

# **Draft\* Minutes**

## **Tamworth Conservation Commission Meeting**

**April 9, 2004, 7:30 p.m., Tamworth Town Offices**

**Present:** John Mersfelder (Chair), Charlie Townsend, Ned Beecher, Harold Cook

Alternates: Jim Alt, Bill Batchelder, Joe Binsack

Planning Board Representative: Tom Cleveland

**Process:** Because they have both attended the two previous meetings, Bill and Joe were appointed by the Chair as voting members for this meeting.

**Membership:** Sue Stowbridge has been a regular volunteer as part of the crew at annual Hazardous Waste Collection Days. She is interested in being an associate member of the Commission. Ned moved to appoint her, Joe seconded. All approved (6 - 0).

### **Approval of Minutes of July 12, 2004**

Changes to the draft minutes:

- under item 5: "Mr. Bates cited RSA..." --actually John had cited that RSA.
- Under 3: "Batch,..." next should be "Joe" (not Claes) and Tom should be identified as Planning Board representative.
- Change "promoted" to promoted.
- Under item 10: delete "days" (there are two of them).

Harold moved to accept minutes of July 12, as amended; Batch seconded; all approved (6 - 0).

### **Treasurer's Report**

John noted that charges were forwarded to the Commission by the town totaling \$1,318.50 for legal expenses incurred through consultations with Town Attorney Bates. Discussion followed regarding whether the charges would need to be from the Commission's small budget. John said he would talk with Cassandra about the details - John has some questions about specific time periods and conversations itemized on the bill.

Ned incurred costs of \$37.88 for copying trail maps; he submitted a receipt for reimbursement. An appropriation for \$37.88 was made: moved by Harold, Joe seconded, all approved (6 - 0).

### **Wetlands Matters**

Ned has available a DES powerpoint presentation on wetlands regulations and shoreline protection; he will make copies for three interested commissioners.

### CMI Project Mitigation Sub-Committee report

Ned reported on developments to date, including the mitigation subcommittee meeting of August 3rd, of which he had forwarded notes to the commissioners and other interested parties. Harold noted that he has not reached the Clarks; "the door is open with Lord," he said. Further work of this subcommittee, including review and approval of the minutes of its last meeting, will occur at the meeting arranged for next Monday at 8:00 a.m. at the town offices. Ned will post the meeting.

### Rhodes Realty Trust DES Wetlands Application

A standard application, after-the-fact, has been submitted to DES. Ned reviewed the history that led to this application. He has reviewed the application and believes it describes the remedies and details agreed upon previously amongst the Commission, Planning Board, and applicant.

The key issue at this time is the mitigation proposal--an easement of 8.7 acres of a buffer along the Bearcamp River that will be at least 100 feet wide extending back from the river's bank. This is somewhat larger than the applicant originally proposed. The Commission believes it is a reasonable mitigation plan. There was discussion about the nature of the Class VI road and rights-of-way to the easement area from Rt. 113 along the north bank of the river. Some further investigation may be needed regarding the results of a court case regarding this access and a possible prescriptive easement farther south near the present garage. Harold will look into this and report back to the Commission at its next meeting.

It was agreed that a letter be sent to DES noting that the Commission has a formal process, including a public hearing, that it must go through in order to accept a conservation easement. Thus, there can be no guarantee that the Town will accept the easement, although it is very likely to do so. Hearing will be at our next meeting in September. Ned will post the hearing appropriately. To review the mitigation area, the hearing will include a site visit at 6:30 p.m., September 13th, followed by the public hearing at 7:30 p.m. at the beginning of the TCC's regular meeting. Ned will write and send the letter to DES noting the above.

### **Motorsports Holdings, LLC / Club Motorsports (CMI) Permits**

*Members present who have recused themselves from this matter - Tom, Joe, and Batch.- moved away from the table. Jim Alt became a voting alternate.*

CMI received its dredge and fill permit from DES in late July.

The Army Corps of Engineers (ACOE) has opened its public comment period on the same joint wetlands application, for the federal regulatory process. The deadline for comments is Friday, August 13<sup>th</sup>. John has drafted a letter of comments to ACOE and, at this meeting, presented it to the Commission for review and approval. All read the letter. Ned noted the need to review TCC's comments to DES of April 22<sup>nd</sup> and make sure that any comments or recommendations that were not addressed satisfactorily by DES in its permit process are re-emphasized to ACOE (e.g. noise). There was some discussion regarding bonding, a concern in TCC's comments to DES. Where is there a mechanism to deal with this issue? The concern is what might happen if the project is abandoned. Ned said that he understands that the DES site specific permit conditions may include bond requirements to ensure quick stabilization of the site against erosion if work is stopped/abandoned. DES wetlands bureau did not address this matter.

#### *Public comment period opened:*

--Steve Gaal raised a concern about aquifer impacts and suggested that the TCC comments to ACOE be strengthened, especially in that area. There were some additional comments.

