

**Minutes, Atkinson Conservation Commission
November 3, 2008
Atkinson Town Hall**

Call To Order by Chairman Tim Dziechowski at 7:34

Attending:

Tim Dziechowski
Dan Kimball
Scott Kukshel
Denise Legault
Pete McVay
Michelle Veasey
Paul Wainwright

Guest Business and Plan Reviews:

- **Dennis Quintal, Patti Mangini, Recreation Commission, East Road fields plan review.** Dennis was contracted by the Recreation Department to do environmental surveys and draw up a field plan for the Recreation Committee. Based on soil analysis, test pits, and deed restrictions, Dennis presented a plan for review by the Conservation Commission. The plans include a parking area adjacent to the existing barn, a LaCrosse field, and a general-purpose field. Dennis has submitted for an alteration of terrain permit. Surveyed the trees along the edge of the field and has plans to plant more along the edge to maintain the zone. The storm drain is outside of the riparian zone by 50'. The inlet is also more than 50' away. Also has a second entrance to the field for emergencies. A swale runs down the center of the plan to keep the runoff under control. There are also plans to remove brush and other debris during the field production. Tim requested that signage be reduced to a minimum, and Patti commented that dog-walking will be confined to appropriate trails. Dennis left a copy with Michelle and an electronic version will be available online once the plans are approved. (www.Atkinsonrecreation.org)
- **Jim Garrity, proposed RSA changes for prime wetlands,** modifications to allow isolated pockets of development and to allow prime wetlands warrant articles by petition. The warrant article designated seven prime wetlands, and there are a number of homes that might be impacted in these areas. Grandfathering was discussed with provisions to allow for these existing homes not to be adversely impacted by a new ordinance. The prime wetlands warrant passed at town meeting, but has the effect of a referendum ballot and has no force of law, since prime wetlands must be designated by the planning board. However, this warrant now gives the Planning Board the authority an incentive with a warrant (meaning the voters of Atkinson are in favor of such a resolution).
- **James Lavelle for Gilles Gagnon, wetlands setback variance request,** Map 16 Lot 50, Industrial Drive. Scott, Pete, Tim did a site walk of the site, and concluded that the wetland was the only functional wetland on the property and too close to the proposed variance area. There was no evidence of any mitigation such as a vegetation buffer near the wetlands. Scott, Pete and Tim recommended that the ZBA stick with the zoning and do not recommend approval. Frank Polito (as a guest) said that the Commission needs to be more precise on the criteria (does it affect surrounding property values, is it in the public interest, in keeping with the spirit of the zone, substantial justice, and hardship). In review and using a Google map, Scott, Pete and Tim remarked that the only wetland on the property is being used, for all intents and purposes, as a holding basin, which use should require a dredge and fill permit. There are also storm drains in the parking lot which drain into that basin, and brush and upper wetland soils had been removed.

- **Frank Polito** came in to discuss differences of opinion between the ZBA and Conservation Commission. The boundaries are ruled on by the ZBA, and the state has jurisdiction over wetlands after that. The state relies on the findings of the local ZBA and Commission to make their decisions in cases. Scott read from Ent-Wt 703.04 to define the policies that the Commission uses in assessment and site walks. Frank has requested a meeting with Tim and the Planning Board and ZBA to resolve the differences in approach to requests for variances. A joint workshop meeting was proposed with date to be determined by mutual agreement (ZBA, Planning Board, Conservation Commission.)

Internal Business

Secretary report: review and approval and minutes deferred

Treasurer's report:

- Scott said that the forestry fund predates the conservation fund. The current land-use change tax changed the flow of funds to the Conservation Fund, and the forestry fund was closed. The Forestry Fund was therefore separate at one time and could be made separate again.
- 2009 budget: Selectmen want to review it before Thanksgiving and this year's budget.
- YTD expenditures: of a \$6,500 budget the Commission has expended \$500. The Prime Wetlands Study is for \$362.28 for 12 copies and \$65.91 for a PDF scan. A motion was made to authorize \$428.19 reimbursement to Tim for costs. The motion was seconded and passed with one abstention.
- Tim stepped down as Chairman and Paul assumed temporary chairmanship. A motion was made to authorize the payment of Tim's Tractor \$300 for mowing the Orr field. The motion was seconded and passed with one abstention. Tim noted that there are some trees down on the Bonin Field that might pose a hazard for emergency vehicles.
- Tim rejoined the meeting as Chairman. Selectmen's authorization to overspend printing line item, bills to reprint 12 prime wetlands study copies and to scan the report to PDF.
- Bill for forestry inventory and mapping, 140 acre Sawyer lot. Tim has contacted Charlie Moreno who has said he will do a forest inventory of the entire Sawyer complex by the end of the year. Estimated cost: \$1,500.
- Surveying projects, Map 20 Lot 35 or Lot 13-1 and McPherson North boundary fence. South end of Big Island Pond. A motion was made to authorize Tim to spend up to \$2,500 for a survey and/or fencework on conservation land. The motion was seconded and passed with one abstention.
- DR mower repair: Tim will take for repair.

Other Dredge and Fills / Site Walks / Complaints

- The draft of notice letter to **Lorraine Mullett** concerning violation of conservation easement was reviewed. Pete will send the letter with corrections.
- **Complaint about hunting blind** on/near Sawyer trails. Tim has seen two, one not on the Sawyer land. Other Commission members have not seen a blind on the Sawyer trails, but will investigate.
- **John Mason, 4 Rocky Point Lane, Map 22, Lot 31.** Addition built within 50' of shoreline with no building permit, ZBA variance, or DES waiver. DES complaint filed by Jim Kirsch, selectmen looking at fines, Eben Lewis investigating at DES.
- **Conservation commission commentary on HAWC groundwater withdrawal proposal.** Tim received a response from DES from Christine Bowman that addressed the concerns of the Commission. The letter is attached to these minutes.

