

Enfield Conservation Commission – Meeting Minutes
DEPARTMENT OF PUBLIC WORKS
September 4, 2022

CONSERVATION COMMISSION MEMBERS PRESENT: Leigh Davis, Shirley Green
(Vice-Chair), Jerold Theis (Chair)

CONSERVATION COMMISSION MEMBERS ABSENT: Doug Smith, John Welenc

STAFF PRESENT: None.

STAFF ABSENT: Whitney Banker – Recording Secretary (note – minutes recorded later from a
tape recording made by Dr. Theis).

GUESTS: Glen Green

I. CALL MEETING TO ORDER:

Chair Theis called the meeting to order and took a “roll call” of members present.

Chair Theis asked for members to identify themselves before speaking so it is clear when Ms.
Banker records the meeting minutes later.

II. NEW BUSINESS:

A. Tax Map 47, Lot 01 Dredge & Fill

Chair Theis said that members had a chance to review the proposals. He asked the members of
the commission to vote on the following recommendations:

The CC send a letter to the NH Department of Environmental Services (DES) pointing out the
lack of certain information regarding the dredge & fill. The dredging process is very close to the
lake, and the Conservation Commission recommends waiting until the lake is drawn down closer
to October so the landowner can put in a silt fence and catch any dirt from that activity.

***Chair Theis MOVED to send a letter to the NH Department of Environmental Services
(DES) with the concerns discussed.***

Seconded by Ms. Davis

Roll Call Vote:

Leah Davis, Shirley Green (Vice Chair), Jerold Theis (Chair) all voting Yea.

None voted Nay.

None Abstained.

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42 *** The Vote on the MOTION was approved (3-0).**
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45 **B. Highest Ranked Habitat Mailing Update**

46 Chair Theis said the next item is the approval of the cost of the Gnomon Copy materials to be
47 sent to the 110 community members who have highest ranked habitat on their property.
48

49 The bill to produce 115 copies (5 extra for Town Manager, Selectboard, Executive Director of
50 NHACC, and CC records). The cost includes double-sided printing to reduce the weight of the
51 mailing, as well as the published map. The cost is \$151.
52

53 Vice-Chair Green asked if the postage is extra. Chair Theis said yes. Once he has the materials
54 from Gnomon Copy, he will supply envelopes to each member to hand-address these materials
55 to be sent. Chair Theis said they may be able to send the materials through the town office and
56 charge it back to the CC if needed. Vice-Chair Green said it is official business so this should not
57 be an issue.
58

59 **Ms. Davis MOVED to approve the cost of the printed materials.**

60 **Seconded by Vice-Chair. Green**
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62 **Roll Call Vote:**

63 **Leah Davis, Shirley Green (Vice Chair), Jerold Theis (Chair) all voting Yea.**

64 **None voted Nay.**

65 **None Abstained.**
66

67 *** The Vote on the MOTION was approved (3-0).**
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69 **C. Tax Map 47, Lot 41**

70 Chair Theis shared maps of the property, 1.23-acres. This property was subdivided. Chair Theis
71 said he spoke with Ms. Huntley some time ago, before 1990 when the zoning ordinances were
72 enacted. It is a non-conforming lot but existed before the zoning. Vice-Chair Green said there
73 has been an easement added to the lot as well. Chair Theis said the landowner plans to place a 4-
74 bedroom house, but he does not have to comply with the zoning ordinance in that area as it is
75 grandfathered from before zoning. Vice-Chair Green said that the home will have to comply
76 with the boundary restrictions to the water. Chair Theis said that is correct. He said he did not
77 have a copy of the Shoreland Permit. Chair Theis said he suspects that DES will check on this.
78 He said there is not a dredge & fill permit, but there is a long list of things the landowner must
79 comply with. Ms. Davis asked if sewage disposal is discussed. Chair Theis said he did not see
80 anything specific, but the regulations from DES are available. Vice-Chair Green said she saw it
81 was copied to A Bee Septic, LLC of Merrimack NH.
82

Vice-Chair Green said do we have a right to ask questions about the septic, and if an appropriate system will be required. Chair Theis said they could draft a letter pointing out that it is a small property where the landowner plans to build a home with many bedrooms. Ms. Davis pointed out that a few lots away is a very wet area, so her concern would be soil. She said she is also concerned about the runoff from the streams that come down the hill going into the lake.

