

**City of Keene
New Hampshire**

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**CONSERVATION COMMISSION
MEETING MINUTES**

Monday, December 17, 2018

4:30 PM

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

Members Present

Thomas P. Haynes, Chair
Eloise Clark, Member
George Hansel, Councilor
Dr. Brian Reilly, Member
Alexander Von Plinsky, IV, Member
Arthur Walker, Alternate
Kenneth Bergman, Alternate
Denise Burchsted, Member

Staff Present

Rhett Lamb, Staff

Guests present:

Steven Bill, Public

1. **Call to Order**- Mr. Haynes called meeting to order at 4:02 pm and roll call was conducted.
2. **Approval of Meeting Minutes** – Mr. Von Plinsky moved to approve the November 19, 2018 meeting minutes with revisions, Mr. Walker seconded and motion was passed unanimously.

Revisions are as follows:

Page 3 of 8, change: “ditches is not a permit-requiring activity” to “ditches is not an activity requiring a permit.”

Page 7 of 8, under New and Other Business, change: “Haynes said the membership is expensive.” to “the Commission’s budget is \$1500 dollars per year.”

3. Discussion Items

a. **NHDES Wetlands Rules Update**

Chair Haynes stated that he hopes everyone read through the document Ms. Clark forwarded in regard to the Wetlands Rules Update so they can assess what the committee would like to do. Ms. Clark noted to members that the comments are due by 4pm on January 18 which is before the Commission’s next meeting. She asked Mr. Lamb if the Commission could possibly draft a letter of response electronically before their next meeting. Mr. Lamb replied that a letter cannot be electronically approved but they could, as a group, authorize Chair Haynes or City staff to draft a letter based on behalf of the Commission or authorize the writing and issuance of the letter by the Chair. He emphasized that it is the group approval process they must pay attention to.

Chair Haynes asked for members’ thoughts on what NH DES proposed. Mr. Walker stated that he found the writing confusing as he had to cross-reference frequently, and although he does not

have experience in this type of writing, he does have experience writing policies and procedures and he believes each item should be as free-standing as possible, for example, having forestry sections for foresters and a homeowners section for homeowners. Mr. Bergman stated that the forestry people had similar complaints around the State. He said they complained that the forestry rules had to be cross-referenced and that made it less user-friendly. Mr. Bergman said the response has been that the new process is to ensure that everyone is directed to exactly the same source and to avoid errors in transcription. He said foresters are overwhelmingly the majority of public commenters at public sessions and that is one of the concerns they have had. Mr. Bergman stated that he found the comparison sheet useful to someone in the bureaucracy, a City planner or a developer; however, as a Conservation Commission member he found the streamlining fairly confusing. He said he gets the impression that there is concern that the streamlining was driven top down by an administration that wants to show evidence of reducing the weight of government. However, it may also serve to reduce the Commission's role and their awareness of certain types of projects and their capacity to comment on them. Both because minimal-impact projects would not come before them and because the turnaround time is so much faster now- as little as five days for some projects and the Commission only meets once per month.

Mr. Bergman stated that the Assistant Commissioner informed him that projects would be posted to the DES website and also sent to the City Clerk. However, somebody would have to actively reach out to look for these projects, but City government would not have much of a role in advising these projects and there's nothing more than an alert that a project is up for action. He asked if the purpose of the revision is to streamline and make more efficient the procedure both for users and applicants, and also to preserve protections for wetlands, then by what metric do they plan to assess the effects of these changes? He asked if anyone is going to look back retroactively and assess whether the changes have had measurable effects on wetland protection. He stated perhaps they could recommend that a study be performed to assess the effects on wetland protection in the next few years of operations.

Mr. Hansel stated that the language of the letter could include that while the goal of the changes is laudable in making the process easier for applicants and those processing the applications, that they encourage them to equally take into account the effectiveness of the regulations after a certain period of time to assess how the rule changes have affected the practical application of preserving wetlands. Mr. Bergman agreed that at the very least there would be some fact finding to explore the relevance to wetland protection. Chair Haynes stated there should be an accountability piece to these changes. Ms. Clark stated that she serves on the Ashuelot River Local Advisory Committee and there were a "streamlining" changes made shoreline protection act rules and through that process they have noticed a dramatic increase in Permit by Notification (PBNs) that come to the Committee after the fact and some of the projects have had significant disturbance to shoreline along the Ashuelot River and they are not able to comment on it. She said that raises her level of skepticism that this will happen on a state-wide level for wetlands. She said also increasing the size of disturbance to putting aside projects that are greater than an acre of disturbance increases the vulnerability of vernal pools. Mr. Hansel provided the example of Ms. Clark's comment to DES over the protection of vernal pools at Goose Pond and stated that if the public had not had the opportunity to comment, DES would have not taken action. He said that demonstrates the value of citizen input at the right time and perhaps they can capture that as an example and forward that on to DES.

