

TOWN OF AMHERST  
Conservation Commission

December 11, 2019

**APPROVED**

1 In attendance: Rob Clemens - Chair, Jared Hardner – Vice Chair, John Harvey, Rich Hart, Vick  
2 Bennison, Bill Widmer, Wes Robertson (alternate), Bill Stoughton (alternate), and Mike Cohen  
3 (alternate).

4 Staff present: Kristan Patenaude – minute taker.

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6 Rob Clemens called the meeting to order at 6:59 pm.

7  
8 ADMINISTRATIVE:  
9

10 **1. Chair Comments**

11 Rob Clemens thanked everyone who has worked on the Caesar's Brook area to get it ready for  
12 the public. He also thanked Kristan Patenaude for her article regarding winter wildlife on ACC  
13 lands that was in the Citizen, and Mike Cohen for his additional help.

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15 **2. Minutes (from 8/28, 9/11, and 10/9)**

16  
17 **Jared Hardner moved to approve the meeting minutes from November 13, 2019 as**  
18 **presented. Vick Bennison seconded.**  
19 **All in favor.**  
20

21 *Frank Montesanto entered the meeting.*  
22

23 **3. Treasurer's Report**

24 The Commission reviewed the Treasurer's Report.

25  
26 Bill Widmer explained that he spoke with Cheryl Eastman, Finance Director, regarding LUCT  
27 funds. Over the past 18 months, four LUCT fund payments have been disbursed to the ACC.  
28 These have increased in number over the past six months; however, LUCT funds do not have  
29 any sort of a regular stream.  
30

31 Bill Widmer recommended that the ACC continue to keep their gift account separate from the  
32 larger land account. Rob Clemens stated that there was conversation between the NHACC and  
33 the Municipal Association that recommended shifting the gift account to be a part of the land  
34 account. Bill Widmer stated that he would follow up.  
35

36 Bill Widmer explained that there are clauses in the property leases between Amherst and the  
37 mowing companies that state a requirement for insurance liability coverage. He doesn't believe  
38 that there are currently any files for insurance certification provided to the town by these  
39 companies. He requested that the ACC authorize him to send a letter to the mowing companies  
40 to request that they provide a certification of insurance of liability to the town. He also noted that  
41 the contracts are good until cancelled by either party; they do not need to be reupped. The group  
42 agreed for this to move forward.  
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**Jared Hardner moved to authorize up to \$175.00 from the Water Crossing Repair and Maintenance line item for purchase of materials for water crossings. Vick Bennison seconded. All in favor.**

**John Harvey moved to authorize \$70.15 from the Invasives Mitigation line item for Vegetation Control Services work. Jared Hardner seconded. All in favor.**

#### **4. Planning & Permits**

Rich Hart stated that he represents the Planning Board on the CIP Committee. The CIP Committee spoke last night regarding impact fees. In looking at the CIP list for the past 8-10 years, there were not any projects listed that impact fees could have paid for. It might be possible for impact fees to be used to build a new school to replace Clark and Wilkins school and add in the 5<sup>th</sup> grade, but this would have to be done very carefully. The new school would need to be built on new land and have an addition added on for future growth. Impact fees could possibly be used to fund this addition; an estimated \$7,000,000 out of an estimated total \$35,000,000. The project would also have to be completed within six years.

In response to a question from Jared Hardner, Rich Hart stated that some of the multimodal projects currently being brought forth by the Bicycle and Pedestrian Advisory Committee might be able to be funded by impact fees.

Rich Hart explained that there will still be five subcommittees working on different sections of the Master Plan, but that the creation of these groups has been delayed until after the holidays. He explained that there seems to be some in town who would prefer to see an array of two-acre housing lots with four-bedroom houses on them, instead of clustered, diverse housing. This is a concern as the latter tends to propose to preserve open space more than the former.

Frank Montesanto questioned if that thinking was subjective, as this would need to be reviewed on a case-by-case basis as to what the data shows is best for the environment in each area.

Rob Clemens explained that the IIHO (Innovative Integrated Housing Ordinance) currently anticipates preserving open space in favor of cluster housing. The ACC has spoken in the past in favor of the developments that do propose to preserve open space. There is some movement in town to move away from the IIHO, but he believes this could be a long process. In the meantime, there has been a benefit to the ACC from the IIHO.

Rich Hart explained that the CIP list will be presented to the Planning Board next week. The Planning Board will also discuss the Prew property proposal. The Planning Board has not seen actual plans for the proposal yet.

Ken Clinton, of Meridian Land Services, stated that he represents Clearview Development and that the discussion on the 18<sup>th</sup> will be for a design review. This will be an informal discussion

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with no votes or decisions made, but with an updated design consideration and room for public input. The current design will require one wetland crossing and so the applicant will also need to come before the ACC for that conditional use permit (CUP).

