

## **Atkinson Conservation Commission Minutes**

**Monday, July 2, 2018**

**Atkinson Town Hall**

*Approved August 6, 2018*

### **Members Present:**

Paul Wainwright, Chair  
Denise Legault, Vice Chair  
Pete McVay, Secretary  
Dan Kimball  
Scott Kukshel  
Dennis Krause  
Jeff Nenart, Alternate (voting)  
Peter Bradshaw, Alternate

### **Others Present:**

Tim Lavelle, Lavelle Associates  
Sue Killam, Planning Board Chair  
Dean Killam  
Peter and Erica Corbett  
Bob Malo

### **1) Call to order, attendance**

Chair Wainwright called the meeting to order at 7:32 PM, Monday, July 2, 2018. Chair Wainwright declared a quorum was present, and asked Alternate Nenart to function as a voting member since Alternate Bradshaw was a voting member last month.

Chair Wainwright passed around a sign-in sheet for members and guests.

### **2) Review and approval of minutes: June 12, 2018 public and nonpublic**

Chair Wainwright requested a motion to approve the minutes of the June 12, 2018 public meeting of the Atkinson Conservation Commission.

**Vice Chair Legault made a motion to approve the minutes of the June 12, 2018 public session of the Atkinson Conservation Commission as amended. Member McVay seconded the motion. All members of the Atkinson Conservation Commission present at the June 12, 2018 meeting and the July 2, 2018 meeting of the Atkinson Conservation Commission voted in favor. Vote: 5/0/0.**

Chair Wainwright requested a motion to approve the minutes of the June 12, 2018 nonpublic session of the Atkinson Conservation Commission as written.

**Member McVay made a motion to approve the minutes of the June 12, 2018 nonpublic session of the Atkinson Conservation Commission as written. Member Kimball seconded the motion. All members of the Atkinson Conservation Commission present at the June 12, 2018 meeting and the July 2, 2018 meeting of the Atkinson Conservation Commission voted in favor. Vote: 5/0/0.**

Sue Killam, Chair Planning Board, informed the Commission that, as a point of order, the private session minutes should be sealed during the public session.

Chair Wainwright agreed that the minutes should be sealed in public session and requested a motion to seal the June 12 nonpublic minutes. Ms. Killam expressed her understanding that the Commission must pick a date when the minutes would automatically be made public. Chair Wainwright suggested one year from the date of this meeting and again requested a motion to seal the minutes.

**Member Kukshel made a motion to seal the minutes of the June 12, 2018 nonpublic session of the Atkinson Conservation Commission for 12 months from July 2, 2018.**

Discussion: Member Kimball asked what could be done if the issue is still open at the end of the year. Ms. Killam informed the Commission that, in her opinion, the issue would have to be revisited.

**Member Kimball seconded the motion. All members of the Atkinson Conservation Commission present at the June 12, 2018 private session and the July 2, 2018 meeting of the Atkinson Conservation Commission voted in favor. Vote: 5/0/0.**

### **3) Scout Troop 9: Eagle Projects - Cooper Howson & Josh Fielder:**

Chair Wainwright informed the Commission that he received an email from Mark Hertrich, Scout Liaison for the Commission informing the Commission that he did not think Scouts would be present. The Scouts also did not do trail work on the southern portion of Sawmill Trail. Chair Wainwright asked Commission members for volunteers to clear downed trees.

### **4) Map 9 Lot 29 (Maple Avenue at Blunts Pond) Wetland Setback Variance Application**

Mr. Lavelle presented the new plan to the Conservation Commission. Mr. Lavelle explained that the wetlands were reflagged by Bruce Gilday, wetlands scientist, new test pits for the septic system were dug and a normal septic can be designed. The soils are sandy. The house is still proposed in the same location. The applicant is also proposing two drywells for roof runoff which would work because the soil is sandy. The driveway will be further down Maple Avenue where there is already a hole in the stone wall. The lot has been staked. Changes to the plan are new soils information, wetlands flags, drywells, and the change in the location of the driveway. The proposed wetlands setback is still 51 feet, with a 49-foot variance requested.

