

**TOWN OF BEDFORD CONSERVATION COMMISSION MINUTES**  
**July 28, 2020**

A meeting of the Bedford Conservation Commission was held on Tuesday, July 28, 2020 via the Zoom meeting platform.

Present: James Drake (Vice Chair), Bill Carter (Town Council), Bob MacPherson, Patricia Grogan (Alternate), Stephen Clough (Alternate), Karin Elmer (Planner I), Rebecca Hebert (Planning Director).

Absent: Beth Evarts, Denise Ricciardi (Town Council Alternate), Maggie Wachs, Greg Schain (alternate).

**7:00 PM Call to Order**

Acting Chairman Mr. Drake called the Bedford Conservation Commission meeting to order at 7:00 PM. Members of the Commission introduced themselves via roll call and all indicated they were alone in the room during this online meeting.

Ms. Elmer read a statement:

- *Due to the Coronavirus crisis and in accordance with Governor Sununu's Emergency Order #12 pursuant to Executive Order 2020-04, the Conservation Commission is authorized to meet electronically.*
- *This meeting is being conducted using the Zoom platform. All members of the Board have the ability to communicate with each other during the meeting, and the public has access to listen and participate by dialing 929-205-6099 and entering the Meeting ID # 935-4594-4975 and the meeting Password 937669. Instructions regarding remote access to the meeting have been published in advance and are available on the Conservation Commission agenda, which is posted on the Town website.*
- *There is no physical location for the meeting, which is permissible pursuant to the Governor's Emergency Order. Town of Bedford is providing public access to the Zoom meeting by telephone, and the meeting will also be broadcast live on BCTV's Channel 22.*
- *Members of the public may email staff at planning@bedfordnh.org to ask questions during the meeting or notify us of technical issues. If you have joined the meeting using Zoom, you may also ask questions when the Chair opens the hearing for public comment through your phone connection.*
- *All votes will be taken as a roll call vote.*
- *If there are technological issues during the meeting, the Chair will recess the meeting and we will try to correct the problem. If the issue continues, the application will be postponed, and the meeting will be adjourned.*

Ms. Elmer read the agenda for the evening's meeting.

Mr. Drake read the Conservation Commission Mission Statement.

**Approval of Minutes:**

- June 23, 2020 Conservation Commission Minutes –

**MOTION by Mr. Carter to approve the June 23, 2020 minutes as written. Seconded by Mr. MacPherson. Roll call vote: Acting Chairman Drake, approved, approved, Ms. Grogan, approved, Mr. MacPherson, approved, Mr. Carter, approved, Mr. Clough, abstained. – Motion passed.**

**Dredge and Fill Applications:**

**NH DOT – Dredge and Fill permit to rehabilitate a 90 inch culvert under Boynton St. with a combined permanent and temporary wetland impact of approximately 8,690 sf.**

Kirk Mudgett of NH DOT gave an introduction of the project to the Commission. Also on line with him were Sarah Large, Chris Carucci and Rebecca Martin. He explained this is one of the highest priority culvert replacements in the state.

Chris Carucci gave a detailed presentation on the permit.

Mr. Drake asked each Board member individually if they have questions. Applicants will be given a chance to answer questions before moving on to the next Board member.

Mr. McPherson asked if there will be any adverse impacts to Bowman Brook?

Mr. Carucci responded that there is no adverse impact and nothing will effect volume or quality of water in the brook.

Mr. Carter stated that the project definitely needs to be done. He asked if there is any kind of maintenance to help prevent this problem in the future?

Mr. Carucci said that unfortunately, we need to use a metal corrugated liner with a polymer so it will eventually erode over the next 50 years.

Mr. Carter asked if there would there be any adverse reactions to the road during the construction process. He said that it would be important to keep the road open.

Mr. Carucci responded no, and explained that we are filling interior open spaces with concrete for strength.

Ms. Grogan asked if Route 101 and Boynton Street have ever flooded. What will happen if we leave the culvert in its natural state?

Mr. Carucci said that as far as we know that intersection has never flooded. If we do nothing the culvert will eventually fail and the road will collapse.