Mr. Bergman suggested the Commission ask for a point of information. He said he searched the City code and they do have ordinances pertaining to hillside development, surface water and

natural resources which have some relevance to wetlands surface waters protection. He said in the comments there was a suggestion that communities may want to develop stronger municipal ordinances. He asked how the City's ordinances compare to the State's and do the State standards and processes eclipse those of the municipalities and is it conceivable that municipalities might propose ordinances that are stricter than the State's. Mr. Lamb said there is no short answer and generally-speaking he is referring to rules that regulate development of land on private property, zoning ordinances in the vicinity of wetlands, site plan authority and subdivision rules and construction of roads and driveways. He said the City has standards for all of those types of development which will affect what can be done in and near wetlands. Mr. Lamb stated that the hillside ordinance was established that regulates development on steep hillsides based on slopes to manage slopes and erosion on steep hills. He said the 2013 Surface Water ordinance established a requirement for identifying buffers from the edge of wetlands-seventy-five feet For Rural Agriculture and Conservation zoning districts and thirty feet in all other zoning districts. Mr. Lamb said that is an ordinance that affects the buffer and not the wetland. The City is precluded by the State from issuing permits to alter wetlands; however, they can and have adopted standards for work in the buffers around the wetlands and for the non-traditional wetlands, like vernal pools, that are not identifiable throughout the year. Mr. Lamb said the adoption of that ordinance was lengthy and quite controversial and its application of its impact was of concern to earlier members of the Conservation Commission. He said the City has gone as far as most communities have gone in the permitting process and has taken a strong position on wetlands and floodplain ordinance (Chapter 54) which also has implications for wetlands.

Mr. Lamb said he suspects that as the City rewrites all land use codes some of these issues that were brought to CONSERVATION COMMISSION's attention years ago will come up again, for example, proper buffer distances will probably be reevaluated. He said they currently exempt certain waterbodies from that ordinance, for example, the tax ditches, as the City has traditionally maintained them and there is some suggestion that they should stop maintenance or subject them through the issuance of a local permit. Mr. Lamb said the land use code updates means the drainage standards will be rewritten as well as standards for floodplains which may affect wetlands. He said that as compared to other NH communities, the City is pretty progressive in terms of ordinance process for wetlands protection. Mr. Hansel said the Commission can inform that process by identification of high value wetland sources to inform the rule-changing process. Mr. Bergman asked if there is a list of high value wetlands and Mr. Hansel replied not really. Mr. Lamb said there was discussion at one point a while back about using the prime wetlands section of the statute or wetlands rules to establish higher protection standards through the State law permitting process, however, the City has not chosen to do that. Mr. Lamb said part of the discussion about moving forward on the surface water ordinance or not was whether the prime wetlands ordinance might offer better protection for prime wetlands; however, they chose the alternative which is the general application to all wetland buffers as opposed to the wetland itself. He said generally the surface water ordinance has probably succeeded in affecting people's choices about the permit process they want to go through. He said the fact that they need a permit to alter in a buffer might stop them from doing a project, or alternatively they could change the location of an improvement to avoid the permit process, more so then avoiding the impact to the wetland.

Mr. Hansel said for the purposes of this body, they should be focusing on what they are trying to protect and finding ways to regulate it to achieve the same end goal by staying consistent and vocal. Mr. Bergman said it would be worthy for the Commission to compile a list of permits that come in to City Clerk even if they do not have a voice in them. Mr. Lamb said the permits all are

referred to the Community Development department so Staff can bring forward the permits which have already been processed through the PBN or other expedited process. Mr. Hansel said that brings up a point as it relates to the State as the State is creating their own definition of wetlands. Mr. Lamb said through zoning they can, although it is risky to go too far outside of what the State says, although, the City cannot regulate them the way the State does.

