

City of Keene
New Hampshire

CONSERVATION COMMISSION
MEETING MINUTES

Monday, August 17, 2020

4:30 PM

Remote Meeting via Zoom

Members Present:

Eloise Clark, Vice Chair
Art Walker
Brian Reilly
John Therriault
Ken Bergman
Councilor Robert Williams
Steven Bill, Alternate
Thomas Haynes, Alternate

Staff Present:

Rhett Lamb, Community Development
Director/Assistant City Manager
Corinne Marcou, Zoning Clerk

Members Not Present:

Alexander Von Plinsky, IV, Chair
Andrew Madison

1) Call to Order

Vice Chair Clark called the meeting to order at 4:30 PM and read the executive order authorizing a remote meeting: Emergency Order #12, issued by the Governor of the State of New Hampshire pursuant to Executive Order #2020-04. Pursuant to this order, members present stated that they were calling alone and stated their locations. Vice Chair Clark, Mr. Reilly, Mr. Walker, Councilor Williams, and Mr. Therriault called from their home addresses. Mr. Bill called from Poestenkill NY, Mr. Bergman called from Wellfleet MA, and Mr. Haynes' status was unknown and he listened only. Mr. Bill acted as a voting member.

2) Approval of Meeting Minutes – July 20, 2020

Mr. Reilly moved to approve the minutes of July 20, 2020, which Mr. Bergman seconded, and the motion passed by unanimous roll call vote.

3) Communication and Notifications

a. Draft NPDES Permit Letter from ARLAC

Vice Chair Clark asked Barbara Skuly to forward this letter so the Commission would know of ARLAC's actions. Mr. Lamb said this agenda item was a placeholder for discussion. Mr. Bergman said he could also share information on water treatment plant outflow from a former student and current Industrial Pretreatment Coordinator for the Keene Wastewater Treatment Plant, Eric Swope. Mr. Lamb saw no issue with sharing that public information and Vice

Chair Clark agreed that anything to help educate the Commission is useful. In response to a question from Mr. Bill, Mr. Lamb said that this matter was before the Commission only as informational about the role ARLAC plays in the permit review process; the Commission would not provide advice or recommendations.

4) Informational

a. Subcommittee Reports

i. *Outreach Subcommittee*

Mr. Lamb said he and Ms. Marcou spoke about how to further develop the Commission's web presence. He recalled from the previous meeting that both the Community Development and Parks & Recreation Departments have active Facebook pages where information can be shared as well. In response to the Subcommittee's request last month, he said that information to share publically should be sent to Ms. Marcou, who would work with Mr. Lamb to make it available across the various website and social media venues. Vice Chair Clark would prepare a first post, likely on pollinator-friendly plants for around the home. She invited photographers to share relevant images and welcomed information from other educators. Members agreed that subsequent posts centered on invasive species would be prudent. Councilor Williams offered to field questions on best practices with his experience as a web developer.

ii. *ARM Fund Subcommittee*

Nothing to report.

5) Discussion Items

a. Airport CIP Wildlife Fence Project – Birding/Habitat Viewing along Airport Road

As a follow-up to the Commission's July discussion, Mr. Bergman had a visit with Airport Director, David Hickling, scheduled the week after this meeting to tour and ensure that the most important wetland areas are clear to the Director. Mr. Therriault and Mr. Bill wanted to join the visit as well and requested further information when available. Mr. Bergman recalled that Councilor Steve Hooper has committed to supporting actions that come from the Commission as a solution develops for the Airport fence.

b. Continued Discussion – Invasive Species Management

http://peterboroughopenspace.org/ewExternalFiles/Invasive_Plants_brochure.pdf

Mr. Lamb said he and the Director of Parks, Recreation & Facilities, Andy Bohannon, would meet the week after this meeting to discuss what it would take to establish an "army" of volunteers who can participate semi-formally in invasive species management on City property. There have been past programs in which volunteers were "deputized" for this kind of work on City trails and parklands, such as an arrangement that Mr. Bergman mentioned with an individual for work in the Ashuelot River Park with Mr. Bohannon, though Mr. Lamb

was unsure the details of that agreement. Mr. Lamb would report back with more information at the next meeting.

