

**TOWN OF BEDFORD CONSERVATION COMMISSION MINUTES**  
**September 25, 2018**

A meeting of the Bedford Conservation Commission was held on September 25, 2018 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Bob MacPherson, Mac McMahan, James Drake, Beth Evarts (Chairwoman), Maggie Wachs, Dave Gambaccini, Phil Greazzo (Town Council), and Becky Hebert (Planning Director).

**7:00 Call to Order**

**Approval of Minutes:**

- April 24, 2018 Conservation Commission Minutes:

**MOTION by Mr. McMahan to approve the April 24, 2018 minutes. Mr. MacPherson seconded the motion. Vote taken - all in favor. Motion carried.**

- June 26, 2018 Conservation Commission Minutes - Tabled until next meeting.

- August 28, 2018 Conservation Commission Minutes:

**MOTION by Mr. Gambaccini to approve the August 28, 2018 minutes. Mr. Drake seconded the motion. Vote taken - all in favor. Motion carried.**

**Dredge and Fill Applications:**

**The Preserve at West Bedford LLC** – Dredge and Fill permit for a previously expired permit to fill 4,392 sf of wetland for two culverts for construction of Indian Rock Rd. and Boiling Kettle Way located off Pulpit Road.

Robert Baskerville of Bedford Design Consultants and Luke Hurley of Gove Environmental Services were at the meeting to present. In 2007, a permit was issued, but the permit has expired so they are back to request another permit. The last two culverts that have not been done are on Indian Rock Rd. and Boiling Kettle Way. They will not be open box culverts, as requested by Fish and Game. They will also be smaller than originally requested. 3,425 sq. feet of impact will be on Boiling Kettle Way and they're requesting a 3x12 box culvert.

At the time of the first permit, they were classified as intermittent streams, but now they're classified as ephemeral streams since they have just drainages so when it rains heavily, they'll drain. Indian Rock Rd. will see an impact of 967 sq. feet and a 3x12 box culvert is proposed.

The crossings are at the same location as they were in the previous permit. All other permits are current and Fish and Game has signed off on them. The main large drainage path comes down Pulpit Road to Pulpit Brook. Chairwoman Evarts asked if they're aware of the grant awarded three years ago and just completed at the Pulpit Rock Conservation area that's downstream of all this flow. Mr. Baskerville replied that he is aware and there is an easement for emergency access currently.

Mr. MacPherson questioned how many houses they're proposing to build there and Mr. Baskerville replied that it will open up about 50 house lots. Mr. Drake asked when the last wetland survey was done on the property and Mr. Hurley replied that the plans given in the application were from the beginning of August 2018. Mr. Drake stated that the wetland scientist certification is not in the application and is needed to make a review. Mr. Drake also asked if they have open box or closed box culverts, to which Mr. Baskerville stated that they're both closed box now.

When the original permit was filed, Bedford Design Consultants had suggested they do a closed box instead of open box. Mr. Baskerville stated that they looked for wildlife on the property and all they found were garter snakes. Mr. Drake asked if Fish and Game has suggested making it all closed box, but Mr. Hurley stated that he's been going back and forth with Kim Tuttle on this and they had to renew the NHB so they had to coordinate with Fish and Game to see if they had any questions or concerns. Kim Tuttle got copies of the plans and had no issues.

Chairwoman Evarts asked if there were any questions on if the detention pond and the work just done for the downstream because some of that pressure being alleviated from the runoff of the development closer to Pulpit Brook. Mr. Drake stated that the detention pond was built for that drainage and once the roads are built, there will be more water in the detention pond. Mr. Baskerville stated that this runoff would go back to its natural path, not to the detention pond. Mr. Drake asked if the detention basins are only for closed storm water drainage and Mr. Baskerville confirmed.

