

CONSERVATION COMMISSION MINUTES

March 1, 2023

APPROVED: May 3, 2023

AGENDA: WATERSHED PRESENTATION – REBECCA HANSON, NEWFOUND LAKE REGION ASSOCIATION (NLRA)
23SUP02 – BRIAN & KAREN GALLAGHER – PEMIGEWASSET SHORES ROAD - #222-030
23SUP03 – TOWN OF BRISTOL – 230 LAKE STREET - #112 – 70 & 71

ATTENDING: Carroll Brown (Chair), Richard Batchelder (Vice Chair), Elizabeth Miller, Richard Metcalf, Janet Cote, Bill Haskell (Alternate) and Chip Carleton (Alternate)

OTHER: Christina Goodwin (Town Administrator), Joanne Bailey (Land Use Manager), and Donna Sullivan (Land Use Administrative Assistant) Karen & Brian Gallagher, Kevin French (via Zoom), Mike Vignale (via Zoom)

Chair Brown called meeting to order at 6:04 pm with a quorum present in-person. A roll call was taken.

NEW BUSINESS:

TRAINING WORKSHOP – WATERSHED PLAN PRESENTATION – REBECCA HANSON, NLRA

Rebecca Hanson of the NLRA conducted a presentation outlining the NLRA Watershed Plan, the methodology and water sampling locations used, water quality issues and runoff impacts from rivers, streams and tributaries flowing into Newfound Lake. Members of both the Conservation Commission and the Lake Water Quality Study Group were present for the training.

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Before discussion, Mr. Metcalf asked for clarification and update on the status of the New Hampshire Department of Environmental Services (NHDES) Violations Notice and Order at this property previously discussed at the December Conservation Commission meeting.

Ms. Goodwin explained that the application before the Commission tonight was for a Special Use Permit for a Septic System and the previous violation letter discussed in December was for activities in violation of Shoreland Protection Act and Wetlands Protection Act and that the applicant is working with the NHDES to address the violation order. She explained that the Special Use Permit was submitted to Planning Board for decision next week and the Conservation Commission has a chance to review this for recommendations for the Planning Board's consideration and this is what is before the Commission to review. This is at the Commission's discretion to recommend, not to recommend, or possibly add conditions that no action be taken unless further information is submitted.

Ms. Bailey stated that a copy of a letter from NHDES to the Gallaghers, dated February 17, 2023 was received asking the owners for a status update of outstanding items pending from the violation order. She reported that she has talked with Mr. Tyler Davidson by phone with NHDES. She said Mr. Davidson indicated that violations number 1 and 3 had been addressed with the application and approval of a Shoreland Permit that was issued on 12/30/22.

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He stated the items identified by violations 2 and 4 were not yet complete but to his knowledge are being worked on with Wetlands Permit application process and wetlands delineation work.

There was some additional discussion regarding the Special Use Permit process and deadlines for review and decision by the Planning Board and the Commission's determination of separation of the violation issues and the special permit application to move forward. Mr. Brown stated he would like to move the process forward for review with presentation of Special Use Permit application for the Septic Design by Mr. Gallagher and/or Mr. French.

Mr. Gallagher made a brief overview statement and deferred to Mr. Kevin French for the specifics of the application and other aspects of his project including status of NHDES permitting.

Mr. French explained that the Gallaghers had contracted with him to move them forward through the State permitting process and violations. He continued with updates about the application and approval of the Shoreland Permit, the NHDES approved Septic Design, and the Standard Wetlands Permit application in process. The delineation of the wetland on the property was in process with Stoney Ridge Environmental to move the Wetlands Permit application forward which includes a proper culvert and the driveway plans. This may have been submitted since his last communication.

Mr. Gallagher stated that there has been ongoing communication with Mr. Davidson of NHDES and last communication was on February 25. He read these communications to the Commission. He stated tonight he was before the Commission for the Septic System. Ms. Goodwin confirmed that tonight's review was the proposed Septic System within the 125-foot setback.

Mr. Metcalf stated his position on taking up applications that do not adhere to the Ordinance setbacks and making decisions to protect the wetlands and resources. He felt his decision to recommend or not recommend is impacted by the previous violation of the Shoreland Protection and Wetlands Act because at present some of the protections to the Pemigewasset River have already been stripped away and we do not have sufficient evidence yet that all the State's Violation Notice remediations and restorations are completed.

