



City of Keene, New Hampshire

CONSERVATION COMMISSION

Monday, December 17, 2018

4:30 PM

**City Hall
2nd Floor Conference Room**

Commission Members

Thomas P. Haynes, Chair
Eloise Clark
Denise Burchsted
Councilor George Hansel

Dr. Brian Reilly
Alexander Von Plinsky, IV
Art Walker, Alternate
Kenneth Bergman, Alternate

No site visit is scheduled

1. Call to Order
2. Approval of Meeting Minutes – November 19, 2018
3. Discussion Items
 - a. NHDES Wetlands Rules Update
4. Informational
 - a. Greater Goose Pond Forest Stewardship Plan
 - b. Aquatic Resource Management Subcommittee Update
 - c. Beauregard Property Acquisition
 - d. Chairmanship
5. Commission Membership – New Hampshire ACC
6. New or Other Business
7. Adjournment – Next meeting date TUESDAY, January 22, 2019

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City of Keene
New Hampshire

CONSERVATION COMMISSION
MEETING MINUTES

Monday, November 19, 2018

4:30 PM

**2nd Floor Conference Room,
City Hall**

Members Present:

Thomas Haynes, Chair
Councilor George Hansel
Eloise Clark
Brian Reilly
Sparky Von Plinsky, IV
Denise Burchsted
Art Walker, Alternate
Ken Bergman, Alternate

Staff Present:

Rhett Lamb, Community Development
Director/Assistant City Manager
Kürt Blomquist, Public Works
Director/Emergency Management Director
Don Lussier, City Engineer
Brett Rusnock, Engineer

Members Not Present:

Andrew Madison

Site Visit: At 3:30 PM, before the meeting, Commission members conducted a site visit to Ellis Harrison Park.

1) Call to Order

Chair Haynes called the meeting to order at 4:30 PM.

2) Approval of Meeting Minutes – October 15, 2018

Councilor Hansel moved to approve the minutes of October 15, 2018, which Mr. Reilly seconded. Ms. Clark noted a correction to the minutes on page five: *Margaret Kasschau* should be corrected to *Margaret Kasschau*. The Conservation Commission carried the motion to approve the minutes of October 15, 2018 as amended unanimously.

3) Informational

a. Sustainable Energy Resolution

Chair Haynes welcomed Suzanne Butcher, from the Energy and Climate Committee, who referenced a letter in the meeting packet. She and Nancy Gillard submitted a draft resolution for City Council consideration that would: set new goals for all electricity consumed in the City to come from renewable energy sources by the year 2030, and that 100% of all thermal energy and energy used for transportation come from renewable energy sources by the year 2050. The draft resolution, which 89 other US cities have adopted, can be viewed in the meeting packet. She explained support for this resolution from the Chamber of Commerce, for example, in helping policy makers understand and take steps to prepare for climate change impacts, like the 71% increased concentration of heavy rainfall events in New England. She welcomed questions from the Commission.

Mr. Walker asked about the increased concentration of precipitation. Ms. Butcher replied studies show increased concentration of precipitation during heavy rain and snow events. This is just one example of climate change our nation is facing.

Chair Haynes said this overview is informational and can be presented on a future agenda. Mr. Lamb recalled the proposed resolution submitted to City Council go before the MSFI Committee on November 28, where they will likely make a recommendation to Council. The Commission can make a statement of support to share with Council when they vote on the recommendation from the Energy and Climate Committee.

Ms. Clark moved for the Conservation Commission to recommend that City Council adopt the resolution presented by the Energy and Climate Committee, with Conservation Commission support. Mr. Reilly seconded the motion, which the Conservation Commission carried unanimously.

b. Shoreland Impact Permit – 11 Production Avenue

Chair Haynes noted this is informational; the Production Avenue approvals are finalized.