Chairwoman Evarts expressed concern about the drainage due to the recent work done and Mr. Drake asked where the access road is to the detention pond. Mr. Baskerville answered that the crossing they're proposing is behind a few lots that will go into the pond. Mr. Drake asked if they're accommodating the increase in rain since the last permit. Mr. Baskerville replied that they had to redo the wetlands analysis per the state's new rain guide and resubmit alteration terrain who reviews the new drainage and make a slight change to the detention basin, but it's all been approved. He also stated that the designs that are being presented are above today's flow standards. They believe putting in the 3x12 box culverts will be better since they're greatly in excess of the standards.

There has been no change to the road design, they have just relighted the water lines. Mr. Drake asked if they're just using rip rap on the steep grades on Indian Rock and Mr. Baskerville replied that it's a combination of rip rap drainage blankets and jude matting. Mr. Drake asked if it makes sense to extend the box culvert out further from the road and Mr. Baskerville replied that since the ground goes down so steep, the box culvert would go down even steeper. Mr. Drake suggested extending out 5 feet to reduce the chance of erosion.

Chairwoman Evarts asked about the consultation with DHR being initiated prior to disturbing activities. Mr. Hurley stated that that is due to historicals along the old Pulpit Road but that's all been completed. Chairwoman Evarts expressed concern over the flow to Pulpit Road conservation area, but she doesn't believe there's anything that can be done about that. Mr. Hurley stated that when the road is completed, they will see improvements to the drainage issues on the trail because now the road has been roughed in.

**MOTION by Chairwoman Evarts to recommend approval of the dredge and fill permit for the Preserve at West Bedford on Boiling Kettle Way off of Pulpit Rock and Indian Rock Rd. with the contingency that a stamped wetland certification will be sent to the Planning Department. Mr. McMahan seconded the motion. Vote taken - all in favor. Motion carried.**

**206 Route 101, LLC & Bow Lane Bedford, LLC** – Dredge and Fill permit for the filling of 5,990 sf of wetland to relocate Bow Lane for the construction and associated development of four 30 unit apartment buildings on Bow Lane, located off Chestnut Dr., Lots 20-99-1, 2, 3 & 4.

Mr. MacPherson recused himself from this presentation as he would like to make comments at other commission meetings.

Mr. Drake stated that there's a legal document stating that the board should not review this. Ms. Hebert stated that the letter received by attorney John Sokul was regarding the Dumas family's access rights across from the property. The access easement is termed Bow Lane and is a deeded access way and the Dumas' and the developer have rights to use the access way. Attorney John Sokul has asked the town to withhold any actions on town applications until the landowner dispute can be resolved. Ms. Hebert has reviewed this with the town counsel and has been advised that the Dumas' are considered landowners in this situation because the plans propose to relocate a portion of that deeded access way. She explained that the town has been advised not to take any action applications to the town until the landowner dispute is resolved. For the Conservation Commission, this an advisory board, and the application is to the state of NH wetlands bureau. There's a timeline, but the board can hold a meeting to discuss the merits of the application and submit comments to the state. Chairwoman Evarts stated that she wants people to make comments tonight because they have a period of time to make recommendations to document them to go up to the state with the application.

Robert Duval and Chris Danforth of TF Moran were back to present on this matter.

Mr. Drake asked if they will be receiving contour plans or storm water management plans. Mr. Duval replied that they do not have them available for the meeting so Mr. Drake stated that they cannot make judgement calls unless they're going to tell them tonight that the existing perched wetlands of exceptional value, then the focus will be on the storm water management and protection of Riddle Brook and if they don't have that information, he suggests they do a carefully worded recommendation to the state.

Ms. Hebert pointed out that during the meeting they can receive feedback from the public and suggest a site walk if they feel it would be beneficial to the application. Mr. McMahan agrees that a site walk would be a good idea. He asked if the Army Corp of Engineers have any play in this. Mr. Duval stated that any wetlands project, they'll have a general overview. Mr. Drake asked what the threshold is for that and Mr. Danforth replied that they review all permits and anything under 3,000 square feet is not bothered unless it has some unique habitat or resource that they want to further review.