In response to a question from Mike Cohen, Rob Clemens explained that the ACC could take a position, as it relates to the group's mission, in regards to possible petition warrant articles for the IIHO, if it so chose.

In response to a question from Will Ludt, 3 School Street, Rich Hart stated that the Planning Board has not yet discussed the Board of Selectmen letter regarding options for the impact fee ordinance and decoupling the CIP projects from it.

**LaBelle's Farmhouse Marketplace Project on Lot 8-52 – Ken Clinton, Meridian Land Services**

Ken Clinton, of Meridian Land Services, explained that he is representing both Arboleda Realty, LLC and LaBelle Winery. About two years ago there was a proposal to expand LaBelle Winery across the road onto Lot 8-52 for a multi-use facility. A variance was granted by the Zoning Board of Adjustment and then challenged by a group of abutters. The applicant prevailed in court and has requested to proceed with the design.

Ken Clinton explained that the NHDES will be implementing a rule change that might affect the considered project. There is a desire to beat the deadline of this rule change regarding wetland impacts. Thus, the project does not yet have a full design and is only focused on the wetland permit at this time. One key item of note is that the DES will be requiring a conservation easement on 25 acres of land on this property. He hopes that the ACC will be able to give a brief statement supporting the conservation easement on 25 acres of the property, subject to an agreement on the actual documents. The applicant will then need to come back to the ACC regarding a CUP, at which time the project will be explained in much greater detail.

Ken Clinton stated that Lot 8-52 sits directly across from LaBelle Winery. The proposed multi-use building, called LaBelle's Farmhouse Marketplace, will contain event space for about 100 people, a distillery, tavern, marketplace and tasting room. There was a large hotel originally proposed on the property, but this has been removed from the plans. There will also be a storage barn for the facility and ample parking. Access to the site is required to be directly across from the access to LaBelle; there are two wetlands directly across from LaBelle's access point. He noted that these wetlands are borrow pits from the early 1950's, when Route 101 was first modified, per records from the DOT. These were man-made pits but are still considered jurisdictional wetlands. These are low value wetlands and DOT has noted it is probably okay to consider filling them for access to the site and parking.

Ken Clinton noted that there is another wetland next to the farmhouse. This is also a low value wetland and may not qualify for a buffer. DES is okay with it being impacted, but would rather it not be fully impacted. There is a third wetland impact near the culvert. This equates to about

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30,000ft<sup>2</sup> of impact on the property which requires compensatory mitigation. In order to satisfy that issue, DES is requiring that 25 acres of the land be placed in a conservation easement. This land was originally outlined for development restrictions, but this requirement is for a higher level of protection. The outline for the protected land has been moved to incorporate an old stone wall as a boundary.

In regards to a question from Rob Clemens, Ken Clinton stated that there is a wetland at the back of the property that crosses the stone wall; this wetland is not impacted at all by the proposal. There will also be a monument and placard placed at the conservation easement.

In response to a question from Bill Widmer, Ken Clinton explained that this proposed easement is adjacent to the Bragdon property. The Holly Hill open space lot also sits north of it, but there is no conservation language for that property.

Ken Clinton explained that the language in the conservation easement will make DES a 3<sup>rd</sup> party easement holder. If the town/ACC doesn't do its job on the property, the state can step in and take control of it. The state could also seek to recoup its enforcement costs from the town. There is some possibility for negotiation with DES on this. This is not language unique to this proposal and the ACC will likely see it again where compensatory mitigation is required. He is requesting that the ACC accept, in general, the conservation easement subject to further review of the document to its satisfaction.

In response to a question from Rich Hart, Ken Clinton stated that the existing barn on the property has a good structural framework, but the exterior and foundation are not suitable. Currently the plan is to look at repurposing the structure as part of the preservation of the property.

In response to a question from Bill Stoughton, Ken Clinton said he doesn't believe his client has any objection to public access on the conservation easement.

The ACC discussed that the LCHIP easements in town have a similar type of 3<sup>rd</sup> party monitoring and that it is not a material change as to how the ACC goes about its business.

Bill Stoughton stated that the motion should read: for the ACC to be willing, in general, to support the conservation easement, subject to mutual agreement on terms of, and necessary town approvals of, the final documents.

**Jared Hardner moved to accept Bill Stoughton's motion language. John Harvey seconded.**

**5-1-0 (F. Montesanto abstained); motion carried.**

TOPICS:

**5. Water Resources Committee Report – Bill Stoughton**

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Bill Stoughton reviewed the ACC's role via town ordinance to protect water quality; RSA 36-A:2. The ACC has the statutory authority to recommend to the Board of Selectmen how to approach water quality in town.

