

Conservation Commission Minutes February 14, 2013

TOWN OF NEWMARKET, NH

CONSERVATION COMMISSION

February 14, 2013

7:00PM Council Chambers

Members Present: Drew Kiefaber (Chairman), Bruce Fecteau (Vice Chair), Jeff Goldknopf, Jessica Veysey (Alternate), Stephanie Coster (Alternate), Dan Wright (Town Council Rep)

Members Absent: Fred Pearson, George Hilton, Bob Gazda (Alternate), Janice Rosa (Planning Board Rep)

Called to Order: 7:03PM

Agenda Items:

1. Pledge of Allegiance

2. Roll Call

Drew Kiefaber nominated Stephanie Coster and Jessica Veysey as voting members in the absence of George Hilton and Fred Pearson.

3. Public Comments

There were no public comments.

4. Approval of Minutes

Jan 10, 2013: There were no recommended changes to the draft minutes.
Action

Motion: Bruce Fecteau made a motion to approve the minutes as revised.

Second: Drew Kiefaber

Vote: All in favor.

5. Treasurer's Report

Jeff Goldknopf distributed the monthly financial statement via email on 02/13/13. There was a brief review of the month's activity. Jessica Veysey asked for more information about a credit of \$635 from January and Jeff Goldknopf agreed to follow up for more detail.

6. Committee Reports

Town Council Report – Dan Wright reported that the Town Council is working hard to educate the public on the upcoming vote on the waste water treatment plant proposal. Sean Craig held a public information session on the new waste water treatment plant proposal and there were about 15 people in attendance. There is a 15 minute video that will run on Channel 13 in the weeks leading up the vote, as well as informational materials available in the library and Town Hall. Stephanie Coster suggested including it in the Town Council newsletter and Dan Wright agreed to mention that to Steve Fournier.

Planning Board Report – Janice Rosa (absent)

Dam Removal Subcommittee – Stephanie Coster reported that the subcommittee is meeting next week to conduct interviews for the RFP and if anyone has any questions they can contact her.

Land Conservation Subcommittee – Jessica Veysey reported that she and Stephanie Coster have identified a handful of parcels that meet their requirements and they would like to take the next step by approaching four of those landowners to determine if they have any interest in conserving their land. After extensively researching all of the dynamics involved in land acquisition for conservation, they have concluded that Southeast Land Trust is the best resource for initiating those conversations, given their expertise and experience in the field. Southeast Land Trust charges \$45/hour and they estimate they will need approximately \$1,200. Drew Kiefaber recommended getting more information about the parcels before making a decision on the funding allocations. Jeff Goldknopf asked if waiting another month will be problematic and Jessica Veysey said waiting one more month should not be a problem. Jeff Goldknopf asked when the Town Council would need to become involved and Jessica Veysey said we would need to establish that there is mutual interest before bringing it to the Town Council. Drew Kiefaber offered to send out a document that lays out the process that the Open Space Commission used to evaluate and proceed with land acquisition for the commission members to review before next month's meeting. There will be a nonpublic meeting at 6:30PM, just prior to the March meeting to review the parcels of land that the subcommittee has identified. A motion to recommend the expenditure of funds can be discussed later that night during the public session.

7. Chairman's Report

The latest issue of GreatBay Matters was received and shared for anyone interested.

8. Old/New Business

Mr. R. Konisky – Wetlands Permit for Oyster Reef restoration in Great Bay

Ray Grizzle of UNH, spoke on behalf of The Nature Conservancy and UNH about the Wetlands Permit application needed to launch the third year of the oyster reef restoration project in the Great Bay. Mr. Grizzle presented a slide show detailing the locations of the existing and new beds, the methods for constructing the reefs, materials used, and timing. The application for this year's project would allow them to build upon the work that has been done over the past two years. They have had good success on the Lamprey River and in Newmarket, in particular. These specific sites have been chosen because it is a really nice natural bed and very close to the new farm. A total of 3.5 acres will be worked on

