

**TOWN OF WOLFEBORO
CONSERVATION COMMISSION
February 10, 2020
APPROVED MINUTES**

Members Present: Lenore Clark, Chairman, Dan Coons, Vice-Chairman, Art Slocum, Brian Gifford, Warren Muir, Members, Nancy Byrd, Sarah Silk, Alternates.

Members Absent: Dave Senecal, Selectmen’s Representative, Jeff Marchand, Ed Roundy, Members.

Staff Present: Lee Ann Hendrickson, Administrative Secretary.

Chairman Clark opened the meeting at 6:37 PM at the Great Hall.

Chairman Clark appointed Sarah Silk, Alternate, to sit in for Jeff Marchand and appointed Nancy Byrd, Alternate, to sit in for Ed Roundy, Member.

I. Discussion Items

a. Eastern Lakes Region Housing Coalition; Amendment to Conservation Easement

Kathy Barnard, Eastern Lakes Region Housing Coalition, introduced Bonnie Medico, Eastern Lakes Region Housing Coalition and Sal Steven-Hubbard, Lakes Region Community Developers. She stated Lakes Region Community Developers has developed the third phase for Harriman Hill; noting the project consists of 20 single family dwelling “for sale” units. She stated the total acreage of the property is 35.77 acres; noting a conservation easement on the property includes 25 of those acres. She stated she attended the Commission’s December 9, 2019 meeting and requested an amendment to the conservation easement; noting the Commission requested a proposed conditions plan depicting the location of the housing units and impact to the easement area, including an overlay of the previously approved conceptual plan for Phase III and Attorney General (AG) approval. Referencing the latter, she stated following review of the AG documentation and process for filing an amendment of a conservation easement, comments from the Conservation Commission are required prior to filing a request for an amendment to the easement.

Sal Steven-Hubbard distributed and reviewed both the previously proposed conceptual plan and the proposed plan. She noted the original area depicted on the plan for Phase III is not large enough for the proposed development. She stated the proposed development is not located in an environmentally sensitive area or wetland area; noting the development is shifted as far away from the easement as possible. She stated Eastern Lakes Region Housing Coalition is requesting a reduction of one acre to the conservation easement. She stated the conceptual plan that was previously designed was not designed as a “for sale” project.

Sarah Silk asked who determined the development of 20 units rather than developing within the original designated area.

Sal Steven-Hubbard stated the site was originally approved for 68 units.

Dan Coons noted the site was approved for multifamily units and now single family housing units are being proposed.

Sal Steven-Hubbard stated Phases I and II consist of multifamily units; noting the Phase III plan was a conceptual plan and did not include engineering or market studies. She stated Phase III was originally presented as a combination of duplexes and free standing houses.

Sarah Silk confirmed the new proposal includes garages to be constructed for each unit. She asked why a conservation easement was executed.

Kathy Barnard stated the project was considered a cluster development under the Conservation Subdivision Regulations; noting such required the designation of 50% open space. She stated 70% open space was provided as part of the approval.

Art Slocum stated a conservation easement in its very nature is in perpetuity.

Sal Steven-Hubbard stated the desire of the developer (Eastern Lakes Region Housing Coalition) is to provide not for profit workforce housing. She stated the developer went well beyond what was required of the Conservation Subdivision Regulations; noting such was a mistake to have provided 70% open space because the development of Phase III impacts that open space which now requires the reduction of the conservation easement by one acre in order to develop Phase III.

Kathy Barnard noted the housing is targeted to first time home buyers.

Warren Muir verified the developer owns the adjacent property.

Kathy Barnard stated Eastern Lakes Region Housing Coalition owns a 35-acre adjacent parcel; noting the property is in Current Use.

Warren Muir asked if any of that acreage is available to offset the reduction to the existing conservation easement. He asked if the developer intends to use the property in the future and whether accessing the property would require an additional change to the easement.

Sal Steven-Hubbard stated there is no commitment to that site; noting future development of the property is premature to consider. She stated the developer does not want to create another mistake and noted there are no current plans to develop the property.

Art Slocum stated the conservation easement stated that if a change is going to be made that the easement can only be sold intact to another conservation agency. He stated such needs to be cleared up. He stated the change to the conservation easement has to go to the State. He noted the conservation easement also speaks to the development of trails on the site (Planning Board request). He noted the easement goes over the sewer line.

Sal Steven-Hubbard stated the trail has not been maintained.

Kathy Barnard stated she met with Dan Coons several years ago regarding trail development.