Ms. Clark stated that she asked Ms. Tilden after the meeting how DES intends to staff the type of accelerated permit processing they are looking to do. She said Ms. Tilden replied that they are looking to hire two more staff people and they would have to wait and see. Ms. Clark suggested questioning the State about their staffing needs as she is skeptical about the process and she would hate to see projects rubber stamped just because of the accelerated process. Mr. Bergman said he spoke to someone as well and they said they wanted more Staff people out in the field and focused on high impact investigations. Mr. Haynes said his concern about the five day period is that the application process may not encompass to the degree that the community might feel is appropriate. He said not having a Commission review, although some of the projects are small, it still feels good that a Conservation Commission has oversight and review. He said the little pieces of wetland add up over time and that can lead to a net loss of wetlands over time without a proper mitigation process.

Mr. Hansel asked if there is a way to get administrative approval where the City staff and Chair can review applications for expedited approval. Mr. Lamb said there used to be an expedited permit option where the sign-off was done through the Chair once the notification came up from the Clerk's office, so it is not impossible. Mr. Hansel said if the Commission could propose that they are interested in a process that would allow for expedited approval possibly with just the Planning Director and Commission Chair and they would like to explore that option, maybe they would be willing to take a look at it. Ms. Clark stated that the Permit by Notification goes from 10 days to 5 days, Standard Minimum Impact projects from seventy-five to five days. Mr. Lamb stated that most of those are driveway and septic systems and they tend to see very few of those as they do not see a lot of new single-family home development in the rural district these days. Chair Haynes asked if there was a way to extend the timeframe beyond the five days to give organizations more time to work within the new proposal. Mr. Bergman replied that Conservation Commission input is not required or allowed with Statutory Permit by Notification (SPM).

Mr. Hansel suggested keeping the letter broad and stating that the City believes that citizen input is important and is willing to look at expediting internal processes if that opportunity is available without getting into the specifics. Mr. Bergman suggested contacting Senator Khan and State legislators to let DES put political weight behind the request so they will actually look at the request and comments. Mr. Bill asked what the rationale behind the five-day expedited process. Mr. Bergman replied just to streamline the process. Mr. Lamb said there is not a governmental organization out there that is not concerned with the time it takes to get a permit and some of it is legitimate and some is politics and pressure. He said the permit process and standards are often to blame for lack of economic development and activity. He said the City is doing the exact same thing with the land use code rewrite by upholding community expectations for what community development should be like, but also shortening the period that it takes for the permitting process by moving towards a staff-driven process where they can, and preserving public involvement where public review is necessary.

Mr. Bergman said the ten day current review period is still shorter than the Commissions' monthly meeting cycle, so the expedited process shortens that period even more and also

eliminates the request for Conservation Commission comment. Ms. Clark said she asked DES if they are cutting out Conservation Commission comments for all projects and she was told no- it would just impact the smaller projects and Conservation Commission would continue to be notified about larger projects. She said she senses that the larger projects are being downsized to fit into the smaller projects. Mr. Bergman said the summary comparison shows increasing standards for certain projects would have minimal impact because there are fewer of them. He stated that Ms. Richter said she would be meeting with Commissioner Scott and both she and Ms. Tilton have offered to help clarify language with flowcharts as guidance, however, those are not yet available.

Mr. Haynes asked if members want to write a letter as it seems they all have points they would like to share. He suggested going over which points are important and incorporating member notes. Mr. Lamb stated there were comments about accountability, methods of measurement and follow-up. He said he made a note to suggest the importance of the Conservation Commission review process using the Goose Pond example, which demonstrates the application of local knowledge on the outcome of preservation of a natural resource. He said they can stress the more general comment about the value of local input and emphasize its preservation where the impact is largest. Mr. Hansel stated that the main thesis is that the Conservation Commissions do valuable work, are partners who are willing to adapt and they should encourage DES to keep them involved whenever possible. Mr. Bergman suggested they recommend reducing waiting periods to no less than ten days-even if DES will reject that proposal- the request can go on the record. Mr. Von Plinsky agreed that reducing a seventy-five day review process to five days is less like streamlining and more like bulldozing. Mr. Bergman agreed that ten days does not sound like an onerous waiting period. Mr. Hansel said the ten-day period may allow them more room to maneuver. Mr. Lamb stated that the problem is Conservation Commission review is not allowed and applicants are entitled to the permit if they follow the checklist. For example, if DES knew there was a sensitive resource like a vernal pool that had not been brought up in the permit application they might take that into consideration as it is a specific impact that they can measure. Chair Haynes said the ten days allows organizations an opportunity to assess whether or not there is a sensitive resource to be considered. Mr. Hansel agreed that the ten days allows organizations time to throw up a red flag. Ms. Burchsted asked if they could also request whether those are business days as that is not specified in the cheat sheet and that would make a big difference.