Mr. Brown asked Mr. Gallagher to explain what has happened to date with the property.

He stated that he and his wife purchased the property with intention of building a home and went about beginning this process trusting that by hiring local contractors that the local contractor would understand local rules and requirements. Once ordered to cease and desist by NHDES they met with and engaged Mr. French and began the process of meeting to come into compliance with the violations listed in the order. Immediate steps were taken to stabilize the soils with hay and silt fencing was installed. Photos of this were shared with the Commission. A Shoreland Permit and shortly after a Septic Design Approval was received by NHDES. He shared some frustration with State departments not communicating with others but said Mr. French was helpful with navigating the process for permitting. Mr. Gallagher then went on to talk about the communication and information concerning the Town permitting. He stated that the

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State approved septic design shows the system 100 plus feet from the River, but the Town has a setback requirement of 125 feet. He added the state requirement is 75 feet. If allowed as designed, they would have a well-designed, highly efficient gravity fed system. He stated in order to meet the Town's 125-foot setback, it would involve changing the system location to the side of the house and the re-design would require a septic pump with a higher possibility of failure, and more plumbing and piping. He was requesting from the Commission their consideration to allow them to use the existing State approved septic design so to they could move forward with the Town process to secure a building permit to start home construction in Spring when snow disappears.

Mr. French outlined the timeline and actions taken to date since the violation order. He stated the first permit granted was the Shoreland Permit which addressed violations and listed conditions. The Septic Design was submitted and approved by NHDES following the Shoreland Permit approval. He added that the wetlands delineation is in process and once done the Wetlands Permit application will be filed meeting the other violation items.

Mr. French then presented the Special Use Permit application proposed septic design plan. He stated that the state approved this plan. The State approved septic plan shows the best location to be approximately 100+ feet from the Pemigewasset River. The owners would like to seek relief from meeting the Town's 125-foot setback requirement. He went on to describe the proposed septic system as a gravity fed system which, if allowed in the location as shown on the plan, would not require the addition of a septic pump or movement of the tank, leach field or any additional piping which would be necessary to accommodate compliance with a 125-foot setback. Location of the house was to comply with setbacks required by the Wetlands Ordinance for the wetland which is identified in front of the house.

Mr. French added that other locations on the site for the Septic System were considered, but the location chosen was where the best soil test pit results were found. The front of the house has poorly drained soils and where the septic is on the current plan it would be gravity fed. He stated that if the system had to be moved back or relocated it would be necessary to add a septic pump and piping and his feeling was that introducing a pump could be a source of possible failure. In his opinion, considering the site soil limitations and proposed house location, the current gravity fed septic design was the best option.

Mr. Brown asked if Mr. French could address Mr. Metcalf's question regarding the changes already made to the site previously and any restoration activity ordered which may change the site or could impact the current septic design as proposed.

Ms. Goodwin clarified this question further asking Mr. French if the Shoreland Permit orders included mitigation or restoration of previously altered shoreline, and would this affect or warrant a change to the current proposed septic design or location of the system.

Mr. French stated there would be no difference to shoreline.

Ms. Cote asked if the Shoreland Permit conditions required restoration of the trees and clearing that happened on the site. She noted some trees and planting along the shoreline and asked if this was

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restoration. Mr. Gallagher clarified that the trees on the shoreline are the existing un-disturbed shoreline and that most of the site clearing activity had occurred in the wetland area not the shoreline area. Mr. Gallagher showed the Commissioners a large copy of the septic design plan and defined the location. He reiterated that they were looking to have consideration for being only 100+ feet from the river rather than the required 125 feet from the river.

Mr. Brown asked Mr. French if there was enough distance to move the leach field closer to the septic tank. Mr. French stated that the system leach field was located at the highest point on the property it could be to allow a gravity fed system.

Mr. Brown asked if the leach field could be made half as wide and longer to adjust the setback. Mr. French stated that they had tried this, and the site ridges and side slopes would not allow for this, and it would cause more impact.

Mr. Brown asked if moving the house and system forward on the lot was possible. Mr. Gallagher stated that the home siting was done taking into account the neighbors and where their homes were on their lots as well as the Wetlands setbacks and the best septic design possibilities.