4) Discussion Items

a. Goose Pond Dam Permit

Chair Haynes noted the Public Works Director, City Engineer, and Brett Rusnock, Civil Engineer were present to discuss this permit. Mr. Rusnock explained that he would provide a general schedule and status update for the Goose Pond Dam project. The City has approval for the wetland impact permit, shoreland permit, and Army Corps of Engineers permit. The project consultant submitted the dam reconstruction permit to the Dam Bureau recently; approval is anticipated by end of year 2018. Then, staff plans to put the project out to bid by the end of March 2019 and to begin construction by May 1, 2019 at the latest (to be finished in time for the fall recreation season at Goose Pond).

Ms. Clark recalled discussion about lowering the water level of the pond and asked for an update. Mr. Rusnock replied there were two viewpoints on drawing down the pond: 1) drawdown as much as possible to facilitate quickest possible construction work; 2) drawdown as little as possible to minimize environmental impacts. The permit approved a six foot drawdown (as opposed to the original 10' plan), which was amicable to the Commission and other stakeholder agencies. Six feet is sufficient for the contractor to work at a reasonable cost and minimize adverse environmental impacts. The plan is to only drawdown four feet, but there is the option to lower the additional two feet if the project is more difficult than anticipated.

Chair Haynes thanked Mr. Rusnock for the update. Mr. Rusnock will forward finalized plans from the Dam Bureau to the Commission, when available. He will also provide updates on when construction will begin. Additionally, he is discussing with the Director of Parks and Recreation about how to best present the two projects/visions happening at Goose Pond at the same time (Commission natural resource inventory; City dam improvement).

b. Citywide Stream Inventory

Chair Haynes welcomed the City Engineer to provide an overview and update about the City's Tax Ditch (stream) system. The City Engineer reported that the City completed a citywide stream inventory recently. When he visited the Commission in February 2018, he discussed a specific Permit by Notification (PBN) to the NH Department of Environmental Services (DES) for Production Avenue tax ditches. The City used that application as a way to engage DES in reviewing the City's stream inventory and to collaborate on a way forward. That discussion with DES occurred over the last few months; the PBN was denied because of other statutory limits, but it did prompt DES to talk about the stream inventory, which the City needed. After a few

meetings, DES sent the City a summary of agreements that routine maintenance of drainage ditches is not a permit required activity. Specifically, permits are only required for maintenance in existing streams that are straightened or enlarged. Manmade upland streams, however, are not subject to permitting under state law.

The Public Works Director recalled how the City defines tax ditches. This term was adopted in 1954, when the City received a series of federal funds to construct ditches or straighten streams to dewater property for agriculture at the time, and development currently.

The City Engineer said this is a win for the City because DES agrees certain activities can continue in the City without DES involvement. The City does not need a permit to manage vegetation along embankments or maintain culverts in manmade ditches. A permit is only required for maintenance around natural streams; this will make routine maintenance much easier. DES did request the City create a list of maintenance actions in each stream segment, using unique identifiers and photos of each resource. He is working on a scope of work to turn the stream inventory into an operations and management plan that includes, for example, the frequency of different activities, when to schedule maintenance, and seasonal restrictions. This will turn the stream inventory into a long-term guide to caring for the City's tax ditches. The goal is for this to evolve into a recurring work order so the highway crew knows what to expect throughout the year for drainage ditch maintenance. The City Engineer will share the stream inventory report with the Commission when it is available; it will be a unique overview of the City's ditch system with a limited scope and meager budget.

Mr. Lamb added that the City maintained many systems and ditches for years under old assumptions for maintenance ditches; this is ongoing work. The City Engineer agreed this maintenance has always occurred; the City has worked to do so with less oversight since work on Beaver Brook in 2013/2014.

Mr. Reilly asked if any ditches are abandoned. The Public Works Director said that is a question this evaluation and report will help answer. Over time, the City has discharged drainage into all of these ditches; for example, Tannery Brook drains everything north of Park Avenue. Part of his concern (as well as DES) is if ditches can be abandoned. He thinks there are probably ones that can be abandoned. He recalled the distinction that the streams requiring further conversation is those straightened and deepened that were once natural.