Ms. Grogan asked what was the original purpose of the culvert.

Mr. Carucci responded that they built it for the brook to keep flowing under the roadway.

Mr. Drake asked if the original culvert was designed for flood storage?

Mr. Carucci responded that they installed the culvert and then brought in enough fill to meet the grade they wanted for Boynton St. and Rt 101. It was probably never designed specifically for flood storage but this is just a byproduct of the design.

Mr. Drake asked if you think this design is adequate for any future development that might occur upstream.

Mr. Carucci responded that the current development regulations requires that all new development be required to control all runoff. Pre and post construction should have no increase. We are maintaining existing conditions.

Mr. Drake explained that he is concerned with the design.

Ms. Hebert stated that the pre and post runoff needs to balance. Changing the design flow could potentially cause flooding downstream. The project would likely also need to file a stormwater permit with the Town because of the size of the project.

Mr. Carucci stated that is true. A fully compliant design would be 32 foot span bridges and change the flow of Bowman Brook. Because of the length of culvert, it is unlikely it will be used for wildlife crossing by a lot of species but we still try to design for them. The intent was to repair it before it fails and not make anything any worse. When a culvert is this deep it is the most economical solution.

Mr. Clough asked for a clarification of the design. Mr. Carucci gave a detailed explanation of the existing conditions and the repair. Mr. Clough asked if part of the design could be softened and what type of mitigation is being done and requests that wetland type trees and plants be planted. Mr. Carucci explained the design for that area. The sand that is there is a temporary condition. It will be washed away in the next large storm. Mr. Clough thanked Mr. Carucci for his presentation.

Ms. Elmer asked if there was any public on the phone or if any emails that have been received. Ms. Hebert sated that no one has joined the meeting by phone and no emails have been received.

Motion by Mr. Carter to move that the project move forward with the culvert rehabilitation on Boynton St. as presented. Second by Stephen Clough. Roll call vote:

Mr. Drake – yes

Mr. Carter - yes

Mr. MacPherson - yes

Ms. Grogan – yes

Mr. Clough – yes

**Motion approved.**

**New Business:**

**Thomas Hamel - Review of a variance request to construct a pool 41.8 feet from the edge of a wetland where 50 feet is required at 201 Campbell Rd., Lot 16-8-7.**

Mr. Hamel gave a brief presentation about his past visits to the Commission regarding his pool and reviewed his previous applications. He explained that the redesigned pool size and configuration is approximately 25% smaller than the earlier proposal the pool is proposed to have a 10-foot setback from the house to give the backhoe room to move around. Only the corners of the pool will be affecting the wetland setback. There is about 180 square feet of the impact. We will also be adding two raingardens to help treat the water before it enters the wetland and we have proactively been trying to make the Commission happy with the design.

Mr. Drake thanked Mr. Hamel for listening to the Commission and addressing their concerns. He said this is a great improvement.

Mr. MacPherson agreed with Mr. Drake and had no further comments.

Mr. Carter stated he had the opportunity to drive by and view the property. He thanked Mr. Hamel for listening to the Commission and said he supported this application.

Ms. Grogan said she also supported this application. It is a huge improvement.

Mr. Clough said he did a lot of reading to prepare for the meeting and that his expertise is wetlands, the impacts including the physical, chemical and biological impacts to wetlands. He agreed Mr. Hamel did a good job with his design.

Ms. Elmer asked if there was any public on the phone or if any emails had been received. Ms. Hebert sated that no one has joined by phone and no emails have been received.