Councilor Williams was pleased and thanked Mr. Lamb for that update. The Councilor also spoke to the link above, which is a PDF from Peterborough NH about identification and control of invasive species. Councilor Williams thought the brochure was high quality and wondered if prints could be ordered or if customizations could be made for Keene because it includes the information he wants to share with homeowners; he hoped to find a good way to make use of it. Vice Chair Clark thought it could be a good first entry for the Commission's web presence. Mr. Lamb offered to contact the Peterborough Conservation Commission to gauge their interest in distributing that brochure through Keene's networks or to investigate other formats more amenable to a web setting than a PDF. Mr. Reilly could share print copies of the PDF and said he could connect Mr. Lamb with the principal person responsible in Peterborough – Francie Von Mertens.

Mr. Bill suggested using the Commission's budget, which was barely used last year, to distribute or reinterpret this brochure for Keene. He also asked whether group volunteer activities would be permissible with Covid-19 and Mr. Lamb thought there were possibilities with safe social distancing and other guidelines.

c. Continued Discussion – Land Use Code Project, Surface Waters and Hillside

Mr. Lamb recalled that at the last meeting he provided an overview of the project and changes proposed to the City's current Surface Water Protection Overlay District, which he would continue describing at this meeting in addition to changes to the Hillside Protection Overlay District.

Surface Water Protection Overlay District:

Mr. Lamb recalled that the Surface Water Protection Overlay District was adopted in 2013 after lengthy discussions, largely as a subcommittee of the Conservation Commission working with Staff. It was established within the Keene Zoning Ordinance as a means to limit the use of private properties adjacent directly to surface waters and wetlands, specifically limitations to development, paving, and structures. The Ordinance was developed on the premise that this buffer area is intended to be in an undisturbed and natural condition. This buffer serves to capture, store and absorb rainfall, and act as a natural filter by capturing sediment, nutrients, and pollutants from runoff, which can improve water quality. It also provides shore land stability and shade with newly established vegetation, which can lower water temperatures, allowing water to hold more dissolved oxygen and support aquatic resource habitat. Initially, a 100-foot buffer surrounding all surface waters in the City was proposed, which was later reduced to 75 feet in the Rural, Conservation, and Agriculture Districts, where minimum zoning lot requirements are upward of five acres and 30 feet in all other districts. This was with recognition that the City's urban center was already developed and a compromise was needed to allow that urban development within reason. This Ordinance requires a Conditional

Use Permit from the Planning Board for proposed uses/activities within this buffer area, which includes review and recommendation by the Conservation Commission.

In 2015, the Conservation Commission formed a subcommittee to review the Ordinance for inconsistencies and make recommendations for addressing those inconsistencies to City Council. This subcommittee focused on the list of surface water exemptions, which include the City's tax ditches. The subcommittee of the Conservation Commission proposed three amendments to the Ordinance, which were presented before the Planning, Licenses & Development (PLD) Committee of City Council in December 2016, at which time the PLD Committee recommended that the City review and consider these changes as part of the Land Use Code Update. The Conservation Commission asked that Staff:

1. Modify the definition of a buffer to remove the phrase, "in an undisturbed and natural condition," because sometimes the natural condition on a private property might have been altered already.
2. As written, certain surface waters were exempt from the buffer, particularly manmade ditches and swales because the City recognized these had been altered dramatically. The City used federal funds and assumed maintenance responsibility of some of these streams and built others known as tax ditches to create opportunities for agriculture, where for many years the City has mowed the edges to maintain many of those ditches. The Commission requested removing that exemption because it affected an extensive area of the City, and if tax ditches are surface waters, then they deserve the protection of a natural stream. These streams were exempt originally because from Staff perspective it seemed unfair and illogical to limit a person's ability to construct a gazebo (for example) next to the stream on their property when the City was mowing the banks of tax ditches.
3. When new subdivisions are proposed, any wetland area flagged by a wetland scientist on the site could not be included in minimum lot size density for that property from a zoning standpoint, so that wetland areas could not count toward the density of the lot.

