

DRAFT MEETING MINUTES
Tamworth Conservation Commission
Special Meeting
September 19, 2007

Draft minutes to be reviewed and approved at a subsequent meeting.

PRESENT: Jim Alt (alternate), Scott Aspinall, Ned Beecher, Bryan Berlind (Chair), John Mersfelder (alternate), Charlie Townsend, Donna Veilleux.

1. Call to Order by Bryan at 7:05 pm.

2. Discussion re: Recusal issues

- Bryan noted that Bill Batchelder recused himself in advance of the meeting and is not attending.
- Bryan voiced strong encouragement for those members of the Commission who had recused themselves on this matter in the past do so again, noting the desire for consistency and avoidance of any perception of unfairness. “Our responsibility is to comment to the Planning Board and the applicant with open minds and no bias.”
- Jim Hoenscheid, President of Club Motorsports, Inc. (CMI) was in attendance for the applicant. When asked to clarify the reason for CMI’s request for recusals, he stated he felt that, amongst those members being asked to recuse themselves, there was “bias against our company and us as individuals.” He noted that CMI attorneys have noted that the standard is “that if you wouldn’t be able to sit on a jury, then you should not sit on this.” Jim said he could feel the bias.
- Commission members noted that there remain differing legal opinions on this recusal issue, especially considering that 1) the Commission is an advisory body, not a decision-making one, and 2) those asked to recuse themselves in the past (and those actually recusing themselves in the past) did so because of their statements of bias against a racetrack development; in the current case, the nature of the proposed development is unclear.
- Ned asked if the current application is for a motorsports park or race track. Jim stated “Our preferred alternative is to use the property as a motorsports country club.”
- Ned noted that TCC members have recused themselves (or abstained from discussion and voting) in the past in order to go above and beyond in terms of avoiding perception of bias entering the decision-making process.
- Donna said she has not formally recused herself in the past, but has stepped down (abstained) from the discussions and voting on this issue.
- Scott noted that he will abstain from discussion and voting tonight, but will not recuse himself. He noted he has no bias against CMI per se, but is concerned about the application of the wetlands ordinance. He takes offense that someone suggests he is incapable of fair consideration of this application.

3. Seating of Alternates Bryan appointed Jim Alt to take the place of Bill Batchelder. Bryan appointed John Mersfelder to take the place of Dave Haskell.

Continued discussion of recusals:

- Donna asked that the Commission vote on how they feel about her recusal or stepping down for tonight’s discussion. John moved and Ned seconded that Donna should step down (abstain) only for this evening. After some discussion, the motion carried

unanimously, with Scott's abstention. Donna and Scott moved away from the table and observed and participated as members of the public.

4. From the Floor & Discussion / Deliberation / Comments to Planning Board for public hearing of 26 Sep 2007 regarding the amended CMI application

