

TOWN OF AMHERST  
Conservation Commission

October 25, 2023

**APPROVED**

In attendance: Jared Hardner – Chair, Rob Clemens, Peter Lyon – Board of Selectman Ex-Officio, Lee Gilman, Steve Lutz, Christian Littlefield, Mark Bender, Frank Montesanto, Rich Hart – alternate.  
Staff present: Kristan Patenaude – Recording Secretary (remote)

**Administrative:**

**1. Chair Comments**

Jared Hardner opened the meeting at 7:00pm.

Rob Clemens explained that the Town closed on the first phase of the Clearview acquisition at Attorney Quinn's offices today with the Amherst Land Trust and the Clearview developers. The process went smoothly and took the efforts of a lot of people. This is a win for the Conservation Commission (ACC), for the Town, and for the Amherst Land Trust. The Town will continue to see the benefits of this in the years ahead. The ACC will continue working closely with the Land Trust on trail blazing, trailhead development, etc., once the second phase of the purchase is complete.

The ACC thanked the attorney, Board of Selectmen, including Chairman Lyon, Town Administrator Shankle, the Finance Department, and countless others for their support.

**2. Minutes Approval**

The Commission tabled discussion of the minutes to the next meeting.

**3. Treasurer's Report**

There was no Treasurer's Report at this time.

Frank Montesanto noted that he made two purchases to complete the Pulpit Trail project.

**Frank Montesanto moved to approve the purchase of pressure-treated lumber and hardware totaling \$134.71 from the Water Crossing budget. Seconded by Steve Lutz.**

**Vote: 7-0-0; motion approved.**

**Frank Montesanto moved to approve a second purchase of pressure-treated lumber totaling \$121.68 from the Water Crossing account. Seconded by Lee Gilman.**

**Vote: 7-0-0; motion approved.**

**Steve Lutz moved to approve the purchase of danger signs for a tree limb hanging over a trail in Joe English from Speed Pro totaling \$30.10 from the Signage account. Seconded by Rob Clemens.**

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**Vote: 7-0-0; motion approved.**

**Special Topics & Presentations**

**4. Proposed land acquisition warrant article**

Ron Clemens explained that, by the end of August next year, the ACC will have exhausted the original \$6M of bonding authority that was made available as a result of the 2021 warrant article. Some people, including citizens, members of the Planning Board, and others, have suggested that the ACC should continue to pursue land acquisition with another warrant article seeking a larger amount of bonding authority. He stated that he has drafted an article that is almost entirely modeled after the successful warrant article from 2021. Town Counsel commented that there were some complications with the last warrant article regarding limiting the amount of money spent per year and specifying the maximum number of acres that could be purchased. It was suggested that the next warrant article be simpler. Thus, the draft language includes reference to the necessary RSA's, such as 41:14 and 36-A, but includes a maximum authority of \$10M over a five-year period. This is being suggested as the market will likely continue to increase and there will be a continued challenge with acquiring significant properties. This draft article does not have a limit per year, as it was suggested that this was a potential barrier of the last article. He asked if the ACC believes that \$10M is too much to request, given all the other costs that the Town and voters will be facing next March, and/or if the article should have a per year maximum to give the voters some confidence that the ACC will not use all the money in one year. The next step will include a review by the Board of Selectmen and the Ways & Means Committee.

Mark Bender stated that \$10M is a big number but it is proposed over a five-year period. He stated that the ACC will likely receive feedback from the voters over the next few months on this item. He would like the draft as is and then see what kind of feedback is received.

Jared Hardner asked when the ACC would make any adjustments to the warrant article based on that feedback. Mark Bender noted that the last changes to warrant articles can be made during Deliberative Session. Peter Lyon noted that it will be up to the Selectmen to make the decisions regarding potential changes with the input of others.

Jared Hardner agreed with leaving the draft article as is, with the ability to adjust it, as needed.

Rob Clemens noted that this language would allow the ACC to spend all the money in year one and come back two years with another article, not that this would occur or be the best idea. Frank Montesanto suggested that the ACC focus on the fact that there will have to be two public hearings for any acquisition, as a safeguard for the public. Some people will believe that \$10M is too much money, but the ACC can make it clear that any purchase will require two public hearings. Rob Clemens explained that the ACC can state that it has already gone through this process and was able to pursue ways for many for people to be heard in the process.

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Peter Lyon noted that the ACC should decide if the number is flat out objectionable, regardless of the process. Jared Hardner noted that the ACC could lower the number, successfully complete another acquisition, and simply come back with another warrant article at a later date. Rob Clemens noted that this proposal seeks a warrant article one year before the last warrant article would have expired. Lee Gilman stated that the ACC's execution on the last warrant article is the main selling point. Rob Clemens agreed that positive examples would be part the pitch of any presentation on the draft article.

Frank Montesanto asked if it is more appealing for this to be \$6M over a three-year period, instead of \$10M over a five-year period. Jared Hardner stated that he believes the time frame should be left the same, as the ACC is in a much better position than when it started this process.

