

TOWN OF BEDFORD CONSERVATION COMMISSION MINUTES
October 23, 2018

A meeting of the Bedford Conservation Commission was held on October 23, 2018 at the Bedford Meeting Room, 10 Meetinghouse Road, Bedford, NH. Present were: Mac McMahan, James Drake, Beth Evarts (Chairwoman), Maggie Wachs, Dave Gambaccini, Catherine Rombeau (Town Council), and Karin Elmer (Planner1)

7:00 Call to Order

Approval of Minutes:

June 26, 2018 Conservation Commission Minutes - **MOTION by Ms. Wachs to approve the June 26, 2018 minutes with corrections. Ms. Rombeau seconded the motion. Vote taken - all in favor. Ms. Evarts and Mr. Gambaccini abstain. Motion carried.**

September 25, 2018 Conservation Commission Minutes: **MOTION by Mr. Gambaccini to approve the September 25, 2018 minutes with corrections. Mr. Drake seconded the motion. Vote taken - all in favor. Ms. Rombeau abstained. Motion carried.**

October 10, 2018 Conservation Commission Minutes: **Motion by Mr. Gambaccini to approve the minutes of October 10, 2018. Ms. Wachs seconded the motion. All in favor. Mr. Drake and Mr. McMahan abstained. Motion carried.**

Dredge and Fill Applications:

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. (Continued from September 25, 2018 meeting).

Bob Duval, engineer and Chris Danforth, Wetland Scientist, both with TF Moran Engineers presenting. This site is approximately 9.6 acres of land. Proposing 120 units of workforce apartments. There will be a wetland fill of just under 6,000 sf. We did a site walk on October 10, 2018.

Mr. Drake asked if they were allowed to continue this review because of a dispute with the neighbor. Ms. Elmer stated that they were allowed to proceed, as they are an advisory Board only.

Mr. Gambaccini noted that the buildings have changed since the original submission. Mr. Duval indicated that previously there were two buildings with 36 units and two buildings with 24 units. They have redesigned the site with four equal size building of 30 units each. Mr. Gambaccini

asked if the corner of the southwest most building had gotten closer to Riddle Brook. Mr. Duval indicated that the building was rotated slightly and probably moved a little further away.

Ms. Rombeau asked if this had impact on the stormwater management plan. Mr. Duval stated that it did not. Total impervious area was about the same. There was a little more room created between the buildings.

Mr. McMahan asked if there was concern from an abutter about further protection for Riddle Brook? Ms. Evarts stated that they received some comments from Bill Carter concerning extra protection for Riddle Brook from human activity, like washing cars. Mr. Duval described the building architecture. Two buildings closest to Riddle Brook will have parking garages in the lower level and the other two buildings will have parking garages at grade level with apartments above.

Ms. Evarts asked if any consideration was given to add drainage detention ponds between the buildings. Mr. Duval described the stormwater plan to the Commission, pointing out 5 Stormtek systems for the site. Ms. Evarts asked if there was going to be disturbance behind the buildings during construction where it slopes toward Riddle Brook? Mr. Duval stated they are taking off the top part of the slope to construct the garage. All the work can be done from the upland side. Ms. Rombeau asked if regrading for the buildings would affect drainage. Mr. Duval says the floor drains in the garage will be discharging to the sewer system including all leaking fluids from cars and melting snow, spilled liquids.

Ms. Rombeau appreciates the stormwater plans submitted to the Commission. As you can imagine, we have varying degrees of expertise in reviewing these types of plans. Is this a typical stormwater plan or a more robust plan? Mr. Duval stated that is typical in that more and more stormwater is being placed underground. These systems are almost the rule. Stormwater is collected and there are deep sumps to settle out the solids. Some water infiltrates where a high percentage of pollutants are removed, much like a leach field. No surface discharge. DES requires a certain percentage of flow from predevelopment to be recharged into groundwater and then provide effective treatment of all the stormwater into the underground systems. There are three discharge points on this site from the stormwater system. Mr. Duval explained the design. They have greatly reduced the pre vs post rates of discharge to address the concerns of the Commission. Substantial reduction of the flow rate. We are reducing the volume leaving the site because the system has been oversized. Everything is being treated. Roof runoff and well as pavement. In addition, the High school has a drainage system going across this parcel that does not have as much of a robust treatment. We are redirecting around the site and containing it better so it is managed better. Mr. Duval pointed out the discharge points.