Mr. Von Plinsky asked Mr. Lamb what types of PBNs typically come up in Keene. Mr. Lamb replied that since he is new to the Commission he is unsure; however, he said they are the smallest and most limited impact projects, for example, related to relocating a driveway where there is a culvert or a ditch on the side of the road that has to be crossed. Mr. Von Plinsky said the proposed process for standard minimum impact project is to make a PBN for residential up to a three lot subdivision. He said there is a big difference between a driveway move and putting in three houses where you can do a lot of damage in three housing lots and to do that by notification seems very reckless. Ms. Burchsted said the next bullet point "New Commercial Access" feels very vague as well and could mean a lot more than a driveway.

Ms. Clark pointed out that the City Engineer put in a PBN to do all the ditch work which is a big project and the State rejected the request to their credit. Mr. Lamb explained that the City Engineer did that to poke the State to get them to provide guidance on how to manage the ditches. Mr. Bergman asked if the ditch work along 101 on the road from Keene to Marlborough is a PBN and Mr. Lamb replied that he does not know as that is a State highway. He said ditch work is not always considered a permanent impact and there is probably a difference between

maintenance and building a structure. Chair Haynes asked if there are any other comments to be put in the letter. Mr. Bergman suggested that they let NH Association of Conservation Commissions know about their letter and forward them a copy.

Ms. Clark read aloud Ms. Richter's comments to Ms. Clark's questions about the streamlining process; Ms. Richter said "*...I do have concerns about the LSA which is a slower scrutiny approval which will be moved down into a PBN (which the Conservation Commissions used to be involved in) process and the lack of local review...this seems like a process that could be open to abuse if the site is not measured accurately and the landowner thinks they would be eligible for minimum impact or LSA...I believe they choose the quicker permit option... DES responded to this concern by saying that all permits will be posted on their website, so that the Conservation Commission can check and see what is happening in their towns...it is not clear to me how Conservation Commission should address problems when they occur, it also seems it is suggesting Conservation Commission review the permit list puts much emphasis on the Conservation Commission and not as much on the applicant... this is still being worked out so it may change.*"

Mr. Bergman moved to approve that Chair Haynes and Mr. Lamb send a letter to NH DES regarding the proposed wetland changes, Ms. Clark seconded and motion passed unanimously.

Mr. Lamb had to leave to meeting but he said he should be able to report back to the Commission in February. Chair Haynes said they will keep in contact via email to compose the letter.

4. Informational

a. Greater Goose Pond Forest Stewardship Plan

Chair Haynes stated that the Advisory group was hoping to meet before the holidays but could not make that work, so the next meeting is scheduled for January 15 at 3 pm at City Hall. He stated that the Commission's comments made at first subcommittee meeting were provided to the consultants on the Plan. They will be able to review that draft which is due prior to the January 15 meeting.

b. Aquatic Resource Management Subcommittee Update

Chair Haynes announced that the subcommittee met with the City Engineer, Mr. Lussier on November 28, and presented five items that they were interested in acquiring more information about from the Capital Improvement Projects which provided for them. Mr. Von Plinsky said he got informed about the Victoria Street Connection project (between Water and Marlborough Street by the Kingsbury Property). It is an interesting project which has impacts with the brook, the Rail Trail and undefined, incidental wetlands. He got in touch with UMASS Landscape Architecture Department and they seem interested in doing a design studio for that project which would be an idea generator, not a construction project, where students would examine the site and look at all the moving parts, the roads, the water, the bike trail and the potential development of the Kingsbury site. He said it would only cost a couple of hours of Mr. Lussier's time and some GIS documents that are already available online. He said the project would take place in the fall of 2019 or the spring of 2020 which would give them some time to act on something. Mr. Von Plinsky said it would be a valuable relationship building exercise for Conservation

Commission as good interaction with the Department could facilitate building a relationship in getting these idea generators going. Chair Haynes said that the City Engineer was open to that process.

