

TOWN OF AMHERST  
Conservation Commission

December 9, 2020

**APPROVED-Amended**

1 In attendance via Zoom: Rob Clemens – Chair, Jared Hardner, John Harvey, Vick Bennison,  
2 Rich Hart, Peter Lyon – BOS Ex-Officio, Lee Gilman, Mike Cohen (Alternate), Bill Widmer  
3 (Alternate), and Bill Stoughton (Alternate).

4 Staff present: Natasha Kypfer – Town Planner, Kristan Patenaude – minute taker.

5  
6 Chairman Rob Clemens called the online meeting to order at 7:02 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 #312-626-6799  
22 and password 898 6314 8623, or by clicking on the following website address:  
23 <https://zoom.us/j/89863148623> 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 Planning Board at: [www.amherstnh.gov](http://www.amherstnh.gov).

29  
30 Providing a mechanism for the public to alert the public body during the meeting if there are  
31 problems with access: If anybody has a problem, please call 603-341-5290.

32  
33 Adjourning the meeting if the public is unable to access the meeting:

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

36  
37 Please note that all votes that are taken during this meeting shall be done by roll call vote.

38  
39 Let’s start the meeting by taking a roll call attendance. When each member states their  
40 presence, please also state whether there is anyone in the room with you during this meeting,  
41 which is required under the Right-to- Know law.

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

ADMINISTRATIVE:

**1. Chair Comments**

Rob Clemens thanked Bill Stoughton for all the work he's done for the Commission.

**2. Minutes (9/23)**

**Rich Hart moved to accept the minutes of September 23, 2020, as amended [to include Rich Hart in the list of attendees.] Vick Bennison seconded.**

**Roll call: Rob Clemens – aye; Jared Hardner – aye; John Harvey – aye; Vick Bennison – aye; Rich Hart – aye; and Lee Gilman – abstain. 5-0-1; motion carried.**

**3. Treasurer's Report**

Bill Widmer reviewed the Treasurer's Report. He explained that the signage budget line item will probably be overrun. The Land Account currently sits at approximately \$265,000, after some LUCT funds were added to it.

Rob Clemens noted that the prime budget line items with balances include Educational Outreach, Water Crossing, and Professional Development.

In response to a question from Bill Widmer, Mike Cohen explained that the Trail Brochure was never reprinted. The item was being held off on until new maps could be obtained.

**Vick Bennison moved to accept the Treasurer's Report. Jared Hardner seconded. Roll call: Rob Clemens – aye; Jared Hardner – aye; John Harvey – aye; Vick Bennison – aye; Rich Hart – aye; and Lee Gilman – abstain. 6-0-0; motion carried unanimously.**

**4. Planning & Permitting**

Bill Stoughton stated that the Planning Board has the Carlson Manor hearing on its agenda for next Wednesday. It was hoped that the applicant would be filing a CUP application for disruptions to the wetlands and wetland buffers on site that the ACC would hear prior to the Planning Board meeting. There will also be a public hearing for the proposed stormwater ordinance revisions at the Planning Board's next meeting.

In response to a question from Jared Hardner, Bill Stoughton stated that the Subaru dealership application was approved by the Planning Board with some conditions, including: additional monitoring wells on site and their proposed locations, and an impervious liner for the underground holding tank.

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**a. Storm Water Ordinance Revisions**

Bill Stoughton explained that the proposed revisions will be heard by the Planning Board, and then be heard by the Board of Selectmen and Town Health Officer for adoption. The proposed revisions were reviewed by Town Counsel and the Town Engineer. Nic Strong, Community Development Director, was also able to have the revisions reviewed by DES. Most of the comments regarding the revisions were incorporated, where appropriate.

Bill Stoughton stated that one of the main revisions includes that runoff from impervious surfaces be treated to remove 60% of total nitrogen and phosphorus, and 90% of sediment. Many involved in the process advocated for this higher percentage to be used, even though there is a potential cost to applicants as there are fewer adequate treatments available in order to reduce the runoff by that percentage. The Town Engineer also agreed that this higher percentage should be used.

Bill Stoughton stated that he hopes the ACC will vote to recommend that these proposed revisions be moved forward to the Planning Board, and Board of Health for adoption.

In response to a question from Jared Hardner regarding what baseline the 90% number is relative to, Bill Stoughton explained that the language in the ordinance gives a list of appropriate treatment measures, as per the NH Stormwater Manual. DES has associated each technique with a percentage of removal that it will give credit for.

Jared Hardner suggested that the language be clearer about how the 90% amount is defined.

Bill Stoughton stated that most major land consultants will understand the language as written. The ordinance might be difficult for homeowners to understand though. The intention is to create a homeowner-friendly application in the future. The application will include a streamlined set of requirements for how to control stormwater runoff.