The City Engineer added that few tax ditches will be abandoned wholly. He wants to focus on activities that prevent invasive maintenance the City has experienced; for example, maintaining tree cover with minimal vegetation allows water to stay cool without flow reduction, which reduces sediment buildup and dredging. This will minimize the need to impact streams as opposed to abandoning them. The Public Works Director agreed sediment accumulates quickly in the storm water system, which has required multi-million dollar dredging every 30 years, approximately. Sediment comes from various sources such as development sites or the aged piping system. In Central Square, for example, the storm water pipes are from 1899 and no longer have the same insulation to prevent sediment from entering. Moving forward, the City will focus on storm water management from development sites in addition to relining aging storm water mains.

The City Engineer recalled he has been working with Commission's Aquatic Resource Mitigation (ARM) subcommittee. They have discussed the potential to use ARM funds for

sediment removal at the ends of discharge pipes, where it enters the streams; for example, a structure to capture sediment, which is cleaned annually to reduce dredging. There is also a project in the City's Capital Improvement Plan (CIP) to line corrugated metal pipes in the City. Mr. Bergman suggested the sediment could be worsening because of higher concentration of rain events. Mr. Lamb agreed that Keene is in a valley, with highly erodible soils. The Public Works Director added that a lot of soil is moved from properties into surrounding brooks and wetlands; he does not envision that changing as people struggle to manage water on their property.

Chair Haynes and Ms. Burchsted inquired if the stream inventory report will address habitat and wildlife. The City Engineer replied this report is specific to what maintenance is required for drainage purposes; making maintenance more hospitable to wildlife is outside the scope of work at this point. This drainage evaluation is funded with Council money for management and functionality. He would love to see this used to help develop a resource on habitat and wildlife eventually. He and Ms. Burchsted agreed there are opportunities to think creatively beyond this report.

c. Ellis Harrison Park Request to City Council to Acquire Property

Chair Haynes recalled some members attended the site visit to Ellis Harrison Park before the meeting. Moving forward, it is unknown if: 1) the City will want to continue pursuing sale; 2) if the requesting landowner wants to continue the request for purchase. He welcomed questions; otherwise this matter would be tabled until the Commission has more information.

Mr. Lamb provided a brief description of the site. The parcel is on the opposite side of the stream from the main park area accessed from Giffin Street. The parcel abuts two backyards of properties just north of the Masons Hall on Washington Street. The parcel is a very steeply sloped embankment, which is challenging to access. It is a part of the floodplain. To him, it does not seem readily developable; if it was proposed for development, it would be subject to the City's Steep Slopes and Wetland Setbacks ordinances. Chair Haynes asked why the landowner would want to purchase if it is undevelopable. Mr. Lamb replied this issue has been placed on more time with Council so the City Manager can work with the property owner to determine what they hope to achieve. There is also consideration of how much staff time would be required to get approval from the federal government, and if it is worth proceeding. He suggested putting this on a future agenda and waiting for a resolution at City Council to revisit when and if necessary. The Commission agreed.

d. West Street Dam

Mr. Lamb recalled that West Street Hydro has withdrawn their interest in the dam. He recalled the Commission heard a presentation from Emily Vogler about their research project earlier in 2018. Staff has worked with the Rhode Island School of Design (RISD) research team for several months. The process is proceeding and the City is working on a scope of work for the research team to facilitate a public process evaluating options for the dam. The public process is scheduled for early April; this includes workshops allowing the public to evaluate all options, with assistance from the Engineering Division to envision what options would look like. They will use graphics to help the public envision what their preference might look like. Mr. Lamb will report back to the Commission before the workshops begin in April; there is also a placeholder in the 2025 CIP for West Street Dam work.

Chair Haynes asked if the Commission should take steps to co-sponsor these workshops. The Public Works Director said that was not discussed yet, but it can be. Because any actual project

work is at least five years out, Commission participation will be most important at that time to assess the environmental impacts of the selected alternative. This process is just to engage the public in identifying their preferred outcome for the dam.

