

TOWN OF NEWMARKET, NH
CONSERVATION COMMISSION
 September 10, 2015
 7:00 PM Council Chambers

Members Present: Jeff Goldknopf (Chair), Drew Kiefaber (Vice Chair), Andrea Frey, Bruce Fecteau, Fred Pearson, and Ezra Temko (Planning Board Rep)

Member Absent: Bob Gazda (Alternate) and Amy Burns (Town Council Rep - Ex-Officio) (*excused*)

Called to Order: 7:04 PM

Agenda Items:

1. Pledge of Allegiance

2. Roll Call

3. Public Comment

There were no public comments.

With a number of speakers present in the audience, the Chair asked the members to approve moving to item one under Old/New Business. There was no objection. For this first discussion, **Jeff Goldknopf** recused himself as he works for Doucet Survey and his company did work on the Elm Street Subdivision. **Drew Kiefaber**, Vice-Chair, will serve as the temporary Chair for the first item.

8. Old/New Business

Elm Street Subdivision- Portage Easement: **Jeff Goldknopf** recused himself and **Drew Kiefaber** agreed to lead this discussion. A letter written by Preston Samuel from LRAC to Bill Doucet, Doucet Survey, was submitted and entered into the minutes below:

Subject: Newmarket Con. Comm.: Canoe Portage
From: preston.samuel@comcast.net
Date: Tue, 8 Sep 2015 21:41:14 -0400

I'm writing this email just to recap conversations that have probably already taken place among the various parties to your proposed subdivision of land abutting Nichols Avenue in Newmarket. I was the person who first suggested the desirability of an easement for the purpose of portaging canoes around the Macallen Dam. This suggestion was made as a part of a technical review I did for your client's project as a volunteer with the Lamprey River Advisory Committee, which reviews and advises on all permit applications occurring within 1/4 mile of the river. As a former resident of River Ridge Condominiums, just upriver, and a frequent paddler on the Lamprey, I was aware of a long-standing use of a small portion of the corner property for access to the river. Most often the reason for access at this point is for fishing, but there has been occasional portage of canoes also.

The subject of portage rights is one that is discussed in paddling magazines on a regular basis. Laws dating back to the founding of our country guaranty rights to portage on all rivers where fur trade may once have taken place, even when the property is otherwise privately owned. Despite these long-standing laws, many land owners have barred access to and from the water, and in a few cases have enforced their "property rights" by killing someone. The purpose of my proposal for an easement is just to avoid such a calamity in the otherwise peaceful town of Newmarket. As was mentioned earlier, the Lamprey River Advisory Committee is currently conducting a study of the feasibility of laying out easements at other falls and dams on the Lamprey, such that respect of the ancient laws would become a moot point throughout the river corridor.

In your recent email to Richard Snow, you mentioned that your client does not wish to grant rights beyond the bare minimum necessary for our needs. I think that is a reasonable position. Quite frankly, the nature of the steep and rocky bank leading down to the river pretty much eliminates the possibility of uses other than fishing access or canoe portaging. There is no need for parking, toilets, wharfs or other improvements. State Shoreland Protection regulations would severely limit such "improvements" anyway, and even vegetation removal would be closely regulated.

The Lamprey River Advisory Committee is not able to hold easements. These must be held by a third party such as the Town of Newmarket. Since the town is in need of an easement for their recently completed drainage lines, it seems a simple matter to have that easement cover the same portion of the parcel as is needed for the drainage. Due to the steepness of the bank, it would be easiest to bring a canoe up from the river by "slab-siding" from a point furthest upstream toward the top of the bank near the end of the bridge guardrail on Main Street. I would recommend that the easement cover the full river frontage (approximately 90 feet) and go back to the landward side of the primitive road existing at the top of the bank.

While no physical improvements are needed as a part of this easement, it would make the portage much more comfortable if a path could be constructed and stabilized along the aforementioned slab-sided route. It would require minimal removal of underbrush to provide a passage of maximum six feet in width, and construction of mortared stone steps wherever necessary to a maximum width of three feet. Signage would be limited to one wooden post at the waterfront with the wording "Portage Around Falls". The Lamprey River Advisory Committee has participated financially in improving other river access points in the past, and perhaps there would be an opportunity to help with the funding at this location in the future. This is, of course, subject to availability of funds from our regular sources.

In all, it seems this easement might relieve your client of some of the current liability associated with the "informal" uses at this location by giving a formal easement to the Town. Similarly, the formalization of access for fishing and canoe portaging would be much appreciated by the residents of this area. Please contact myself or Richard Snow if we can assist you any further in this matter.