**Motion by Mr. Carter to support the variance request to construct a pool 41.8 feet from the edge of a wetland where 50 feet is required at 201 Campbell Rd., Lot 16-8-7, conditional upon raingardens being installed at each corner where the pool encroaches into the wetland setback. Second by Mr. MacPherson.**

Roll call vote:

Mr. Drake – yes

Mr. Carter - yes

Mr. MacPherson - yes

Ms. Grogan – yes

Mr. Clough – yes

**Motion passed.**

**Circle Dr. Associates – Review of a variance request to fill approximately 2,511 square feet of wetland for new construction where it is not allowed on S. River Rd., Lot 35-98-40.**

Jim Gove, Certified Wetland Scientist of Gove Environmental Services provided an overview of the project. He reminded the Commission that he led a site walk last fall as part of their review of the dredge and fill permit. He explained that the project has received its dredge and fill permit from the state. There is one area, shown as wetland #3 on the plan that is proposed to be filled as part of this development. This area was excavated sometime in the past, left as a whole, and developed into a wetland. He said that there was one egg mass when he did his site work and the wetland is categorized as a vernal pool. He explained that it is set in bedrock. When the bedrock is blasted for development, this wetland will be hydraulically impacted. Which means it will disappear.

Mr. Drake said that this is vastly different from the last proposal we saw. Mr. Gove stated that all the buildings have been pulled back from the wetlands. There are fewer buildings and the buildings are pulled further into the site out of the wetland setback areas. There is another vernal pool that will not be impacted. It is located within another wetland and will have a large buffer.

Mr. Drake reminded the Commission that we never provided comments to the NHDES as we thought we would see the plan before it went to them for final submission. However, NHDES as approved the wetland permit for two stream crossings and the fill of the wetlands.

Mr. MacPherson asked if environmentally this would impact wildlife such as deer or other wildlife. Mr. Gove stated that there are no rare or endangered species that we will be impacting. We have not done a full wildlife study. It was not required by NHDES for the permitting. Mr. Gove stated that most wildlife typically follow brooks and stay along the edges of the wetlands, which we are not impacting. He said that he did see evidence of wildlife trails along the brook.

Mr. MacPherson said that he is concerned with the deer running out into the Everett Turnpike.

Mr. Carter stated he has been a big proponent of saving wetlands along the highway, but that he does not have a concern with filling wetland #3. The buildings have been moved further away from the wetland areas and I applaud the applicant for moving them further away from the wetlands.

Ms. Grogan said that she concurs with Mr. MacPherson. She said that she is also concerned with the wildlife. She noticed beaver dams and wondered if they were being relocated and if there was evidence of wild turkeys in the area? She asked what is being done about them.

Mr. Gove stated that the engineers designed the stream crossing to preserve the upstream beaver dam. It was constructed specifically to match the beaver dam and flow.

Mr. Clough asked how old the vernal pool was. Mr. Gove said that he thinks it was excavated about 20 years ago, based on aerial photos. There was an old haul road system. We don't know the exact date. Mr. Clough asked what is the main purpose of the fill. There is no building going in on top of it. Mr. Gove stated there is a parking lot going over it. Even if we do not fill it, when we blast right next to the wetland it will crack and cause it to drain. The concept is even if we shifted the buildings, it's pretty certain it will be impacted. What is not shown here is the topography? He explained this site actually sits in a valley. He said that both to the west and east there are knobs and the trees will be removed and the ground will be stumped and bedrock will be blasted.

Mr. Clough mentioned another site that was redesigned due to a vernal pool. I am hesitant to say to go destroy a wetland without being familiar with the site.

Mr. Carter stated he hears Mr. Clough's concerns. Mr. Carter has worked with Mr. Gove in Salem. I have walked the property. What I feel is the more important section are the wetlands that run along the Everett Turnpike. Mr. Clough and Mr. Drake have not walked the site.

Mr. Drake stated that a vernal pool is the most highly classified wetland.

Ms. Elmer reminded the Commission that our ordinance does not distinguish a vernal pool from any other wetland.

Mr. Clough stated the Town did a Prime Wetland study but vernal pools did not rise to that status. Mr. Drake stated the Town did not adopt prime wetlands. Ms. Elmer stated that neither Mr. Hamel's lot nor this area were shown to be Prime Wetlands.

Mr. Drake stated that we routinely ask wetland scientists as to the value of a wetland. Mr. Gove and Mr. Clough discussed characteristics of vernal pools.