#### *Public comment period ended.*

Ned suggested attaching to the ACOE letter a copy of TCC's comments to DES of April 22<sup>nd</sup>, and referencing them, to emphasize continuing unaddressed concerns.

A vote was taken on whether or not to send the letter to ACOE, with revisions suggested and with a copy of the TCC comments to DES of April 22<sup>nd</sup>: Harold moved, Charlie seconded. All approved (5-0). Ned and John will complete the letter and send it by Friday's deadline and distribute copies to Commissioners and other interested parties.

#### Town Wetlands Ordinance Special Use Permit (SUP) for Motorsports Park

John noted that the Planning Board hearing is continuing on August 25<sup>th</sup>, 7:00 p.m. Planning Board will meet September 16<sup>th</sup> for a working meeting at which the Commission members are requested to assist in deliberations. TCC will meet at its regular time, Monday, September 13<sup>th</sup>, to help develop final comments to bring to the Planning Board's working meeting. Tonight, we will draft preliminary comments to the Planning Board, after discussion of the matter.

John began the discussion by suggesting walking step-by-step through 1) interpretation of the wetlands ordinance sections that apply to this particular application, and 2) analysis of this particular application.

Chris Conrod was invited to this meeting by the Chair to provide insight into the process that took place in developing the Town's updated wetlands ordinance, as he was on the Commission subcommittee that developed it back in the early 1990s (other members of the subcommittee were Lori Girard and Peter Cooperdock, according to Chris). The copy of the ordinance went through the subcommittee, then the TCC, then the Planning Board, and was adopted by the Town at the March, 1991 Town Meeting.

Why did CMI feel they need an SUP? There was general agreement that this is answered by Section D of the ordinance: a motorsports park is not a designated permitted use. Thus, a special use permit is required. However, Chris noted that CMI might have chosen to say that the proposed facility is a permitted use, under D.2.(d). The proposed project is reasonably a recreational facility, he said, and others agreed. However, he noted that recreational facilities permitted must be "consistent with the purpose and intent of this ordinance." He noted that the subcommittee that amended the ordinance in 1991 added to the ordinance any language that now appears in italics—thus, it is evident that the phrase "consistent with the purpose and intent of this ordinance" existed in Section D.2.(d) from the original wetlands ordinance, and the subcommittee added equivalent phrases to other permitted use statements in Section D.2 (e.g. the statement about nature and conservation areas). He also said, there are times when you have to be practical and allow some uses that would allow impacts to wetlands. He recalled that, at the time, it was unusual for a local wetlands ordinance to allow construction of a home in a wetland (as per Section D.1.).

It was generally agreed by the Commission that a recreational facility that is permitted must be consistent with the ordinance's purpose and intent, which are detailed in Section A. There was general agreement that the proposed facility has difficulty meeting the described purpose and intent in Section A. Commissioners then agreed that this discussion about Section D was, in

fact, moot, given the fact that the applicant apparently agrees with the Commission's finding above, since they chose to request an SUP.

Chris and others then discussed the fact that there are three options for requesting a Special Use Permit under Section E. 1. Which option(s) did CMI designate and why? They chose (a) "streets, roads, and other access ways" and (b) "water impoundments."

Chris was asked to review the intents of Sections E.1.(a) and (b). The intent of (a), he said, was to allow use of good, buildable upland if the only access to it is through a wetland. The subcommittee working on the ordinance did not want to cause a hardship—or a kind of "taking"—on any property.

Intent of b: Chris noted that the term "water impoundments" was part of the existing language of the original ordinance; in order to make it more specific, the subcommittee created additional language to specify exactly what kinds of impoundments were meant. In the discussion of this concept, the current Commissioners generally agreed that CMI had good reason to select this option (b), because they intend to construct "water impoundments" for "on-site detention of surface runoff."

Discussion then followed regarding the CMI application and how it addresses Section E.5.(a). John noted that in their application, CMI states the current plans have reduced impacts to wetlands to such an extent that impairment to the functions of the existing wetlands has been much reduced or made negligible.

Discussion then turned to trying to understand how the clause "streets, roads, and other access ways" can be interpreted with regard to the site in question. It was noted that, at this time, 3 clear and current access (dirt) roads exist on the site, at least one of which (the eastern-most) was created historically by filling some wetland (CMI will restore this wetland by removing the fill placed for this access road). These three access ways could be used to access all of the upland sections of the site, Ned noted, as they access each of the three dry areas between the site's streams. Chris and others noted that, if the site were to become a subdivision with house lots, subdivision roads would likely have to be wider—requiring some additional wetlands fill to bring the current dirt roads up to standard. Also, they would likely have to meet emergency access requirements and, thus, may be only allowed to extend maybe 800 feet before another access point from Route 25 would be required. Thus, it is possible, though not certain, that stream crossings in the upper part of the site would be reasonable in such an instance, in accordance with Section E.5.(b): "interferences with safety."