Mr. Lamb referenced a summary of remaining changes proposed to this Ordinance in the Land Use Code Update in the meeting packet.

Mr. Bergman noted that some content was confusing, such as tax ditches. Mr. Lamb clarified that the current Ordinance exempts any manmade stream and therefore if the City is maintaining tax ditches, it was illogical to limit someone's use or development adjacent to those ditches on private property. Mr. Bergman questioned whether those changes proposed by the Commission were included in the current Ordinance and Mr. Lamb replied in the affirmative. Mr. Bergman questioned whether the exemption language for tax ditches also listed collecting ponds for rain runoff and asked if those would be treated the same as tax ditches. Mr. Lamb said that the manmade swales or storm water retention systems continue as exempt because they are built usually for the purpose of managing storm water coming from development. Mr. Bergman referred to the manmade water retention at places like Monadnock Marketplace and Mr. Lamb said those ditches remain exempt in the proposed Ordinance updates because they are constructed for water quality improvement from a development and it seemed illogical to Staff to impose buffer restrictions; Mr. Bergman said unless the

development were required to mitigate wetlands effects elsewhere, which Mr. Lamb thought was not likely through the wetlands permit process anyway.

Mr. Bill referenced blue and yellow highlights throughout the document and Mr. Lamb thought those were only for Staff's drafting purposes. Mr. Bill asked whether the difference between a 30-foot and 75-foot buffer was based more on topography or land use. Mr. Lamb said land use; the 30-foot buffer respects a denser urban setting. Mr. Bill said he did not see power line corridors in the list of permitted uses and Mr. Lamb said that most regional power lines are not subject to City control through zoning.

Vice Chair Clark referred to the requirement that all surface waters on a property be deducted from the calculation for minimum lot size, which she thought might be a detriment to environment on a property near wetlands. Mr. Lamb said this was an interesting discussion and he thought the Commission's logic was that it was unlikely those areas would be altered significantly for any development because of state wetland permitting requirements. He thought it was a policy decision that would get input moving forward from many perspectives. He said it was really about protection of resources versus greater use of a property by an individual. City Council is still hearing input on the many sides of this issue. Vice Chair Clark referenced the document that stated, "No changes are proposed that would alter the original intent and meaning of this Ordinance or that would impact the standards for review," and said the proposed changes would do both of those things, leaning more toward development than conservation. Mr. Lamb said that if further discussion is needed, the Commission could make recommendations on this draft at its September meeting.

Hillside Protection Overlay District:

Mr. Lamb said this Ordinance was developed largely in response to some serious flooding from 2005-2012 precipitation events that exceeded the 100-year flood patterns, which highlighted drainage concerns on the valley floor and lack of proper storage higher in the watershed. Like the Surface Water Protection Overlay District, this Ordinance was also developed with a goal to preserve the capacity and quality of those natural systems. This Ordinance was developed in 2009 and amended in 2010 to protect steep slopes from development and therefore the major potential effects of erosion on drainage. There are two categories of steep slopes, first graded 15-25%, and second graded greater than 25%. The goal was to ensure that development avoid the steepest parts of the property or otherwise require a Conditional Use Permit from the Planning Board with Conservation Commission input for any removal of vegetation, grading of slopes, erection of buildings, addition of impermeable surfaces, installation of sewage disposal systems, and/or removal of native soil impacting greater than 20,000 sf of precautionary slope area on one lot.

Mr. Lamb said the changes to this Ordinance were less substantive than the previous and he was unaware of the Conservation Commission commenting at any time on this Ordinance. He did refer to Staff's recommendation to eliminate the current Planning Board Site Plan and Subdivision Regulations specifying that all prohibitive slopes (greater than 25%) and half of precautionary slopes (15-25%) be deducted from the calculation of minimum lot size; this mirrors the deduction of surface waters from minimum lot size in the Ordinance discussed

previously. The argument is that this requirement creates a penalty to be unable to count that land area toward the zoning density requirement, with the assumption that the Ordinance itself would prevent development of those slopes.

