

TOWN OF AMHERST
Conservation Commission

January 10, 2024

APPROVED

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

Administrative:

1. Chair Comments

Jared Hardner opened the meeting at 7:00pm.

2. Minutes Approval

Rob Clemens moved to approve the meeting minutes of December 13, 2023, as amended [Line 118: Change “companies” to “contractors;” Line 199: Change to “9:45pm”.] Seconded by Frank Montesanto.

Vote: 5-0-1; motion approved [C. Littlefield abstaining].

3. Treasurer’s Report

Mark Bender stated that, as of December, the Commission’s budget sits at \$5,976 compared to its total budget of \$12,190. The budget has a balance of funds available of \$6,214. The Land Account had a beginning balance of \$1,080,711 and earned \$2,269 of interest, leaving an ending balance of \$1,082,981. There is a total of \$948,845 pending charges to that account, the most significant of which are due to land acquisition items. The Gift Account had a beginning balance of \$48,893 and, after one expense and interest, now has a balance of \$47,897. There are some forestry expenses anticipated in that account. Finally, the ACC received a \$10,000 donation from Candace Rapf of Amherst. The ACC thanked Mrs. Rapf and noted that a letter of thanks will be sent.

Special Topics & Presentations

- **Vonderosa Properties, LLC, Subdivision, Map 4 Lot 118, 119, 121, & Map 6 Lot 102**

Jared Hardner and Rob Clemens recused themselves from this item. Frank Montesanto sat as Chair.

Chad Branon, PE, Fieldstone Land Consultants, explained that the applicant received comments from the Commission regarding the last presentation on this proposed subdivision. The driveways for these lots will likely require some wetland and buffer impacts, which would require Conditional Use Permits (CUPs). The applicant has not yet finalized the designs of the driveways in hopes of having a collaborative conversation with the ACC on these items. The parcels total approximately 332 acres. The applicant is proposing a 58-lot subdivision, with seven of the lots depicted on the plans to be conservation lots. The applicant is trying to create a development that maintains the

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rural character of the area and is sensitive to many of the important existing features of the land, such as the wetlands, buffers, and the aquifer.

Chad Branon explained that Lot 4-145 has frontage on County Road and Upham Road. The parcel consists of almost 17 acres of land and the proposal is to subdivide that into five lots. The ACC's letter asked that the applicant review the proposed common driveway for this subdivision. Originally, this subdivision was proposed for six lots, but this led to some buffer impacts along the wetland that bisects the site. The decision was made to try to preserve the field along Upham Road leading to a reduced density of five lots with a common driveway off County Road to service three of the lots, preventing any wetland impacts in that area. The ACC asked if the driveway could be adjusted in order to remove any buffer impacts as well. The applicant plans to embrace that feedback and attempt to incorporate it into the driveway design. This should not lead to an issue with the sight distance along the road. The intention is to have no buffer impacts from this subdivision. The plan shows 100' buffers, in order to incorporate a maximum buffer.

Chad Branon stated that Lot 4-116 has frontage along Cricket Corner Road and County Road. This is proposed as a nine-lot subdivision, with one of those being a back lot. The proposed driveway locations and test pits are shown on the plan. The ACC had questions regarding how the back lot areas will be accessed and how to minimize buffer impacts. The applicant is exploring ideas regarding a common driveway between two of the lots that are further to the north along County Road in order to minimize buffer impacts and potentially avoid a wetland impact. There is a wetland located in the northwest peninsula area of the site and the applicant discussed this wetland in the wetland's functions and values assessment regarding the associated buffers. The applicant will continue to revisit this item.

Chad Branon noted that the ACC's letter mentioned some changes to the Wetlands Ordinance, but he could not find those as specified. Rob Clemens noted that the ACC approved the language for these changes at its public hearing in December. Chad Branon noted that those changes will not apply to these applications, as they were submitted prior to the December date.