Preston Samuel

Mr. Preston Samuel, member of LRAC, addressed the CC. He is on the technical review committee which reviews permit applications from DES. He also serves as project manager for the potential footpath along the Lamprey River for 23 miles through Newmarket, Durham, Lee, and Epping. Portaging is a guaranteed right dating back to the founding of the nation. The surveyor responded to his email and said the developer was amenable to some sort of easement, but did not want any facilities to be created (i.e. parking area) or for the area to become a swimming hole. The River is steep (14 ft. drop) and lined with large stones of granite so erosion should not be a concern. The landowner does not wish to be delayed further and the Town does not have the funds to proceed with the easement preparation. The question becomes who will pay for the drafting and technical work involved. A discussion followed about the three different routes to accomplish the portage. The routes are all equidistant. The preferred route would be down Penstock Way between the Mills which requires, like the others, permissions from land owners. The other routes may be awkward with a canoe. **Ezra Temko** will ask the PB about the drainage easement (work already completed without an easement in place) that the town is correcting now and ask if this easement might be included without too much additional cost. According to Preston Samuel, the National Park Service describes this as a primitive trail and the town would not be required to fulfill the ADA requirements. There is no possibility to make this a grade of 8 percent to meet ADA regulations without significant work which is in direct conflict with Shoreland Protection. **Drew Kiefaber** believes this to be a worthy pursuit and his only concern is the cost. As an entity of the National Park Service (NPS), LRAC cannot hold the easement. The Town must hold the easement and pay the preparation and court costs incurred.

After the discussion, **Ezra Temko** suggested the following language for a memo to the PB:

"The Conservation Commission supports the ability of the public to portage canoes and similar boats around the Macallen Dam. We believe this would be a positive recreational opportunity for Newmarket residents and visitors, reflects their legal rights, and could help avoid conflict. The Commission supports pursuing this so long as it can be accomplished at reasonable cost and without substantive hardships. From the information we have at present, we believe a possible ideal way to accomplish this would be through the developer providing an easement to the town, and that the town combine their development of an easement for the adjacent recently completed drainage lines in order to mitigate costs."

Action

Motion: **Drew Kiefaber** moved that the language which **Ezra Temko** crafted be forwarded to the Planning Board as an expression of the Conservation Commission's interest in pursuing a portage easement on this property as part of the development.

Second: **Fred Pearson**

Vote: Approved 5-0-0

SOAK – Great Bay Project: Laura Byergo (laura.byergo@greatbaystewards.org), Trustee with the Great Bay Stewards (GBS), came to make a presentation about the Soak Up the Rain Great Bay Project (www.soaknh.org). GBS has a grant from the EPA administered through the DES. They are a model program to demonstrate best practices for ten home projects and they perform extensive outreach to raise awareness as well. She described several current and past projects. They are looking for small size homeowner projects within Newmarket. The funds are restricted to the Great Bay Watershed only. DES is modeling the pollutants entering the Bay from their projects. She has volunteered to take a walk with members of the CC around Newmarket. The CC agreed and had several ideas. Members will meet her at 9:00 am on Saturday the Sept. 26th at Schanda Park (Water Street) to begin their tour of Newmarket. **Jeff Goldknopf** will have the walk posted as a public meeting and all are welcome to attend.

LRAC Footpath Meeting: Sharon Meeker, from LRAC, has scheduled the meetings for each of the four towns involved in the proposed footpath along the Lamprey River. The Newmarket meeting is scheduled Monday, Sept. 21 at 7:00 PM in the Town Auditorium. All are welcome to attend.

The Chair returned to the original agenda.

4. Approval of Minutes

August 13, 2015

Action

Motion: **Drew Kiefaber** moved that the minutes of August 13, 2015 be approved as drafted.

Second: **Andrea Frey**

Vote: Approved 4-0-2

5. Treasurer's Report

Andrea Frey reported for both July and August. There was an unusual deduction and she will clarify this with the finance department. She also reported that **Jeff Goldknopf** has been reimbursed for the fence posts he purchased. **Jeff Goldknopf** received the bill from NE Barricade for the water removal signs and he split the payment by posting \$200.00 of the bill to the general supply budget line and the remaining \$184.80 on the conservation fund budget line.

6. Committee and Subcommittee Reports

Ezra Temko reported that the PB would be meeting next week. He sent the recent revisions to the draft of the Visioning Statement to the CC members. Any members with comments, may contact him before the next meeting of the PB.