Mr. McMahan asked how much increase in flow would enter Riddle Brook when this site is developed. Mr. Duval stated there would be a decrease. Mr. Drake stated the potential for contamination of that flow will increase. Snow storage and salt can contaminate Riddle Brook. Ms. Evarts asked Mr. Duval how they address snow storage on the site. Mr. Duval explained that there is some room on the site between the buildings. If there is a tremendous amount of snow, it will be removed from the site.

Mr. Drake stated that in his opinion, Mr. Duval and Mr. Danforth have done an admirable job working with us and sharing your insight to help address some of our concerns. Overall, there are some concerns that cannot be addressed by this Commission. First, I do not think we have the experience to determine if the existing wetland is valuable to the town or if it has a vernal pool. Second, based on concerns with Riddle Brook being an impaired water, I think this development appears to be an overdevelopment of the site with the creation of a lot of impervious surface. I understand that you have addressed the stormwater but there are areas where contaminants like snowmelt can still contaminate Riddle Brook. Third, you are staying out of the 50-foot wetland setback along Riddle Brook. However, this is a steep slope and I do not think there is a sufficient buffer if there is any runoff from the site. When we say buffer we mean an area where there is a naturally sloped area that will help slow things down and give the runoff a chance to percolate. The 50-foot setback just does not work well on this site. I think the site is overdeveloped. Yes, it fits our requirements and regulations and no, we cannot refuse it per se, but for our need to protect the brook, I do not think this is the right development for this location. I think it needs to be downsized and I just don't know if the wetland has any value to the Town.

Ms. Evarts asked Mr. Duval about the consolidation of these lots with the Shorty's lot. Does it impact us? Mr. Duval stated that there are no physical changes taking place at Shorty's. It is impractical to link this site with the Shorty's lot because of Riddle Brook. People can walk from the site down Chestnut Dr. and then Rt 101 on sidewalks to get to Shorty's.

Mr. Drake asked what is the purpose to combine the lots? Mr. Duval said to support 115 apartment units. Mr. Drake stated that we do not like phased projects; we like to see the entire development at once. Ms. Evarts stated that things change. Mr. Duval stated that this was never intended to be a phased project. It was always shown to be combined properties.

Mr. Drake asked if the open area from Shorty's and consolidating the lots is helping with the calculations of impervious surface for the development. Mr. Duval stated that by combining the lots, it increases the total acreage to support the development.

Mr. Drake stated that this supports his point that this is an overdeveloped site. Ms. Evarts reminded Mr. Drake that they are reviewing the Dredge and Fill permit.

Mr. McMahan asked if the town lawyer has looked at the consolidation. Ms. Elmer stated that the lawyer is not looking at the consolidation. He is looking at the easement held by an abutter.

Mr. McMahan stated there appears to be some people on the Commission that have some expertise and recommend to the ZBA for an independent review of the total drainage system.

Ms. Rombeau stated she is concerned with the buffer and the steep slope by Riddle Brook. There is not a lot of room for water to be absorbed before it reaches the brook.

Ms. Wachs stated that others have stated her concerns as well.

Ms. Evarts asked if anyone from the public would like to comment. No one from the public came forward to speak.

Mr. Gambaccini echoed some of the same concerns as Mr. Drake. He stated that he has an environmental science degree with a minor in geology with a concentration in hydrogeology. My family also owns a construction company in Massachusetts. I have worked with much less engineered systems before so I have direct experience literally in the field with them. I truly appreciate the work that you have done. Sometimes the public forgets that you are not trying to personally build this project. You have been hired by someone to do the work. Not speaking about what the project is, just a concern about its impact on Riddle Brook. I agree it is well engineered. I still wonder about the slope and the overall impact of the additional hard surfaces and deleting the natural runoff. I am not concerned about what the project is, just the overall impact to the site.

Ms. Evarts stated she also appreciates the hard work from the engineers and we appreciate input we have received from the public on the project. There are three things we can do. We can make a motion to recommend to DES to approve the Dredge and Fill permit, recommend to deny the permit or make a recommendation of no finding.