Dan Coons agreed stating they met with Andrew Lester however, such was never pursued. He stated the Commission's counsel offered an opinion regarding an amendment clause and noted he does not see such in the conservation easement.

Warren Muir recommended the developer review the adjacent property.

Kathy Barnard stated that when the adjacent property was purchased the intent was to conserve half the acreage.

Brian Gifford asked if the adjacent property is landlocked.

Kathy Barnard replied no, the frontage for the property is located on Birch Road.

Sal Steven-Hubbard stated the property can be accessed from Birch Road however, more disturbance would occur due to ledge and the slope.

Art Slocum recommended considering all contingencies for future planning.

Sal Steven-Hubbard stated the developer received a \$300,000 grant from Northern Borders in addition to a tax grant of \$300,000; noting such helps make the proposal affordable. She stated that if the funds are not expended by 9/30/20 then the developer will lose the grant funding and will be required to return the tax credits.

Sarah Silk stated there was a lot of concern by the Birch Hill Estates residents because of the future connection to their roads.

Kathy Barnard stated there is no connecting roadways proposed.

Art Slocum asked if the proposed number of units is the same number of units previously proposed.

Sal Steven-Hubbard replied yes.

Art Slocum asked if the original proposal included garages.

Sal Steven-Hubbard replied no.

Warren Muir confirmed the original proposal included home ownership.

Sal Steven-Hubbard confirmed such and stated the original proposal also included duplexes however, the developer doesn't feel such is marketable. She stated the units are constructed on slabs therefore, the garages will serve more as a storage unit. She stated the plan is to build two houses and when those units are sold two more units will be constructed.

Kathy Barnard stated storage has been an issue with the existing rental units in Phases I & II.

Dan Coons asked if full basements could be built.

Sal Steven-Hubbard replied no because of the ledge and construction sequencing.

Brian Gifford asked if the garages could be constructed as a cluster elsewhere on the property.

Sal Steven-Hubbard stated if the units were proposed to be rental units then yes, such could easily be done. However, the units are home ownership and the marketability of such is questionable; noting it is not what people want or expect with home ownership.

Dan Coons questioned the anticipated sale price of the units.

Sal Steven-Hubbard replied \$200,000 to \$225,000.

Sarah Silk questioned the size of the individual lots.

Sal Steven-Hubbard stated there are no individual lots rather, there is limited common area with a homeowners association. She stated the intent is to construct the infrastructure by September 2020 (roads, water, and sewer).

Warren Muir confirmed the Commission is being asked for a letter of recommendation to the Attorney General in support of the project.

Lenore Clark asked when the application would be reviewed by the Planning Board.

Kathy Barnard replied April 2020.

Ms. Barnard, Ms. Medico and Ms. Steven-Hubbard exited the meeting.

Sarah Silk stated the worthiness of the project doesn't matter; noting the requirements of the approval have to be met. She stated the Commission was informed that currently 70% of open space exists however, the Commission was not told what percentage would be diminished after the reduction of the conservation easement.

Dan Coons stated the percentage would be reduced to 65%.

Sarah Silk expressed concern regarding constructing and marketing to first time home buyers because the area is not viewed as a prosperous neighborhood because of the number of visits by the Police Department. She stated there are still a lot of concerns about the development from the residents of Birch Hill Estates.

Dan Coons stated he contacted Barbara Richter, NH Association of Conservation Commissions, regarding amendments to conservation easements. He reviewed the criteria associated with such.

Sarah Silk asked if selling the units is a financial benefit.

Lenore Clark stated the units are nonprofit. She asked if Lakes Region Community Developers nonprofit.

Dan Coons replied yes.

Art Slocum stated they did a poor job laying out Phase III; noting they made a 1-acre mistake on 25 acres. He stated the easement is in perpetuity and everyone knew what they were signing (referring to the signing of the conservation easement deed). He stated that if the Attorney General's Office would permit an adjustment of one acre with an offset then he would be in favor of the amendment.

Sarah Silk stated they are not looking into the future with regard to connecting to the abutting lot.

Warren Muir stated they are requesting a reduction of one acre with no impact to wetlands or priority conservation resources that the Commission is trying to protect.

Lenore Clark stated they are asking for a letter of support to present to the AG's office.

Dan Coons stated they did not plan well and they are not planning well for the future.

Sarah Silk stated Eastern Lakes Region never constructed the trails that were required and noted in the conservation easement.

Art Slocum read the conservation easement deed, dated 12/11/09, requesting the Grantor to construct and maintain recommended trails.

Nancy Byrd stated there are limited areas for trails.

Art Slocum stated regardless, the requirement to construct trails is noted in the easement deed.