Ms. Wachs questioned if the date on the wetlands mapping from VHB is of importance since it's not on the document. Ms. Hebert replied that the document is from the Bedford Prime Wetlands Study and it was not enacted, but it is a thorough review of all the significant wetland areas in Bedford and Ms. Hebert believes it happened in 2006, but she can get that date for the Commission.

Mr. Duval stated this is pursuant to a wetlands application and the wetlands application is complete in all respects. They are still working through some stages of the wetland project design. He would like it to be clear that it is the wetlands they're talking about are not prime wetlands and would never be eligible under the definition of prime wetlands. They are very low functioning wetlands and are isolated pockets that are the side ditches of an old railroad bed and to the extent that the project abuts Riddle Brook. They will take special precautions to make sure there are no impacts to Riddle Brook

and the project stays completely out of the Riddle Brook wetland buffer. Any storm water discharge that heads in that direction will comply fully with AOT treatment and detention recharge and all that goes with storm water discharges.

The total lots would be 9.6 acres. There is a Bow Lane right of way that was created with the subdivision in 1979 and the purpose was to serve the Dumas property (abutter to the south) as access to the property and across to County Road. This is a very significant abutter and the concern that they have has nothing to do with the wetlands, since for them to enjoy their rights as abutters and their rights of access over this site, they would have to fill the wetlands. For anyone to develop on this site, the wetlands would have to be filled in. Mr. Duval stated that the wetlands in question are of very little significance and are too small to have any wildlife function of any significance. A report from NHB shows there are no endangered creatures in the area. The state habitat map also shows that there's basically zero habitat in the site area.

A benefit to the project is the density itself, which will be going before the ZBA shortly, but the density of housing will provide a type of housing that Bedford lacks. Also, by concentrating on a mixed use neighborhood, a lot of the impacts such as driving and core development will be reduced. Another benefit is the extension of sewer and water to serve the apartments rather than providing on site treatment which is one of the major sources of impact to Riddle Brook.

Chairwoman Evarts asked about taking special precautions for impacts to Riddle Brook and the wetland that has deemed of special significance, which is not the two wetlands they're looking to develop on, but the flow down below. She questioned if the option for sewer is a definite and what is the alternative if it's not a definite. Also, she would like to know how that would impact Riddle Brook and the wetlands down the hill. Mr. Duval answered that they have two options – tying into Bedford Village shops or connecting to the high school. He stated that either option is feasible and acceptable to the project. Regardless of which option is best, there will be sewer going to the development. There will be no on site treatment either way.

Mr. McMahan questioned if they've already gone to DPW to discuss the capability of the sewer and water line to see if any pumping stations will be needed. Mr. Duval answered that if they go to the Bedford Village shops route, when the plan was approved there was a provision that a 6 inch force main extension to the Chestnut Drive specifically to allow those Chestnut Drive abutters to hook into, so they're tying in to an existing approved plan. This plan already provides for most of that, so there will be a pump station to replace the existing leach field in the Shorty's rear. That will be pumped to the extension at the Bedford Village Shops system. Mr. McMahan stated that some residents have questions, such as if the expense needed to connect water/sewer will be a public expense. Mr. Duval answered that it will absolutely not be.

Ms. Wachs asked if the proposed area to be filled will collect surface water from abutting areas and that filling it will have no impact on the abutting areas. She also asked if there is any detail or information on the water currently being collected there. Mr. Duval replied that there's an old railroad bed that used to follow Route 101, then at Chestnut Drive it started drifting up then came up the hillside. The rock was then cut through the hill and continues south to Merrimack. The area is a relatively flat area then the railroad track is about 4-5 feet below the surrounding ground on each side. The top of the hill is fairly flat and as a result, the rock cut was very flat so the ditches, when the tracks were removed, began collecting water. The water eventually evaporates or seeps into the soil, but filling these will have no effect on the surrounding hydrology.