and the rationale behind the design is to expand on the area. Dan Wright asked if the existing farms will ever become commercial and Mr. Grizzle said they are not to be harvested or used for commercial purposes. Jessica Veysey asked for clarification on the location of this year's farms relative to the last year. Mr. Grizzle said they are adjacent. Stephanie Coster asked about recruitment rates and Mr. Grizzle reported that their best results have been in Newmarket, resulting in the densest set of any other area. A member of the public asked about boat traffic in the channel during the last week of June and if it would have any impact on the barge. Mr. Grizzle said it should have no impact at all and he encouraged the public to visit the barges to learn more about the project. Ray Konisky, TNC, thanked the town of Newmarket for the funding provided last year. He said it was a difficult year for fundraising and the town's support of the project went a long way. Drew Kiefaber asked if they could communicate the specific dates that the beds would be planted to share with the public.

ACTION

Motion: Bruce Fecteau made a motion for the Chair to sign the expedited permits so that they can continue on with the great restoration work.

Second: Jeff Goldknopf

Vote: All in favor.

Mr. W. Cheney – Moody Point Lot 13 (Jeff Goldknopf recused himself from the discussion.)

Mr. Cheney addressed the Conservation Commission about a proposal for the commission to take ownership of a portion of Lot 13 at Moody Point that has been vacant for approximately 26 years. He is in talks with The Nature Conservancy (TNC) to donate all of the land up to the high water mark, the first 20', and the remaining 105' would serve as a buffer between the conservation land and the homeowners. TNC has requested that a third party take ownership of the 105' strip of land between the TNC parcel and the abutters property. Mr. Cheney displayed a map of the lot to show the proposed area. TNC will not accept the donation without a third party owner of the 105' buffer. He stated he wanted to donate as much land as possible to TNC and thought that the Conservation Commission may have some interest in the property.

Dan Wright asked how many homes he planned to build on Lot 13 and Mr. Cheney said it was up in the air at the moment but speculated 4 or 5, possibly 6. He said that TNC may use two of those units for a federal match program. Dan Wright asked what sort of housing was planned. Mr. Cheney said he was unsure but would at this point he would plan for single family homes or duplexes. Dan Wright asked if he could build structures there given the environmental sensitivities of the area. Mr. Cheney said he it was all buildable but that this particular lot has gone through some changes since the original proposal. He explained that even though the area is buildable land, he didn't know what he was going to do with it until he could get the third party ownership issue settled. Dan Wright asked if he would be bringing a proposal to the Planning Board and Mr. Cheney said they have written letters to them and thinks they are going before the Planning Board next month but he needs to know if the Conservation Commission is interested in owning the third parcel before bringing anything before the Planning Board. Dan Wright expressed concern for Mr. Cheney's lack of detail about the kind of units he is planning to build. He asked how many units can be on one lot and Mr. Cheney said there is a maximum of 103 units in the Moody Point development and there are currently about 90 units there. He said the only units that can go out there are the ones he designates to go there. Bruce Fecteau asked if the buildable lot would be connected to town sewage and town water. Mr. Cheney said it would be town sewage but the water would be from wells, unless the Moody Point Community Association (MPCA) wants to tie in together. Bruce Fecteau asked if there had been some question about the original use of this lot as open space. Mr. Cheney responded that it was raised by Diane Hardy. Bruce Fecteau asked if the original subdivision plan mention open space at all. Mr. Cheney responded no. Bruce Fecteau asked if there is any open space at Moody Point and Mr. Cheney said yes. He went on to provide some background information on the open space issue and the legal disputes that resulted from the Diane Hardy's designation of the parcel as open space. Mr. Cheney said a judge ruled that Lot 13 was an independent lot of record and that once approved you can build upon it, resell it, or develop it. Bruce Fecteau asked if the strip of land he was offering to the Conservation Commission had public access. Mr. Cheney said that public access would not be possible. Bruce Fecteau stated he felt that properties owned by Conservation Commission should have some public access or benefit. Mr. Cheney said that if TNC and Newmarket do not want the lots, he will simply find someone else. He said that the development of the lot is down the road but that he wants to conserve as much of the land as is possible. Stephanie Coster asked if there was any area where they could have public access and Mr. Cheney said no. He is trying to protect

