervene in some way to get the tank back on track.

Chair Wainwright and Vice Chair Legault will be meeting with attorney Manougian on Wednesday, June 5, to discuss preparations for the appeal hearing.

**Denise Legault made a motion to return to public session. Scott Kukshel seconded the motion. The motion carried unanimously, 7/0/0.**

There were no decisions made in non-public session, and no motion was made to seal the minutes.

## **11. Adjournment**

**Tim Dziechowski made a motion to adjourn. Jeff Nenart seconded the motion. The motion carried unanimously, 7/0/0**

The meeting adjourned at 8:45 PM.

### **Attachments:**

- Member Contact Information
- Redacted list of sealed minutes
- Treasurer's Report
- QR Code for Sawyer Trail Map
- Letter of Administrative Appeal
- Letter from Attorney Bosen

### **Deferred Items:**

- Charlie George's land purchase request
- Land Conservation Planning – need funding and publicity
- Invasives mitigation on Sawyer

# Atkinson Conservation Commission

## Contact Information

### Members:

**Paul Wainwright, Chair**  
[paul@paulwainwrightphotography.com](mailto:paul@paulwainwrightphotography.com)  
home: 362-6589  
cell: 603-247-2263 - TEXT ONLY

**Denise Legault, Vice Chair**  
[denise\\_legault@uml.edu](mailto:denise_legault@uml.edu)  
home: 686-5145  
cell: 603-479-1881

**Pete McVay, Secretary**  
[p.mcvay@comcast.net](mailto:p.mcvay@comcast.net)  
home: 362-5288  
cell: 603-502-0116

**Jeff Nenart**  
[jeffmn1213@comcast.net](mailto:jeffmn1213@comcast.net)  
home 382-2107  
cell: 508-277-7137

**Dan Kimball**  
[wilvalent@yahoo.com](mailto:wilvalent@yahoo.com)  
home: 362-4789  
cell: 603-560-1796

**Scott Kukshtel**  
[scottkukshtel@gmail.com](mailto:scottkukshtel@gmail.com)  
home: n/a  
Cell: 603-553-0637

**Dennis Krause**  
[dennis\\_krause@msn.com](mailto:dennis_krause@msn.com)  
home: 362-4610  
cell: 603-362-7406

### Alternates:

**Tim Dziechowski**  
[tdziecho@gmail.com](mailto:tdziecho@gmail.com)  
home: 362-4072  
cell: 603-479-2031

**Bill Steele**  
[diving4bugs@yahoo.com](mailto:diving4bugs@yahoo.com)  
home: 362-8850  
cell: 978-621-2185

**Your Name Here**

### Recording Clerk:

**Debbie Husson**  
[djhusson@comcast.net](mailto:djhusson@comcast.net)  
home: 362-8494  
cell: 603-490-5360

### Regular Guests:

**Brent Ebner** (Hampstead CC)  
[brent.ebner@nationalgrid.com](mailto:brent.ebner@nationalgrid.com)  
[bebner0963@comcast.net](mailto:bebner0963@comcast.net)  
home: 382-1375  
cell: 603-380-0837



Minutes Name	Seal	Release	Topic	Recommendation
2006-01		✓	Marylyn Matte lot: purchase; Currier lot: land swap	Both were purchased.
2007-01		✓	Busby Land Purchase	Land was negotiated in trade: sports field for prime conservation land.
2009-03		✓	Jane Jones lot, Map 12, Lot 1, purchase	Land was purchased.
2009-07		✓	Ruth MacPherson trust, via Carol Grant: purchase Chooljian land	Discussion with Carol Grant of use of MacPherson trust money for land purchase. Chooljian land was one possibility. Still open, but a remote possibility.
2010-08	✓		██████ land purchase	This is still an active project. Recommend not unsealing.
2010-09		✓	Essex Greenbelt Connector purchase possibilities	Swampland was eventually purchased, but Greenbelt purchases are still remotely possible.
2010-11		✓	Swampland Map 8 Lot 10 (Bryant Brook) purchase	Land was purchased.
2011-02		✓	Blunt's Pond, Gordon Brown Trail, Kinney Garage	None of these were purchased.
2011-03		✓	Purchase of Gary Witley lot?	Discussion with Carol Grant and lot was not purchased.
2011-04		✓	Blunt's Pond, Pettingill back lot Map 10 plot 8	Discussion with Carol Grant and lot was not purchased.
2011-06	✓		██████ Land, SE Passage, Ruth McPherson-Lang-Brown, Kutzleman greenway passage	██████ land purchase still possible.
2011-06-20			Duplicate of 2011-06	Remove
2011-09	✓		██████ land, Jane Jones Land	██████ land purchase still possible.
2012-07-02	✓		██████, Kinney, Brown(Page) land	██████ land purchase still possible.
2012-07-10		✓	Jane Jones lot	Lot was added to Slade Town Forest.
2012-07			Duplicate of 2012-07-10	Remove
2012-10	✓		██████ Land,	██████ land purchase still possible.
2012-12	✓		██████ meeting	██████ land purchase still possible.
2014_11_10		✓	Gordon Brown Backland	Sold to developer.
2015_06_01	✓		██████ land	Still pending