Mr. Duval addressed the Commissions concern about this development. Yes, it could contaminate Riddle Brook. However, that is true for all development. This project is taking extra steps to make sure that the risk of contamination is minimal. The contamination from this site is in an order of magnitude less, maybe a couple of orders of magnitude less than other existing properties along Riddle Brook. Not just these commercial properties, but all the way up the watershed. This project is an example of how to build housing for people that is more protective of your resources. An independent review of the drainage will be performed through the Planning Board with town staff and VHB, the towns engineering consultant. They are very thorough. It will also be reviewed by the State of NH. Since the current rules have come into effect, they have been tightening down every year in their review. Nothing gets by the state. You have to comply with all the rules. There will be a very strict review. In terms of questions of vernal pool and the value of the wetland, Chris Danforth, Certified Wetland Scientist, is here to answer those questions.

Mr. Danforth stated he has been doing this work for 30 years. I have mapped hundreds of acres of wetlands. In my opinion, this is not a vernal pool. It was just muddy. No standing water. There was not the hydro period needed. I mapped the site in early May, which is the critical time for vernal pool species. When I looked at the wetland, there was something about the wetland that did not ring true. The species diversity is very low. It contains many young white pines that are dead. There is extra drainage from the high school that is being captured in the railroad bed. Based on this I believe the hydrology has changed. During the site walk of October 10th, the area was wet. I went out again today and the area is almost dry. It confirms the fluctuation of the water table, which does not support a vernal pool habitat.

Mr. McMahan asked if the ZBA would have access to the reviews of the project. Ms. Elmer stated it depends on which Board hears the application first. If the Planning Board has VHB review the plans, the ZBA will not hire another company to do the same review. If the ZBA hears the application, first they can ask VHB for the review first.

Mr. McMahan stated that yea, nay or no decision, if I were on the Board, I would think the Conservation Commission was not doing their job. Can we say our Commission would be interested in those reviews before we make our final decision? Ms. Elmer stated that the Commission has to make a decision tonight based on the legal timeframes dictated by DES for the review of Dredge and Fill permits.

Ms. Evarts stated that she does not agree with Mr. McMahan's assessment of a decision of no finding for the permit. I think the Commission has done a lot of work reviewing this permit than some past Commissions have been able to do. I do not think it says we did not do our due diligence. A vote of no finding is something that keeps us a neutral party. We can still give our recommendations to DES on the wetland fill for this lot.

Mr. McMahan stated that if I were new on the ZBA and I saw a recommendation of no decision, if it was not accompanied with further recommendations, I would be confused. Ms. Evarts stated that whatever motion we make it should have recommendations attached that other Boards and the State can consider.

Mr. Drake stated to Mr. Duval and Mr. Danforth that we are not trying to impugn your reputations or your professionalism, all we are thinking about is getting a second opinion. We are uninformed.

Mr. Drake suggests the following motion: Our recommendation is to disapprove the Dredge and fill permit for Bow Lane development because we feel we lack adequate information to make a decision. We also make the following recommendations: DES to visit the site; the Town engage a wetland scientist to provide the ZBA and Planning Board with an additional opinion on the value of the wetland; and either the Planning Board or the ZBA increase stormwater detention so there is no net runoff from this site. In addition, the Planning Board or ZBA require that snow storage be prohibited from the site. It should be removed from the site or stockpiled in a safe area where it can be treated.

Ms. Evarts stated she is not comfortable with the motion. We have already asked DES to walk the site. Ms. Elmer said they are not staffed for it. Mr. Danforth stated that DES does not have a licensed Wetland Scientist and they cannot review my work.

Ms. Elmer said you could still add it to the motion to let DES know your thoughts. Mr. Drake said we need to signal our concern to DES and not rubber stamp it.

Ms. Evarts asked about the wetland scientist review of the value of the wetland. Ms. Elmer stated the request for review should go to Planning Board and they will determine if they want to do that. You are recommending to DES and local Boards.

Mr. Drake summarized that we let DES know that we request they do a little further due diligence and they can determine whether to extend their review.

Ms. Evarts asked if we could prohibit snow storage. Ms. Elmer said you are recommending to the Boards that this be done. Mr. Drake stated he gave an alternative to treat the stockpiled snow.

Ms. Evarts asked for any last comments. Ms. Wachs asked if the current motion asks for an independent licensed wetland scientist come to the site. What specifically are we asking? A holistic approach for the whole site or just for the rail bed? Mr. Drake stated just the rail bed. They are outside the 50-foot buffer and we do not have any control. Ms. Elmer stated that when they apply to the Planning Board for review, our consultant will review all the reports that are written for the entire project, including stormwater, traffic, wetlands, etc. It is a process that happens through review by the Planning Board. It is a standard review.