The town ordinance for wetlands and watershed is addressed under Section 4.11 of the ordinance. The ACC's role is advisory (4.11.1.g) and applies to CUPs affecting wetlands, lakes, ponds, streams, and associated buffers. Wetlands are determined by certified wetlands scientists, scored by the UNH Cooperative Extension guide, and higher ranked areas have larger buffer areas. Streams are determined by the source and duration of their flow, and permanent groundwater-fed streams receive the largest buffers.

Bill Stoughton reviewed the wetlands and watersheds standards for review. He will include the guidelines and associated information in the ACC's Dropbox.

The town's ordinance for aquifers and wellheads is addressed under Section 4.13 of the ordinance. The ACC's role is advisory and the areas that apply are designated on a map produced by NRPC. This map is static and he questioned how often it is made up-to-date. The wellheads are scattered throughout town. The wellheads on the map may be private or public water supplies. The standards for review include avoiding and minimizing the impact to land in the district. The Planning Board can also require for state permits to be received, but this is not applicable at the ACC review.

The town's ordinance for floodplains is covered under Section 4.10 of the ordinance. The ACC is authorized to review this as it applies to non-commercial sports and recreation areas located in the flood plain. This area is based on Federal FEMA maps, subject to the 100-year flood. The standard for review is that the ACC has no other role under the ordinance for floodplain application review.

He explained that DES will go through a rule change on December 15<sup>th</sup>. This may result in certain non-major project applications being denied or elevated, unless the ACC signs off. The ACC can request an additional 40 days to look at an application or it can give DES its comments.

Bill Stoughton proposed that the ACC formalize its approach to reviewing applications for water quality including: getting copies of applications before ACC meetings, determining which ordinance is relevant, the ACC review and discussion using relevant performance standards, and formulating written advice to the Planning Board regarding the ACC's conclusions and recommendations. There could also be the opportunity to have representatives brief the Planning Board on these matters in the future.

Bill Stoughton suggested that, in the future, the ACC determine: if the maps and designations being used for water resources are accurate, if the ACC roles are appropriate, if the DES application review should be integrated, if the ACC should move their meeting to the week before a Planning Board meeting in order to facilitate reviews, and if the ordinance is incomplete because it lacks key definitions and guidance needed to apply it correctly and consistently.

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Rob Clemens stated that the ACC has an interest in better integrating with the Community Development Office and Community Development Director, Nic Strong. The ACC needs to make sure it's doing its part and not assuming it's already being done.

Rich Hart explained that the Planning Board members do get a document that includes any ACC text regarding each application and that this is looked at to varying extents. He believes it would be helpful to note that decisions are being based on a certain ordinance or RSA.

Bill Stoughton noted that the ACC can establish credibility by doing the job already assigned to it.

The Board discussed with Ken Clinton the importance of having a site-specific evaluation by a certified wetlands scientist, but also that this tends to lose the view of connectivity to the rest of the town.

In response to a question from Jared Hardner, Ken Clinton stated that he believes the ACC is doing a good job overall. He noted that the ACC is uniquely heard at Planning Board meetings because it has a sitting member on the Board. It is the role of that member to bring forth concerns of the ACC. He also believes that using specific sections of the ordinances or RSA's is very helpful to applicants and those that represent them.

The ACC thanked Bill Stoughton for his work.

#### **6. Purtell/Atherton Trail Development – John Harvey**

John Harvey stated that he is speaking as an alternate member of the Bicycle & Pedestrian Advisory Committee. He noted that the ACC has agreed to construct and do rehab on a trail in the Purtell easement. There is the possible opportunity to connect this area to the future proposed bicycle/pedestrian side path on Amherst Street and also to Joshua's Park. There is a benefit for the residents of these condo homes to be able to eventually access the Milford Oval and Joshua's Park. There is also a benefit for wildlife observation in this area and a heritage component.

John Harvey explained that the Purtell easement sits between the Country Mansions and Atherton Lane developments, and also between Joshua's Park and Founder's Way. The proposed trail through the Purtell easement could be a backbone trail due to its connectivity to other trails in the area and out to the proposed side path. The parcel runs through two kinds of forests, an active beaver pond and wet meadows. The proposed path is currently mostly clear of standing trees. He suggested a 6-8' bridge across the creek that feeds into the beaver pond, and a wall break, or stile, across the stone wall border. For a spur to Joshua's Park, there would probably be a need for a bog bridge or boardwalk, with *Do Not Disturb* signs for the beavers. The heritage component of the proposal includes stone walls, slotted gate posts, and a rough-cut wall. He believes the minimum cost would be about \$340 for the above projects.

Jared Hardner noted that a crosswalk or something similar might be needed because building a trail to a main road invites users to cross it.

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Will Ludt explained that the Heritage Commission would prefer a stile be placed over the stone wall.