Chair Wainwright requested comments from the Commission.

Member Kukshel asked if the driveway was relocated to the existing hole in the stone wall and Mr. Lavelle agreed and stated it is easier to pull off the road at that location so there will be less disturbance of the stone wall. Mr. Lavelle does not know the square footage of the driveway. Member Kukshel remarked that the driveway runs close to the wetlands, and stated that if the Commission were to recommend approval of the variance, the Commission would recommend permeable material for the driveway to the Zoning Board of Adjustment. Mr. Lavelle stated that the current plan specifies asphalt and an option would be Petro Paving which offers permeable paving.

Alternate Nenart asked about the tree line. Mr. Lavelle explained that it is not in the plan. Chair Wainwright informed the Commission that the applicant is allowed to cut trees in the wetland as long as it does not disturb the earth. Chair Wainwright remarked that it would be nice if there were some plantings to act as a buffer. Mr. Lavelle also stated his opinion that the area is not heavily wooded.

Member McVay stated he is concerned about the slope and combination of sandy soil during construction and during use. There is about a 10 foot drop according to the topographic map.

Member Krause stated that he has lived across from the pond for 42 years. He explained that there is a culvert that is frequently blocked by beaver dams so that the pond level varies considerably and there is danger of flooding.

Member Kimball remarked that the house will likely speed up the eutrophication of the pond and shorten its life, therefore, he feels the proposed project is detrimental to the pond. In his opinion it will raise the temperature of the pond and speed up runoff. He is opposed to it [the project].

Member McVay informed the Commission that the soil around the pond is sandy, but the subsurface of the pond is Bradford Clay, so anything that goes into the pond will layer on top of the subsurface.

Mr. Corbett stated that it is hard for him to believe that his one house will be the end of the pond. There is one house with a lawn that goes right to the edge. Any fertilization goes into the pond. He does not want anything to harm the pond. He does not think one house will be the end of the pond.

Member Kimball responded that the house will accelerate the eutrophication of the pond. Mr. Corbett explained that he has property that he wants to develop and he is trying to do it in a reasonable way. Mr. Lavelle explained that the house is over 50 feet from the pond, which is the state setback to great ponds and this is not a great pond. With proper silt fencing, Mr. Lavelle believes the house can be built without degrading the pond.

Ms. Killam asked if the septic system has been approved by DES. Mr. Lavelle explained that the septic system has not been submitted for approval and it is designed for three bedrooms. Ms. Killam responded that procedurally, the first step is septic approval by DES and it is not that expensive.

Mr. Malo asked if a certified wetlands scientist had defined the wetlands boundary. Mr. Lavelle responded that the wetland scientist is Bruce A. Gilday.

Mr. Malo asked why there is a zoning ordinance requiring a 100-foot setback from a wetland and the applicant is asking a 50-foot variance. Atkinson already has liberal zoning laws, and in his opinion this variance would be too much. He stated that if the variance is granted, then he will hire a conservation lawyer.

Chair Wainwright reminded Mr. Malo that the Conservation Commission does not have authority to approve or deny variance applications. It can only make recommendations to the ZBA.

Mr. Corbett reiterated that he is concerned about damage to the wetlands.

Chair Wainwright also stated that in the past the Conservation Commission has recommended many variances for small wetlands or an extra bedroom on an existing house, but this application is for new construction, and the wetland is fairly significant.

Mr. Corbett informed the Commission that the lot was subdivided in 1955 and nothing was done until he became the title holder. From his point of view it is a valuable lot. Chair Wainwright reminded Mr. Corbett that the lot is currently assessed for \$11,300, and that the assessor's notes indicate that it is considered to be wetlands.

Chair Wainwright stated that he would like to do a site walk. The applicant is going before the Zoning Board in August. Chair Wainwright asked for an informal poll of the sense of the Commission. Since there were a number of Commission members still undecided, a site walk would be appropriate.

Member Kukshitel stated that the Planning Board has worked hard on wetlands setbacks in the past. Sue Killam agreed that there are different kinds of wetlands, and different setbacks may be required.