Chad Branon explained that the third application is for a subdivision along County Road and Upham Road across four existing parcels. Lot 4-118 consists of just over 44 acres of land. Along the west side of County Road, 14 buildable lots and one conservation lot are proposed. All of these lots meet the regulations and the proposed driveway locations seem to be appropriate. One wetland crossing is proposed in the northwest section of the property. Across County Road, there is a parcel that consists of 160.8 acres of land, and this is proposed for a subdivision of 14 buildable lots and three conservation lots. Moving toward Spring Road, the next parcel is proposed for four buildable lots and three conservation lots. Each of those 2 lots would be serviced by a common driveway and there would be associated buffer impacts in order to access the isolated areas of these lots. Once the applicant begins to consider driveway designs, any stormwater concerns will be reviewed and addressed, along with the overall impacts for buffer and wetlands impacts, which will be reduced to the greatest extent possible. Moving toward Upham Road, Lot 4-121, is proposed to be developed into five conventional frontage lots.

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89 Chad Branon stated that the ACC's letter about this application asked about potential impacts and
90 the possibility of placing additional land into conservation restriction. The applicant tried to place
91 a good portion of the land into protection through conservation lots and conservation easements.
92 A wildlife study was submitted which showed that this is proposed as a large lot subdivision,
93 meaning that there will be separation and natural corridors between the lots. The applicant
94 understands the importance and sensitivity of these areas. The applicant believes that placing land
95 in conservation restrictions could create connectivity and a well-defined large corridor through this
96 project. The proposed conservation lots total approximately 113 acres in size and the conservation
97 easements total approximately 27 acres in size. This leads to approximately 140 acres or 52% of
98 the total land area of these lots being protected. The proposed conservation land allows for
99 connectivity to adjacent protected lands, such as those in the Village Woods Common conservation
100 area.

101
102 Brett Vaughn, owner & applicant, stated that there has been a lot of discussion about the land by
103 the abutters and the Town boards. He has tried to address the concerns regarding the larger
104 application, as he believes the smaller applications are not as much of an issue. He has heard that
105 the potential aquifer under this land is of great value and could be an unlimited water source for
106 the Town, if needed. He has also heard about the importance of protecting wildlife corridors,
107 reducing the number of building lots, preserving acreage with connectivity to other areas, and the
108 idea that this may connect to an old railroad bed which could be key to potentially having a
109 multimodal access for the entire Town. He has considered the cost and value of this land. The
110 Town paid approximately \$5.4M for the 140 acres across the street from his house, so he believes
111 the land in question is likely quite valuable. There could be ways to work through the funding for
112 parts of the land with the Town. The Town could decide to waive future current use penalties as a
113 way to fund some of the land. He plans to phase this project with a couple of lots developed each
114 year. He noted that County Road is an existing through road. A large share of potential road
115 improvements would come through the Town but there would also be some disbursement from
116 him due to the development of these lots. He plans to continue working with the DPW Director on
117 these items. This will likely lead to a 20' paved road in this section of County Road. The proposal
118 to waive current use penalties was not well received by the Planning Board. Brett Vaughn stated
119 that he is asking the Town to cover the cost of improving the road and to waive the current use
120 penalties, approximately \$1.5M in value, for a piece of valued land, of which a similar sized piece
121 was recently purchased by the Town for \$5.4M. He is hoping the Town groups can work together
122 to determine how best to make this work.

123
124 Chad Branon stated that previous conversations with the Commission dealt with interest on the
125 part of the owner to sell this land. This has always been in the back of the owner's mind, to find a
126 win-win balanced solution. There is a need for housing, but everyone wants to see it done modestly
127 over a period of time. Unlike many developers, Brett Vaughn's approach and intention is to phase
128 this project in over a reasonable time period, which plays well into the Town potentially
129 collaborating to purchase part of the property and/or to adjust budgets properly for upgrades to
130 Country Road.

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Frank Montesanto stated that he believed the owner intended to donate the conservation land as part of this project. He was unaware that the applicant was looking for something in exchange for the land. Chad Branon explained that the applicant sent a cover letter with certain conditions. The initial offering was that the Town step away from the applicant's required off-site improvements. The applicant believes that offering this much conservation land leads to an expectation that the Town will pay for the road. The goal is to take the cost of the off-site improvements to County Road and somehow create a plan with a net offering from the applicant. The applicant would like to take a simple approach that the value here is, in some ways, in the conservation land. The Town obviously has a history of purchasing conservation land. Rather than just making a statement that Brett Vaughn does not want to contribute to off-site improvements, the applicant would rather consider an opportunity to sell the conservation land and consider that prorated cost in the process.