Mr. Drake requested an update on two species previously mentioned in last month's meeting. Mr. Danforth answered that Kim Tuttle does the analysis on the species being flagged in the NHB reports and she came back with a negative finding, so it should not be an issue. Mr. Drake also requested confirmation the project was outside the 50 foot setback on all sides and also outside the 100 year flood zone, to which Mr. Duval confirmed that it is outside. Mr. Duval stated that there's a little work to be done adjacent to the floodplain, which will be the limit of work and there will be a little bit of fill to the edge, but there will be a cut in that area creating more storage so it's not technically in the 100 year floodplain to the extent that it impacts it at all.

Mr. Duval pointed out that it looks like the retaining wall has been removed, but Mr. Duval stated that there is a retaining wall about 10 feet along the back of the building for foundation reasons at 20-99-1. They will be at least six feet above the flood area.

Mr. Drake asked if the pedestrian bridge was still an option and Mr. Duval replied that it is not practical, especially since a sidewalk will be built along River Road so it's not too much of a detour for pedestrians.

Mr. Drake stated that he believes the dredge and fill permit being presented is approvable based on the findings that the wetlands are perched wetlands and they don't have any exceptional value and there's not endangered species effected. He stated that their only leverage in giving up the wetlands is that they wanted to see that they have significant storm water controls on the property and that TF Moran will come back and present it to the commission. Mr. Duval stated that they'll be submitting a site plan and design review application to the town, which will have a storm water plan and report next week, then depending on the review process from the town, they will come back to the commission.

Mr. McMahan asked if they will be developing the storm water plan for 120 units or 90 units and Mr. Duval replied that the application they're submitting is for 120 units and there's a variance application that's going in also. Chairwoman Evarts asked if the storm water plan could change based on the results from the Zoning Board meeting, and Mr. Duval replied that the project is being designed for 120 units and the hope is to receive a variance for 120 units. If that design is rejected, they will look into doing a lesser number of units.

The floor was opened for public comment.

Patrick Kelly, 19 Ledgewood Rd, asked why the contour plans and drainage plans were not presented, since required for the permit application. Mr. Duval answered that it would be foolish to present a completed plan that requires a wetland fill before you know if you'll get the wetland permit. The contour plan is included in the plan submitted and an existing conditions plan has also been submitted. Mr. Drake stated that they have never seen a dredge and fill permit that didn't give a storm water plan, plus the commission asked for it and it was not provided. Mr. Duval replied that if it was significant to the application that they showed contours across the entirely filled wetlands, then they would do so but they're not impacting Riddle Brook, they're only impacting the wetlands and to construct and form of roadway will make no difference because the wetland will be totally filled. Chairwoman Evarts stated that they are trying to anticipate any future issues that could arise, including any potential impact to Riddle Brook. Mr. Danforth stated that they will not get a wetlands permit from the state until the site's application is approved. They require one to be approved before they'll get the wetlands application. There will probably be additional information provided to DES either for storm water for the wetlands permit.

Mr. Duval would like to clarify they will be back before the board to advise on the storm water design. Mr. Kelly asked if anyone on the council has walked the property to view the area being filled and chairwoman Evarts answered that there will be a recommendation to do a site walk with the developers and can be put in as a contingency, but a site walk has not been done yet. Mr. Kelly also asked for clarification on the good benefit to the town due to high density as emphasis to fill the wetlands. Chairwoman Evarts answered that when the commission asks for contour and storm water and drainage plans, those are all things they look for with the project as a whole down the road. It will be part of the recommendation that will be going to the state.

Kevin Gagne, 51 Federation Rd., stated that he has spoken at other commissions meetings regarding this development. He would like to put on the record that within 24 hours of last month's meeting and his testimony that the developer, Bill Greiner, researched him, discovered where he works, and sent letters to Mr. Gagne's employer suggesting that he has engaged in unethical behavior based on his testimony before the commission and before the Planning Board. He has circulated the letter to all town officials and boards, plus have provided copies tonight. He feels that residents should not fear challenges to their livelihood or worse as consequences of their willingness to engage public service or public processes such as attending meetings.