Mr. Reilly asked for a time frame on that process. Mr. Von Plinsky replied that the CIP is a rolling five year plan. Chair Haynes said it is far enough out to allow for the brainstorming to occur. He said they also talked about flood mitigation and storm water and the City Engineer is waiting to hear from various federal agencies about what their role is within some of the new plans that are being developed. He said there is not a lot of information at this point and they will await more information from him. Ms. Burchsted asked if there is a way for Conservation Commission members to be included in the communications and assume somewhat of a role in the development of ideas and requests from the City-side. Chair Haynes said that was not discussed but they can certainly ask if it is a possibility. Mr. Von Plinsky replied that Mr. Lussier told him Conservation Commission does not have a lot of input on it as the court or federal entity is required to do it as part of a federal process. Ms. Burchsted said that is standard process for them, however, in her experience, ultimately the City and community can make recommendations. She said it differs from a consulting relationship; however, it would be good to know the date of the report release and the primary ways in which the waters of Keene will be affected through storm water management.

Chair Haynes stated that he and Mr. Von Plinsky also discussed the alternative uses for the Public Works land on Main Street as it is primarily being used as a dumping facility for snow and debris; as well as ideas on how to use the transfer station. He said overall it was a good meeting and there was interest in a partnership as well as suggestions made, for example, they proposed that perhaps the Harris Center could partner with Conservation Commission. They also stated that an invasive species survey could be helpful in terms as they often do not have funding for that type of project. Mr. Von Plinsky agreed that they were very interested in making this process work to and it was a motivating discussion. Chair Haynes proposed that he, Ms. Burchsted and Mr. Von Plinsky meet after the holidays to keep up the discussion and plans moving forward.

c. Chairmanship

Chair Haynes stated that Mr. Bergman and Mr. Walker have put in requests to the Mayor to become full-time Commission members as his term is up. He said that will leave them with seven full-time Commission members. Mr. Bill is interested in becoming an Alternate and Chair Haynes can shift into an Alternate position as well if members are agreeable. Members agreed. Chair Haynes said he will write a letter to the Mayor requesting an Alternate position with the Commission.

Chair Haynes said they still need to nominate the Chair and Vice Chair. Mr. Von Plinsky replied that he would love to be Chair but he does not have a lot of time with his new legislative position. He proposed the idea of Co-Chairing with Mr. Bergman; however, he is not sure if that is possible. Chair Haynes said he has already asked Mr. Bergman and he responded that he would consider the role for next year. He said that he understands Mr. Von Plinsky's time limitations and Ms. Clark has already volunteered to be Vice Chair or Co-Chair. Chair Haynes said Ms. Clark has been the Chair of the Commission before and could serve as a solid Co-Chair. Mr. Bergman said he felt ideally he would wait a year, however, he travels a lot and he feels it would be irresponsible given that fact. He said reading through the wetlands documents also made him feel confused and inadequate. However, he did not say no absolutely but he was

hoping some of the other members would step up. Mr. Von Plinsky said he is one of the experts at the table and he would be the best option for that position. Chair Haynes suggested that Mr. Von Plinsky take on the Chair position with Ms. Clark as his Co-Chair so that he has a year to realize his time constraints and then next year they can re-evaluate how that has worked. Mr. Von Plinsky said he is concerned about not giving the Commission what it needs as he is unaware of what his new commitments will be in Concord. Chair Haynes suggested that just for procedural process, that they go ahead with Mr. Von Plinsky take on the Chair position and Ms. Clark assume the Co-Chair role and they can change the commitments as needed. Mr. Von Plinsky agreed. Chair Haynes said they need a recommendation for nominating Mr. Von Plinsky as Chair and Ms. Clark as Vice Chair.

Ms. Burchsted moved that Mr. Von Plinsky be nominated as Chair and Ms. Clark be nominated as Vice Chair, Mr. Bergman seconded and motion passed unanimously.

Mr. Bill will write a letter to the requesting appointment as an Alternate on the Conservation Commission for 2019. Mr. Bill introduced himself as a retired professor of Geology from Keene State College.

5. Commission Membership – New Hampshire ACC

Chair Haynes said Conservation Commission membership in the NH Association of Conservation Commissions was tabled mast meeting and Mr. Lamb was going to look at budget and did not provide that information so proposed that they table that until next meeting. He said their budget is from July-July so they are still in the midst of their fiscal year

Chair Haynes thanked members for their support over his term as Chair and wished all a happy New Year.

Chair Haynes adjourned the meeting at 5:20 pm.

Respectfully submitted by,
Ayshah Kassamali-Fox, Minute-Taker

Reviewed by Rhett Lamb, Community Dev. Dir./ACM