Vice Chair Clark noted that she was secretary of the committee that developed the Hillside Protection Overlay District and she said the members spent hours debating these points and to make the changes Mr. Lamb described would go against the work of many people and she was not yet comfortable with the rationale.

Mr. Bill said the consideration of slopes seemed to focus on flooding but he questioned failure of the slopes themselves; for example, the slope failures at the apartments at Chapman Road and Eastern Avenue. Mr. Lamb thought slope failure as not the primary motivation and he was unsure the history of slope failures in Keene. He was familiar with the example mentioned and to his knowledge that was the only instance of an issue like that. Therefore, the focus of this Ordinance was the impact of development on drainage patterns lower in the watershed. Mr. Bill noted that the Ordinance mentions a 50-year flood over a 24-hour period and wondered if more prudent to specify an amount of accumulation over a time period and to also take into account the permeability of material; the 50 and 100-year floods are now ambiguous with climate changes. Mr. Lamb said that there is a precipitation amount equivalent for 100-year storms that can be used to calculate 50-year and the City uses a parallel to that in almost all major commercial developments to calculate a 25-year event for managing storm water on the site. He recognized that periodicity of these events is changing.

Mr. Reilly requested an example of how removing wetland area from minimum lot size would affect zoning density. Mr. Lamb said there is a five-acre minimum lot size in the Rural Zone today and so an existing 10-acre lot could only be subdivided into two five-acre lots if there were zero wetlands on the property. The argument for changing that standard is that the wetland would already be protected in that scenario and therefore a potential double jeopardy exists for how land can be subdivided.

Mr. Bill said there are many challenges to defining minimum lot sizes as ways to exclude certain demographics from inhabiting areas and asked whether there would be challenges in how we are defining these matters. Mr. Lamb was unsure from a legal perspective but believed that calculating density through lot size is still a valid way of managing/planning a town. Unlike some cities, Keene is not dominated by large-lot zoning and he thought that our valley floor was zoned in a way to allow diverse market rate housing in an affordable category.

Vice Chair Clark noted the complexity of these documents and all Commission members agreed to postpone action until the September meeting. Mr. Lamb and Senior Planner Tara Kessler are happy to speak by phone with Commission members in the interim. Members can also send questions via email directly to Mr. Lamb, who would send answers to the whole group.

d. Greater Goose Pond Forest Management Plan

This agenda item was a placeholder for future discussion, when Director of Parks, Recreation & Facilities, Andy Bohannon, would be invited to provide a written or oral update on current activities. Mr. Bohannon is the best person to answer questions on timelines for implementing those management practices.

6) New or Other Business

The Source to Sea Clean-Up event for the Ashuelot River and Beaver Brook is proceeding on September 26 and the organizers feel confident that they can do so safely with masks and social distance. They seek sponsors and the Conservation Commission has participated in the past.

Mr. Therriault recalled that two meetings ago the Conservation Commission recommended to City Council that Keene become a Bee City USA but there was yet to be action at the Council level. Mr. Lamb would prepare a resolution to Council and send it to Mr. Therriault for feedback.

Vice Chair Clark requested that Staff consider allowing video for future Zoom meetings and other members agreed. Mr. Lamb is happy to coordinate based on the video connections of members and the degree of screen/document sharing during the meeting. This is possible via smart phone. Vice Chair Clark, Mr. Lamb, and the Chairman would discuss moving forward with the best option.

7) Adjournment

Hearing no further business, Vice Chair Clark adjourned the meeting at 5:43 PM.

Respectfully submitted by,
Katryna Kibler, Minute Taker
August 24, 2020

Edits by Rhett Lamb, ACM/Community Development Director
Reviewed by Corinne Marcou, Admin. Assist.