Jared Harder stated that, even if these proposed controls are applied to new developments, the Town will continue to be in non-compliance, per the MS-4. The only way for the Town to become in compliance is to limit development or clean-up/improve the current points of discharge. Due to the fact that many things happened before the MS-4 existed, there were more pollutants introduced into the stormwater system than should have been allowed. Thus, even if the new permit reduces 90% of runoff, it will still be allowing some amount of pollution into an already over-polluted system. The new systems may be legal on individual levels, but the Town is responsible for the total load being introduced into the system. This permit, to make new systems as clean as possible, is only a first step; it does not solve the problem.

Bill Stoughton noted that the MS-4 permit has additional requirements that look at existing contributors and ways to reduce their impact that will be required in future years of the permit process. The permit requires the Town to look at the existing polluted runoff going into the watershed, analyze what to do about it, and reduce it if possible. There is no one currently

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working on this aspect of the permit and figuring out how to clean-up the current and reduce future nutrient loading is a large issue.

In response to a question from John Harvey, Bill Stoughton stated that the ordinance outlines that the Community Development Office and Health Officer are the enforcement entities for the Town. Unfortunately, these entities do not currently have the resources to actively do this.

Rob Clemens noted that Eric Hahn, DPW Director, has identified a number of stormwater abuses around Town; he, unfortunately, does not have the means to enforce the ordinance.

Jared Hardner noted that the proposed regulations are an excellent first step but are not the end of the story. The Town next needs to look at the total amount of nutrient loading and how to reduce the total amount, as federal regulations say to. He isn't sure that the Planning Board has been thinking of this as it approves new developments.

In response to a question from Mike Cohen, Jared Hardner stated that he is working on getting discussion of this topic worked into the Master Plan.

Bill Stoughton noted that large developments are also subject to the State's Alteration of Terrain (AoT) permit requirements. The main problem is not the new developments coming into Town, but the existing sources that continue to contribute to the watershed. This is the difficult part to fix. He explained that, even if no new developments were allowed into Town, the Town would still not be in compliance.

Jared Harder agreed; even if these proposed regulations are followed exactly, the Town will not be in compliance. He stated that the Town needs an entity to make all of the pieces function together. He wants everyone to be aware of this issue, get organized, and get the proper authority to decide where to allocate resources in order to reduce the discharge amounts.

**Jared Hardner moved to recommend the proposed ordinance, as presented. Rich Hart seconded.**

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

## TOPICS

### **5. Discretionary Easements (RSA 79-C)**

John Harvey explained that he recently learned about discretionary easements, RSA 79-C. There is an application process for this type of easement. The State requires information as part of the application, including a map of the proposed easement, a description of the specific public benefits of the proposed easement, and a tax appraisal of the property. The Town could use a similar application process and base the public benefit stance on the Conservation Plan's habitat value map.

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Bill Stoughton noted that water protection is not a permitted reason for a discretionary easement to be sought.

In response to a question from Rob Clemens, John Harvey stated that discretionary easements are used in Exeter and Stratham, that he knows of. Rob Clemens stated that he would like to study how other towns use this type of easement before deciding if it's something the Town should adopt.

John Harvey noted that adopting this type of easement would require looking at the balance between preserving lands in Town and some reduction of tax input, due to it being a tax benefit for the landowner.

In response to a question from Rich Hart, John Harvey stated that, if the public benefit can be justified, a discretionary easement could be used to reduce the unrestricted portion of a lot past the required zoning minimum lot size.

John Harvey gave the example of Lot 7-51 on Austin Road. It has approximately 4.3 acres in some of the highest ranked wildlife habitat for both the Town and State. This could be a key wildlife corridor link. He recommended that the Town Administrator initiate the process to allow discretionary easements in Town and that the ACC recommend this plan of action.

Rob Clemens explained that Dave Morley, the prospective buyer of Lot 7-51, contacted the Town regarding discretionary easements and, per the RSA, is allowed to seek an easement of this type through the Town.

Bill Stoughton recused himself, as a nearby abutter.

Dave Hall, broker/owner of Hall Home Group, explained that his is the listing agency for the current owner of Lot 7-51. This lot is somewhere between 4.3 and 7.3 acres. He explained that Diane Aubrey purchased this land in 1974 and has been paying the full amount of assessed taxes on it each year. As the lot recently went up for sale, Dave Morley, who owns nearby lots, approached an abutter regarding a possible lot line change in order to connect the lots through current use. This request was denied, so Dave Hall suggested a discretionary easement to Dave Morley. He believes it is a benefit to the Town for this land to remain conservation land. This would also allow for a tax benefit to the landowner.

In response to a question from Bill Widmer, John Harvey explained that a discretionary easement remains in place for a minimum of 10 years, or indefinitely, if so chosen. It runs with the ownership of the property, or until someone wants to get rid of it.

Dave Morley explained that this lot loops into the Joe English Reservation. He believes the lot could be built on, which would destroy the habitat of the area.