Chair Wainwright informed Mr. Lavelle that he would poll the Commission members for available dates for a site walk, and would contact him.

## **5) Other Issues Involving Tim Lavelle**

### **a) Tony & Leigh Komornick (16 Robie Lane, Map 5 Lot 40-1) Property Line Complaint**

Tony and Leigh Komornick wrote to Tim Dziechowski last fall about the property line between their home and the Orr Town Forest. Property stakes were apparently added just prior to the selective timber harvest on the Orr Town Forest a year or so ago. There are two sets of stakes. Mr. Lavelle stated that he received the email and he will investigate the situation. Ms. Killam explained that boundary markers can only be set by a licensed land surveyor, and if different boundary markers were set by different land surveyors, then the dispute has to go to the State. Mr. Lavelle stated that he may have staked the line at one time and would like to look at it.

### **b) Judge Marshall Town Forest Access from Industrial Way**

Chair Wainwright explained that he has a plan and the Town should own the last 50 feet but Chair Wainwright cannot find the deed. Mr. Lavelle stated that he is sure that a deed was recorded. Ms. Killam explained that she is not aware if the deed exists and it is up to the property owner to convey the property to the Town. Chair Wainwright explained that there are no visible monuments because the site has been bull dozed. Ms. Killam also explained that at

the same time, the Town has to grant a deed to the property it gave in exchange for the new access way.

Ms. Killam also informed the Commission that State law is not clear on the subject, it has been the point of the Planning Board to require the deeds but not without authorization from the RSA's. Mr. Lavelle stated that he would research the issue.

**c) 126 Maple (Chris & Valerie Leavitt) Wetland Mitigation D&F Application**

Mr. Lavelle explained that the application is very close to complete and it should go out tomorrow.

**6) Upcoming Trail Maintenance:**

**a) Sawyer Town Forest**

Mr. Krause reported that the trails are clear and he has reblazed, where necessary, and all the trails that he blazed 12 years ago are clear and reblazed.

**b) What to do about ATV damage on Sawyer?**

Member Krause explained that the trails are clear. The only issue is ATVs. Chair Wainwright stated that more signage is needed to let people know that no ATVs are allowed. Mr. Krause stated that if a gate were put up, then ATVs would just go around it. Chair Wainwright met the new police chief and the police can enforce the regulation, but they are not there [in the woods]. Fish and Game can enforce the no ATV rule, but they need to know when ATVs are on the trails. Mr. Krause stated that every wet part of the trail is rutted up. Chair Wainwright stated that he would like to use the critter cam to film ATVs on the Sawyer Forest. Signs are also needed.

Member McVay stated that the price of security cameras has dropped considerably and that may be an option. Wi-Fi may not be necessary. Alternate Nenert asked if the signs should state "no unauthorized vehicles." Chair Wainwright informed the Commission that the wife of the chair of the Hampstead Conservation Commission has a sign company. Chair Wainwright also informed the Commission that Hampstead has passed an ordinance allowing police to ticket people using ATVs where they are not allowed. Alternate Nenert asked what the penalty would be. All are good questions, and this issue will be revisited in future meetings.

**c) Orr Town Forest**

Member Kimball informed the Commission that the trail was in good shape up to the new selective cut. Alternate Nenart stated that he cut through the big pine that was blocking the trail but did not have time for anything else. Member Kimball stated that there is good potential for trails on the selective timber harvest was recently done. Member Krause stated that some of the trails are old carriage trails from Trinity Camp. Member Kimball stated that they would need some grooming and marking. Chair Wainwright stated that he is happy with the progress on trails.

Member Krause also stated that there was a nice area [behind the Community Center] with granite benches and a chimney. Member McVay stated that 10-15 years ago, the Girl Scouts used it extensively. Member McVay stated that it [the Orr Town Forest] has an incredibly diverse geology and ecology. Member Kimball stated that there is a poison ivy problem along the Orr Town Forest. Member Krause reminded everyone that poison ivy is an indication of a healthy forest.

Member Krause asked if the area by the community center would be a good project for the Scouts to clear out.

