

Tamworth Conservation Commission
Minutes
December 8, 2008
Approved on 1/12/09.

Call To Order

Meeting called to order at 7:10 PM by Ned Beecher.

Members Present: Bill Batchelder, Ned Beecher, Kathy Bunker (Alternate), David Cluff (Planning Board Representative), Willie Farnum (Select Board Representative), Margaret Reiser, Charlie Townsend

Seating of Alternates: Kathy Bunker substituted for Scott Aspinall.

Welcome: Margaret Reiser and Kathy Bunker were welcomed.

Review of agenda.

Approval Of Minutes

Kathy Bunker moved, and Bill Batchelder seconded, to accept the minutes of the November 18, 2008 meeting as presented. The motion passed, 4-0.

Chris Conrod / Bearcamp Trackers:

Chris Conrod explained, and illustrated with maps, how the Sandwich and Ossipee Mountain Ranges are connected and what factors influence the movement of large mammals between them.

Budget Discussion

- Charlie Townsend met with the Select Board to discuss the proposed budget for 2009. The Select Board approved the request with one change. The amount requested for “Signs and Boxes” will be \$300.
- It was noted that the Commission spends more on postage than it plans. This category will be monitored.

Warrant Articles:

- The Commission has discussed creating a conservation easement stewardship fund. There has been discussion of seeking an increase of the portion of the Land Use Change Taxes (LUCT) from the current cap of \$5,000 to be used to begin a separate stewardship fund. The Selectmen suggest, and the Commission agreed, that seeking additional funds this year is not a good idea, given the economy. The concept of a stewardship fund will be included in the TCC’s annual report, to begin to make citizens aware of the need to have such a fund growing slowly over the years to ensure easements can be defended, if needed.
- The Commission decided to go forward with having the two warrant articles on the warrant, as discussed at the November meeting. The Selectmen and town office have them.

Wetlands Matters (Part 1):

- Dave Bowles attended to represent the Ossipee Valley Snowmobile Club.
- Ned Beecher gave a summary of events regarding the Snowmobile Club’s work on a bridge on the Cave property and the attendant wetland impacts (rutting) caused by the work.
- There was general agreement on the idea that the OVSC should apply for a full DES permit and a Tamworth Wetlands Ordinance Special Use Permit for restoration work (and as after-the-fact). The Selectmen are the ones who enforce the Ordinance. The Commission will advise if the local SUP application is filed. In the meantime, the breach of the conservation easement, because of working in wetlands without a permit, will be addressed by the Commission and the Office of Energy and Planning. Ned will address this issue in a letter to the landowner, with a copy to the OVSC and other interested parties; he will send it to Commission Members for comments before finalizing it.
- Dave Bowles was thanked for attending the meeting.

Administrative

Special Use Permit Waiver Protocol: This has been adopted by the Planning Board.

Committee / Coordinator Reports

Select Board: Willie Farnum reported that the budget season is wrapping up.

Planning Board:

- David Cluff reported that the Planning Board met on November 19th and discussed subdivisions.
- A public hearing was held on the Capital Improvement Plan. It is being edited and will be presented to the Select Board.
- The Ossipee Valley Snowmobile Club/Cave property issue is on the agenda for December 10th. Ned will attend for the Commission.

Energy Committee:

- The Commission needs a volunteer for this committee.
- A handout that counters myths about idling is available at the Town Clerk's office.

Family Day/Earth Day:

- A volunteer is needed to organize the Family Day events.
- Here's an idea: how about a TamwEarth Day in April? A town gathering of conservation interests, with honors for recent leading activities and people?

Household Hazardous Waste Day:

- Chris Clyne has volunteered to head this, taking the place of Donna Veilleux.

Managed Lands and Trails Committee

- Bryan Berling has communicated that the Concord State Prison cannot help with signs, but he is awaiting word from Berlin.

Ordinance Review:

- The committee will be meeting in early January.

Outreach, Publications, Publicity, Education:

- Batch wrote and sent an article for the Green Mountain Conservation Group Newsletter, however it will need to be edited for length.
- An article was also sent to the NH Association of Conservation Commissions
- Bill Batchelder will serve as chair of this committee.
- Kathy Bunker will join the committee.
- Bill Batchelder is working on the town report write-up.

Wetlands Matters (Part 2):

McConarty Update:

- A report was sent to DES stating that the necessary work has been done, however some TCC members visited the property and commented that stabilization and vegetation still need to occur. There are five wetlands areas, four of which were included in the correction plan. The fifth area does not appear to be complete, but may not have had to be, according to the correction plan. We will check on this.
- A draft letter from Bryan Berling to DES was reviewed. It was decided to suggest that the letter be sent.
- A disqualified Forestry Notification for Timber Harvest was received. A different permit is needed because the area is within 100 feet of prime wetlands.
- A completed Forestry Notification was received for Pike Perkins, Map 420, Lot 4.