Mr. Brown confirmed that it was an Enviro-System and stated that based on the information shared by the owners and Mr. French that their position is that this is the best location for the home and least impactful location and design for the septic system for the lot. Mr. Brown asked if there were any other questions from the Commission.

Mr. Gallagher reiterated his position of plans for the home, the septic design and process to comply with all permitting.

Mr. Metcalf stated that the applicant letter with the application indicates the home placement and septic design is not only based on slope issues but also the best to allow for home position for a walk out basement. He continued with questions and his concerns regarding the compliance with the NHDES violation order specifically with the restoration of the site. He agreed that the photos showing erosion controls address condition #1 which, from verbal communication from Mr. Davidson, has been done but the restoration order does not seem to be addressed or done from any evidence or communication presented. He would like to be sure that the restoration piece which includes re-planting is either waived or met before making any recommendation to the Planning Board about the septic design Special Use Permit. The reason for his concern was that everything on the lot will flow downhill to the river and that he would be better advised if he had information that the restoration order was either met, accepted, or waived by NHDES. To clarify, he stated he would like to be sure of whether all limitations and if aspects of the previous clearing would leave the lot with less erosion control than it had originally to consider allowing for the exception to complying with the 125-foot setback and the Town's Ordinance.

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Ms. Bailey clarified the communication again from Mr. Davidson of NHDES reiterating that that he indicated that according to his records, the Gallaghers had remedied condition #1 and possibly #3. He was waiting for confirmation from others assigned to the case about compliance with conditions #2 and #4 and would get back to her later in the week. Her plan was to contact him again the next day. She stated that Mr. Gallagher has received a letter back from Mr. Davidson, but the office has not yet. Mr. Gallagher shared the communication received. Ms. Bailey stated that since the initial violation notification in December, there have been lots of communications with the Gallaghers and NHDES. She shared that the owners were somewhat misinformed about the regulations that would apply to the development of their property and shared that it was found that back in 1989 the Pemigewasset Shore Lots were granted exemption from complying with the Pemigewasset Overlay District requirements. Ms. Goodwin shared that when the owners began their land use application process, they were informed that this would not exempt them from any other requirements such as Wetlands Conservation Overlay District, NHDES permitting and standard setback requirements.

Ms. Cote shared that her only concern was that there was still some communication needed regarding the NHDES violations on this property and that from what she could see from the Shoreland Permit granted, restoration of the site was not a condition of this permit and may instead be a condition of the Wetlands permit if granted. She felt restoration was an unknown, but the Gallaghers have installed erosion controls, they have applied and received a Shoreland Permit, the wetlands on the site are currently being delineated with a soil scientist and they are in the process of applying for the Wetlands Permit, so the owners are working to comply with all violations. In her review of the Special Use Permit application and plan, the Gallaghers and Mr. French have demonstrated that the septic design and home location was indicated in the best and maybe only suitable location on the lot. Her feeling was that there was a chance all the plans could change if the NHDES Wetlands Permit conditions warrant it. She stated that there was the feeling of putting the cart before the horse.

Considering the deadline for Planning Board now that this Special Use Permit application is in receipt, Mr. Brown wanted to be sure the Commission was clear on what the Commission's job was regarding the application. Ms. Goodwin stated that the job of the Commission was to decide on a recommendation or not as to whether the septic system can be inside the 125-foot setback from the river. She offered that this could take the form of a conditional recommendation, no recommendation, or decision to not recommend with a reason such as more information is needed, but it was up to the Commission how they wished to proceed.

Mr. Brown asked the Commission if they thought that whatever might happen for mitigation or mediation of the site would change or impact a decision about the location of the septic system. He added that his thought was that any recommendation to allow should include that any mitigation should not change or impact the location of the septic system as noted on this plan. He added that it was his feeling that having to introduce a pump or other machinery to a septic design could cause a failure of the system at any time.