Mark Bender asked if County Road is a Class V road. Chad Branon stated that all of County Road is a Class V road. The intention is to approve approximately $\frac{3}{4}$ of a mile of the road along a certain frontage. The DPW Director wrote a fair letter indicating this is a unique opportunity to solve existing issues with the road. The road currently has a narrow right of way ranging from approximately 20' to 14'/15' in areas with limited-to-no drainage. Chad Branon explained that the applicant owns both sides of the road in some sections. This project will ultimately deed and dedicate more land to the Town for wider right of ways through this section. The applicant has agreed to work with the DPW to take the drainage from County Road and bring it onto the properties through easements, allowing the stormwater to be treated before it reaches the wetlands. There is currently no treatment for stormwater along County Road.

Mark Bender asked Peter Lyon if the Town and/or DPW had plans to improve County Road prior to these applications. Peter Lyon stated that there were no plans to his knowledge.

Brett Vaughn stated that Bill Stoughton, Planning Board, suggested that a road study of this area be completed in order to better understand the costs and the share of those costs. This is an ongoing conversation, as the study has not yet been completed. Brett Vaughn stated that he plans to use the notes from DPW regarding the items to be improved in order to get costs. The already completed road study states that virtually any increase in traffic on this road should lead to a certain standard for the road. He stated that he believes the road will be kept as narrow as possible with as much of the scenery preserved as possible. The Town has the right to leave it gravel, but it does need to be improved. He spoke with a couple of road builders regarding potential costs to improve the road. It would likely cost an extra \$1M for the Town to complete the changes in the way he has seen proposed.

Brett Vaughn stated that he is now suggesting that the Town may simply be interested in purchasing the land outright, instead of going through this process of determining balanced costs. If the Town does not want to contemplate purchasing the land or consider paying for the road improvements, he will consider going back to his original plans for the area. Mark Bender stated that the Commission needs to have discussions regarding the new information presented this evening. He noted that he does not know how other residents of County Road feel about the road potentially being improved. Brett Vaughn stated that he knows the other residents do not want to

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see the road improved unless he is left with the cost. The small group of residents that show up at each meeting regarding this application do not want the road improved.

Chad Branon stated that the Town spends money on County Road every year, as the road does not function well from a drainage standpoint. The Town has completed improvements on Brett Vaughn's property without permission for drainage items and he has not complained. The Town does not own this property and does not have a right of way. The DPW Director's letter explains that this is a unique opportunity for needed improvements. The traffic study completed by VHB shows that improvements are needed in terms of school buses and emergency vehicles being able to access the road with other drivers.

Frank Montesanto suggested circling back to conservation items at this time. He asked about Brett Vaughn's proposed solution. Brett Vaughn explained that he is proposing that the dark green areas on the plan are those for the Town to purchase outright, with some included conservation language for the lighter green areas.

Chad Branon stated that the ACC's letter outlines other areas that the ACC would like to see protected and those could be encompassed in the conservation lot area as well. Brett Vaughn has purchased the property and there are builder's rights to the land, after the necessary process has been worked through.

Steve Lutz asked if the plans have been changed since they were submitted in December. Chad Branon stated that the plans have not been physically changed since that time. These will be presented to the Planning Board at its next meeting. Revisions will be made after comments and suggestions are made. Rob Clemens noted that additional information regarding this plan is available through the Community Development Office that the Commission may not currently have.

Brett Vaughn stated that he originally submitted a cover letter with nine conditions to the Planning Board. There are only two items of those that he finds truly important, regarding the items with financial value, such as the road and current use penalties. He noted that he has already heard from interested parties regarding some of the proposed lots.

In response to a question from Christian Littlefield, Chad Branon explained that the conservation lots as shown on the plan are 113 acres, and the total acreage of the parcels in the third application is approximately 270 acres. Brett Vaughn stated that approximately half of the land on the Spring Road and County Road parcels is wetlands. He explained that he assesses the value regarding the number of buildable lots. Chad Branon explained that there are pockets of wetland areas inside the uplands, but this exact calculation has not yet been done.

In response to a question from Frank Montesanto regarding the impacts to Lot 4-145, Chad Branon stated that there will be an attempt to avoid buffer impacts by shifting the driveway.