Ms. Clark said this sounds like a good, fresh start to developing a solution for the dam. Mr. Lamb agreed it is necessary to restart with the community and there is no fixed idea about where this will go. He said there is value in allowing the RISD process to occur, with more Commission involvement when more defined decision making occurs at the Council level.

Ms. Burchsted asked if there are additional studies the Commission can conduct in the meantime to assist in decision making. The Public Works Director replied that because no project will occur on the dam before 2025, studies might be better reserved for closer to that time; it is hard to maintain consensus that long. The state is not putting a lot of pressure on the City to make a decision yet, because the higher hazard dams in the City are being addressed (Babbidge, Woodward, Goose Pond). He suggested the Commission could focus their efforts on encouraging participation in the public workshops. At the earliest, he envisions any permitting process for the chosen alternative beginning in 2023, since that takes time. Still, he does not envision any design money allocated before 2025, with construction a few years after that.

Mr. Lamb confirmed that it would be ideal to have the RISD study closer to when the City is ready to take action on the dam. However, their research is funded federally within a certain timeframe. Mr. Bergman hopes their study will remain relevant until actual decision making on the dam.

e. Greater Goose Pond Forest Stewardship Plan

Chair Haynes reported that the Advisory Committee met a few weeks ago to review an initial draft from the consultants and make comments. The process is moving forward after a few slower months. The Committee will meet again before the holidays to edit the proposed plan and add any comments necessary. He hopes there will be a solid draft to publicize with public meetings by the end of February 2019. He hopes to provide a more detailed update at the December meeting.

f. Aquatic Resource Management Subcommittee Update

Chair Haynes reported that the subcommittee met and reviewed the CIP. They found many potential projects that ARM funds could be used for as well as general projects the Commission could have an impact on. The subcommittee will meet with the City Engineer on November 26 to identify five or six potential projects; they will report back on that discussion at the December meeting.

g. Beauregard Property Acquisition

Mr. Lamb reported the City is awaiting an updated appraisal (last in 2010) of the property on Beech Hill; funds are available and it will be contracted out soon. Once the property is appraised, the City Manager and Director of Parks and Recreation will contact Mr. Beauregard. Mr. Lamb hopes to have more of a report on this at the December meeting.

h. Margaret Kasschau – Friends of Open Space

Chair Haynes recalled the letter from Margaret Kasschau, on behalf of the Friends of Open Space, included in the meeting packet. Mr. Reilly asked for clarification interpreting the letter. Chair Haynes said the Commission discussed the contents of the letter at a previous meeting; at the next meeting the matter slipped through the cracks on his and staffs part, as he understands it. Then, the property (169 Church Street) was sold and things moved on unfortunately.

Mr. Lamb reported that he met with the Friends of Open Space in November. As he told them, the City chose not to move that request forward because of issues with the building owners; at the time of this request for Commission attention, the bank owned the property. The Code Enforcement officers tried to secure the building and work with the owner; then a windstorm left the roof hanging over the sidewalk dangerously. The owner did not rectify the safety concern so the City had to pay \$30,000 to demolish the building. The City was trying to get the bank owner to reimburse that amount when the Community Development Department received the letter of interest from Friends of Open Space for the City to buy the property; the City was in discussions with the bank. It was not logical to ask the Commission to advocate buying that property when the City was not yet paid back. In the interim, the bank sold the property to someone else; the Friends of Open Space got the impression the City gave them improper advice, when the bank just moved forward. The Friends understand the complexities of the situation now.

Mr. Lamb said he owns the responsibility that this matter was overlooked; it was his decision that the Commission would be going down a slippery slope if they were convinced to support purchasing the land before things were finalized with the bank. Chair Haynes said he also had responsibility in it being overlooked on the agenda; it is just an unfortunate situation to learn from. Mr. Lamb said it is important to have trust when working on agendas; the process of bringing agendas to the Commission should be transparent and he welcomed any questions.