He stated that he has witnessed many Bedford residents come to the Conservation Commission meetings asking to better their properties within the 50 foot setback. They work with many others to show that they've exhausted all alternatives and come back multiple times showing they've made improvements to their plans. On the other hand, there are developers who seek to fill 6,000 square feet of wetlands and were pressed to show less impacting options. The developer has replied that there's no practical solution other than to fill the wetlands.

The property is a commercial property and cannot be used for single family homes in a commercial zone. Mr. Gagne questioned if a commercial business could put in two offices in instead of apartments, should we be using the maximization of private profit as the standard for which we condone the destruction of wetlands and do we apply to the same standards to residents? He requested that since all plans not provided, that the board does not recommend the filling of the wetlands. Chairwoman Evarts pointed out that any wetland impact permit comes before the board and stated that if the state approves the application, the board may request that the wetlands be offset. Mr. Duval replied that while the building of two offices wouldn't directly affect the wetlands, it would impact any future development of the Doumas' lot since the easement runs squarely over the wetlands and there's no way to exercise their easement rights. Chairwoman Evarts stated that whether it was the Doumas' or a developer presenting, the process would still be the same.

Becky Soule, 327 New Boston Rd., stated that on the BedfordNH.Org website, the December 2005 prime wetlands study shows Riddle Brook #12 states that the wetland system extends along Riddle Brook parallel to Wallace Road. She stated that she disagrees with Mr. Drake that the state may approve the filling of the wetland. Part of the Riddle Brook #12 prime wetland says the DOT removed fill from this area and restored the wetlands near the intersection about 8 years before the study as mitigation for wetland impacts associated with this highway project. More diverse and less disturbed wetland occurred at the southern portion of the wetlands system, and abandoned railroad bed. This system, Riddle Brook #12, is one of the more remarkable wetlands in Bedford. Mr. Drake clarified that the idea of prime wetlands is very restrictive. It restricts what the commission and the developers can do, so therefore the town engaged a study and the town decided not to incorporate that. He also clarified that the prime wetlands, which is Riddle Brook, is what they're trying to

protect, not the perched wetlands so until it's determined that the wetlands in question have value, that's the issue. This is why they're looking at storm water protection, along with capture and treatment off the site because it will go into Riddle Brook and that's the prime resource of wetlands with exceptional value.

Chairwoman Evarts and Mr. Drake made it clear that the wetlands in question are not Riddle Brook or adjacent to Riddle Brook. Chairwoman Evarts stated that as a commission, they are concerned about the wetlands in the study which is about 200-300 feet down the hill. Mr. McPherson stated that the wetlands in the study are next to Shorty's and Modern Bride on the highway that runs and bisects the Dumas property, and the railroad tracks are a few miles south of where the rail bed crosses Riddle Brook. The area that was mitigated by DOT by the previous round of improvements on the Wallace Road intersection are actually on the Priscilla Curry property, which is just south of the Shorty's property and the easement was placed on that land. The wetlands in question is a perched wetland system, it is an isolated small pocket of wetlands. Chairwoman Evarts stated that it's not part of the natural wetlands in the study, however that doesn't mean the commission isn't looking into the described wetland component down the hill.

Mr. McMahan asked if Chairwoman Evarts could clarify what they're looking for from the Army Corp of Engineers and DES and how that hierarchy works, such as how they don't approve. Chairwoman Evarts confirmed that the Army Corp of Engineers and NH DES works on a state level, then the Planning Board will make approvals or denials. The Conservation Commission is there on an advisory position to help with the checks and balances for the natural resources in the Town of Bedford. This includes open space and wetlands. The Conservation Commission is looking to for input and feedback when it comes to natural resources, wetlands, and open space. Mr. Drake clarified that they are working within the regulations of the state and the power they give to the board. He addressed Mr. Gagne that he made a good point about the wetland setback and that's something the board struggles with. The only difference is that at some point, the town voted for the 50 foot setback and they were explicit no structures, no pools, nothing of significance can be within that setback. There is a difference from the town trying to work with the homeowners and trying to follow that town voted ordinance vs. them working with developers on filling in wetlands within the context of the state requirements. He stated that with this project, they're outside the 50 foot setback and outside the 100 year floodplain, so now they have to work within the state requirements.