*At some point in the discussion, the map of the proposed project and wetlands impact points was put out on the table for viewing.*

It was generally agreed that the project involves two parts: 1) access roads and 2) the road course and associated staging areas ("paddocks" and parking areas). Chris felt that the road course is a recreational facility and does not meet the definition of "streets, roads, and other access ways." He argued that the road course itself does not fall under Section E.1. (a) or (b). It could fall under (c), but, he noted, CMI did not apply under (c). It was noted that the standard of

having to meet the purpose and intent of the ordinance, as laid out in Section A, would likely be hard to meet anyway.

Does the proposed project meet the requirements of Section E and is it therefore eligible for an SUP? Ned asked “Could the road course be considered to “access” anything, such as the upper part of the track?” There was general agreement that, no, it is not a form of access; rather, it is the facility that is accessed by the proposed access roads across the lower wetlands near Route 25.

There was discussion regarding the intent of the last clause of Section E.1.(a). Access ways have to be “so located and constructed as to minimize any detrimental impact.” Thus, it makes sense for the proposed access ways to follow the narrowest, least impact points, as is generally proposed by CMI, to cross the lower wetlands and access the drier uplands—as long as doing so does not impact some greater wetlands value.

There was discussion of the “parking lots,” as someone described the paved “paddock” areas. These areas will likely have multiple uses—driver training, staging, and parking. It was generally agreed that these areas, the paddocks, are mostly part of the facility and not part of the “access ways.” There was discussion regarding the garagemahals and whether or not they impact wetlands; it was agreed they do not.

*Public comment period opened.*

Joe Binsack expressed agreement that the road course and associated facilities are not access ways and, he said, there are lots of impacts to wetlands from the recreational facility. Steven Gaal reminded TCC of the NH Supreme Court decision that supported a local ordinance that is more stringent than state laws or regulations. Willie Farnum and Chris Conrod stated that the Commission must look at the entire existing proposal as it is and cannot speculate regarding other possible uses of the land. Ned responded that the speculation was merely intended to help form better understanding of what is reasonable under the ordinance. Other public comments: is this a roadcourse or a racetrack? Is it a recreational facility?

*Public comment period ended.*

The Commission concluded by reviewing the course of logic that had been discussed and creating a straightforward statement of its understanding at this time:

The total package of access ways and the recreational facility (the road course and associated paddocks, etc.) does not seem to be permissible with a special use permit under Section E.1.(a) or (b), because the impact areas delineated by the applicant and numbered 2, 3, 4, 5, 6, 7, 8, 9, 14, 15, 16, and 17 are not covered by Section E.1. (a) or (b). This statement was voted on as follows: motion by Charlie, second by Jim; vote was in favor of the statement, 5 - 0.

*Those who had recused themselves from the above discussion returned to the table and active participation in the Commission meeting.*

## **Other Business**

### Wildfowl Haven

Ned reported on the Waterfowl Haven project. John Gotjen has completed the permit applications and provided them for review and action. Ned has reviewed both the DES minimum impact expedited application and the special use permit for the Town ordinance, which John and Ned had suggested would be needed. However, Ned noted at this meeting that the project does not need a special use permit, as it clearly falls within the “permitted uses” in Section D.2(c), (d), and (e). It was agreed that the Commission Chair would sign the permit application to DES and pay 1/2 of the fees involved: \$50. Jim moved question, Joe seconded, and all approved, 5 – 0, with one abstention.

Ned reviewed his discussions with Peter Leonard, the neighbor to the east of the Wildfowl Haven. Peter is not interested in providing any easement across the disputed, narrow triangle so that the Commission may have access between its two parcels of land. Ned told him that the next step would be to attempt to determine which registered deed is correct and legally binding, the Commission’s or the Leonard’s. John suggested a third option be looked into first: a recorded boundary-line adjustment. Ned will talk to Peter about this possibility. It was agreed that Stan Coville may be a person to talk to, as he did the original subdivision survey for the property the Leonards later bought. John and Ned will pursue this matter further.

### Other

There was a note from Cassandra at the town office regarding complaints she received. They were regarding a buried propane tank and pushing of material toward a stretch of river in South Tamworth. Charlie noted that Commission policy is to receive written, signed complaints and then follow a flow-sheet. John agreed to look into the details of this matter, talk to Cassandra, and see if a written complaint can be obtained and/or if the matter even warrants any further action. Cassandra also requested a map of the easement area Harold Cook gave to the town last year; Harold said he will get this map to John ASAP to give to the town.

Willie Farnum reported that the Boy Scouts will paint the bridge at Big Pines on September 13th. The Commission will need to get set up Monday afternoon, with tarps and all supplies there. The Scouts plan to start at 6 or 6:30 (will check with them on the exact time). Joe agreed to purchase supplies—4 gallons of stain, cheap brushes, plastic sheeting or tarps, etc. and keep receipts for reimbursement.

## **Adjournment**

Ned moved to adjourn, Harold seconded. All were in favor. The time was about 11:00 p.m.

*\*Draft minutes respectfully submitted by Ned Beecher, August 15, 2004; to be approved at subsequent meeting.*