

**Tamworth Conservation Commission
Minutes of Public Hearing on January 5, 2011**

Draft minutes to be approved at subsequent meeting.

Call to Order:

Hearing called to order by Chairman Ned Beecher, 6:30 pm.

Members Present: Ned Beecher, Chele Miller, William Batchelder, Nelson O'Bryan, Margaret Rieser

Public Present: ~150

Introductory:

Ned announced that the purpose of this public hearing is to accept comments concerning an article to appear on the 2011 Town Warrant, submitted by petition, to abolish the Conservation Commission. Public safety announcements concerning smoking and emergency exits were made.

A short PowerPoint slide show concerning the duties and activities of the TCC was presented. The slides are available for viewing on-line at www.tamworthconservationcommission.org

Ned asked all people intending to make comments to use the microphone, state their name, direct all questions and comments to the commission. Keep it formal, not personal, be clear and concise.

Public Comments:

(Italics in parentheses denote interpretations of the recorder where there were ambiguities in syntax or exact wording was missed while taking notes. Apologies for any loss of eloquence and unique vernacular.)

Ernie Mills: The slide show claims the cost of TCC to town is \$5500. How much was spent legally on stopping CMI that the majority of voters wanted? And how many hundreds of thousands or millions of dollars of tax revenues have you kept out of town? Ned: We don't have that information at this time. Ernie: I didn't think so.

Nat Scrimshaw: Thanks to the commission for their work over the years. Appreciates the freedom to walk through forest, hunting, trails. An important role of TCC is as a place to come together to talk about plans for conservation and vigorous debate.

Herb Cooper: Would like to ask petitioners: what is the alternative? Replace commission with what? What is consequence if there is no conservation commission? Ned replied: the slide show tells what the commission does. All of that would not happen if there were no commission. Whether or not some of the tasks would be performed by others is a question.

Wendell Dicey: There is freedom elsewhere too. TCC should look ahead. The track thing, FOCUS, and you all – I don't think you want to help the town. I think you are costing the town a lot of money. Start helping the people – look at other things besides conservation... Start

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helping the people besides the guy who just moved in here from Arizona who wants to take a walk.

Michael Stepkin – The reason people want to abolish the commission is because people are tired of you imposing your views on what they can do with their land. In response to Ernie Mills' question, Mr. Sager has cost the town over \$38,000 to put a stoppage on this.

Susan Ticehurst – Much of what is being said tonight is misplaced anger. Over the past two years, I have attended most of the conservation commission meetings. I think there is misunderstanding about what the scope of the responsibilities of the commission are. There is no attempt to take anything from anyone – only a willingness to work with people who want to work with them. I have seen an incredible volunteer effort. I see a benefit to the town. I do see we have problems in town, but I think the anger is misplaced. I'm disappointed that we are not able to hear responses from the commission now.

Ernie Mills – TCC is and has been taking (*legal sense; as in taking of property rights*) – when they call land prime wetland this is taking. You can't even cut a tree on prime wetland – that is taking. If you people (*directed at audience; intended to mean the townspeople*) allow TCC to continue what it is doing, there is something wrong. We need to get rid of both of these boards.

Sally Ann Garcia – I like the way there are conservation efforts going on in town. Don't know all the ins and outs. Doesn't like the way conservation efforts are being perceived as threats to livelihood of the residents and continuity (*of a vibrant, healthy town?*). TCC should continue. I think it is important that we practice land conservation and land education. TCC helps us see what we have here where we are living. Like to see both parties/multiple parties work together, come to compromise. Reading (*the Exchange*) recently, I didn't know whether to laugh, cry, or scream. I appreciate your efforts. I do not support abolishment of either board.

Ned noted between comments that mention had been made of FOCUS; he said that the Conservation Commission does not have any involvement in that organization and has no interactions with it.

Alexandra Cook – Hard to be against TCC; it started out very well. But sometimes there comes a time to sweep things clean. Don't get rid of commission forever, but step back and take a look... A little story to tell you: the Graces have been logging their land every 10-15 years for years, along the Bearcamp River; they log in the winter, because it is wet. They don't abuse the land, they don't build on it. They probably hunt on it. Mr. Beecher is aware of this, because a letter has been sent to him, the Governor, to representatives, the Selectmen about this. A recent new law – denoting prime wetland. There are wetlands that are special. But there is also land that is nothing special, just wet, you can't do much with it. Mr. Grace's land is like that - a piece of land that gets wet. The new law, which I believe is supported by TCC – now they can't do anything with the land; they can't log it, not even in winter when it is frozen. Property rights are being taken away from the Grace family, because all they can do is look at it and walk on it and plow it. That's going to happen to everyone here who owns land that's wet: sooner or later it will be called prime wetland, and you will only be able to look at it, walk on it, and maybe plow it. This is the law that is supported by our commission. They just take everything. They don't take a stand for the people here. They shouldn't take all the laws passed by Concord.