- A letter was sent from DES to HAWC lawyer, which included many issues along with Slade Town Forest issues. The proposed well is too close to conservation lands and cannot be done without a waiver.
- **HAWC minimum impact dredge and fill for temporary test weir** on outflow stream from Stewarts Farm Pond, 10/4 site walk and workshop meeting, approved by DES.
- **Maple Heights subdivision at 40 Maple Ave**, 10/4 site walk, Looked at trail easement to connect to trail easement on Scott Kukshel's land for through trail to Kelly Lane.
- **Kevin Bresnahan request for wetlands setback** to rebuild preexisting nonconforming deck at 5 Jasmine Drive. 10/4 site walk, workshop meeting, voted to recommend variance to ZBA. ZBA has granted 20' variance.

Review of Correspondence

Planning Board Agenda Items:

- Prime wetlands warrant article update, workshop meeting 11/5/08, ZBA and Carol Grant attending.
- New 9 hole executive golf course at Atkinson Farm
- Lincmark ("mini-mall") site plan redone as residential
- Maple Heights 10 lot subdivision, trail easement will be granted to Scott Kukshel's property, developers will survey and monument easement but they want us to construct the trail.

Zoning Board Agenda items:

- Status update, SPNHF and community center commercial sign
- 8/13 agenda, Ferreira-Ludwig, special exception to add 2nd story addition, 12B Stickney Road, Map 23, Lot 48, and also conversion from seasonal to year round, both approved. This was not a duly noticed public hearing because the conservation commission is an abutter and was not notified. Formal request for rehearing submitted 9/10 to ZBA, will be acted on at 10/8 ZBA meeting. Shoreland waiver applied for 10/2/08. Waiver assigned to Thomas Gilbert. Spoke to him and all that was applied for is a septic system (no home expansion). Rehearing granted by ZBA at their 10/8 meeting, will be heard at the 11/12/08 ZBA meeting.
- 8/13 agenda Dobrov, expansion/alteration (teardown/rebuild) replacing cottage with new primary residence at 3 Valcat Lane, Map 22, Lot 48. The ZBA felt that this complied with the new shoreland protection act. Variance and year-round conversion both approved. No shoreland waiver applied for so wetlands complaint filed. Spoke with Thomas Gilbert and he still has not seen a shoreland waiver application. Dobrov: will be investigated by state. Jane Magoon contacted Pete for more information and will investigate. Thomas Gilbert is now taking over some of Eben's duties.
- 9/10 agenda Orlando, special exception/expansion to extend existing bedroom 75" x 10.5'. 7 Valcat Lane, Map 22, Lot 50. Variance granted subject to DES shoreland protection approval, and selectmen's class 6 road approval. No building permits will be issued until these conditions are met.

Other Business

Pete read an entry proposed from the NHACC meeting on Saturday:

If your community would like to have the ability to support land protection projects by giving money to a qualified organization (such as a land trust) without taking a property interest, your community will need to pass this article:

“Shall the town vote to adopt the provisions of RSA 36-A:4-a, 1(b) to authorize the conservation commission to expend funds for contributions to ‘qualified organizations’ for the purchase of property interests, or facilitating transactions related thereto, where the property interest is to be held by the qualified organization and the town will retain no interest in the property?”

If your commission would like the ability to spend money on projects that occur outside of your municipal boundaries your community will need to pass this article:

“Shall the town vote to adopt the provisions of RSA 36-A:4-a, 1(a) to authorize the conservation commission to expend funds to purchase interest in land outside the boundaries of our municipality, subject to the approval of the local governing body?”

Special Projects

- Town meeting articles - new powers of conservation commissions, make new 20 acre Sawyer parcel a town forest
- **Forestry plan**, Charlie Moreno starting on Sawyer inventory.
- **Chain/cable** was placed to close off Big Island Pond conservation land being used for unauthorized parking and storage.
- **Canoe dock** on Big Island Pond was secured for the winter.
- **No hunting signs** need to be placed on conservation lands.
- **Five trees are down** on Bonin land. Tree warden will be notified.

The next meeting of the Commission will be Monday, December 1st, at 7:30.

The meeting adjourned at 10:23.

Respectfully submitted,

Pete McVay

Letter to to Christine Bowman, State DES from Tim.

Christine,

Below are the Atkinson Conservation Commission's questions about the Hampstead Area Water Company large groundwater withdrawal in Atkinson.

Tim Dziechowski

Chairman, Atkinson Conservation Commission

1/ The town is considering prime wetlands status for seven wetlands, which includes the wetland containing the central well. This is identified as wetland 30, Wright Farm Pond in the attached prime wetlands study. We understand that the NH Supreme Court ruled in Nottingham vs. US Springs that water withdrawal from a well in a prime wetland does not constitute a dredge and fill. Do construction activities within a prime wetland by a water company (expanding a road, buiding a pump house, etc.) require a major impact wetland application to DES?

2/ Would a water company be allowed to hydrofracture an underperforming well in a prime wetland?

3/ If fracking is allowed and the prime wetland's water level is permanently altered, would the water company be required to mitigate the damage?

4/ This week, Governor Lynch proposed budget cuts of \$1.3 million for groundwater protection and landfill closure grants. Does this affect your budget and ability to protect our town's water?