#### **d) Sawmill South**

The Scouts did not clear that area, so members with chain saws were encouraged to clear it.

#### **7) Multi-town Conservation Commission news:**

Mr. Ebner could not be present. In his email to Chair Wainwright he explained that Plaistow is working with Charlie Marino on a forestry plan.

He has been back and forth with Neatline Associates, the mapping people [concerning the tri-town trail map and emergency responder project]. Mr. Ebner has ordered the letters for the blazes and is purchasing 4x4 posts and will leave them at the Atkinson trail intersections in the event that there are Atkinson residents willing to install them.

#### **8) Other Business**

##### **a) Page Farm Trail Access Points –**

Chair Wainwright has a set of plans. Ms. Killam suggested that whatever the Conservation Commission decides works best, that is not already in the deed or the condominium easement documents (which have not yet been recorded), should be put in there. There is some trail easement language in the condominium declaration has been approved by the Attorney General. Ms. Killam has asked the applicant to record it, but it has not been done as of yet. Once it is, they are a matter of public record and can be upheld. The trail access easement document, another stand alone document, also has not been recorded. If the Conservation Commission decides that they would like something different, both documents need to be amended and added to the deed and the condominium documents. Chair Wainwright asked Ms. Killam for help on making sure the easements are properly recorded.

Planning Board Chair Killam informed the Commission that there is a proposal before the Planning Board by Hampstead Water Company to build a water tower in the development's dedicated open space. The Planning Board did not accept the application [as of this meeting]. If a water tower is approved, then it might affect the trail easements and the condominium documents.

Chair Wainwright stated that he would like an easement from the parking area to the established trail. Chair Killam explained that there should be an easement already. Chair Wainwright asked about the easement between two building lots. Chair Killam explained that

she believes it is only for emergency access. Ms. Killam also explained that the uses of the easements are spelled out in the Conservation Easement documents. Ms. Killam explained that the next meeting of the Planning Board will take up the proposed [water tank] structure in the dedicated open space.

Chair Wainwright stated that Green & Co. got good reviews from Pelham. He walked the land a couple of times with Michael Green's permission. Chair Wainwright passed around photographs of the cleared area at the back of the project.

**b) DES Inspection of Page Farm Development on Tuesday, June 26**

Chair Wainwright reported that he walked the back of the Page Farm project on Tuesday, June 26, accompanying Jirias Charabati, a DES compliance inspector, who was on a routine compliance visit. Ms. Killam explained that she asked the Town Engineer to check on erosion control and should have a written report. Chair Wainwright informed the Commission that he specifically asked the DES inspector, Jirias Charabati, on Tuesday and was informed that the inspector thought the wood chips [he could not remember the technical name for this type of erosion control] placed by the developer are sufficient.

**c) Walk northern part of Sawmill trails – Saturday June 30**

Member Krause, Member McVay, Alternate Bradshaw and Chair Wainwright walked the northern part of the Sawmill trails on Saturday, June 30. Chair Wainwright informed the Commission that it is a very nice trail. There was nothing that needed to be cleared. The trails across the Sawmill Ridge development along the deeded trail easement are open and passable. A very responsible, selective cut was apparently done in the dedicated open space in the back of the Sawmill Ridge development. Chair Wainwright reported that it was possible to reach Picadilly Road in Hampstead over a Hampstead trail easement, but the Hampstead portion of the trail was not well maintained. There is a bench in the back of the Sawmill Ridge development overlooking Sawmill Swamp, the "George E. Kinney Jr. Memorial Bench" in memory of the former owner of the land, and Chair Wainwright thinks it is the most gorgeous place in Atkinson.

**d) Dock Issue: James and Eva Perry**

Member Legault spoke with Neal Bilodeau on 6/28/18 and the owner had called him on 6/27. The owner believes that the dock may be grandfathered.

**e) Map 14 Lot 141 (Keith Cutler, 7 Brittany Lane) – Upcoming DES application to "clean" a swamp**

Chair Wainwright received an email from Sue Coppeta regarding a request from Keith Cutler about dredging a pond on his property. Chair Wainwright met with Mr. Cutler and viewed the proposed project. Mr. Cutler is aware that a Dredge and Fill permit is needed from the State. The wetland scientist is Bruce Gilday. The wetlands scientist thinks that the State should give him a permit, Chair Wainwright would be surprised if the State grants the permit.