Ned noted that the commission is taking in the information presented and will provide written responses, but the TCC wants to take in as many comments as possible during this hearing.

Scott Aspinall – Would like to clarify tree cutting. I am a professional forester for 35 years. First I've heard that you can't cut timber in a wetland. Trees can be harvested in wetlands. TCC and Planning Board do not go around saying they're going to turn wetlands into prime wetlands. Accolades to the TCC for educating the public about wetlands. Wetlands are important; they serve as recharge areas, wetlands hold back flood water. Great wildlife habitat areas. TCC has been protecting wetlands and educating about these natural resources. Forest industry is important in this area and the work of TCC serves to ensure continuation of the forest industry. One of the primary leading industries in town is forest management. Every dollar from that leads to 7 – 15 dollars down through the economy for other businesses. I appreciate that conservation work helps support a viable logging and trucking industry. It's not as viable as I'd like to see it, but that's because of global markets, not because we don't have the resource. A couple of political land use issues in town are getting confused. I don't think it's fair to direct the anger at TCC. It's a worthwhile organization. They are not about to take over your land; I would be the first against something like that. It would be great to get at the real issues here. The wetlands ordinance was passed by the Town a number of years ago, and that seems to be the big issue for the race track. If people don't want that, then rescind the thing. But you can't blame the organization that is charged with helping understand it – they don't even have the authority to enforce it; that belongs with the Selectmen. It's unfair to give these volunteers flack. I support what you do. Keep up the good work.

Sue Stowbridge – The commission does a good job with hazardous waste collection days. It's good to keep them (*hazardous waste items*) out of transfer station, get them where they belong.

Cathy Arsenault-Shea – Used to live in Somerville; people called it “Slummerville”; before that, it used to be known as “Garden City.” Thankful for TCC keeping Tamworth from becoming “Slummerville.” Is Tamworth different from other towns? Do other towns have conservation commissions (*rhetorical*)? Appreciates the beautiful, clean, delicious water.

Mark Albee – I didn't know all that TCC does, and I am thankful for your work. There's a tendency for people to fall off balance beam; to go to extremes. That's what's happening with this proposal to abolish TCC. I believe, as Aldo Leopold said, that “bread and beauty grow best together” (*economics and environment go together*). We don't always get the balance right, but that doesn't mean that we can't work for that balance. I hope that people who think the balance is not right will work constructively to make the balance right.

Crosby Kennett – Other towns, individuals, and businesses are watching what we do. If we abolish these boards, they'll wonder what is going on in Tamworth. Where is it going to end? Those opposed to the volunteer work of these boards, what is their vision for Tamworth? What are they trying to accomplish by abolishing these organizations?

David Little – Offered clarification: Prime wetlands were designated by town vote. In 1979, Barry Keith did a study designating 71 wetlands areas; 9 were designated as prime wetlands (total of 573 acres) ; not something TCC can do (*independently designate or create prime*

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wetlands). It is something the state authorizes towns to do by town vote.

There being no more public comments and no comment by the commissioners, Ned closed the hearing at 7:20 pm.

Submitted by Chris Conrod, TCC Admin. Ass't

Responses and Clarifications to Public Hearing Comments

January 8, 2011

DRAFT by Ned Beecher to be reviewed and possibly adopted by the Commission at a subsequent meeting.

Thank you for the interest in the TCC

The Commission appreciates the large turnout at the public hearing January 5, 2011 and the considerable interest in the Commission's work. At the hearing, we received 10 comments (from 10 different people) generally in support of the Commission and 5 comments (from 4 different people) in support of abolishing the Commission. In addition, prior to the hearing, we received several written comments in support of the Commission.

The Commission, a group of local volunteers that meets monthly (2nd Monday, 7:00 pm), is tasked by state law, with working to protect local natural resources, particularly wetlands. The Commission was created by vote at Town Meeting. The members are appointed by the Selectmen. The Commission has no regulatory or enforcement powers; it is solely advisory, providing input to the Planning Board, the Selectmen, the NH Department of Environmental Services (DES), and town residents. Full Commission members and alternates take an oath of office, which includes upholding the laws and regulations of the Town. Details about the Commission's work are available at its website: www.TamworthConservationCommission.org. The slide presentation about the Commission's work, presented at the public hearing, is available there.