7. Chairman's Report

Meeting of the Chairs- General Property Maintenance & Schanda Park: **Jeff Goldknopf** attended the meeting of the Town Chairs. There was discussion around the topic of who will care for Schanda Park in the long term. Who should keep the calendar of use and approve the users?

Currently, the DPW performs all the mowing and general maintenance, but perhaps the CC could make the process of reserving the space for events more effortless for the public. The application could be made available online, but more publicity is necessary of the requirements for applying to the CC for the use. The CC will continue the discussion at the next meeting.

2016 Conservation Commission Budget: The budget appeared fine and the CC will not ask for changes to the proposal.

New Hampshire Association of Conservation Commission: The CC has received the bill for the annual dues from the NHACC (<http://www.nhacc.org/>). They provide a wide range of services to the State and there is more detailed information at their website.

Action

Motion: **Drew Kiefaber** moved that the CC expend \$363.00 to maintain our membership in the New Hampshire Association of Conservation Commissions.

Second: **Bruce Fecteau**

Vote: Approved 6-0-0

Andrea Frey will see that the check request for the dues is made to the finance office.

Wiggin Farm: We received more photos from Paul Klein of the early years of the Wiggin Farm. **Jeff Goldknopf** will pass these on to the New Market Historical Society and write a thank you note to Mr. Klein. It is wonderful that he is sharing this history with us.

Nature Conservancy: Peter Steckler, GIS and Conservation Project Manager from the Nature Conservancy, wrote to tell the CC that the engineering report on the Lubberland Creek Culvert project will be presented on September 24 from 10:00 to noon at the Great Bay Office. He will be sending us a check request shortly.

Southeast Land Trust: **Jeff Goldknopf** has been informed that the Hayden property (Bald Hill) is closing shortly.

2015 Lamprey River Clean Up Day: The 2015 Lamprey River Clean Up Day is scheduled for Saturday, September 19th from 9:30 am – 11:30 am. All are encouraged to meet at the Library parking lot prepared to clean up the River rain or shine!

8. Old/New Business

Request for Permission to Use Schanda Park: Melissa Fales has requested the use of Schanda Park on Oct. 17 or 24 for a baby shower. Unfortunately, the 24th conflicts with the annual Halloween Haunt held by the Newmarket Recreation Department every year on the Saturday before Halloween. The park would, however, be available on Oct. 17 from 1-5 pm for the 40 people she expects to attend. **Jeff Goldknopf** will email Melissa to offer her the 17th.

Action

Motion: **Bruce Fecteau** moved that the CC approve the use of Schanda Park by Melissa Fales for a baby shower on October 17 from 1-5 pm be approved if she accepts the date change.

Second: **Jeff Goldknopf**

Vote: Approved 6-0-0

Fred Pearson mentioned the continuing problem with people feeding the wildlife at Schanda Park. Recently he spoke with a woman who knew the sign was there, but continued to feed the birds pretzels. He also mentioned unofficial signs posted on the Kiosk and that they were out of date. He removed them.

Salon Realty – 438 Wadleigh Falls Road – Letter: Jeff Goldknopf shared the letter with the Planning Department and he will be making a few minor changes after his discussion with Diane Hardy. The letter will be sent to the Code Enforcement Officer once complete and the CC members will receive a copy.

19 Osprey Lane – Permit: The Chair reported that the Shoreland Permit has been issued for the property.

Water Removal Signs: **Bruce Fecteau** reported that the signs were ready and in his truck. He expects to put most of them up on Sunday. Others on the CC will be taking some of the signs to post as well. **Bruce Fecteau** mentioned that he bought 10 signs, but should we need more the set-up fee would not be necessary as they keep the design at NE Barricade. Many thanks to Bruce!

Schanda Park- Improvement: **Bruce Fecteau** has asked a contractor for an estimate to complete the wall repair work, electrical, and brick work. It was suggested that we get the estimate, but begin the work in the spring. CC members will take a look at the park conditions during the already scheduled SOAK walk on the 26th and make notes for the next meeting.

Wiggin Farm: **Jeff Goldknopf** will ask the DPW for a fall mowing on the farm.

Agenda item for the next meeting will include scheduling the easement monitoring for the fall.

9. Adjournment

Action

Motion: **Drew Kiefaber** moved to adjourn the meeting.

Second: **Andrea Frey**

Vote: Approved 6-0-0

The meeting was adjourned at 9:08 PM.

The next meeting will be held on Thursday, October 8, 2015.

Respectfully submitted,

Sue Frick, Recording Secretary