Land Acquisition & Easements

Cave/Great Hill Reservation Trust:

- Steve Walker sent a report on his site visit.

Remick Natural Area:

- Charlie Townsend has completed the Self-Inspection Report for the Remick Natural Area. He will request of the State suggestions for the design and wording of a sign acknowledging the NH LWCF.
- Dave Haskell will be notified that a sign is needed.

Land Trust Standards and Practices:

- The Conservation Lands Review Committee has assessed how well the standards are being met in Tamworth.
- An ad-hoc committee of the Commission is filling in the gaps that were identified and will have a report for the Commission to review at its next meeting. The Commission will then decide if it wishes to adopt the protocols, moving closer toward possible accreditation as a land trust.
- Chris Conrod donated Land Trust operating manuals for the Commission.

Other Business**Reports from the NHACC Annual Conference in November**

- Susan Ticehurst reported on the most recent updates to the Right To Know Laws, including those covering public meetings, public records and electronic communications.

Adjournment

Kathy Bunker moved, and Charlie Townsend seconded, to adjourn. The motion carried at 9:28 PM.

DRAFT

Memorandum

To: Tamworth Selectmen and Tamworth Planning Board

From: Tamworth Conservation Commission

Re: Ossipee Valley Snowmobile Club (OVSC) trail work wetlands violation on Great Hill Reservation Trust land

Date: December 8, 2008

In October, 2008, the landowners became concerned about rutting and other potential impacts to wetlands that had occurred as part of the replacement of a snowmobile trail bridge. The OVSC, under the leadership of David Bowles, had submitted a trail work permit by notification permit for the bridge replacement project and had received notice from NH DES that the permit was in order and work could proceed. The OVSC had also obtained a waiver from the Tamworth Planning Board for work to be conducted within 25 feet of a wetland for the bridge replacement project. The Tamworth Conservation Commission had recommended granting of this waiver.

The current status of this matter is as follows:

1. NH-DES Wetlands Concern

A complaint was made to NH DES by the landowner, Great Hill Reservation Trust, through their lands manager William Farnum, regarding potential wetlands impacts incurred as part of the project to construct the new bridge on the OVSC trail over Sanborn Brook. Upon discovering the impacts, the landowner had asked the OVSC to stop its work and subsequently closed the trail and the property to them until these matters are resolved.

DES conducted a site visit on November 4th and sent a letter, dated November 21, 2008, noting ~2700 square feet of temporary dredging had occurred in three places, as well as other impacts, all as a result of trail maintenance equipment being driven through wetlands causing rutting. Most of the “deficiencies” were not at the Sanborn Brook bridge replacement site. DES directed that the impacts be corrected with raking with hand tools and seeding. In addition, DES recommended that permanent trail structures would be a good idea at some of these areas, so that future impacts would not occur during maintenance activities in the spring, summer, or fall. If such structures were to be built, DES stated that a Standard Dredge and Fill permit would be needed, because this would be a major project because some of the areas are located within 100 feet of a Prime Wetland (Great Hill Pond).

Restoration as directed in the letter should be done soon, and the bridge should be completed soon, to avoid further degradation, states the DES letter. DES did not impose any fines or take any other enforcement actions regarding these temporary impacts (rutting). The restoration work is to be completed by June 1, 2008, and the landowner is to provide photo documentation that the work is completed. Speaking with Ned Beecher on December 4th, DES permit writer Vanessa Burns noted that, because the letter of deficiency directed that the restoration work be completed, no additional permit for that work in the wetlands is required.

Ms. Burns also noted that OVSC did not actually need a permit for the bridge project, since they were not working in jurisdictional wetlands, since the bridge spans from upland to upland (bank to bank). However, she said that she encourages trail clubs to file permits by notification to ensure that projects are well thought out. Therefore, although the OVSC was not actually following the requirements on the DES permit approval for this bridge project, which noted that the permit by notification is only valid for projects that span 10 feet or less

(the width of Sanborn Brook at this bridge site is over 20 feet), it was not a significant issue, since OVSC did not actually need a permit.

At this point, DES appears to be done with this matter, except for the agency's expectation that all corrective actions outlined in its letter of November 12th be completed.

However, on December 5th, Mr. Farnum spoke further with Vanessa Burns at DES, and, according to Mr. Farnum, they agreed that the OVSC's work has affected wetlands away from Sanborn Brook that were never discussed in the permit by notification, and, therefore, those wetlands impacts were made with no permit in place. According to Mr. Farnum, they also agreed that best management practices (avoiding rutting, installing erosion controls) were not used for the trail work; BMPs are required for any trail work permit by notification.