Mr. Drake stated that is why he put in his motion that there be no net runoff from the site. That is above and beyond the requirements of the Town and the probably the State. Looking at the development and what someone might see as overdevelopment with the pervious area, I would like to see no net runoff. Alternatively, that all runoff be treated.

Ms. Evarts stated that we are already getting runoff from the high school. How do we say no net runoff? Mr. Drake stated that their drainage comes around the site with no treatment. I am talking about their pervious area for this development. The engineers determine this.

Ms. Evarts thanked Mr. Drake for going over the list of items from his proposed motion. She stated that while she agrees with the items, she is not sure if she is comfortable with making a recommendation to approve or deny the application. She would be more comfortable making a recommendation of no finding. Because we do not have finite answers to all these questions.

Ms. Rombeau asked about what type of finding we need to make. Ms. Elmer stated that you need to make some sort of recommendation to DES. Whether it be to recommend to approve, deny or make a decision of no finding because certain things need to be addressed.

Mr. McMahan stated that what makes sense to him is we are imparting a message to both boards that there are serious concerns with this development. Whether we approve, disapprove or make a decision of no finding, that would be the first thing people are going to listen to and see. If it is a strong one of disapproval, the following statements will back that up and would emphasize that we think might be a good idea for both Boards to look at.

Ms. Rombeau feels the bullet points, asking for information that are not currently in the plan would be a disapproval. Mr. Drake, I believe I said we disapprove the dredge and fill because of lack of information. Whether that is our fault, the Town's fault or the engineers fault, I am not looking for blame. I am just saying I do not have enough information. I want to send a message that we disapprove this and I want the following. We are an advisory Board.

Ms. Elmer stated one of the reasons DES has local comment is because you have local knowledge of the area. Not that you are all experts on drainage plans.

Mr. Drake stated that this may be an economically viable project, but it may not be an environmentally viable project. That is what we have to consider. Mr. McMahan said we cannot consider if this is economically viable. We have to look at the environmental aspects.

Mr. Drake stated that if you look at this, do you feel this is an overdevelopment of site that could have harmful impacts on Riddle Brook that we are trying to protect. Notwithstanding there are other projects going on in town that may not be providing this protection.

Ms. Evarts stated that the impact to Riddle Brook is something we want DES to consider, the dredge and fill is for the 6,000 sf area of the project. Mr. Drake stated that we can disapprove the dredge fill permit to use as leverage for better protection of Riddle Brook.

Ms. Wachs asked Mr. Drake about his comment that we do not have enough information to make a decision, on the filling of wetland. We do now have the stormwater report and we do have wetland finding by a licensed Wetland Scientist. What else would we need? Mr. Drake stated that a developer sets up an escrow account with the Town to use VHB to review the stormwater plans. We could have asked the Planning Board at our first meeting to have them engage a licensed Wetland Scientist to review this information. It did not work with our timing. That is why I am suggesting this. If we had that information and had they concurred with Mr. Danforth's findings, it would have been a different motion.

Ms. Evarts made a motion, based on Mr. Drake's draft motion to recommend to deny the dredge and fill permit for 206 Route 101, LLC & Bow Lane Bedford, LLC for further consideration of the following items: DES to visit site with a licensed wetland scientist if possible; Commission would like an independent wetland scientist provide input on the value of the wetlands to be filled; that a consideration be made to increase stormwater detention to provide no net runoff from the site into Riddle Brook and that snow removal and storage of such snow is removed off site or provide an alternative. Mr. Drake clarified it should say snow storage, not snow removal and/or captured in a secured area for treatment. Second by Mr. McMahan.

Ms. Elmer clarified that the original statement from Mr. Drake said to recommend to disapprove the dredge and fill due to lack of adequate information to make a decision and hereby request the following: DES to visit site with a licensed wetland scientist if possible; Commission would like an independent wetland scientist provide input on the value of the wetlands to be filled; that a consideration be made to increase stormwater detention to provide no net runoff from the site into Riddle Brook and that snow storage be prohibited or captured in a secure area for treatment.

Ms. Evarts accepted that change. Mr. McMahan seconded the change. Vote: Mr. Drake, Mr. McMahan, Mr. Gambaccini and Ms. Rombeau in favor of the motion. Ms. Evarts and Ms. Wachs voted not in favor.