Ms. Davis pointed out the RSA that states the purpose of the Conservation Commission: RSA 482-A:1. She said that this RSA says that the commission should make sure the land and water are protected, even in cases of grandfathering, as it affects the quality of the water, runoff, absorption, plants, habitat, etc. Ms. Davis said her concern would be regarding a soil type and if it is grandfathered. Chair Theis said the building is grandfathered, but the landowner would need to comply with regulations. Chair Theis said if members would like he can draft a letter to DES with their concerns and questions. Chair Theis asked for the things that members would like to be included in the letter.

Ms. Davis said she believes there is a channel of water that runs down Lockhaven road that is near or even through the property. She wants to ensure the stream channels and their ability to handle the runoff waters will not be disturbed. She said she would also want to ensure that the size of the house and the soil will safely handle the septic.

Vice-Chair Green said she would like to ensure that the setbacks regulations are complied with. Chair Theis said with a 1.23-acre lot, there may not be a lot of room to accommodate setbacks. Vice-Chair Green said this is important.

Chair Theis said there have not been any plans or blueprints with the house and septic locations. He said he will include this concern in the letter.

Chair Theis said he would write up the draft and send it to members to review, then send it to DES as discussed.

D. Tax Map 01, Lot 10: Bog Road New Conkey Gravel Pit

Chair Theis said that Mr. Conkey would like to open a gravel pit on Bog Road. He provided members with a copy of the letter that he sent to Mr. Conkey asking for permission to review his property due to concerns of habitat and the aquifer on the property, and the environmental impact.

Chair Theis said that Mr. Conkey refused the certified letter. He had gone to the recent Planning Board meeting with this case. He brought a map to that meeting to show where the aquifer is located in relation to Mr. Conkey's property and gravel pit location. Chair Theis also said that he is going to suggest to DES that they see if they can get a hydrological engineer to come and do tests.

Chair Theis said that Mr. Conkey had already removed a large amount of timber from the property recently. It was an intent to cut from April 2022-March 2023. He has removed 400k board feet (bf) of white pine, 50k bf of red pine, 100k bf of spruce, 20k bf hard maple, 10k bf white birch, 10k bf yellow birch, 5k bf oak, 10k bf ash, 10k bf soft maple. Mr. Conkey is also pulping 3000 tons of bio-mass chips.

The property is 90.8-acres and according to the intent to cut he intends to cut 90.8-acres. Chair Theis said that Ms. Huntley had told him that often the application is not filled out correctly. The town does not check, they only need to know about the board feet for tax purposes. Chair Theis said that he suspects it will be a clear cut for purposes of gravel removal, trucks, equipment, etc.

Chair Theis said that Ms. Huntley had told him the last time tax was paid on gravel for that property removed from the pit. According to the town's records, the pit has not been used as a source of gravel for 6 years. He said [RSA 155-E:6](#) states "Regulators should not grant a permit where the excavation would substantially damage a known aquifer". He said this is the first point he will recommend DES look into. If the aquifer extends over where he plans to remove gravel, the state will not provide a permit. Mr. Conkey can't get a state permit until he obtains a town permit. Vice-Chair Green asked why he would not apply for the state permit at the same time. Chair Theis said that he did not know if Mr. Conkey had applied to the state, but the materials supplied to the town for the Planning Board did not include state information.

Ms. Davis asked if she is correct in interpreting that the Planning Board did not approve Mr. Conkey's application. Chair Theis said no, but they voted to have the state approve of the operation before they will. Vice-Chair Green said the Planning Board also voted to approve that the pit is grandfathered in operation.

Members reviewed the map that Mr. Conkey submitted with his application to the Planning Board. Chair Theis explained that he wanted to review the property to determine the size of the wetland. Vice-Chair Green said that the Planning Board wanted to ensure Mr. Conkey has a reclamation plan, and the board did not discuss environmental impact during deliberation.

Chair Theis said under the same RSA, in section 5, A it reads "The following projects do not require a permit, but are nevertheless subject to Sections IX, X and XI of these regulations. In the event of a question regarding compliance, the Board may require the owner/operator to come before the Board and submit such information as may be necessary to demonstrate compliance with said standards."