Mr. Drake said it is always a balancing act between protection and development. In the past we have asked for a second opinion through the Planning Board. The Commission did not render an opinion of the dredge and fill permit previously because we knew there would be a redesign and we thought it would come back to us. It did however continue to NHDES for review and was approved. It is a catch 22 on our part.

Mr. Clough said he would be more comfortable making a decision until he can take a site walk. Mr. Carter stated that if we delay a decision it then delays the applicant from proceeding to any other boards. Ms. Hebert reminded the Commission that they may have different opinions and the Commission does not have to come to a consensus.

Mr. Drake stated that the Commission never reviewed the stormwater drainage on the site.

Ms. Hebert said that the project will require a stormwater permit from the Town; site plan review with the Planning Board; and an Alteration of Terrain permit from the state. There are three levels of review for stormwater.

Mr. Gove is hearing that in the future NHDES will potentially be asking for wildlife studies for Alteration of Terrain permits. There is a lot of discussion between Fish and Game and NHDES.

Mr. Drake asked if this site will have no net runoff. Ms. Hebert stated yes, that is part of the MS4 permit and site plan review. Mr. Drake asked what is the threshold for the stormwater permit. Ms. Hebert said any land disturbance over 10,000 square feet.

Mr. MacPherson asked about snow storage. Ms. Elmer stated the Planning Staff will be reviewing for snow storage locations. Mr. Drake said this should have a very thorough review. Ms. Hebert stated snow melts are incorporated in the storm water systems. We will make sure they are shown and highlighted on the site plan. She also explained that these minutes would be made available to the Planning Board and the Public.

Ms. Elmer asked if there was any public on the phone or if any emails had been received. Ms. Hebert stated that no one has joined by phone and no emails have been received.

Mr. Carter made a motion to support the variance request to fill approximately 2,511 square feet of wetland for new construction where it is not allowed on S. River Rd., Lot 35-98-40.

There was no second to the motion

Mr. MacPherson said he is conflicted. He has heard a lot of concerns from Mr. Clough and is concerned with the wildlife disruption. However, if the alternative is to move the project closer to the highway, he is opposed to that, too.

Ms. Grogan said that she is concerned with the wildlife also conflicted.

Ms. Elmer stated that if this discussion is tabled they will not be able to continue to the ZBA meeting in August. They would also not be eligible to meet with the Planning Board until they receive a variance. If the discussion is tabled for more information, they would be back before the Commission in August, then the ZBA in September and the Planning Board in October. Ms. Hebert explained that they need to have their variance before the plan can be accepted by the Planning Board.

Mr. Drake stated another option might be to not make a motion for the ZBA but make comments that the Commission feels this needs further scrutiny of the value of the vernal pool and information to confirm Mr. Gove's statement that development of this site will indirectly impact the vernal pool and cause it to drain. Mr. Drake asked Mr. Clough if he is looking for a second opinion.

Mr. Clough stated that Mr. Gove's statement is an apriory argument to say that developing the site will drain the vernal pool. I have never known Wetland Scientists to be prophets.

Ms. Elmer reminded everyone that NHDES has approved the filling of the wetland. She explained that you are not reviewing a dredge and fill permit and that the Commission is reviewing a variance request.

Ms. Grogan asked if a wildlife study was done and if the Commission could see it. Mr. Drake said that would take time. He said that the Commission could ask the Planning Board to do a wildlife study.

Ms. Hebert said it sounds like there is no resolution or consensus. The motion failed without a second.

Mr. Drake said one option is to make a recommendation but send the Commission minutes to the ZBA with our concerns for their review. He also said that anyone could attend the ZBA meeting to express their concerns. A second option would be to table the discussion and ask for a wildlife study.

Mr. Carter said if we do table it we will be causing a three month delay on the project. I am more than happy to pass this on to the ZBA with our minutes for their decision.

Mr. Drake said he heard from a couple of people that want the town to obtain a wildlife study and get a second opinion on the value of the vernal pool and if it can be protected. We can make a motion to not support the variance and the ZBA will then table for more information.