Sarah Silk stated the trails are a requirement of the subdivision.

Nancy Byrd suggested the Commission include the construction of the trails in its recommendation.

Art Slocum recommended the Commission ask for offsetting acreage on the abutting parcel.

Brian Gifford stated the Commission could request the trails be developed on the adjacent property.

Lenore Clark stated she was concerned for the precedent being set if the Commission supports a reduction to the conservation easement however, in reading the documentation from Barbara Richter it is clear that amendments to conservation easements occur.

Warren Muir recommended the Commission ask them if they are agreeable to offsetting the one acre by receiving more acreage on the adjacent parcel once it is developed.

Sarah Silk stated she believes the offset has to be done on the existing lot. She stated she doesn't believe it is legal to ask for an offset to occur on the adjacent parcel. She stated they could build ten units of the existing lot and ten lots on the abutting parcel or, construct 12 units on a cul-de-sac and fit the development within the originally proposed area.

Dan Coons stated the infrastructure costs would be too expensive for 12 units.

It was moved by Warren Muir and seconded by Dan Coons to forward a letter of support to the Attorney General to approve a reduction of the open space constrained by the existing conservation easement by 1.08 acres associated with the Eastern Lakes Housing Coalition's development of Harriman Hill, Tax Map #176-20-1, with the expectation that in the future the Coalition will add to the conservation holdings from either the existing lot or the adjacent lot.

Discussion of the motion:

Sarah Silk recommended the Commission ask counsel if the Town can obligate a separate parcel.

Warren Muir stated his motion doesn't obligate Eastern Lakes Region Housing Coalition to do anything.

Dan Coons stated there appears there is some area on the existing parcel, Tax Map 176-20-1, that the limited common area could be increased. He stated the project provides public benefit however, is concerned that the developer is not planning ahead for Phase IV; noting their lack of planning is consistent for Phases III and IV.

It was moved by Dan Coons to amend the motion made by Warren Muir to include that the recommendation is contingent upon the completion of trail construction as noted in the Conservation Easement Deed, dated and recorded July 2010.

Warren Muir stated he supports Dan Coons' amendment to his motion.

Nancy Byrd seconded the motion.

Discussion of the motion:

Sarah Silk requested clarification whether additional conservation easement acreage is proposed to be on the existing property or the adjacent property. She stated she thinks the Commission can only obligate the developer to the existing lot.

Warren Muir stated his motion doesn't obligate the developer.

It was moved by Sarah Silk to amend the motion made by Warren Muir and subsequent amendment made by Dan Coons to include the addition of conservation holdings shall be contingent upon such being designated to the existing parcel, Tax Map 176-20-1.

Warren Muir stated he does not support Sarah Silk's amendment to his motion.

There being no second, the motion failed.

It was moved by Warren Muir and seconded by Dan Coons to forward a letter of support to the Attorney General to approve a reduction of the open space constrained by the existing conservation easement by 1.08 acres associated with the Eastern Lakes Housing Coalition's development of Harriman Hill, Tax Map #176-20-1, with the expectation that in the future the Coalition will add to the conservation holdings from either the existing lot or the adjacent lot. Lenore Clark, Warren Muir, Brian Gifford, Art Slocum, Nancy Byrd voted in favor. Dan Coons, Sarah Silk opposed. The motion passed.

It was moved by Dan Coons to amend the motion made by Warren Muir to include that the recommendation is contingent upon the completion of trail construction as noted in the Conservation Easement Deed, dated and recorded July 2010. Nancy Byrd seconded. Lenore Clark, Warren Muir, Brian Gifford, Art Slocum, Nancy Byrd voted in favor. Dan Coons, Sarah Silk opposed. The motion passed.

Dan Coons stated he did not vote in favor of the motions because he is uneasy with the developer's lack of planning.

Sarah Silk stated she opposed the motions because the developer cannot be obligated to another parcel.

b. Conservation Protection of Wolfeboro Tax Map #127-6 & Tuftonboro Tax Map #64-2-1

Steve Wingate stated the Tuftonboro BOS and Budget Committee are supportive of the project and a warrant article for \$12,000 has been submitted for 2020 Town Meeting (to cover the preparation and submittal of grant applications to ARM Fund and LCHIP). He stated the landowner doesn't qualify for NRCS Wetlands Reserve Program because they have not owned the property for two years. He noted the 2-year ownership provision can be waived if the owner can provide proof they were not aware of the program or potential conservation efforts at the time of the purchase.

Dan Coons asked if the purchase would be a bargain sale.