the area to the best of our capabilities and does not want people walking through there. He said there have already been two instances of trees being removed from the area. Mr. Cheney stated that in one instance, 350 trees were cut and removed from that area and the stumps were bulldozed into the wetland. He said one individual removed them all and DES investigated but there were no penalties at all. He argued that if the town owned it, people would be less likely to cut the trees. Drew Kiefaber stated that the trees on Lot 4 would be addressed later in the agenda. With regard to Lot 13, Drew Kiefaber stated he was interested in conserving as much land as possible but that, practically speaking, owning a strip of land with no public access is not of particular interest as the proposal stands. But he would be willing to talk further about it to see if something could be worked out since the Conservation Commission shares the same goal of conserving as much of that property as possible. Mr. Cheney asked where the Conservation Commission was when the rest of the town did what they did and that if the Conservation Commission really cared about it then they should fight for it and help him find somebody who can be a better manager. Dan Wright asked TNC would be willing to take it over if Newmarket passed and Mr. Cheney said that they did not want the land unless a third party took ownership of the buffer between the two lots. If the Conservation Commission doesn't want the land, he suspects TNC would take the entire lot. But if they refuse, he will need to find someone else. Jessica Veysey commented that because he brought the proposal to the commission in its early stages that they may be able to assist him with finding a way to create public access. Mr. Cheney said it cannot have public access because he wants to keep people off the marshland. Jessica Veysey remarked that if the strip of land is donated, it can be used as a match for future land acquisition projects, which could make the proposal more agreeable to the commission. Discussion ensued around the need for a third party to police encroachment since the parcel is already under the protection of the Shoreland Act. The Conservation Commission recommended that Mr. Cheney discuss this point with TNC to see if that changes their decision to take the entire parcel. Drew Kiefaber summarized that if the offer is for a 105' strip of land with no public access, then the Conservation Commission is not interested. However, if there is a way to conserve more and gain public access then there may be an opportunity to work something out. Bruce Fecteau and Jessica Veysey remarked that being able to use the value of the property for federal matching funds has some appeal for the Conservation Commission and deserves further consideration.

Lot 4 – Trees Issue

Mr. Cheney asked that the Conservation Commission review an issue involving trees being replanted as a buffer. Drew Kiefaber said that as far as he knows, the Conservation Commission has no legal interest or opinion that carries any weight on Lot 4. Mr. Cheney expressed his dissatisfaction with the town's refusal to assist him in this matter. Mr. Cheney asked that the Conservation Commission speak with the Building Inspector about enforcing the buffer ordinance on Lot 4. Drew Kiefaber said he would be willing to walk the property to see what, if any, role the Conservation Commission can play.

Moody Point Community Association (MPCA)

John Badger, Cushing Road, addressed the Commission in response to Mr. Cheney's proposal of Lot 13 as a member of the Board of Directors of MPCA. He addressed the issue of development on Lot 13 and planting of trees on Lot 13. He referred to the RSA regarding conditions of approval for property development. He stated that while serving as Chair of the Planning Board in 2007, he sat with Mr. Cheney's representatives and Diane Hardy and made an agreement on the division of Lot 13, subject to approval of the MPCA. At that time, it was agreed that the land behind the TNC lot would be given to conservation easement. Mr. Badger stated that upon his return from a fishing trip and seeing the agreement for the first time, Mr. Cheney terminated the attorney who represented him at that meeting. Since that time, the legal debate remains and Mr. Cheney has not suggested speaking with the MPCA or the Lubberland Creek association in order to reach some agreement. Mr. Badger referred to multiple archival Planning Board minutes as examples of Mr. Cheney's representations of his plans. He also referenced several legal decisions about the status of Lot 13 as open space.

