

TOWN OF AMHERST
Conservation Commission

June 09, 2021

APPROVED

1 In attendance via Zoom : Rob Clemens – Chair, Jared Hardner, John Harvey, Frank Montesanto,
2 Lee Gilman [7:07pm], Vick Bennison, Rich Hart, Peter Lyon – BOS Representative, Bill
3 Widmer (Alternate), Mike Cohen (Alternate), and Bill Stoughton (Alternate).
4 Staff present: Natasha Kypfer – Town Planner, and Kristan Patenaude – Recording Secretary.

5
6 Chairman Rob Clemens called the online meeting to order at 7:01 pm, with the following
7 statement. As Chair of the Amherst Conservation Commission, I find that due to the State of
8 Emergency declared by the Governor as a result of the COVID-19 pandemic and in
9 accordance with the Governor’s Emergency Order #12 pursuant to Executive Order 2020-04,
10 as extended by various Executive Orders, this public body is authorized to meet
11 electronically.

12 Please note that there is no physical location to observe and listen contemporaneously to this
13 meeting, which was authorized pursuant to the Governor’s Emergency Order.

14 However, in accordance with the Emergency Order, I am confirming that we are:

15 Providing public access to the meeting by telephone, with additional access possibilities by
16 video or other electronic means:

17 We are utilizing Zoom for this electronic meeting.

18
19 All members of the Board have the ability to communicate contemporaneously during this
20 meeting through this platform, and the public has access to contemporaneously listen and, if
21 necessary, participate in this meeting through dialing the following phone #646-558-8656
22 and password 845 0102 1661, or by clicking on the following website address:
23 <https://zoom.us/j/84501021661> that was included in the public notice of this meeting.

24
25 Providing public notice of the necessary information for accessing the meeting:

26 We previously gave notice to the public of the necessary information for accessing the
27 meeting, including how to access the meeting using Zoom or telephonically. Instructions
28 have also been provided on the website of the Conservation Commission at:

29 www.amherstnh.gov.

30
31 Providing a mechanism for the public to alert the public body during the meeting if there are
32 problems with access: If anybody has a problem, please call 603-341-5290.

33
34 Adjourning the meeting if the public is unable to access the meeting:

35 In the event the public is unable to access the meeting, the meeting will be adjourned and
36 rescheduled.

37
38 Please note that all votes that are taken during this meeting shall be done by roll call vote.

39
40 Let’s start the meeting by taking a roll call attendance. When each member states their
41 presence, please also state whether there is anyone in the room with you during this meeting,
42 which is required under the Right-to- Know law.

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Vick Bennison, Jared Hardner, Mike Cohen, Peter Lyon, Frank Montesanto, Rich Hart, Bill Widmer, Bill Stoughton, Rob Clemens, and John Harvey – all present and alone.

Bill Widmer sat for Lee Gilman, until his later arrival.

ADMINISTRATIVE:

1. Chair Comments

Rob Clemens thanked all Commissioners for their hard work and support for the Open Space Warrant Article. He also congratulated Bill Stoughton on his election to the Planning Board.

2. Minutes

John Harvey moved to approve the meeting minutes of May 12, 2021, as amended [Line 186: change Bill Stoughton to John Harvey; Line 221: change the date of the next meeting to June 9, 2021]. Vick Bennison seconded.

Roll call: Vick Bennison – aye; Rob Clemens – aye; John Harvey – aye; Jared Hardner – abstain; Rich Hart – aye; Lee Gilman – aye; and Frank Montesanto – abstain. 6-0-1; motion carried.

3. Treasurer's Report

Bill Widmer reviewed the Treasurer's Report. He noted that the Commission has approximately \$5,300 to spend before the end of the year. Peter Lyon noted that encumbrances need to be approved by the end of June by the Board of Selectmen. The Board's last meeting in June is scheduled for June 26, 2021. Bill Widmer noted that there is still about \$112,000 worth of LUCT funds waiting to be processed into the account.

Vick Bennison moved to accept the Treasurer's Report as presented. John Harvey seconded.

Roll call: Vick Bennison – aye; Rob Clemens – aye; John Harvey – aye; Jared Hardner – aye; Rich Hart – aye; Lee Gilman – aye; and Frank Montesanto – abstain. 7-0-0; motion carried unanimously.

4. Planning & Permitting – nothing to report at this time.

TOPICS

5. Bragdon Farm Easement – Kayla Woods, NH DOT

Kayla Woods, NHDOT Right of Way Agent, stated that she deals with DOT projects that impact properties. She meets with property owners to discuss these impacts and provide compensation through an appraisal of the property. In this case, she met with Rob Clemens and DPW Director, Eric Hahn, at the Bragdon parcel to review the proposed impacts, complete a site walk, and form the remainder of the appraisal. She reviewed three proposed impacts to the site.