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Ms. Cote stated that if it were not for the violation and need for additional information, there would most likely be an easy decision on recommendation. She asked to view the exact location of the wetland on the lot and the plan and Mr. Gallagher demonstrated where this was on the plan at the front of the property. Mr. Brown noted that the construction activity on the lot cannot be within 50 feet of the wetland. Mr. Gallagher stated that the area of trees and plantings along the shoreland is existing and the contours in the back are the natural contours. Mr. Metcalf asked about where the fill referred to by the violation letter was located. Mr. Gallagher indicated the fill in question with violations was in front of the house and was done for the driveway.

Mr. Metcalf was still not clear if there was a restoration plan and if violation #3 was met. He asked Mr. French if they were working on a replanting plan and Mr. French stated that he did not have the final delineation of wetlands or wetlands application plans yet, so this could be within this application.

Ms. Cote asked Mr. French about the communications to date and if there has been any discussion about a restoration plan. Mr. French stated that the Shoreland Permit did not require any, but because the Wetlands Permit was still in process, and the Gallaghers had plans to install plantings, this could be added to the Wetlands Permit application.

Mr. Brown asked Mr. French if all the mitigation activity would be done before installation of the septic system leach field. Mr. French stated they will add loam, seed and plantings simultaneously, because if done all at once, erosion controls are in place, and this would allow it all to stabilize.

Mr. Brown suggested that a recommendation be made to the Planning Board to allow waiver of the 125-foot setback requirement because the Conservation Commission does not have an issue with the septic system design as discussed, the Commission could add to the recommendation that all the violations cited by NHDES are complied with and mitigated by the owners. Mr. Metcalf added that the motion should also include violation mitigation and restoration. Ms. Miller added that it should include the receipt of a Wetlands Permit.

Ms. Cote motioned that the Conservation Commission recommends to the Planning Board to allow the Special Use Permit #23SUP02 for the septic system as designed, as long as all permitting, violations, and restorations are received, addressed and/or mitigated as required by the NH Department of Environmental Services. Mr. Batchelder seconded. The motion carried 5-0-0.

Mr. Brown thanked the Gallaghers and Mr. French for their understanding of the process for the Commission especially with the “after the fact” permitting situation they found themselves in with NHDES.

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Ms. Goodwin stated she would be representing the Town as the owner for this application and not as a staff member and Mr. Vignale, will be representing the Town as the project engineer attending via Zoom. Ms. Goodwin presented the Special Use Permit application for the new proposed Public Safety Building. The special use is for the

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excavation, construction and building which is within the Wetland setback. The wetland was discovered during site review of the property.

Mr. Vignale presented the plans for the project citing that the wetland is a small grassy area that currently drains from the hillside to a catch basin and then proceeds to the State drainage system and the Newfound River. This wetland would be impacted with the proposed parking lot area, driveway, and building. He indicated that to address this new drainage with a sub-surface stormwater mitigation system to reduce peak flows, provide filtration and provide water quality storage volume was designed. This system effectively will take any water and parking lot runoff and send it to a system to be stored so sediments can settle out, be collected and taken away. He added that ideally the water quality leaving the site will be better than it is now. He stated that the project is under review with NHDES for Wetlands and Shoreland permits and because of the size of the area impacted by construction within the Shoreland Protection area, an Alteration of Terrain permit was required and is also in process. He stated the NH Department of Transportation (NHDOT) is also reviewing the proposal for peak discharge. He said the project was expected to start this year and be completed by the summer of 2024.

Mr. Brown asked Mr. Vignale if he thought this was a natural wetland or one created by man-made activity on the site. Mr. Vignale stated it was hard to tell, but that there was some fill noted, and there was a natural ravine too, so the buildings that were on the property before could have caused it to develop.

Mr. Brown asked if this project is eliminating this wetland. Mr. Vignale indicated that with the building being constructed, the small salley port entry to the side, the parking and the driveway would eliminate this wetland completely.

Ms. Cote indicated the drainage system proposed looked similar to the one used for the Dollar General project and this was confirmed. She asked Mr. Vignale if the water that would normally go through this wetland will be going into the drainage system on the site now. Mr. Vignale indicated it would start with catch basin #1 and continue through the new sub-surface system. Mr. Batchelder asked if there would be a maintenance plan for this system. Mr. Vignale confirmed that there was a maintenance plan. Ms. Goodwin indicated that this would be incorporated into maintenance plans for the building.