Mr. Badger read from 1985 archival minutes from Planning Board meetings that show the original approvals for Moody Point management plans were based on Mr. Cheney's representation of Lots identify Lots 4, 11, 12, 13 as open space and identified Lot 13 as being one of the most pristine and unaltered wetland wildlife areas on the Lamprey River. He stated that the town based their approvals of Moody Point project on the understanding that Lot 13 is open space and not to be developed. Since then, several lawsuits have been filed. MPCA challenged his title to Lot 13 and Judge Nadeau ruled that Mr. Cheney clearly intended to preserve it and leave it undeveloped. Mr. Cheney initiated litigation against town of Newmarket alleging slander of title but the judge dismissed the lawsuits in 2012. The judge concluded that Lot 13 is entirely undeveloped land and is environmentally sensitive and that, given the regulation in place at the time as well as representations from Mr. Cheney, it was to remain undevelopable open space. Mr. Badger stated the MPCA opposes any attempt to develop this land and is hopeful that Conservation Commission joins them in their efforts to prevent any development or building on Lot 13. He said that the MPCA intends to fight to protect Lot 13 but welcomed the opportunity to meet with Mr. Cheney and stakeholders to come to an agreement. Dan Wright asked Mr. Cheney if he would be willing to sit down with all parties involved and he said "absolutely". Mr. Cheney apologized and said he takes full blame for the

current circumstances. He said that the town has been unresponsive to his requests for a meeting. He agreed to sit down with all parties involved; he apologized for not contacting MPCA or Lubberland abutters for a meeting sooner.

Trish Simon, President MPCA, distributed copies of the Lot 13 and Lot 4 maps. She stated that since 2010 Mr. Cheney has questioned the cleanup that took place on Lot 4 after storm damage, approximately 400-500 trees were damaged and removed. He is now asking that the town enforce the bylaws to comply to repair, restore or replace common land after damage. She said the MPCA has done that, working with DES and Town Code Enforcement Officer to clear massive debris. Regrowth on the property is being actively monitored and managed and argue that planting 25' trees in the area would not be good in this shoreline area. She states she is feeling personally harassed at this point. The board takes the management of the land very seriously and asked that it be noted.

Russ Simon, Cushing Road, recommended getting a map of the full Moody Point area shows that Lot 13 was part of the original development. This lot is a cornerstone and part of the approval process for the cluster development. He stated it is not an independent lot and was planned to be open space.

Mr Cheney addressed the Conservation Commission and public. He said he was excited about the opportunity to all meet. He went on to say that Mr. Badger quoted an RSA that was enacted 3 years after Moody Point was developed so it does not apply to Moody Point. Mr. Cheney said that when Moody Point became a lot of record, that all he ever wanted to do was to give the land to TNC but that he had been waiting for the right time to get the right value for TNC. He said there was never anything said about open space on Lot 13 and it wasn't until 1987 when an employee of his made a false statement. He said that in a court of law, the property can be developed to the fullest and that doesn't change his right to donate it to TNC. He wants to protect it and develop what was never part of the original lot.

Jan Jeremiah, Cushing Road, said the explanation that if TNC doesn't want to abut the homeowners, it seems like a really good solution to donate the entire lot to TNC.

Justin Richardson, Town Attorney, addressed the Conservation Commission and public to provide an understanding of the town's role and current status of Lot 13. He said there is a court case right now in Rockingham Superior Court to deny the building permit but Mr. Cheney has appealed that. The town's position is that Lot 13 is subject to development restrictions resulting in the Planning Board's approval of Moody Point development. The town would like to have a deed restriction on the entire Lot 13 in which case the lot will become unbuildable. The court has already determined that he was the owner of the lot of record; it was represented and understood at the time of the development approval. If the town prevails the lot will be restricted from development but Mr. Cheney will still own it. As long as this dynamic is in place there will be contention. Attorney Richardson suggested that the Conservation Commission find a way to implement what the original vision was for Lot 13. And that was to find a way to get portions of the lot in conservation and protect the property. Several options could be for the town to acquire it and record a conservation easement on it; convey the marsh to TNC; maybe the town or one of the Moody Point associations could manage the land for public access in appropriate areas; the town or Conservation Commission could maintain an executory interest. Drew Kiefaber thanked him for his comments and that it all seems reasonable and asked that the Conservation Commission be invited to the meeting. Bruce Fecteau asked if it would be a public meeting and Attorney Richardson answered that there are a whole range of options depending on who is in attendance and what will be discussed. He offered to review that when the time comes. He also offered to talk about some of the underlying issues with the pending litigation and can conduct a non-meeting to discuss the potential legal risks surrounding the meeting. Jessica Veysey suggested that it would be efficient to take advantage of Attorney Richardson being available now if the timelines were eminent. Attorney Richardson said he heard Mr. Badger and Mr. Cheney talk about meeting sometime next week. Jeff Goldknopf asked if he should to recuse himself from the nonpublic session since he recused himself from the public session. Attorney Richardson answered that it was his call as a public official. Jeff Goldknopf recused himself from the recess.