Steve Clough, 5 Hunters Road, questioned if anyone has done a hydrological study to prove that this is a low functioning isolated wetland, and if that is available he would like to review them. Mr. Danforth replied that he has done a lot of work with ephemeral pools and studying the hydro period which is significant. He stated that this is an isolated wetland and is very shallow. The capacity of any significant amount of water is very limited. It is in a bedrock system so the water perches on the surface and has limited ability to infiltrate. He has not done a formal hydrological study, but based on indicators around the wetland and the vegetation it is very limited. Mr. Clough asked if he knows if the water in the wetland infiltrates down to Riddle Brook and Mr. Danforth answered that the wetlands are in a rock cut so there's no soil infiltration path connected to Riddle Brook. Mr. Danforth added that any water will go into the soil so they won't go into Riddle Brook. Mr. Clough asked if they have a formal wetland delineation and Mr. Danforth confirmed that they do, as it was done by Mr. Danforth. Mr. Clough asked if Mr. Danforth was able to identify if anything may be endangered or threatened and Mr. Danforth replied that the state has a procedure for this and he can assure that it's not an ephemeral pool. Mr. Clough requested documentation that it's not an ephemeral pools, along with the soils and hydrology types of species.

Dylan White, 29 Bracken Circle, stated that he is noticing a lot of wetlands in Bedford being filled in lately. He is also concerned with storm water runoff, which is the biggest pollutant to the water ways. He also mentioned that it was asked if TF Moran would be presenting storm runoff plans for 120 and 90 units and the answer was no, just 120 units. He stated that he went to the Planning Board meeting and the initial preliminary response was that they didn't like the number of 120 units because it was combining the Shorty's property and the four parcels off of Bow Lane. The max units of total land areas calculated was 115, but they also didn't like it because they are two separate parcels.

Their preliminary write up said that if you got rid of the restaurant, they could feasibly go with 115 units, but if you want to keep the restaurants then the 90 units would be suggested based on the land of the 4 collective plots together. Mr. Duval pointed out that the main issue here in filling the isolated wetlands is that they're right in the roadway so whether you're building 120 or 90 units, or anything more than 20, you would be filling that, plus it's the only access to the Dumas property. Chairwoman Evarts asked Ms. Hebert if there's a requirement to look at the site plan and development for a lower amount of units, and if there were any changes would that come back to the Conservation Commission. Ms. Hebert answered no, but if it were to increase the area of wetland fill than it would.

Mr. White stated that in the first application, the Conservation Commission stated that they're concerned with the runoff from the retention pond. He stated that the retention pond just south of the main road from the back of Pulpit Brook, based on the elevation map, the runoff would drain down south to the conservation area. It looks like it would join the flow of Riddle Brook and hopefully not affect the area.

Linda Camarotta, 16 Weymouth Drive, questioned why a developer would come before the Zoning Board and exceed something that's already been established, meaning the 90 units. She asked if there is any impact on any type of natural resources with 120 units vs. 90 units, and Chairwoman Evarts replied that she can't respond to that from a developmental perspective but it's more of a Planning/Zoning Board issue. Ms. Hebert replied that intuitively they assume that the buildings would become smaller if the unit number decreased, but it's not necessarily true because they don't have zoning tools to say how large the units need to be. The unit number does come in to play when considering how many people will be moving in and how many cars will be on the lot. The density of the 90 units comes from all of the lots and reserving land for Shorty's and that parking lot. The developer has applied for a variance to exceed the 90 units so the Zoning Board will take that under consideration. The Zoning Board has five criteria set by the state that they'd need to review.