Mr. Reilly said it does not seem this matter fell through the cracks; staff had a great rationale to not agendize it. Chair Haynes said providing a follow-up at a subsequent meeting did fall through the cracks.

Ms. Clark asked if there are prospects for development at 169 Church Street; she knows it is in the floodplain. Mr. Lamb replied part of the property is in the floodway, so there are many layers of regulations, including FEMA flood rules. Any future development on that property would have to be built to FEMA standards: with no crawl space and with the first floor one foot above the 100 year flood elevation. It could be rebuilt but would be very expensive. There cannot be new structures that would extend the building toward the river in any way that could impede flood flow.

Ms. Burchsted said she could sense the Friends of Open Space's frustration but agreed with Mr. Reilly that staffs decision was logical. She said, from a larger perspective, that there are opportunities to remove properties from the floodway and improve water resources. She hopes this scenario can be an example of the need for ARM work, for example, working with staff to have plans in place to deal with these opportunities along Beaver Brook in the future.

Mr. Bergman asked if there was a lien on the property when the bank sold it. Mr. Lamb replied it was owned by the bank but he was unsure if they were paying property tax or had private liens.

5) Commission Membership

Chair Haynes recalled that his term is ending and someone new needs to take on the position of Chair. He said a decision needs to be made by the December meeting and he is unsure the best way forward. Mr. Von Plinsky asked if there is full Commission membership otherwise. Mr. Lamb replied that with the loss of Mr. Madison, there would be two open full memberships, which the two current alternates (Mr. Bergman and Mr. Walker) could fill. Then, the Commission could seek two or three new alternates.

Chair Haynes summarized his role as chair. He works with staff to create the agenda monthly, to keep track of Commission projects, to run meetings, and to ensure the Commission follows through on important items month-to-month. He also has some phone calls and emails to facilitate; still, it is not a time consuming role overall. He has chosen how much to be involved, while balancing his personal life. There are times the Chair needs to speak before the Council or other Committee's to explain Commission projects. It will not be an independent role; staff helps train new Chairs to run meetings. He visits City Hall for one hour per month approximately to work on the agenda with staff, but those responsibilities can be met remotely as well.

Chair Haynes hopes there will be a volunteer for Chair at the December meeting. Mr. Lamb thinks it is likely the Mayor will allow Chair Haynes to continue on the Commission as an alternate to help continuity of projects, knowledge, and experience. Chair Haynes is willing to be an alternate.

Mr. Bergman said he finds Chair Haynes' presence reassuring and useful; he welcomes his continued involvement. He also asked if he and Mr. Walker need to submit letters to the Mayor expressing their interest in being full members. Mr. Lamb replied yes, that should help the Mayor expedite his appointment process. The Mayor is reviewing résumés and letters of interest. In response to Ms. Burchsted, Chair Haynes suggested continuous outreach and recruitment for interest in the Commission, even when the Board has full membership.

6) New or Other Business

Ms. Clark asked about annual dues for the NH Association of Conservation Commissions. Chair Haynes said the membership is expensive: \$1,500 for three years. He thinks it is great if the Commission can afford it, but it limits the budget and the minimal amount the Commission does spend annually. He asked the Commission if they want to pay the membership, stop the membership, or discuss another contribution that is not full membership price. Benefits of membership include consultation; for example, when Barbara Richter helped to re-conceptualize the Conservation Master Plan. Otherwise, the Commission has not used Association services beyond attending some annual meetings and receiving their newsletters. Mr. Lamb agreed the annual meeting programs are excellent and registration for that event is included with membership. Because this matter was not on the agenda, he suggested tabling it for further discussion in December.

Ms. Burchsted also suggested revisiting how the budget was spent last year at the December meeting; if the Commission is not spending on anything else, why not continue membership.