**f) Ruth McPherson Conservation Trust**

Chair Wainwright explained that Ruth McPherson, in addition to the real estate she gave to the Town during her lifetime (the Town forest that bears her name), also left a sum of money, now worth about \$52,000 which was placed in a Conservation Trust for the purpose of buying conservation land. The trustee was Carol Grant, who has passed away. The trust is now in the hands of the Division of Charitable Trusts. Chair Wainwright spoke to Tom Donovan, director of the NH DOJ Division of Charitable Trusts, and suggested that Atkinson's Conservation fund, or a separate fund managed by the town's Trustees of the Trust Funds, might be an appropriate place for the funds. Chair Wainwright stated that the decision about what to do with the Trust funds will be decided by the Division of Charitable Trusts and the court system.

### **g) Handicap Access to Orr Town Forest Trails?**

Chair Wainwright thought that the area behind the Community Center would be a good area for handicap access. It would have to be graded and crushed stone put in. It would be more than a scout project. A landscaping company would have to be hired. Chair Wainwright stated asked if any members of the Commission would walk the trail. Member McVay stated that there is a small parcel off Pope Road [the Slade Town Forest], it is very flat, has semi-developed trails, and there is parking. He agreed that it would be a good spot for handicapped accessible trails but it needs clearing. Member Krause suggested checking with the Forestry people regarding the Community Center area. Ms. Killam suggested researching what type of surface would be best. She recommended boardwalks rather than crushed stone and talking to Elder Services and the Atkinson Recreation Commission.

### **h) Inventory Updates**

Member Kimball has the inventory updates. Chair Wainwright would like to get signs on the inventory.

### **9) Nonpublic Session under RSA 91-A: 3 II(d) to Discuss Possible Land Acquisition or Sale:**

Chair Wainwright requested to postpone the discussion of the letter from Charles Kinney to nonpublic session under RSA 91-A:3 II(d) to discuss possible land acquisition or sale. Ms. Killam asked whether the land was Town owned and if so, it should be a public discussion. Chair Wainwright replied that jurisdiction is up to Town Counsel and was not going to be discussed or debated in the nonpublic session. Ms. Killam replied that she did not think that an ownership question should be a nonpublic discussion. Chair Wainwright stated that the issue of who has jurisdiction was to be discussed with Town Counsel this coming Friday. The reason for his request for a nonpublic session was that, since Mr. Kinney has indicated he might seek litigation in the matter, Chair Wainwright wanted input from the Commission on what he should do if Town Counsel concluded the Commission had jurisdiction over the sale of the land in question.

Chair Wainwright requested a motion for the Atkinson Conservation Commission to go into nonpublic session under RSA 91-A:3 II(d) to discuss possible land acquisition or sale.



**Vice Chair Legault made a motion for the Atkinson Conservation Commission to go into nonpublic session under RSA 91-A:3 II(d) to discuss possible land acquisition or sale. Secretary McVey seconded the motion. All members present voted in favor. Vote: 7/0/0.**

The nonpublic session adjourned back to public session around 9:10 PM.

**Vice Chair Legault made a motion for the Atkinson Conservation Commission to seal the minutes of the July 2, 2018 private session under RSA 91-A:3 II(d) to discuss possible land acquisition or sale for 12 months from the date of this meeting. Secretary McVay seconded the motion. All members present voted in favor. Vote: 7/0/0.**

#### **10) Next Meeting & Adjournment**

The next regular meeting of the Conservation Commission is Monday, August 6, 2018 at 7:30 PM.

Chair Wainwright requested a motion to adjourn.

**Vice Chair Legault made a motion to adjourn the July 2, 2018 public meeting of the Atkinson Conservation Commission at 9:10 PM. Member McVay seconded the motion. All members of the Atkinson Conservation Commission present voted in favor. Vote: 7/0/0.**