ACTION

Motion: Bruce Fecteau made a motion to recess for 15 minutes to meet with legal counsel.

Second: Jessica Veysey

Vote: All in favor.

Public meeting in recess at 8:49PM

ACTION

Motion: Jessica Veysey made a motion to end the recess.

Second: Bruce Fecteau

Vote: All in favor. Jeff Goldknopf abstained due to recusal.

Public meeting resumed at 9:19PM

Health of Great Bay Estuary Forum – Feb. 19th

A public forum is being held 7-9pm in the Town Hall to discuss the new waste water treatment plant in addition to the health of the bay. There are four speakers planned for the night. Drew Kiefaber invited people to bring a food item if they liked.

CC Scholarship for resident senior

Drew Kiefaber had a conversation with a guidance counselor who said that when the money has not been used that it is generally because there are no students with eligible majors. Discussion ensued around opening up the eligibility to Newmarket "natives" or residents who are already in college; discussion ensued around the challenges of enforcing and promoting that.

ACTION

Motion: Bruce Fecteau made a motion to offer a \$1000 scholarship to a Newmarket resident senior graduating in June.

Second: Drew Kiefaber

Vote: All in favor

Bruce Fecteau will get the application to the guidance counselor and the application information listed on Channel 13 and the website. Jeff Goldknopf mentioned that the website does not list the meeting times for the Conservation Commission and that might be something to consider.

Easement Monitoring – New Roots Farm – Jan. 20 - Done

Drew Kiefaber reported that it is complete and filed but he still needs to send a copy of the report to the owners of the property. There were no issues to report.

Invasive Species management on Town properties

Drew Kiefaber would like to schedule time in the spring for invasive species management and wants to keep it on the agenda. Jeff Goldknopf mentioned that it would be good to mobilize a larger group of people to assist.

Action Item List

- Complete easement monitoring reports – all 2012 reports are completed; no further action needed at this time.
- Create education outreach plans about nitrogen removal from the Great Bay/sponsor Nitrogen workshop – Jeff Goldknopf did send the information to TNC; Stephanie Coster recommended future field trips that educate students on issues. Dan Wright suggested arranging a trip to the Jackson Lab to educate on the oyster beds. Drew Kiefaber will contact the science department at the middle and high schools to see what grade would be appropriate for this topics. Jeff Goldknopf suggested getting involved with scholarship recipients who educate in local schools.
- Discuss plans for scholarship offering - done
- Mark easement boundaries at New Roots Farm – nothing to report
- Think about creating a trail on the Hayden property in conjunction with Fish and Game – nothing to report
- Continue invasive species removal – in process
- Review amended application in Concord to see if Follet's Brook is a Prime wetland (Policy & Process subcommittee) – no further action; Jeff Goldknopf has new maps that he sent out earlier today; he would like to move forward on getting the maps done. He recommended eliminating Map 6 since there are no prime wetlands on that map. Discussion ensued around the buffer on the maps. If anyone who has additional comments, please send them to Jeff. He has a friend who might be able to help get to Concord.
- Develop a process for identifying when land has changed from current use for tax purposes (Policy & Process subcommittee) – nothing to report
- Finish connector trail at Piscassic/Loiselle – nothing to report
- Amend Wiggin Farm management plan to move mowing to after Sept 15 – nothing to report
- Remove defective snowmobile bridge from Wiggin Farm & arrange meeting with Snow Rollers to discuss mutual interests (Drew) – nothing to report

9. Adjournment

Action

Motion: Bruce Fecteau made a motion to adjourn.

Second: Jeff Goldknopf

Vote: All in favor.

Meeting adjourned at 10:15PM.

The next meeting is scheduled for Thursday, 03/14/13 at 7PM.

Respectfully submitted,

Becky LaPense