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- 1) At the Bragdon gate there will need to be a drainage easement for an already existing catch basin. The State will need to take a bit more land in this area. This is not considered a large impact site.
- 2) There is a channel and drainage easement on Pulpit Brook. A new bridge will need to be put in this area that will maintain the flow. This impact gives the State access to install the box culvert bridge.
- 3) There is a long easement across from Twin Brook Lane, where there is currently a gate and fence. A treatment swale is proposed to be installed in this area to help with water runoff from the road. Some of the fence and the gate are located within this easement and it will be part of the State's contract to replace them. There will need to be a conversation with the contractor to see if this fencing can be continued outside of the easement.

In response to a question from Jared Hardner, Kayla Woods stated that the Town/ACC access to these areas will not change.

In response to a question from Jared Hardner, Kayla Woods stated that there are currently two 5' concrete pipes in the area, but this proposal will install a box culvert instead to help with the flow of Pulpit Brook.

In response to a question from Jared Hardner, Rob Clemens explained that the proposed box culvert will be similar to the bridge recently installed on Horace Greeley that contains a ledge on either side so wildlife may cross. Jared Hardner stated that this appears to be an improvement on what currently exists in this area.

Kayla Woods noted that there is a cherry tree on the property which will need to be removed in order to install the swale. The appraisal of this tree is approximately \$1,200. The total appraisal for the easements and tree is \$3,200.

In response to a question from Bill Stoughton, Kayla Woods stated that if the Town does not agree to the proposal, the State has already gone through the public hearing process, and thus has eminent domain of the area. If the Town and DOT cannot come to an agreement, the Town would need to file a condemnation with the Attorney General's (AG's) Office. The Town can then negotiate with the AG's Office for more money than the appraisal, but the DOT will continue to move forward with the project.

Bill Stoughton noted that the State will get these easements one way or another. Compensation for the Town can be discussed, either in this forum or through court proceedings.

Bill Stoughton asked if the conservation restrictions on the property via the Amherst Land Trust (ALT) would in any way keep the State from exercising its condemnation rights. Kayla Woods stated that she does not believe this is the case. She does not believe that the proposed easements go against the conservation restrictions, as they do not change the Town's use of or access to the property.

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Bill Stoughton stated that he disagrees. Kayla Woods stated that she would need to hear more about what the ACC believes is preventing the DOT from utilizing these easements.

Bill Stoughton stated that he believes there are two conservation restrictions of issue. He noted that the ALT deeded this land to the Town subject to these conservation restrictions. He believes the Town/ACC has an obligation to enforce these conservation restrictions unless the State determines it needs this land anyway. He reviewed two of the conservation restrictions:

- 1) *"Said premises shall not be altered from its natural state by the dredging or filling thereof, by dumping thereon or otherwise alter it or in any other way develop it for any use inconsistent with retaining said premises in its natural state for conservation purposes, except insofar as said Amherst Conservation Commission shall deem any alteration or development thereof necessary or desirable for conservation purposes."*

Bill Stoughton stated that his concern is that this is a restriction on altering the premises for uses against the retention of it in its current state. He stated that this proposal will alter the premises, as there will be land slope changes which will not retain the property in its current state, for reasons outside of conservation purposes (for highway purposes). He questioned if the Town/ACC can voluntarily agree to let the DOT do this, or if the Town/ACC must be forced to do so.

- 2) *"No digging, destruction, cutting or transplanting of trees, shrubs, plants or other silvicultural or forest management practices shall be allowed on said premises, except under the auspices of or with the consent of the Amherst Conservation Commission and then only insofar as is necessary to undertake proper silvicultural and conservation management practices for the conservation of said premises."*

Bill Stoughton stated that he believes the Town/ACC can only agree for the DOT to cut down the cherry tree if it believes it necessary for the conservation of the area. Cutting down this cherry tree is not being done for conservation purposes, but for road improvement purposes. He believes the Town/ACC has some obligation not to roll over on these restrictions.

Kayla Woods stated that she will now need to go back to her project manager to discuss these items. She noted that she is unsure if the DOT can move forward with this project even with these concerns about the restrictions.

Bill Stoughton noted that he is not opposed to moving forward with this project but wants to make sure the Town/ACC has the authority to do so and that it is being done in the right way.

Jared Hardner noted that the box culvert could be seen as an improvement over the current conditions, which might make that portion allowed through the restrictions.

John Harvey agreed that the box culvert seems to be an improvement to the current conditions. He noted that the long, skinny easement could possibly be considered desirable because of the improvements for stormwater standards being proposed, and the fact that it will be restored to its natural state at a slightly different elevation.

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Rob Clemens agreed with John Harvey. He believes the proposed easement will allow water reaching the Pulpit Brook watershed to be in better shape than otherwise.