John Harvey proposed that a chainsaw cadre go out to bush cut the brambles on the proposed trail, that volunteers be used to install a 6-8' bridge over the beaver inflow, and that a path be determined to go around the beaver pond itself. He also encouraged that the forested area near the trail be allowed to climax/mature.

In response to a question from Mike Cohen, John Harvey explained that the Bicycle & Pedestrian Advisory Committee determines the possible trail benefits, the ACC writes up the project to implement these, and then sends the plan to the Committee to decide if it should/can be completed or not.

Rob Clemens stated that the ACC has an obligation to maintain a trail in this easement and that this project is a shared opportunity.

Jared Hardner noted that the ACC has a responsibility, where there are opportunities on their managed properties, to make greater connectivity.

Bill Stoughton proposed passing the project to the Bicycle & Pedestrian Advisory Committee for planning of connection to a future path, but to note that no one can continue without the ACC's approval.

#### **7. Public Education and Outreach Activities Update – Mike Cohen**

Mike Cohen explained that he and Kristan Patenaude have been working to update and standardize the ACC's informational posters. Three posters are in draft form and the goal is to take all of the posters and print them all to look the same. Contact information for the ACC has been added, along with information on how the public can get involved, and the ACC's new tagline. These posters will be laminated and put up at ACC events or in other public places.

Mike Cohen noted that he and Kristan Patenaude are also working with NRPC to create a system-wide trail map. This can be made into an insert for the Trail Guide and also printed in a poster size.

He explained that it is his intention to work with Kristan Patenaude to draft articles to be submitted to the citizen for the ACC each month. Also, the Library display that the ACC was to have in January has been pushed off until the spring, due to Library renovations.

He also noted that he and Rob Clemens met with the Recreation Department at Peabody Mill Environmental Center (PMEC) to discuss how best to utilize the space there for public presentations.

Mike Cohen finally mentioned that he hopes to get the ACC's website up-to-date with consistent educational materials and plans.

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John Harvey noted that the Meadows & Fields poster should more appropriately be named "Grasslands & Shrublands."

**8. Tree Stand Policy**

The group agreed to defer this topic to a later date.

**9. Other Business**

Will Ludt mentioned that he and Rob Clemens recently went to the Corn Crib to examine the second building at the site. The Heritage Commission has agreed to evaluate and assess it. He also explained that the Heritage Commission is considering a town celebration to commemorate the 19<sup>th</sup> amendment. This could possibly be done with an event on Bertha Rogers land.

Rob Clemens explained that he is proposing the ACC accept the Gleason Conservation easement, as reviewed by town attorney, Bill Drescher, without the additional conditions brought up, and to bring it next to a joint public hearing with the Board of Selectmen.

**Jared Hardner moved to accept Rob Clemens' proposal for the Gleason Conservation Easement. Vick Bennison seconded. All in favor.**

Rob Clemens explained that members of the ACC met with the Board of Selectmen on Monday in a joint public hearing regarding the Dodge Road, LLC donation of land behind Gowing Woods. The donation was accepted by both groups.

Rob Clemens also noted that the donation of two Wolf Trust parcels off of Boston Post Road are being reviewed by Attorney Quinn.

**John Harvey moved to add the Wildlife Habitat Management Plan to the ACC Dropbox for review. Frank Montesanto seconded. All in favor.**

Jared Hardner stated that the use of sand/salt on town roads was previously discussed by DPW Director, Eric Hahn. The ACC agreed to support the reduced total amount of salt on the roads and the elimination of sand use. There has been a public request to revert a few roads in town to being No Salt roads. The ACC has taken initial chloride levels at Ponemah Bog. A volunteer has agreed to take these samples, but it will be important to buy the correct testing device and, if deemed necessary, the correct sampling test.

**Rob Clemens moved to expend up to \$150.00 from the Conservation Fund to purchase a depth sampler. Vick Bennison seconded.**

**Discussion:**

In response to a question from Bill Stoughton, Jared Hardner stated that Ponemah Bog is being tested because it is the only place that is ecologically sensitive in town with



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susceptibility to the town road salting. This also falls within the ACC's responsibility for water quality. The tests will determine the baseline chloride levels now and will eventually be used to determine if road salt is causing the accumulation of chloride in sensitive areas. If the levels are already high, there will be a discussion as to the urgency of the issue. Other waterways in town could be tested, if there was the correct manpower.

**Voting: all in favor.**

**Bill Stoughton moved to add the Grater deed and an updated spreadsheet into the ACC's Dropbox. John Harvey seconded.  
All in favor.**

**10. Round Table**

John Harvey noted that he will go on a field walk on Friday with Fish & Game on the Hemlock Trail to survey the mountain laurel thicket habitat. If rabbit droppings are found, they will be DNA tested to determine the species.

**The meeting was adjourned at 10:51pm.**

Respectfully submitted,  
Kristan Patenaude

Minutes approved: January 8, 2020