New Business: - None

Old Business:

-Ms. Evarts reminded everyone of the upcoming Planapalooza events. Spread the word. Please try to attend. Mr. McMahon, as the Planning Board liaison, also encourages everyone to attend.

-Chairwoman Evarts updated that the upcoming NH Association of Conservation Commissions conference is November 3, 2018. Chairwoman Evarts and Ms. Wachs will be attending.

-PLC meeting coming up. Ms. Elmer distributed an article on the Florence Tarr property. Chris Wells, Director of the PLC will be coming to our December meeting for an update on the Tarr property.

-Pulpit Rock Update: Chairwoman Evarts said a final site walk was done with the State. More information to follow at the workshop.

- Review status of Forest Stewardship Plan for Pulpit Rock Conservation Area: Ms. Evarts met with Ethan Blair, County Forester and will update everyone at the workshop.

-**Mr. Crowley, 44 Barr Farm Rd.** stated that he was supposed to be on this agenda to continue the discussion of his proposed pool within the wetland setback. He stated he e-mailed new plans today. Ms. Elmer asked when? Mr. Crowley stated this afternoon. Ms. Elmer explained that she only works until noon and did not receive the e-mail with the updated plans and photos. Ms. Evarts asked if we could review this at the workshop. Ms. Elmer stated that there would not be enough time. Mr. McMahon suggested, since he is here to let him present and then we can put him on the next agenda. Ms. Elmer stated he is trying to go to the November ZBA meeting, which is before the Commission next meeting. Ms. Elmer stated she does not know if she can even get Mr. Crowley on the ZBA agenda for November 20th. Ms. Evarts proposed letting Mr. Crowley present to the Commission since he has been so patient. However, understand it still needs to go thru the process of public notice.

Mr. Crowley described his new proposal for a pool, which has been moved closer to the house. It was originally a 16' x 32' pool 17 feet from the edge of a wetland. It is now 33.4 feet from the edge of the wetland. Ms. Wachs asked if it would be 20 feet within the setback. Mr. Crowley said it starts at edge of setback. Ms. Elmer stated it is a 50-foot setback so the pool still has a 20-foot encroachment. Mr. Crowley stated the pool is 33 feet from edge of wetland, with the pool being 16 feet wide. Ms. Elmer again stated that the whole pool is still within the setback. Ms. Evarts stated it was originally 17 feet from edge. Is this pool still the same size? Mr. Crowley said the new pool is 16' x 38'. A bit larger to accommodate his family. Ms. Evarts stated you are increasing it six feet in length.

Mr. Drake asked the distance of the deck footing. Mr. Crowley stated 6 feet. However, the wall is raised about two feet. I want to leave the edge of rock wall and we will have a bigger deck in the back and adding a raingarden. Mr. Drake thanked him for listening to the Commissions previous comments. Mr. Drake asked if the height of the rock wall had been determined. Mr.

Crowley said it is 4 feet. He has a photo of the tape measure against the wall. We are spending \$15,000 to \$18,000 to pull the pool further away from the wetlands. Part of the reason for pulling it forward eliminates the 25-foot setback variance from the lot line. Ms. Elmer explained that she never received a revised survey plan for the pool and that could be why he was not on tonight's agenda.

Ms. Evarts stated we still need to see the plans and which agenda will work. We are not in a position tonight to make a decision. Ms. Evarts stated that they appreciate him coming back to the Commission. Ms. Wachs gave some feedback. The plan still shows the plan within the wetland setback. This is not something we generally recommend. In a way, you have extra time to think of a different placement.

Mr. Crowley said he meets all five criteria for a variance. Even if you deny me, I can plead my case to the ZBA. Even if the pool water leaks, it goes straight down. The chance of it getting 33 feet to the wetland is slim. Pool water is less polluting than rainwater. I have no place else to put it. I am entitled to enjoy a pool. That is the purpose of a variance because there are exception of every rule.

Ms. Evarts stated we have not typically given recommendation to locate pools within the setback. Mr. Crowley stated there was one last month that was approved.

-Trail mapping is moving forward.

Enclosures: None

Other Business:

Land Trust meeting is this Thursday. It is full, so you will have to wait until next year.

Adjournment:

MOTION by Mr. Drake to adjourn at 8:30 pm. Ms. Wachs seconded the motion. Vote taken - all in favor. Motion carried.