Conservation Commission meetings are properly noticed, open to the public, and minutes are properly made public. Public comments are welcome at meetings and via email at any time: info@TamworthConservationCommission.org.

Please Vote at Town Meeting

At Town Meeting (Wednesday, March 9th, 7:00 pm), the petitioned warrant article to abolish the Conservation Commission will be considered. Please attend and vote.

Striking a Balance

As several comments noted, we need to strive for a balance between conservation and economic needs of residents. Conservation and economic needs are not exclusive. As one comment noted, conserving tracts of timber help the local timber harvesting industry. There were a few people, however, who stated that conservation efforts have gone too far; they are concerned about limitations to the use of private lands.

The Commission commonly considers this balance, recognizing that people value property rights, while also recognizing that the welfare of residents depends critically on clean water and other natural resources. For example, protecting wetlands helps assure clean water, prevents flooding, and supports diverse wildlife.

From this public hearing process, we have been reminded of the importance of striking a fair balance. We look forward to continued guidance from residents with diverse perspectives as we continue our work.

Having said this, it is important for us to respond to comments that stated or implied that we do not care about Tamworth people. By definition, the focus of the TCC is the environment, including how people interact with it. But while that is the focus of our work for TCC, TCC members, alternates, and associates are involved in a wide variety of activities that support people in Tamworth through social service work and other ways. And the Town provides support in all kinds of ways, through road services, welfare, library services, economic development efforts, etc. – not to mention the myriad non-governmental work by the Tamworth Foundation, the community nurse, Bearcamp Valley School & Children's Center, etc.

What Would Happen if the TCC Was Abolished?

The regulatory work of the TCC is only advisory, so abolishing the TCC would not have any great impact on basic Town functions. However, by state regulation, the TCC plays a local advisory role to DES on wetlands permit applications. If it were abolished, the Selectmen would have to assume that responsibility; for example, they would have to sign off regarding local intervention for any permits-by-notification. And, DES might not allow any expedited minimum impact permit applications from Tamworth, because there would be no conservation commission to sign off on them, as required by Env-Wt 505.01.

Other work of TCC - trail maintenance, education, etc. – would be handled by some other group or individuals, if they were to be done at all. Easement monitoring is a legal responsibility of the holder of the easement, which is the Town in some cases. Therefore, the Selectmen would have to assure that this monitoring was done.

Club Motorsports Inc. Road Course / Race Track

There were several comments that mentioned the CMI development south of Route 25 in southeast Tamworth. Here is a synopsis of the TCC's interactions with that project:

- When, in 2004, CMI applied to DES for a wetlands permit (a permit to dredge and fill wetlands on the property), the TCC had the opportunity to provide comments on the application from the local perspective, in accordance with state wetlands regulations. This is standard practice for all minor or major wetlands permit applications. The TCC provided comments on the application to DES, as it has done with other applications consistently for decades.
- As part of the consideration of the state wetlands permit, CMI was required to identify a piece of land that they would conserve for the purpose of mitigating their wetlands impacts, as is required by state regulations. The TCC consulted with CMI leaders and recommended several potential sites in Tamworth that would meet this mitigation requirement. In the end, CMI chose – and the state agreed to - a wetlands mitigation property in Sandwich.