- Bryan reviewed the history of the current application. CMI made application to the Planning Board for a special use permit under section E.1(a) for access ways to the upland portions of their property in December of 2006. The TCC Wetlands and Subsurface Committee met January 23, 2007 and reviewed the application, and, on January 24th, submitted a letter to the Planning Board (later confirmed by the full Commission) which had three points – all Commissioners were provided a copy of that letter by Bryan.
- John noted that point #2 in this letter – the detailed discussions of potential ways to minimize wetland impacts – were construed hypothetically, with the idea that a road course was *not* the intended use. However, based on a letter of January 12th from CMI, a road course was noted as being the intended use of the uplands.
- Continuing the review of the history, Bryan noted that after further legal happenings and other issues over the past 8 months, the application was amended on September 7th. This amendment, which is before the Commission and Planning Board now, include a two-page letter and 4 pages of engineering drawings numbered A-1, A-2, A-3, A-4. It was generally agreed that pages A-2 and A-3 have no new or pertinent information on them. A-1 shows the reduction in number (down to 2) and location of the impact areas, and A-4 shows the engineering details for the construction at the two remaining impact areas.
- Discussion followed regarding waivers of the 25' buffer; no buffer areas are shown on the engineering plans or the wetlands plan. Jim and Ned discussed the idea that by avoiding direct impacts on some wetlands, CMI is now creating a buffer intrusion issue. Jim suggested that it might have been easier just to continue having direct impacts at those locations, avoiding the buffer issue (because it is assumed that buffers are impacted where direct impacts occur) and avoiding the extra engineering needed to avoid the direct impacts. It was agreed that that could have been done, but that then the Commission and Planning Board would take the package as a whole and determine whether minimization had been met, and the extra direct impacts may have caused the balance to tip against issuing an SUP. It was agreed that CMI did the right thing to avoid as much direct impact as possible – that is the highest priority in the ordinance; buffer impacts are of secondary importance. Willie Farnum commented and Bryan noted that, however, even though the standard for a waiver of buffer intrusion is not as serious as direct wetland impacts and the process involves a simpler process of writing a letter of request, such waivers are not automatic.
- Ned asked the applicant what the use of the upland is. Jim Hoenscheid stated that “the preferred use is to develop a motorsports country club.... But it could be homes with businesses at the front...” Commissioners continued seeking clarification from Mr. Hoenscheid about the intended upland use, noting that the minimization concept required by the ordinance depends on understanding the intended use. Jim H. replied that the intention is for the requested access to be an initial step in exploring options for future development of the upland: “this is a building block.”
- Discussion included participation from several members of the public who expressed frustration with the lack of clear disclosure of the intended use of the property.

- Bryan handed out to all Commissioners and interested parties, including Mr. Hoenscheid, a letter from Rath, Young, and Pignatelli, attorneys for Focus:Tamworth, which had arrived by email this afternoon.
- Jim Alt suggested that the main issue is the uncertainty about the intended use and suggested that the Commission recommend to the Planning Board that, because this issue remains, the SUP should be denied.
- Ned noted that there are several directions the Commission could take:
 1. Formulate opinion based on assumed use of uplands as a racetrack
 2. Formulate opinion based on assumed use as something other than a racetrack.
 3. Repeat the idea put forth in the letter of January 24th (item #3) that an SUP not be granted until a specific use is disclosed and shown on the plans.
 4. Recommend granting an SUP based on this application, as amended.
- Bryan stated and other Commissioners reiterated that CMI is commended for dramatically reducing the wetland impacts of the proposed development, from more than 6,818 square feet to 674 square feet.
- Commissioners noted that, given no past confusing history (which this project has), and given a known use of the upland, the proposed extent of the wetlands impacts are reasonable, in comparison to other projects (as long as they are found as meeting the minimization standard).
- The question was raised, as has happened in the past, as to whether or not this is a new application compared to the permit that was denied in 2006 (the application showing the full road course). If the “preferred use” is a race track, then is this taking “two bites out of the same apple?” This was not resolved, and the known legal opinions vary on this point.
- Ned asked, if the road course is the preferred use, why is it not shown on the plans? CMI may be intending to build the racetrack using arch-culverts and avoid any further wetland impacts, and, if so, would showing this on the plans constitute “a second bite of the apple?” He thought not, since the extent of wetlands impacts would be so reduced from the original denied application. Jim H. said that CMI did not have any such plans at this time.

Note: Jim Alt moved that the Commission reiterate its Jan. 24th recommendation (item #3) to the Planning Board that a Special Use Permit (SUP) not be granted until a specific use(s) of the uplands is known and shown on the plans. John seconded; the motion carried 5 – 0.

5. Other Business

Herb Cooper of the Planning Board raised a question about the Ossipee Snowmobile Club’s interest in trail building work that may impact wetlands or buffers. The Planning Board is seeking Commission guidance. There has been no formal application or letter for a waiver, although Commission members have provided preliminary guidance to David Bowles, of the Club, regarding the work. The next step is up to the Club, as noted in a recent letter from Bryan to David Bowles.

5. Adjournment John moved; Ned seconded to adjourn. All approved adjournment at ~ 9:00 pm.

Draft minutes respectfully submitted by Ned Beecher, September 20, 2007.