Jane Aiken, 60 Rosewell, does not feel the need to fill in every empty space and is also concerned with the condition of Riddle Brook. She has 300 signatures of people who don't want the wetlands filled.

Erin Montgomery, 43 Woburn Abbey Drive, is concerned because some things are unclear. She is curious how true it is that the Dumas' want to fill the wetlands. Also that the wetlands are not naturally occurring, but we are filling them very quickly throughout the town, so that is of concern. Lastly, she is concerned that some answers are vague. She stated that she wished the natural resources were preserved more. Mr. Duval reiterated that these are isolated wetlands of very low value by a certified wetlands scientist. Riddle Brook will not be impacted and they're not even within the buffer.

Michelle Ditoumasso, 6 Col. Daniels Drive, is concerned about the natural wildlife and how so many forests are being torn down. She also questioned if the wetlands are denied for filling, what will

happened to that property. She stated that if it's denied, the property basically becomes useless. Chairwoman Evarts replied that that's a fair statement to make and that will be taken into consideration.

No additional individuals came up for public comment.

Mr. Drake stated that this application is online so the individual who requested the wetlands information can look online under agenda. He also replied to Erin that the proposition needs to be filled for any future development isn't anything they're talking about here since the board doesn't consider future developments. Chairwoman Evarts stated that whomever is in front of the board, it would be the same process.

Chairwoman Evarts would like to make a recommendation. She would like to request a site walk with the developers so they can ask questions. They would also like grading plans and storm water plans as a recommendation that would go to the state as part of the application. She would like it to be noted that they received a letter from an attorney on behalf of the Doumas' regarding the unresolved issue of land. If there's a rework of the configuration, they would also like to know, of any impacts down the road. She has stated that the Commission will be providing a letter with the recommendation that these things be put before them before a final decision is made. Ms. Hebert said they can make a request to intervene and then they have 40 days to make the final recommendation so they'd want to schedule a site walk then schedule another meeting to formulize the recommendation to the state. A letter would then be submitted to the state with comments on the application.

**MOTION by Mr. Drake to intervene in the process and would like a 40 day extension and there will be a site walk scheduled. They would like to see storm water plans within that 40 days. Mr. McMahan seconded the motion. Mr. MacPherson abstained. Vote taken - all in favor. Motion carried.**

Ms. Hebert stated that the site walk is to view the wetlands, not to have a forum for public discussion. The group will coordinate the date for the site walk by email.

#### **New Business:**

**Katherine & Edward Crowley** – Review of a variance application for a pool within the wetland setback at 44 Barr Farm Rd., Lot 2-23-15.

Edward Crowley came to the meeting to request a variance for a pool on an already existing raised structure. He stated that there would be no interference with wetlands. A retaining wall is already up from the previous owner. A survey has been completed and pictures were sent to Karen Elmer. Mr. Crowley stated that due to the ledge, plus a leech field, there's no other place for the pool. He stated that he applied for a pool permit, but was told by the building inspector that he has wetlands to consider.

Chairwoman Evarts asked when the wetlands were delineated and Mr. Crowley answered that they were delineated when the development was put together between 2002 through 2006. The last house was built around 2008. There is a retaining wall that is about 4 feet tall. The pool he would like to put in is 32x16 to fit in it on the rectangular structure. There will be no dirt dumped over the wall. They

would like to put a fence up against the retaining wall, then the pool would be in front of it. The patio would be toward the deck. There is an option to put it further back in the yard, but they'd have to bring in a lot of fill and create a retaining wall, but that would be even closer to the wetland. We would like to be 18 feet from the wetland setback.