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Rob Clemens explained that he asked Town Administrator Dean Shankle to look into the requirements needed for this type of easement to be allowed by the Town. There needs to be a better understanding as to how this type of easement could be used.

Dave Hall explained that there is a 21-day window from the time the contract was executed, which was a week ago, to pursue this easement. Dave Morley will need information on the possibility of this easement before deciding to complete the purchase of this lot.

In response to a question from Peter Lyon, Dave Morley explained that he currently owns 18 acres on Mack Hill Road, most of which is in current use. There is no way to connect his property to this lot.

Jared Hardner suggested that the owner could work together with the ACC, outside of a discretionary easement, to make sure that the land remains conserved.

Peter Lyon stated that the Board of Selectmen will want input from the ACC regarding discretionary easements before agreeing to move forward with voting to adopt them in.

**Jared Hardner moved for the ACC to endorse an application for a discretionary easement on this property, given its conservation values, to move forward in the Town. John Harvey seconded.**

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

#### **6. Forest Management Plan Next Steps**

Jared Hardner reviewed the provisional action plan with the group. There are two significant shelterwoods suggested within the next five years.

The group discussed the possibility of finding a way to authorize additional hunting in Town, in order to reduce deer populations that are affecting the growing forests in Town.

Jared Hardner stated that he will send the 2021 provisional action plan to Town Administrator Shankle, in order for it to be shared with the Board of Selectmen.

#### **7. Open Space Acquisition Warrant Article**

Bill Stoughton stated that the proposed Warrant Article has been through an extended legal review. The Warrant Article is currently being reviewed by the Town Administrator for financial details. It will be moved to a public hearing on January 11, 2021, and then be voted on by both the Board of Selectmen and Ways & Means Committee.

Bill Stoughton reviewed some of the current language in the Warrant Article. The process for purchasing open space will be similar to the Board of Selectmen purchasing land, in that there will need to be two public hearings and a vote by the Board. There will also be an opportunity

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for 50 taxpayers to petition the Board to wait and hear the potential acquisition at the next Town Meeting. Another change is that the originally proposed language allowed the Warrant Article to be evergreen. The language now reads that the Warrant Article will expire in five years. Additional authority for another Warrant Article can then be requested. There is also additional language that better defines what the bond funds can be used for. The intention is to be as specific as possible as to the purpose of the funds. There is a checklist included as to the possible purposes that will be binding on the process. The checklist draws from the existing Conservation Plan and gives additional pluses/minuses of features that would lead there to be a desire to purchase pieces of land.

In response to a question from Rob Clemens, Bill Stoughton stated that the Warrant Article has received Town Counsel's blessing, and approval from the DRA is close.

**Vick Bennison moved to approve the proposed Warrant Article, checklist, and associated criteria. John Harvey seconded.**

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

#### **8. Other Business**

The group discussed possible updated maps for the Pond Parish, Patch Hill, Converse Woods, Betty Arnold, and Lindabury Orchard areas.

Mike Cohen explained that he went to the Library with the educational posters and discussed using them to educate the community while rotating them in the Library. There are two sets, each with a total of nine posters, and one set is currently at the Library for their future use.

In response to a question from Mike Cohen, Jared Hardner stated that the Ponemah Bog was monitored for salinity amounts. There were three or four samples taken last year, and sampling has continued this year. DPW has agreed not to salt the roads around the Bog during this time. An educational poster would be dedicated to understanding salting roads and what the plan is into the future. Jared Hardner noted that the monitoring looked good last year.

Mike Cohen explained that there were two bids for the website project. There was concern regarding the three phased costs from both bidders. The bids will be examined, and next steps will be decided. It may be necessary to bid the project again, while also considering changing the proposed amount and phased approach.

Rob Clemens noted that, if both bidders had the same issue, and the project phases are changed, that the original two bidders should be allowed to bid again.

John Harvey explained that the Bicycle & Pedestrian Advisory Committee will have a Warrant Article on the upcoming ballot to create a Capital Reserve Fund and to fund it with \$75,000. The

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Warrant Article won't list a specific project for the funds, but, if it passes, the most immediate project will be a side path near the Souhegan High School.

Jared Hardner stated that work on the new King Post Bridge has begun. Over 20 volunteers carried the structure, in pieces, onto the trail. He thanked all the volunteers for their work. More work is needed.

Rob Clemens stated that there will be a site walk with the UNH Extension crew at 1pm to look at the habitats in Buck Meadow.

Rob Clemens also stated that Craig Fraley mentioned that the High School cross-country ski team would like to use Buck Meadow for training and possibly events this winter. The team has equipment to put trails down. Additional signage may be necessary to keep people off the ski trails and on the walking trails.

The next meeting will be December 23, 2020.

**Jared Hardner moved to adjourn the meeting at 9:52 PM. Vick Bennison seconded.  
The meeting was adjourned.**

*Respectfully submitted,  
Kristan Patenaude*

Minutes approved as amended: December 23, 2020