Bill Stoughton stated that he believes receiving the deed means that the Town/ACC must enforce restrictions. The Town/ACC needs to put a good faith effort into this. He noted that if the State is going to proceed with this project anyway, then the Town/ACC should be okay with it because it does not want to proceed with condemnation.

Lee Gilman asked if there is a way to quantify the impact on the water flow from this proposal.

In response to a question from Frank Montesanto, Bill Stoughton stated that it is unclear as to the repercussions of allowing the conservation restrictions to be violated. Bill Stoughton stated that the ALT could say that the Town/ACC failed to observe the restrictions, but the Town's liability is unclear.

Rob Clemens stated that he has sent documents to the ALT for their Board to review.

Lee Gilman stated that he has a concern about the invasive Japanese knotwood that grows up the slope from this area. Any movement of soil in certain areas of the site might move this invasive further onto the property. He stated that he would like to know what the follow-up treatment would be if this happens.

Rob Clemens noted that the control of invasive species was discussed as part of the DOT project. This can be followed up on. He stated that he believes there is language in the deed that allows for modifications, if there is a conservation benefit. He believes there are benefits to what is being proposed in each area that could allow for these modifications.

Bill Stoughton stated that there seem to be good arguments that will be included in the record, to show the process that the Commission went through and will, eventually, vote on.

Rob Clemens noted that this item will ultimately be decided on by the Planning Board and Board of Selectmen. Bill Stoughton stated that the Board of Selectmen would have the final say in where the appraisal funds are dispersed to. The group discussed items on site that the appraisal funds could be used towards.

Kayla Woods stated that this project will be sent to contractors at the beginning of September, and probably close for bidding at the end of that month. Bids will be reviewed for approximately 4-6 weeks and must then be approved. Any work this year on the property would probably only include tree work within the right of way.

Bill Stoughton suggested that this be an agenda item for a future meeting, with the ability for ALT members and the public to speak. The ACC can then vote to recommend or not to the Board of Selectmen.

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6. Nature Steward Program – John Harvey

John Harvey suggested that the ACC look into educating Amherst regarding its local native habitats and species. He noted that a section could be added on the website for those interested in being citizen scientist nature stewards. These stewards could be involved in a number of projects throughout Town after being trained on how to use monitoring apps such as iNaturalist or eBird.

The group discussed leading with training nature stewards and answering the question as to how the data will be used by the Town/ACC.

John Harvey stated that he will work on rewriting the webpage and including information about iNaturalist training sessions.

7. Fourth of July Plans

The group discussed being a part of the virtual display for the holiday. They agreed to put together a short video regarding the ACC to submit for the display. The group agreed not to have a presence at the reverse parade.

8. Other Business

Vick Bennison moved to appropriate up-to \$750 to Lee Gilman to remove downed trees at PMEC. Jared Hardner seconded.

Roll call: Vick Bennison – aye; Rob Clemens – aye; John Harvey – aye; Jared Hardner – aye; Rich Hart – aye; and Frank Montesanto – abstain. 6-0-0; motion carried unanimously. [Lee Gilman did not vote on this motion].

John Harvey moved to expend up-to \$800 for two large signs, one at Bragdon Farm after the State has finished its project and the other at Great Meadow, and four posts. Vick Bennison seconded.

Discussion:

Bill Stoughton noted that the Bragdon project will not be completed by the State for at least a year. He suggested waiting to expend the funds until then.

Mike Cohen stated that the meadow is an existing place, and a sign might be nice for it even in the interim.

Rob Clemens agreed with Bill Stoughton that the sign might get damaged during the project.

Frank Montesanto noted that the ACC has a supply of 4'x4' posts already.

Jared Hardner stated that he and Frank Montesanto had earlier decided against having a large sign at the entrance to Great Meadow due to its proximity to the road and possible destruction from snowplows, etc. John Harvey stated that there is a small area that is specifically not mowed, approximately 30' from the road.

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263 **Roll call: Vick Bennison – aye; Rob Clemens – aye; John Harvey – aye; Jared**
264 **Hardner – aye; Rich Hart – aye; Lee Gilman – aye; and Frank Montesanto –**
265 **abstain. 7-0-0; motion carried unanimously.**
266

267 The group discussed the Open Space Warrant Article and the process that will occur moving
268 forward. The ACC will need to discuss this with the Board of Selectmen in order to determine
269 next possible steps.
270

271 Rob Clemens stated that the ACC will next meet on June 23, 2021.
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273 **Vick Bennison moved to adjourn at 9:26pm. Jared Hardner seconded.**
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275
276
277 *Respectfully submitted,*
278 *Kristan Patenaude*
279

280 Minutes approved: June 23, 2021