<b>Minutes Name</b>	<b>Seal</b>	<b>Release</b>	<b>Topic</b>	<b>Recommendation</b>
2015_07_06	✓		██████████ Land	Pending
2015_12_07		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2016_01_04		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2016_02_01		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2016_03_07		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2016_05_02		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2016_06_06		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2016_11_07		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2016_12_05		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2017_09_11		✓	Turner Brown/backland development (Page Farm)	Easement and land purchase issues have been settled.
2018_06_12	✓		██████████ Land	Pending
2018_07_02	Done already		Land swap with Charles Kinney	Deal is dead – minutes unsealed Aug 6, 2018

**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, May 6, 2019 Minutes, Apr 1, 2019 Minutes, Mar 3, 2019 Minutes, Feb 4, 2019	\$36.00 \$132.00 \$120.00 \$156.00	5/27/2019 4/24/2019 3/26/2019 2/21/2019	5/27/2019 4/26/2019 3/26/2019 2/22/2019	\$36.00 \$132.00 \$120.00 \$156.00	\$ 444.00	\$ 2,056.00
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>\$ 1,856.32</b>	<b>\$ 7,170.68</b>

# Digital Trail Map Pilot Project

1. Download this App: AllTrails
2. Using your smartphone camera, follow this link:



Sawyer Loop

3. Tell us what you think:  
[conservation@atkinson-nh.gov](mailto:conservation@atkinson-nh.gov)

**TOWN OF ATKINSON CONSERVATION COMMISSION**  
**21 Academy Avenue**  
**Atkinson, New Hampshire 03811**

**NOTICE OF APPEAL**

May 14, 2019

Atkinson Zoning Board of Adjustment  
21 Academy Avenue  
Atkinson, NH 03811

Re: Administrative appeal under RSA 676:5 of zoning ordinance 600:11 interpretation contained in the decision of the Planning Board dated April 17, 2019 granting relief from the perimeter buffer requirements to the applicant Midland Investments, LLC

Dear Chairman and Zoning Board of Adjustment Members –

The Atkinson Conservation Commission is requesting an administrative appeal hearing under RSA 676:5 of a zoning ordinance interpretation made by the Atkinson Planning Board at its meeting on April 17, 2019. The zoning ordinance in question is 600:11, which concerns perimeter buffer requirements for new subdivisions. The project in question is the proposed 7-unit addition to the Page Farm development.

At their meeting on April 17, the Planning Board concluded that a Zoning Board of Adjustment review is not needed for Midland Investments' proposed cutting and grading in the perimeter buffer between their development and the town's conservation land. The Planning Board came to the same conclusion concerning use of a different portion of the buffer for a bioretention area. At that meeting, the Planning Board went on to grant conditional approval of the plan.

We disagree with this administrative decision by the Planning Board to bypass ZBA review of this plan as it relates to zoning ordinance 600:11, and are asking for a hearing before the Zoning Board of Adjustment under RSA 676:5.

The applicant has claimed that this is a case of "Administrative Gloss," which applies to situations where there is ambiguity in an ordinance, and a person or board has consciously interpreted the ambiguity in a particular way, and changes their interpretation without legislative action. Since there is no ambiguity in the perimeter buffer ordinance, Administrative Gloss does not apply. Additionally, any prior approvals by the Planning Board are not of precedential value as each application has its own set of unique facts.