Ms. Hebert stated you could table this for more information or vote to let the record of this meeting summarize your comments and not make a recommendation. She reminded the Commission that they are an advisory board. She said that you are recommending to object or not to object to the variance request. She said that you could oppose the wetland fill and ask the ZBA for a revised plan or for the least impacting alternative or present your comments to the ZBA. She said the Commission should only table if you feel there is more information you would need to make a recommendation.

Mr. Drake stated a possible motion to not support the request because the Commission does not feel it has enough information and the applicant should complete a wildlife mitigation study and the Planning Board engage a second wetland scientist to review Mr. Gove's presentation relative to the value and impacts the development will have on the wetland.

Ms. Elmer stated you have made recommendations to two different Boards. You can't combine them into one motion. Ms. Hebert explained that you need to focus your motion on the Zoning Board application.

Mr. Drake stated they want a wildlife study to be done on the property to assess the impact to wildlife on this development. Ms. Elmer stated that she is concerned the ZBA will not know what to do with study. Mr. Drake stated the Commission is asking for a wildlife study and mitigation plan for the site. They could come back and say there is no adequate wildlife corridor. Mr. Drake said they can make the concerns known to ZBA and they can decide.

Mr. Drake said in the past we have had applicants ask us to take wildlife corridors into consideration. Mr. MacPherson said he feels we do not have all the information we need for a decision. He said there have been legitimate concerns raised.

Mr. Drake stated he heard there were wildlife concerns mentioned after the site walk and the mistake we made was not reviewing for wildlife when we were reviewing the dredge and fill permit, because the applicant stated the plans were going to change dramatically from that presentation, so we tabled our discussion until we received a final plan.

Ms. Hebert asked Mr. Gove if NHDES reviewed any of these issues during their review of the permit. Mr. Gove stated that NHDES did review the alternatives analysis and that this was the least impacting alternative and in their authorization we did look at threatened and endangered species and the analysis of the vernal pool. The truth is that any development will have an impact on wildlife but in terms of this development the critical habitat of the Sebbins Brook and the beaver habitat is going to be protected. The deer will be impacted, like all development.

Mr. Drake thanked Mr. Gove. Mr. Drake stated that Mr. Carter brought up the concept of balance on what is trying to be achieved. The other members feel they want more information.

Ms. Hebert explained that we do not have standards in our zoning ordinance or land development control regulations for wildlife protection. There is a concern, but there is not a regulatory tool to protect wildlife from development and said that you do not have a set of clear criteria.

Mr. Drake would like to see the minutes from the application where the applicant brought up wildlife corridors as part of their presentation on Col. Daniels Dr. The issue has been brought up before. The same concern is being brought up again.

Ms. Hebert stated they were just comments from an applicant and the items you are asking for are not required by our ordinance. Ms. Elmer stated that an applicant can put forward any information they have to you. They can bring lots of consultants but you have to be careful how much weight you give to all that information. She explained that you have to separate your needs and want from what the ordinance allows. The ordinance allows that property to be developed. It is how it gets developed that the Planning Board reviews. The variance is for the filling of the vernal pool not the full site development. Ms. Hebert said that right now you are being asked to look at the wetland fill for the variance.

Mr. Drake reviewed the mission statement. “The mission of the Bedford, New Hampshire Conservation Commission is to protect, preserve and conserve the town’s natural resources and open space land for the common good. This includes stewardship and management of conservation land.” This could be interpreted as allowing for wildlife studies.

Ms. Elmer stated that if you were reviewing the whole site for a dredge and fill permit I would say yes, but you are reviewing for a specific variance, which is a different. This is different than a dredge and fill permit. That permit has been issued. You are now reviewing for a narrow definition for the filling of that wetland. If you feel a wetland study is important you can request the Planning Board to add to their review but it is not required for a variance to fill a wetland.

Mr. Drake asked members if they are comfortable sending our recommendations to the Planning Board relative to our concerns on wildlife impacts.

Mr. MacPherson thinks this may be an alternative. If it is not the Conservation Commission, then who is going to be concerned about these things? He said we should be true to our mission statement.