2. Tamworth Wetlands Ordinance Concern. Tamworth Conservation Commission (TCC) members Donna Veilleux and Ned Beecher observed the wetlands impacts on a site walk with Mr. Farnum in October, just before he sent the complaint to DES and before DES visited the property. The TCC waited to hear DES's findings before discussing possible recommendations on possible actions.

After receiving a copy of the DES letter of November 21st, TCC Chair Ned Beecher discussed options for actions with the Tamworth Selectmen (at their meeting of December 4th). It was agreed that a violation of the Tamworth Wetlands Ordinance had occurred and that the Selectmen would send notice of the violation to the landowner (Mr. Farnum, a Selectmen himself, recused himself from this discussion and vote). Because the violation of the wetlands was temporary (driving through once or twice, causing rutting), imposing a fine under the Ordinance is not an option.

It was suggested that the restoration work required by DES in their November 21 letter may require a Special Use Permit (SUP) under the Tamworth Wetlands Ordinance, since it involves work in wetlands. The Commission will discuss whether or not to recommend this at their meeting of December 8th. The Planning Board makes the final decision on whether or not to require and grant this permit.

Otherwise, it appears the bridge replacement project itself complied with the Ordinance, having received a buffer waiver and not involving work in wetlands.

3. Conservation Easement Concern

This Great Hill Reservation Trust land is under a conservation easement, which notes that any allowed operations on the property, such as trail maintenance, must be conducted with all appropriate permits. This easement is held by the Town, with back-up by the State of NH, which helped to fund the project. Steve Walker of the state Office of Energy and Planning (OEP) visited the property and observed the wetlands impacts and bridge project on October 9th. In a letter to the TCC dated November 18th, he noted that OEP shared the same concerns as the landowner and the TCC. "It is the Town's obligation to enforce the terms of the conservation easement on the land," he wrote. He noted that some stabilization of the impact areas and some restoration work had been done. He noted that the Department of Resources and Economic Development (DRED) had an interest in seeing the trail re-opened (it is part of their statewide network), had assisted in an initial response to the landowners' concerns, and had been a grantor of funds for the bridge replacement project.

Ned Beecher spoke with Steve Walker on December 4th and Mr. Walker stated that his office would support the Town in enforcing the conservation easement by requiring proper permits be obtained.

The TCC will decide what steps it wants to recommend to the Selectmen and Planning Board regarding enforcement of the conservation easement, such as requiring a DES permit and the SUP discussed above.

Landowner Concerns

The landowner is the ultimate arbiter on this issue. The OVSC trail is allowed on the property only by permission of the Great Hill Reservation Trust. The OVSC breached trust with the landowner by ignoring best management practices. The final resolution of this issue requires the landowner and the OVSC coming to mutually-acceptable terms. DES, the TCC, OEP, and DRED have no part in this aspect of the issue.

It appears that the landowner would like to see OVSC obtain a Standard Dredge and Fill Permit from DES and an SUP from the Tamworth Planning Board to complete the restoration work required by DES and to address any longer-term issues with the particular wetlands impacted (such as installing protective structures).

The landowner, through its agent, have made it clear that the trail will remain closed and work on the bridge will remain on hold until all of the above concerns have been addressed and all the involved parties (DES, OEP, Tamworth Selectmen, TCC, and Tamworth Planning Board) are satisfied with the proposed remedies.

8 Dec 08

Kristen Pulkkinen
NH DES - WEetlands
PO Box 95
Concord, NH 03301-0095

RE: File # 2006-03213
McConarty - Tamworth, NH

Dear Ms. Pulkkinen:

Please be advised that we have received the Oct 22, 2008, Post-Construction Report from Irene Garvey, of Abanaki Services, regarding the post-construction condition of the above application.

Also be advised that Tamworth Conservation Commissioner Bill Batchelder and myself did conduct a site inspection of the project on Nov 7, 2008, to observe the construction, with Ms. Garvey's report in-hand..

For the most part, we found the Abanaki report accurate and appropriate for "Areas A thru D".

However, the report did not address "Impact Area E", being a couple hundred feet beyond "Area D". In fact, we found construction at "Area E" incomplete. It had been cut and apparently stumped but has yet to be brought to finish grade.

A phone call to Ms. Garvey indicated that "Area E" was not a part of the needed restoration plan for those impact areas having been disturbed prior to permitting, thus was not included in her report. The report was focussed upon those areas in need of restoration due to the pre-mature disturbance, which was only "Areas A thru D".

We hope the above is helpful to your review, and look forward to working with you again in the near future.

Sincerely,
Bryan D. Berlind
Tamworth Conservation Commission and
Chair: Wetlands & Subsurface Commitee

cc: Irene Garvey of Abanaki Services

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