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In response to a question from Frank Montesanto regarding the impacts to Lot 4-116, Chad Branon stated that there are three lots in question per the ACC letter (Lots 1, 2, and 6). These are proposed to be back lots. The proposal is for a common driveway across the wetlands to access two of the lots. For Lot 6, the original proposal was to parallel Lot 7, which would lead to buffer impacts from the driveway. One thought is to place a common driveway for two or three of the lots near Lot 8, to come around the wetlands, leading to only a small buffer impact. A detailed design for this has not yet been completed.

In response to a question from Frank Montesanto regarding the impacts to Lot 4-118, Chad Branon explained that a test pit was dug on the north side of the wetland area. There is not an intention to place the septic system on the north side of the lot, but he did not want to cross the wetland to dig a test pit. The completed test pit technically satisfies the criteria for the lot, but a test pit would be dug in the area of the actual septic system in the future.

Regarding the proposed Spring Road lots, Chad Branon explained that the proposal is to cross a wetland to access the buildable area. This will lead to wetland and buffer impacts. The ACC suggested these lots become conservation lots as part of its letter, which could be considered as part of Brett Vaughn's previous discussion.

Regarding Lots 18 and 19, Chad Branon explained that a common driveway is proposed to access the lots leading to buffer impacts. There could also be consideration as to including these within the conservation lot discussion.

Regarding Lot 121-1, Chad Branon explained that the buildable area is in the front of the lot on the Upham Road side. The ACC's letter asked if there was a way to merge the two lots proposed and remove one of the buildable lots from the plan to preserve the area in the back. Chad Branon stated that he does not believe this is possible, as the applicant has received a lot of interest in this piece of the property. This lot will likely not encroach on the buffer. The applicant has considered adjusting the lot lines for some of the lots to improve the building areas and lessen the impacts.

Regarding the ACC's letter item to protect the back end of Lot 5, Chad Branon explained that there is no objection to this, and it could be considered as part of the conservation land discussion.

Regarding the ACC's comments about Lot 102-14/15, Chad Branon explained that the proposal is for a common driveway leading to minimal wetland impacts. The concerns are valid, and the applicant will submit additional information regarding how to minimize impacts.

In response to a question from Steve Lutz regarding potential wells on conservation lots, Chad Branon explained that there is no intention to build on conservation lots. These are details that should be omitted and removed. The vernal pool study has been completed and these details can be added to the plan. There are a number of vernal pools on the property. The wetlands functions and values report has been checked by three professionals and the applicant feels that due diligence has been completed. He noted that the ACC mentioned a third-party professional review and asked

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if this was necessary. Frank Montesanto asked that any additional reports or letters be submitted for review.

Frank Montesanto stated that the ACC would revise its comment letter and submit it to the Planning Board.

Jared Hardner and Rob Clemens retook their seats.

- **B&M Rail Trail Depot**

Will Ludt explained that he flagged an area across from the originally proposed location for the rail stop. The ACC noted that there may be wetland issues in this area, but he thinks it might be a wet spot instead. He would like to avoid going to NH DES for a waiver to build the small 9'x16' replica 1901 rail stop. The previous presenter spoke of breaching wetlands for crossings and driveways and Will Ludt stated that he would like to make sure the same rigor is being used for each project. This proposed project is a very small breach compared to others. He understands protecting the 50' shoreland area.

Jared Hardner stated that he believes there is a false equivalency comparing the two projects. There are certain water bodies for which the State-level Shoreland Protection Act kicks in. The previous presenter's project is not in that type of area. The ACC does not have authority to override State law. If the ACC gave permission to complete a project, such as the rail stop, on its land without a DES permit, the Town would be in violation of State law.

Will Ludt asked if the Town has ever submitted a waiver request or application to DES for this type of project. Rob Clemens stated that he went through a similar process for a recent Boy Scout project to access a certain waterbody. While it is difficult, the process must be undertaken. With regard to building on the original Little Baboosic Pond proposed site, he suggested that Will Ludt first engage the State to see what is required.

Jared Hardner noted that moving the proposed rail stop down the path a bit may remove barriers through the State and Town. The proposed location is a poor one due to nearby wetlands on each side.

Jared Hardner asked if approval from DES on this item could be viewed as strict compliance with the Town's Wetland Ordinance. The Ordinance states that there should be no building within a buffer of a certain distance. Rob Clemens noted that the area near Little Baboosic Lake would likely be considered for a 100' buffer. The ACC would likely need to advise the Planning Board if the State's opinion is in favor of the proposal.