Mr. Crowley stated that the pool would be located on an already made raised structure. Mr. Drake asked Ms. Hebert is you can fill within a 50 foot setback and Ms. Hebert replied yes. Mr. Drake said that they would have to go back and check if the retaining wall was approved by the conservation committee in the past before they could approve the new application. Mr. McMahan asked if the wall was there before Mr. Crowley moved in and he replied yes. Ms. Hebert stated that the only regulation on the retaining walls is that they have to be less than 6 feet. Mr. Greazzo asked Ms. Hebert is they found out that the retaining wall was illegally made, would they be forced to remove it and Ms. Hebert replied that Mr. Crowley could seek a variance after the fact or an equitable waiver.

Chairwoman Evarts asked if a pool on top of a structure is a structure. Ms. Hebert replied that the tub or basin of the pool is a structure, but the apron or patio would not be a structure. Mr. Crowley stated that a fence would be would be put along the retaining wall, then there would be a cement deck. Chairwoman Evarts stated that there's concern about being within the 50 foot setback with the chemicals that go into the pool.

Mr. McMahan asked if Mr. Crowley had a date the last time the wetlands were reevaluated as far as the boundaries go and Mr. Crowley replied about 10 years ago. Mr. McMahan then asked if they could install without blasting and Mr. Crowley replied yes, the contractor has already done test holes. Ms. Wachs stated that he's 100% in the 50 foot setback, but Mr. McMahan stated that he'd be able to get the size of a wading pool in his yard if he wanted to be completely out of the setback. Ms. Hebert said that this would go to the Zoning Board for a variance. Ms. Wachs suggested checking into if the setback line is still where it said it was in 2001. Chairwoman Evarts asked if he's worked with anyone else for pool plans, like he has worked with for the layout plans. Mr. Crowley replied they he has worked with just Maridian for both plans. Chairwoman Evarts said she's not comfortable making a recommendation since it's so far in the setback.

**MOTION by Chairwoman Evarts to recommend to the Zoning Board that they consider the fact that the pool is being placed within the wetland setback and that they as a commission, uphold the recommendations of not allowing significant impacts within the setback of 50 feet. The Zoning Board should also have confirmation of the retaining wall's height to make sure it's a conforming structure within the wetland setback. Mr. McMahan seconded the motion. Vote taken - all in favor. Motion carried.**

#### **Old Business:**

- Chairwoman's update:

Chairwoman Evarts updated that the upcoming NH Association of Conservation Commissions conference is November 3, 2018. Chairwoman Evarts has signed up and needs to know if anyone else is willing to go.

- Update on Pulpit Rock Trail Grant Project:

Chairwoman Evarts said work is now complete and will be doing a walk through next week with DES. Ms. Hebert stated that a phase 2 proposal is being put together for the commission to consider.

- Review status of Forest Stewardship Plan for Pulpit Rock Conservation Area:

Tabled until next meeting because Chairwoman Evarts just met with Ethan Belair, county forester, and she would like to discuss more before meeting with the commission.

- Update on outreach:

Chairwoman Evarts stated that the outreach binder is back with Karen Elmer.

- Update on trail mapping project:

The additional GIS data sets were sent off to trail finder and those are being worked on now. Chairwoman Evarts is hoping by October that there will be two or three more trails on trail finder.

**Enclosures:** None

**Other Business:**

Chairwoman Evarts and two members of the Bedford Land Trust met with Amherst Conservation Commission and they'd like to partner together on trail signs for Joppa Hill and Pulpit Rock. They're trying to pull together some conservation efforts between the two towns in the areas. More of a report will be presented at the next meeting.

The Bedford Land Trust has their annual meeting on October 25<sup>th</sup>. Bill Kilham, bear biologist, will be at the meeting and RSVP is required.

Chairwoman Evarts will suggest to Karen Elmer to have a regular meeting before the workshop. She would like an RSVP on the workshop as soon as possible.

**Adjournment:**

**MOTION by Mr. Drake to adjourn at 10:00pm. Ms. Wachs seconded the motion. Vote taken - all in favor. Motion carried.**

Next Meeting will be on October 23, 2018 and the Commission will hold a workshop on October 30<sup>th</sup>