A-1:B – "the owner or operator of such an excavation area shall have filed an excavation report per RSA 155-E: I (d) with the Board no later than August 4, 1991. Any existing excavation that failed to file this report shall no longer be considered to be grandfathered and must obtain a permit from the Board before continuing excavation of the site."

Chair Theis said that another thing this RSA states, in section 6, A-1 "Any excavation, except for those associated with stationary manufacturing plants, for which the affected area has not been

brought into complete compliance with the reclamation standards of this regulation shall be considered abandoned if: 1) No material of sufficient weight or volume to be commercially useful has been removed from the site during any 2-year period either before, on, or after August 4, 1989. The time period may be extended if, prior to the end of the time period, the Board approves a reclamation timetable, and a bond or other surety is posted in a form and amount prescribed by the Board sufficient to cover the costs of reclaiming the entire site.”

Chair Theis said that there has not been material removed from that property in 6 years. Vice-Chair Green said Mr. Taylor’s point at the Planning Board meeting was if it had not been used for any other purpose it is grandfathered.

Ms. Davis asked for the RSA information. Chair Theis said it is Title 12, RSA 155-E.

Chair Theis said that section 6.A-1 is the one that involves abandoned excavations. He said that it is considered to be an abandoned excavation, and as such he should be required to apply for a DES permit.

Ms. Davis said that she is understanding that the Planning Board misinterpreted the RSA and that this is an abandoned excavation due to the period of time since the property was last used for excavation. She said that she also has a comment based on reading in her NH Municipal Conservation Commission handbook that there is a possibility, or maybe a necessity, for a member of the CC to attend the Planning Board meetings to state their input. She said at the moment this seems to be an intensive subject. She said that the Selectboard has the right to appoint if requested, a Conservation Commission member to the Planning Board. She said she does not know if they are an official member, but that they participate in the discussion and receive materials for the cases.

Chair Theis said that he did go to Chair Fracht before he became Chair of the Conservation Commission and asked if he would consider appointing someone from the Conservation Commission to serve on the Planning Board. He said that Planning Board Chair Fracht said he absolutely would not. Vice-Chair Green asked if Town Manager Morris was aware of this statement. Chair Theis said no, it was a verbal conversation.

Vice-Chair Green said that at that Planning Board meeting, two alternates voted (Ms. Banker, the recording secretary, and Mr. Bonner, the videographer). Ms. Davis said she wondered if alternates receive materials to be aware of the cases to vote.

Chair Theis said that because board members across town boards and committees don’t get any stipends, there is little motivation to do more than the minimum necessary.

Chair Theis said that he would like to have the authorization to write a letter to the DES regarding the issues with the Conkey Property:

1 – Mr. Conkey refused to allow the Conservation Commission to enter the property to assess environmental factors

2 – there is an indication that the aquifer that is near or on the property is in jeopardy of pollution with excavation

3 – the regulations of RSA 155-E state that his pit is considered to be abandoned, as there has not been any work since 2016. The CC feels he should be required to apply for a permit, and the grandfathered status is in question.

Ms. Davis MOVED to approve Chair Theis write a letter to the NH DES regarding the issues discussed for the property at Tax Map 01, Lot 10

Seconded by Vice-Chair Green

Roll Call Vote:

Leah Davis, Shirley Green (Vice Chair), Jerold Theis (Chair) all voting Yea.

None voted Nay.

None Abstained.

**** The Vote on the MOTION was approved (3-0).***

III. PUBLIC COMMENTS

Mr. Green said that he wondered if the Conservation Commission could use a drone to survey properties instead of having to go onto them on foot. Ms. Davis asked if that would be legal. Mr. Green said he did not know; he would have to do research. Chair Theis said he had looked into this, and there is a certain distance above property that is considered private property – any interference with this space is considered violating private property. He said he did not know the exact footage, but that it would be too high to allow assessment of the aquifer and wetlands. Chair Theis said that the cost for a drone with video quality would be significant.

VI. NEXT MEETING: October 6, 2022

VII. ADJOURNMENT:

Vice-Chair Green MOVED to adjourn the meeting.

Seconded by Ms. Davis

Roll Call Vote:

Leah Davis, Shirley Green (Vice Chair), Jerold Theis (Chair) all voting Yea.

None voted Nay.

None Abstained.

**** The Vote on the MOTION was approved (3-0).***

Respectfully submitted,

Whitney Banker

Recording Secretary