Will Ludt asked if this could be approved administratively or if an application to the Planning Board will be required. Rob Clemens stated that the Community Development Director and Building Inspector would likely review the request in order to determine which process needs to be undertaken. Jared Hardner stated that the ACC's purview would be to write a letter in support

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or against this proposal for the Community Development Office. This is one more reason to consider moving the proposed rail stop down the path.

4. Other Business

- **Vernal pools training**

John Harvey explained that there are no inlets or outlets to vernal pools. As such, they harbor rare and endangered species that are only found on the East Coast. The Town Forester, Charlie Koch, has found at least 30 potential vernal pools on the Town's conservation lands. It takes a citizen level of science activity to certify vernal pools. He has partnered with the Harris Center for Conservation Education regarding training volunteers on how to identify and certify vernal pools, locate them on a GIS map, and report the same into the New Hampshire database. The proposal is for a vernal pool training event at Buck Meadow on April 13, 2024, with a rain date of the 14th. The Harris Center will advertise the event and approximately 10-20 people are expected.

- **Temporary access permission for Ross Bird Sanctuary**

Jared Hardner explained that the Commission previously heard a presentation regarding the bridge reconstruction at Thornton Ferry Road I. There will be a very small amount of activity on the Ross Bird Sanctuary property, of no material consequence. A temporary access easement was drafted to allow that activity to occur. The Commission can consider authorizing the Chair to sign a brief letter authorizing this work to occur.

Rob Clemens asked for additional language that there be best efforts made for the land to be restored to its original condition after the work is complete.

**Frank Montesanto moved to authorize the Chair to sign the letter, as amended with the obligation to rehabilitate the land to its original state. Seconded by Steve Lutz.
Vote: 6-0-0; motion approved.**

- **Other**

**Rob Clemens moved to approve an amount not to exceed \$152 to fund the ACC's annual website management. Seconded by Steve Lutz.
Vote: 6-0-0; motion approved.**

John Harvey noted that former Commissioners were interested in chestnut trees. Five of these in the upper Bragdon meadow are still healthy. The American Chestnut Foundation is doing genetic research and cross breeding to try and bring the American chestnut tree population back. Former Commissioner Bill Widmer was a board member of the New Hampshire and Vermont chapter of that foundation. John Harvey suggested that the Commission join the foundation for \$40/year.

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He would also like to consider planting chestnut trees on the Alice Towne's property, with a member of the public willing to maintain them.

John Harvey moved to approve an amount not to exceed \$40 to fund the ACC's first year membership in the American Chestnut Foundation. Seconded by Mark Bender.

Discussion:

Rob Clemens asked for additional information on this topic before planting additional trees in Town. Steve Lutz voiced his support for the membership but agreed that additional information is needed before planting trees.

It was noted that John Harvey could not make a motion as an alternate member. The previous motion was withdrawn.

Mark Bender moved to approve an amount not to exceed \$40 to fund the ACC's first year membership in the American Chestnut Foundation. Seconded by Rob Clemens.

Vote: 6-0-0; motion approved.

Jared Hardner moved to enter into Non-Public Session, per RSA 91-A:3, II, (d) at 9:08pm. Seconded by Frank Montesanto.

Roll Call Vote: Hardner – aye, Clemens - aye, Lutz - aye, Bender - aye, Littlefield - aye, Frank Montesanto – aye; 6-0-0; motion approved.

Non-Public Session per RSA 91-A:3, II, (d)

Consideration of the acquisition, sale, or lease of real or personal property which if discussed in public, would likely benefit a party or parties whose interests are adverse to those of the general community.

Rob Clemens moved to exit Non-Public Session at 9:50pm. Seconded by Frank Montesanto.

Roll Call Vote: Hardner – aye, Clemens - aye, Lutz - aye, Bender - aye, Littlefield - aye, Frank Montesanto – aye; 6-0-0; motion approved.

Rob Clemens moved to approve \$1,500 from the Conservation Fund for a property appraisal. Seconded by Frank Montesanto.

Vote: 5-0-1; motion approved [J. Hardner abstaining].

Rob Clemens moved to adjourn at 9:56pm. Seconded by Steve Lutz.

Vote: 6-0-0; motion approved.

The meeting adjourned at 9:56pm.

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393 *Respectfully submitted,*
394 *Kristan Patenaude*