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- When CMI applied to the Planning Board for a Special Use Permit (SUP), as required by the Tamworth Wetlands Conservation District Ordinance passed by the residents of Tamworth at Town meeting in 1991, the TCC was asked for consultation (as required by the Ordinance). The TCC joined in a site walk of the property in cooperation with CMI staff and consultants and subsequently discussed the CMI application and whether or not it met the standards of the Ordinance. These discussions occurred at several meetings, and there were two application processes over a period of some time. In the end, because the proposal did not meet the requirements of the Ordinance, the TCC recommended to the Planning Board that the SUP not be granted. During the discussions with CMI staff, the Commission indicated what changes we believed would be needed to meet the needs of the Ordinance. These were documented in meeting minutes. The Planning Board considered the TCC recommendations and reasoning, as well as input from a variety of other sources, and decided not to grant an SUP.
- During the initial consideration of the CMI proposal, the TCC hired a wetlands scientist to delineate the wetlands on the CMI site, as is allowed by the local Ordinance and state laws. CMI and its consultants cooperated fully in the process and ultimately agreed with the improved wetland delineations provided. The cost of this – about \$3,000 – was paid from the Conservation Fund, which the TCC administers. The only other significant cost to the Town that could be attributed to the Commission's actions with regards to the CMI proposal are costs for occasional legal consultations with Town Counsel, totaling perhaps a few hundred dollars.
- When the Town was considering whether or not to become a party to a particular legal action to uphold the Wetlands Ordinance, the TCC recommended that the Town support its Ordinance. (In the end, the Selectmen chose not to be a party to that case.)
- Because the proposed development was a contentious issue, CMI requested that TCC members who had expressed bias regarding CMI and its proposal recuse themselves from discussions and voting on the matter. This was done by any members who felt they had a conflict of interest. This helped ensure a fair and impartial hearing and decision-making process.
- Besides the actions noted above, the TCC has had no further involvement with CMI and its proposed development, other than providing copies of documents on the matter, when requested. Occasionally, as meeting minutes show, the Commission has heard updates on the court cases and other matters related to the proposed CMI development.
- The TCC has not been involved in any of the court cases and legal actions regarding the proposed CMI development, other than providing copies of documents and testimony, upon request.
- The intent of the Commission was and is to meet its responsibilities under the Tamworth Wetlands Ordinance and provide input and support to the Planning Board and the Selectmen as they take actions to uphold the Ordinance.
- At the hearing, one comment included speculation regarding the potential positive impacts of the proposed CMI development on local jobs and taxes. There is also speculation about the potential negative impacts of the proposed development on the Town and its natural resources. Arguments on both sides may have some merit. In the end, they are difficult to assess, and, in its deliberations on the proposed CMI development, the TCC has focused on its narrow responsibilities under the Wetlands Ordinance.

TCC Trail Work

One or two comments alluded to TCC work on trails. TCC performs trail maintenance, mostly on Town-owned lands, including repair of trail bridges and the Great Hill Fire Tower. The Hemenway Big

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Pines, Great Hill, Black Spruce Bogs, and other trails are popular with residents and visitors and add to the appeal of the Town, helping support local hospitality businesses and local commerce in general. There are other groups that maintain some of the many trails in Town as well, including the Ossipee Valley Snowmobile Club, Tamworth Outing Club, and Wonalancet Out Door Club. TCC appreciates and coordinates with the efforts of these other groups.

Wetlands Protection and Prime Wetlands

There were several comments criticizing the TCC's role in protecting wetlands. Two comments later in the hearing clarified what the Commission actually does in this regard and the extent of its authority. These comments were in support of the TCC's work with regards to wetlands.

As noted, above, the TCC only advises DES and the Planning Board and Selectmen regarding local wetlands permits. DES has a comprehensive wetlands permitting program that includes several levels of applications; the larger the wetlands impacts, the more involved the application process. The current Tamworth Wetlands Conservation District Ordinance was adopted in 1991 by vote at Town Meeting. The Planning Board administers it and grants permits, with consultation by the Commission; the Selectmen enforce it. More details about the local wetlands ordinance and the TCC's role is available at the TCC website.

As the final comment at the public hearing noted, prime wetlands were defined by the analysis of a UNH-CE wetlands specialist in 1979. In accordance with state enabling legislation, the Town voters adopted the prime wetlands designations at Town Meeting in 1980. The designation of prime wetlands triggers additional review requirements by DES. Statements made at the hearing that timber cannot be cut on prime wetlands are inaccurate. However, the major application process that can lead to legal cutting of timber in a prime wetland is more cumbersome and costly – quite a bit more hassle than the minimum impact forestry application that most foresters submit.

The particular instance raised at the public hearing, regarding timber cutting on a prime wetland, is a recent issue. The forester involved sent a letter to many public officials, copying the Commission. Upon receipt, Ned Beecher, Chair of the Commission, called the forester to discuss the concern and offer help in figuring out the issue. Ned has spoken with the DES wetlands scientist involved and has reviewed the prime wetlands regulations. The Commission will continue to take steps to help the local landowner find a fair solution, within the legal requirements and intent of wetlands protection regulations. It is through discussions like this, at the local level, that town residents and the Commission can best find the balance between wetlands protections and property rights. In this kind of situation, the local Conservation Commission provides local assistance to local landowners dealing with state regulations.

Lastly, as one comment from the public hearing noted, the local wetlands ordinance was a choice of the majority of voters of the Town. It can be modified by a vote of the Town. The Commission is considering recommending an updating of the Ordinance in the near future. This effort will benefit from input from a variety of citizens. Already, it is clear that some requirements of the Ordinance should be relaxed – such as the septic system setback that is larger than the state and for which there is little current scientific justification. If the Commission and Planning Board were to decide to work on an update to the Ordinance, the process would be conducted in public meetings with public input, as is always the case for town boards.

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Draft submitted by Ned Beecher, Chair, TCC, January 10, 2011