Mr. Drake said we wrote a mission statement but we can only review under the current regulations and the regulations don't state that we should be looking at wildlife mitigation.

Ms. Hebert stated in this situation there may be an area that you want to protect and you can recommend to the Planning Board or Zoning Board that its set aside as a buffer or riparian zone. Mr. Drake said we don't know what areas to protect without a wildlife study.

Ms. Grogan stated that she is here to protect our wildlife and our wetlands and that she wants to know what is out there.

Mr. Drake asked Ms. Hebert the best way to handle this if we do not want to recommend approval. We can record our feelings against supporting the variance.

Ms. Hebert explained that you could offer two motions. One to the Zoning Board that you do not support the project and a second to the Planning Board stating you had an opportunity to take a second look at the development and suggest the Planning Board take a deeper dive into the environmental impacts and wildlife corridors. She said that the Commission could also ask the applicant to come back. She explained that the ZBA is specifically looking at the wetland fill and whether it meets the variance criteria and the wildlife impact is beyond the scope.

**Mr. Drake made a motion that the Commission's input on Circle Drive be sent to the Planning Board as we are concerned with wild corridors and the impact of this development on wildlife and we would like the Planning Board to invest in a study of those impacts before their final decision on the proposal. Second by Mr. MacPherson.**

Roll call vote:

Mr. Drake – yes

Mr. Carter - No

Mr. MacPherson - yes

Ms. Grogan – yes

Mr. Clough – yes

**Motion approved.**

**Mr. Drake made a draft motion to not support the variance to fill wetland #3 per the presentation because the Conservation Commission feels additional study should be done by a third party to investigate the value of the vernal pool and to ensure mitigation cannot be impacted to the vernal pool from the proposed development.**

Mr. Clough stated there seemed to be some contradictions in the motion.

Mr. Carter suggested stating just not to support as per our discussion.

**Mr. Drake made a motion to not support the variance request to fill wetland #3 based on all of our discussion tonight. Seconded by Mr. Clough.**

Roll call vote:

Mr. Drake – yes

Mr. Carter - No

Mr. MacPherson - yes

Ms. Grogan – yes

Mr. Clough – yes

**Motion approved.**

**Old Business:**

**Pulpit Rock Trails:** Ms. Elmer stated that Mr. Klemarczyk has finished all the trail work and we will be doing a final inspection. If you have time, please take a walk out there and take a look. Staff is now working on closing out the grant.

**Pulpit Forest Stewardship Plan:** Ms. Elmer stated we do not have an update as Mr. Klemarczyk has been busy finishing up all the trail work for the grant.

**Other Business:**

Ms. Elmer stated the Zoning Board did not meet in July so there are no updates from ZBA. A dredge and fill permit was issued for the Gage Girls Road project and the work has been started.

**Election of Officers:**

Ms. Elmer stated that even though Ms. Wachs is not here this evening, she has spoken to Ms. Wachs and received her permission to say she is willing to be Chair of the Commission.

**Motion by Mr. Drake to nominate Ms. Wachs as Chair of the Conservation Commission. Second by Mr. Carter.**

**Roll call Vote:**

Mr. Drake – yes

Mr. Carter - yes

Mr. MacPherson - yes

Ms. Grogan – yes

Mr. Clough – abstain

**Motion passed.**

**Motion by Mr. Drake to nominate Mr. Carter Vice-chair of the Conservation Commission.  
Second by Mr. MacPherson**

**Roll call Vote:**

Mr. Drake – yes

Mr. Carter - yes

Mr. MacPherson - yes

Ms. Grogan – yes

Mr. Clough – abstain

**Motion passed.**

**Non-Public:** None

**Motion to adjourn by Mr. Carter. Second by Mr. MacPherson.**

**Roll call Vote:**

Mr. Drake – yes

Mr. Carter - yes

Mr. MacPherson - yes

Ms. Grogan – yes

Mr. Clough – yes

**Meeting adjourned at 9:33pm**

*Respectfully submitted:*

*Karin Elmer, Planner I*