Furthermore, while we do not disagree that other similar encroachments into perimeter buffers have occurred in other developments in Atkinson, we do disagree that previous cases were a conscious interpretation of 600:11. By their own account, in the meeting on April 17 members of the Planning Board repeatedly stated that they had never discussed these cases in the past. They just happened. Planning Board discussion about similar perimeter buffer encroachment in other projects never took place. Since this is the first time such a debate has occurred, we feel it is a unique situation that does not set a precedent for the current situation.

Another unique aspect of this case is this: the applicant has failed to demonstrate that there is a repeated pattern in which an abutter has objected to such use of a perimeter buffer, the Planning Board has heard the abutter and considered his objections, but has ruled in favor of the applicant anyway.

We feel that it is the responsibility of the Zoning Board of Adjustment to make interpretations of zoning ordinances, not the Planning Board, particularly since the Zoning Board of Adjustment previously granted a variance from Section 600:11, b to this same applicant for the same subdivision on September 12, 2018.

We ask that your board hold a hearing to consider our appeal, and if you agree, we ask that you require the applicant to apply for a variance to determine whether the proposed use of the perimeter buffer under 600:11 should be allowed or denied.

Finally, this appeal is properly before the Zoning Board of Adjustment pursuant to RSA 676:5 as the Town of Atkinson has not adopted Section 600 of their zoning ordinances under RSA 674:21.

A motion to make this appeal received unanimous support from the Atkinson Conservation Commission at their regular meeting on May 6, 2019.

Thank you for your prompt attention to our concerns.

Sincerely,



**Paul Wainwright, Chair**



**Denise Legault, Vice Chair**



**Peter McVay, Secretary**

Copy to :

Sue Killam, Atkinson Planning Board Chair  
Sue Coppeta, Atkinson Planning and Zoning Administrator  
David Cressman, Atkinson Town Administrator  
Julie LaBranche, Rockingham Planning Commission

**BOSEN & ASSOCIATES, P.L.L.C.**  
**ATTORNEYS AT LAW**

**John K. Bosen**  
Admitted in NH & MA

May 24, 2019

**Christopher P. Mulligan**  
Admitted in NH & ME

Atkinson Zoning Board of Adjustment  
21 Academy Ave  
Atkinson, NH 03811

**Molly C. Ferrara**  
Admitted in NH & ME

**Bernard W. Pelech**  
Admitted in NH & ME

Re: Midland Investments, LLC/Administrative Appeal

Dear Chairman and Members of the Zoning Board of Adjustment,

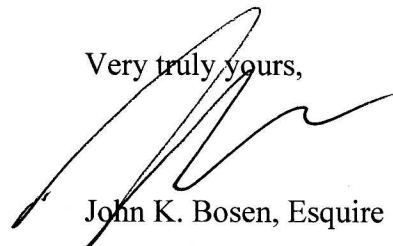
This office represents Midland Investments, LLC who received conditional approval from the Town of Atkinson Planning Board on April 17, 2019 to add seven lots to the Page Farm Subdivision.

As a preliminary matter, Chairman Saba should recuse himself from any deliberations on this matter as he was present at the April 17, 2019 Planning Board hearing and spoke in opposition to the application. As a result, he is now legally disqualified and should recuse himself from any vote on the administrative appeal filed by the Conservation Commission.

As an additional preliminary matter, the Atkinson Conservation Commission has alleged that the Planning Board misinterpreted the zoning ordinance. However, RSA 676:5 III makes it clear that if the zoning ordinance contains an innovative land use control adopted by RSA 674:21 as in this case, then the Planning Board decision made pursuant to that delegation cannot be appealed to the Board of Adjustment, but should be made to the Superior Court as provided in RSA 677:15. In this case, the appeal by the Atkinson Conservation Commission is made relative to innovate land use controls and must be appealed to the Superior Court.

Lastly, Midlands Investments, LLC has over 59 acres of Open Space in the subdivision and is well within the allowable density. As a result of the foregoing, this appeal lacks merit and should be dismissed.

Very truly yours,



John K. Bosen, Esquire

Cc: client  
Atkinson Conservation Commission  
Atkinson Planning Board