Ms. Clark recalled when she was Chair in the past, the Commission would write an annual report of activities to present to Council. She suggested that is a practice the Commission could consider using the budget for again. Chair Haynes has made oral presentations to Council in the past, but never written. Mr. Lamb said Council hears a presentation and updates from all

Committee's regularly (biannually typically). Mr. Lamb will bring the budget for discussion at the December meeting.

7) Adjournment – Next Meeting Date Monday, December 17, 2018

Hearing no further business, Chair Haynes adjourned the meeting at 5:46 PM.

Respectfully submitted by,
Katie Kibler, Minute Taker

Reviewed by Rhett Lamb, ACM/Com. Dev. Dir.
Edits, Lee Langella

November 1, 2018 NHDES Newsletter article

When describing the process of rewriting the state wetlands rules, the Beatles' song "The Long and Winding Road" comes to mind. While the process of revising and updating the wetlands rules has been going on for several years, and included 29 public meetings and 20 meetings with state partners, the process began in earnest in January when NHDES released an initial draft of the revised rules. Our instincts to release the draft prior to undertaking formal rulemaking turned out to be the right call. After hearing concerns of the public at meetings and reviewing written public comments, we realized we missed the mark and had more work to do to get the draft rules right.

Following a nearly three-month open public comment session that included five public meetings throughout the state and close to 2,000 public comments received, NHDES began revising the draft rules and reconvened a wetlands rules stakeholder workgroup comprised of representatives of groups having diverse interests in the wetlands rules, including the Associated General Contractors, New Hampshire Timberland Owners Association, Business and Industry Association of New Hampshire, The Nature Conservancy, Coastal Focus Group, New Hampshire Association of Natural Resource Scientists, and the New Hampshire Stream Crossing Initiative Steering Committee, as well as representatives from other conservation interests, utility providers, landscapers, agriculture interests, and aquaculture.

The stakeholder workgroup met eight times over the busy summer season, working diligently to make proposed changes to the rules by building consensus among the many parties involved. Each group was given the opportunity to be heard and their proposals were weighed by the group for adoption to the final draft rules.

The proposed rules include changes to reflect the many revisions to RSA 482-A that have been enacted since the last major rules overhaul in 1991. They capture existing practices and help to achieve consistency between state and federal program requirements. Specifically, the proposed rules include many existing Army Corps of Engineers requirements in the federal general state permit, streamlining the permitting process for applicants.

Under the proposed rules, while still being protective of the environment and public health, more projects will be eligible for streamlined review, more projects will be eligible to be performed without a permit, and Permit-By-Notice (PBN) and expedited review processing time will be reduced, allowing more projects to become shovel-ready sooner. The new PBN process does not require conservation commission review or abutter notice, similar to the existing PBN process that has been successful within the Shoreland Program.

The proposed rules include a new option for a Consolidated Shoreland-Shoreline Structure application. This option will consolidate shoreland and wetland reviews into one – requiring only one NHDES point of contact, one plan and one NHDES permit. This will increase efficiency and reduce costs for the applicant.

Because of the increased frequency of flooding in mapped floodplain wetland and coastal areas and associated risks to public safety, the proposed rules include requirements for additional vulnerability assessments for these areas.

Overall, the rules clarify existing terms; define new terms, processes and project-specific criteria; reference updated and new best management practices; and incorporate references to recognized technical manuals and methods.

While some people or groups may not endorse these proposed wetlands rules whole-heartedly, we can all agree that every suggestion and every position was considered by NHDES and the Wetlands Rules Workgroup during this process. There will also be an opportunity to provide further input during the formal rulemaking process. The initial proposals of the rules (one for each chapter) were filed with the Office of the Legislative Budget Assistant on September 28 to begin the formal rulemaking process. NHDES will hold formal rulemaking hearings in five sites throughout the state beginning in December.

For more information on the rules or the upcoming hearings, please contact Mary Ann Tilton at (603) 271-2929 or MaryAnn.Tilton@des.nh.gov. Check out the website for updates:

<https://www.des.nh.gov/organization/divisions/water/wetlands/process-improvement.htm>.