Steve Lutz stated that he is slightly conflicted because this seems to be the right number based on the acquisitions already completed. The amount is correct, but the question will be how the voters perceive the fiscal responsibility of using that money.

Rob Clemens stated that, when reviewing possible candidate parcels in terms of acreage that complement parcels already owned and given the market, \$10M is justifiable. The Master Plan speaks to acquiring land for open space. The intention of the warrant article is to provide the wherewithal to move when an opportunity presents itself.

Christian Littlefield stated that there may be a bit of sticker shock associated with \$10M. He asked about including a contingency of some sort. Peter Lyon stated that he does not believe this would be an option. This would be the opposite of what the ACC presented for a warrant article last time.

Rob Clemens noted that the ACC always has the ability to put a specific property acquisition on the ballot instead. There is a time delay associated that can sometimes be problematic. He noted that this could be the ACC's proposal it feels comfortable putting forth, but it could then be amended by the Board of Selectmen or Ways & Means Committee, based on other information they have. Mark Bender agreed.

Steve Lutz asked what the ACC could do if the Board of Selectmen comes back with a smaller number recommendation. He asked if it would be advantageous to then put two warrant articles on the ballot, one for a smaller sum over three years and another one for the same sum starting three years out. Frank Montesanto stated that he believes people will vote for the lower number, if given options.

Jared Hardner stated that the ACC needs to make sure people know about the other deals that have already happened and drum up excitement.

Mark Bender discussed simplifying some of the language within the draft article. The Commission discussed other proposed changes to the language.

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**Rob Clemens moved that the ACC adopt the proposed warrant article, as presented, with edits as discussed, and with Town Counsel approval. Seconded by Frank Montesanto.**

**Vote: 7-0-0; motion approved.**

## **5. ACC recommendations for Zoning Ordinance updates**

Jared Hardner explained that the ACC has become intensely involved in the last couple of months with regard to looking at the Wetlands Ordinance. There are a couple of things that should be tightened up in the Zoning Ordinance as it relates to the Wetlands and Watershed Conservation District. The first proposed change is to update references to the New Hampshire Method, which is used to evaluate wetlands once they are delineated using the Army Corps Manual. The current version of the Army Corps Manual is 2012, not 2011 as stated in the Ordinance. The latest version of the New Hampshire Method is 2015 with updated mapping tools from April 2023. Updating these two references will allow for no confusion as to which version should be used. The Commission was in agreement.

Jared Hardner explained that in the Ordinance, Article 9: Definitions includes the definition of significant wetlands, vernal pools, perennial streams, etc. Each of these has different buffer requirements. In the main body of the Ordinance, it states that significant wetlands have a 50' buffer but does not include an indication as to what a significant wetland is. He spoke with Nic Strong, Community Development Director, regarding moving some of the definition material up into the main body of the Ordinance. However, Jared Hardner stated that he believes this could become cumbersome, so the intention is to add language that the definitions are included in Article 9 to make it abundantly clear as to how the buffers and terms are defined.

Lee Gilman suggested that every word with a definition in Article 9 appear in bold in the text. Bill Stoughton stated that he would not do this unless suggested by Nic Strong, due to Staff time this would take.

Rich Hart asked why there are different buffers for different types of wetlands. He noted that all wetlands seem to be similarly important. He asked if it would be easier to make the buffers for everything the same. Jared Hardner stated that he does not believe this would be simpler. Certain wetlands have 25' buffers and these are scattered across the landscape. The maximum is 100', and if all wetlands had this type of buffer, it would essentially render the remaining landscape unbuildable. Larger buffers are more likely to prevent pollutants from getting into the aquifer. Buffers have different types of vegetation, different soils, etc., to filter those nutrients. Rob Clemens agreed that it is a balancing act. If all wetlands had 100' buffers, this would essentially preclude development on a lot of properties and lots that exist by subdivision. There would be an economic impact to this overreach.

Rich Hart asked if the State considers different buffer distances. Jared Hardner stated that towns are responsible for establishing buffer distances, with the exception of the Wetlands Protection Act. This could be studied more closely, and different numbers could be determined, but he does

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not believe the ACC is prepared to do that right now. Rob Clemens explained that part of the goal is to try to clarify or emphasize the buffers that are currently on the books. This is to make sure that people are paying attention to them and honoring them.

Rich Hart stated that he has been concerned over the years that development in Town has been chipping away at buffers. Jared Hardner agreed that it should not go unnoticed that the ACC just went through a large process with the ZBA to get them to confirm that buffers in Town do have protections and lawns do not fit under agricultural exemptions.

Christian Littlefield asked if outside consulting groups have been reached out to regarding the proposed language, to make sure it is accurate and makes sense to people within the industry. Jared Hardner stated that the base text went through an extensive process, but these proposals are just to clean up a couple of loose ends. Rob Clemens stated that these changes are not proposing technical changes to the Ordinance. Christian Littlefield stated that he was interested in receiving feedback regarding the readability of the language and understanding of it. Rob Clemens noted that this is a good point.