Mr. Metcalf added that it was important to note that the job of the Commission is to protect wetlands. He noted that there could be a difference when the wetland may have been created by construction or other activity with home building or road building etc. or even if it is natural to whatever flow may have come before but to allow elimination of this wetland the Commission should be clear as to the reasoning and mitigation with its decision.

Ms. Cote added that she felt it was a small wetland, probably not a significant natural resource or wildlife habitat and this may be why she could even consider elimination. She asked Mr. Vignale if there were any mitigation requirements involved with elimination of this wetland. He stated not to his knowledge. Mr. Brown suggested that could still be a requirement of this Commission and it was suggested that it could be mitigated on another lot that the Town owns.

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Mr. Brown added that Mr. Metcalf's point is important especially where this is a Town property and to remain consistent with decisions like this. Ms. Goodwin agreed that the mitigation idea could be one way to achieve their goals.

Mr. Metcalf reiterated that the consideration of the natural resource itself, the specialized drainage system designed to filter the runoff and take the place of the wetland, and the possibility of mitigating this wetland with the creation of another or enhancing or protection of another on Town owned property could be the reasoning for recommendation to allow.

Ms. Goodwin indicated that the recommendation decision by the Commission can cite the reasons for whatever decision the Commission decides.

Ms. Cote motioned that the Conservation Commission recommend to the Planning Board that the Public Safety Building project proceed as designed based on size and origin of wetland impacted and the proposed specialized drainage system allowing the water traveling to the river from the site to be improved quality. It is recommended that the Planning Board and Select Board consider mitigation on another Town property to offset the loss of the wetland. Mr. Batchelder seconded the motion. The motion carried 5-0-0.

OLD BUSINESS:

SPECIAL USE PERMIT CHECKLIST

After the trial run with voluntary use by Town of Bristol for the Safety Building application, the Commission discussed the finalization and adoption of this form for use for future applications. Mr. Batchelder motioned to accept the Conservation Commission Special Use Permit Checklist Forms. Ms. Cote seconded. The motion carried 5-0-0. At Mr. Metcalf's request this will be shared with the Planning Board. Ms. Goodwin added that in the future when used, this document would become part of the official record for permit applications.

MINUTES:

The minutes of Feb 1, 2023 were reviewed. Mr. Batchelder moved to approve the minutes as presented. Ms. Miller seconded the motion. The motion carried 5-0-0.

COMMISSION MEMBER ITEMS:

GRANT OPPORTUNITY - Mr. Haskell and Chair Brown shared a grant opportunity for the Commission to research for possible application if pursuing land or easement purchase of a Hall Road property for conservation and recreational use. Grant application requirements, deadlines and match information was discussed. More research will be done to determine if this is a good option for the Town and Commission as consideration in acquiring and protecting properties. There was additional discussion of the Conservation Fund and the funding source from a percentage of Current Use Change Tax.

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COMMISSION MEMBER ITEMS: - continued

APRIL MEETING SPEAKER UPDATE - Mr. Batchelder indicated he would follow up to confirm Roger LaRochelle of the Squam Lakes Association for the April 5, 2023 meeting to talk about his experience and other resources for funding and other aspects of land purchases for conservation purposes.

CONSERVATION COMMISSION FILES - Ms. Cote shared that in her work on organizing the Conservation Commission files, she found information on the Ann Giles, Smith River Road Easement which is held by the Society for the Protection of New Hampshire Forests. This and other deeds, as well as any permits will be filed with the appropriate property files when the review project is completed.

COMMUNICATIONS:

Ms. Sullivan shared that the office was in receipt of two notifications from NHDES. The first was for a Wetlands Permit to install two seasonal personal watercraft lifts on the shoreline at Manor Estates located on West Shore Road. The second was an abutter notice and information for a Shoreland Permit for a replacement septic system at 2 Pikes Point Road. There was also a communication from the Society for the Protection of NH Forests which included four Easement monitoring reports for the Worthen easements.

LAND USE STAFF COMMENTS & UPDATES: None

NEXT MEETING: April 5, 2023, at 6 pm

ADJOURNMENT:

With no other business, Mr. Batchelder moved to adjourn. Mr. Brown seconded. The motion carried 5-0-0. The meeting adjourned at 8:48 pm.

Respectfully submitted,

Janet Cote
Land Use Associate