Jared Hardner explained that, following recent events, the ACC has taken a position on a paragraph at the end of the Definitions Article 9 which states that, "When classifying wetlands for the purpose of this Ordinance, separate evaluation units should be considered and drawn at each location where the wetland narrows to less than 50'." The reference for this is the 1991 paper that was the precursor to the New Hampshire Method. The New Hampshire Method is required to evaluate wetlands and the most recent version is called to be used in the paragraph above this one. The current version of the New Hampshire Method does not include this 50' chokepoint/ cutoff. The current New Hampshire Method considers, wherever possible, keeping the wetland together and considering it one unit. This should cut off when it becomes a stream channel between two wetlands. He suggested removing the paragraph and keeping the language to use the most recent version of the New Hampshire Method. The paper referenced is outdated and, in his opinion, is being used as a loophole for cutting off wetlands so they do not trigger larger buffer requirements.

Jared Hardner suggested adding a new paragraph that would read similar to, "When classifying wetlands for the purposes of this Ordinance that extend over neighboring private properties, the size of the wetland must be determined either by physical measurement with the landowner's permission, or by an estimate supported by a topographic map (LiDAR 2-ft. contours or most precise available), remotely sensed images where appropriate (e.g. NH NAIP 2021 Color Infrared), site photographs, and documented in a written report detailing the analysis including the maps and images." Currently, the default position seems to be to stop at a property line when estimating the total size of a wetland.

Jared Hardner explained that he spoke with Rick Van de Poll, a leader in this field in New Hampshire and principal author of the New Hampshire Method, who stated that the mapping data is so good at this point that a reasonable estimate should be able to be created using control maps based on LiDAR. Jared Hardner stated that he is suggesting, if a wetland goes off a

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property, the wetland scientists should ask permission if they can go onto the neighbor's property and measure the size. If this permission cannot be obtained, the wetlands scientist should submit the evidence they used to make the assessment, including a copy of the contour map, the infrared images, etc. The Planning Board can then review this for credibility. He would like to see supporting documentation, instead of a simple opinion that a wetlands is smaller than an acre.

Rob Clemens asked if this particular language has been adopted in other Ordinances or documents. He asked how wetlands scientists would react to this change. Jared Hardner stated that he has been trying to get an answer to this question. He reached out to the UNH Cooperative Extension who publishes the New Hampshire Method and spoke to Dr. Van de Poll but has not yet heard how other towns are dealing with this. Jared Hardner stated that he is not trying to prescribe a method but asking scientists to provide supporting evidence to their argument.

Bill Stoughton stated that the language speaks to applying this over neighboring private properties. He asked why this would not apply to any property. Bill Stoughton suggested amending the language to read, "when classifying wetlands for purposes of the ordinance that extend beyond the limits of the subject lot," or something similar. He noted that the ACC may not want to restrict this to neighboring properties only, because some of these wetlands could go beyond those. The group agreed that the language could be amended to state that this would be the landowner's permission, regardless of whether private or public.

Jared Hardner noted that this could be reviewed externally but it is unclear if this can be done before Wednesday, when it needs to be submitted to the Planning Board. Bill Stoughton noted that Town Counsel will review all the proposed changes before they go on the ballot. The Planning Board could consider a third-party review, via the Town Engineer or someone similar, as well. There will also be at least one public hearing on these and a second public hearing if substantive changes are made.

Jared Hardner explained that he would seek additional third-party input before submitting it to the Planning Board via Nic Strong. The Commission agreed.

## **6. Other Business**

Steve Lutz presented on bridge work completed by Frank Montesanto. There has been good feedback from the Bedford Conservation Commission. The bridge includes an observation point over the beaver pond. This trail connects from the old mill road all the way up to New Boston.

Rob Clemens suggested sharing pictures and a write up of the project on the Town Facebook page. Jared Hardner noted how much the ACC gets done for an infrastructure budget of approximately \$12,000 a year.

The ACC thanked Frank Montesanto for all of his work.

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Steve Lutz explained that John Harvey and Marion Kastner organized a removal of Autumn Olive on Buck Meadow last Saturday. Some follow up treatment in the area will need to be completed next year.

Jared Hardner explained that an Eagle Scout, Jacob Sainsbury, requested a project from the ACC. The ACC asked Mr. Sainsbury demolished an old bridge over a river in Joe English. This project was well done and there is very little evidence that a bridge was in this location. This bridge was previously replaced with a larger bridge near the sluiceway. The ACC thanked Christian Littlefield for his help on this project.

Rich Hart noted the poor condition of the Sawyer's Mill cottage at Joe English. It is unclear who should maintain the building at this time. Rob Clemens noted that the building could use some care, but the structure itself seems to be sound. Frank Montesanto stated that he would go examine the building. Jared Hardner noted that he would speak with the Recreation Department regarding if the Commission can use the space for storage.

**Frank Montesanto moved to adjourn at 8:32pm. Seconded by Steve Lutz.  
Vote: 7-0-0; motion approved.**

**The meeting adjourned at 8:32pm.**

*Respectfully submitted,  
Kristan Patenaude*