Steve Wingate stated such has not been discussed. He stated there is over 700' of shorefront however, not all of it is developable. He stated the properties were appraised at the time of the purchase however, the owner has not shared such because they want to carve out two building lots.

Dan Coons asked who will be conducting the appraisal.

Steve Wingate stated such has not yet been organized. He stated if NRCS is involved then they organize and pay for the appraisal.

Warren Muir asked what the ask is of the Commission.

Steve Wingate replied nothing at this time however, there may be a future ask which would include being the holder of the easement. He stated if the ARM Fund and LCHIP grants are approved he anticipates such would cover the cost of the purchase of the easements. He stated he would attend the Commission's meeting in April to provide another update.

It was moved by Dan Coons and seconded by Art Slocum to agree in principle to be the conservation easement holder of the property located in Wolfeboro, Tax Map #127-6. All members voted in favor. The motion passed.

c. 2020 Projects and Funding Requests

The Commission tabled such.

d. Pleasant Mountain

The Commission reviewed the funding request from Lakes Region Conservation Trust (LRCT) to contribute toward the transaction fees (totaling \$43,000 and includes an appraisal, survey, stewardship, legal, etc.) for the purchase of 130 acres (6.5 acres of the property is located in the Beach River watershed). The Commission noted the Town can contribute towards transaction costs.

Lenore Clark stated contributing to the project falls within the Commission's purview and noted she is favor of such.

Warren Muir questioned the acreage located in Wolfeboro.

Referencing the Commission's 1/28/20 minutes, Staff replied 6 acres is located in the Beach River watershed.

Warren Muir recommended contributing 5% to reflect the amount of acreage impacting the watershed area and acreage in the Town of Wolfeboro.

It was moved by Warren Muir and seconded by Brian Gifford to contribute \$2,500.00 to Lakes Region Conservation Trust for the purchase of Pleasant Mountain. All members voted in favor. The motion passed.

e. Willey Brook Signage

The Commission discussed signage at Willey Brook to include a kiosk at the entrance of the trails to be installed in April 2020.

f. Annual Report

Lenore Clark noted the Commission's Annual Report was submitted.

g. Library Program

Lenore Clark stated she received a phone call from Joyce Davis, Wolfeboro Public Library, requesting a representative from the Commission to sit on a panel of various organizations in the Town that maintain and use trails. She noted the event is scheduled for April 18, 2020.

h. Cyanobacteria Task Force

Warren Muir stated Dave Ford has stepped down as Chair of the Task Force; noting the Task Force is currently co-chaired by Linda Murray and Paul O'Brien. He noted the name of the Task Force will likely be changed to Wolfeboro Waters. He stated the Assessment Committee prepared a draft 2019 report; noting such would be presented to the BOS on March 4, 2020. He stated the Communications Committee is developing the Wolfeboro Waters website; noting such will be online April 1, 2020.

i. Heath Brook Conservation Easement

Dan Coons questioned whether the easement includes breach of easement language/provision.

Staff provided Mr. Coons the easement for review.

Referencing page 17, Section X.E. of the Heath Brook Conservation Easement, Dan Coons read the following; "The Easement Holder shall be entitled to recover damages from the party directly or primarily responsible for a breach of this Conservation Easement or damage to any conservation features protected hereby, including, but not limited to, damages for the loss of scenic, aesthetic, or environmental attributes of the Property. Without limiting the Landowner's liability therefor, the Easement Holder, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Property." He also reviewed Section X.F.; "Provided that the Landowner is directly or primarily responsible for the breach, all reasonable costs incurred by the Easement Holder in enforcing the terms of this Conservation Easement against the Landowner, including, without limitation, staff and consultant costs, reasonable legal fees, and any costs of restoring the damaged Property, shall be borne by the Landowner; and provided further, however, that if the Landowner ultimately prevails in a judicial enforcement action, each party shall bear its legal fees and other costs." He recommended reviewing the attorney fees the Commission paid as

a result of the breach and requested Lenore Clark contact the landowner to discuss the reimbursement of the Commission's expenditures.

Lenore Clark stated Dave Ford contacted her to review design alternatives to reroute the drainage. She stated the Town is submitting an amendment to the permit to the State.

II. Consideration of Minutes

December 9, 2019

It was moved by Nancy Byrd and seconded by Dan Coons to approve the December 9, 2019 Wolfeboro Conservation Commission minutes as submitted. Lenore Clark, Brian Gifford, Nancy Byrd, Warren Muir, Dan Coons, Nancy Byrd voted in favor. Art Slocum abstained. The motion passed.

January 28, 2020

Corrections: Page 1, Members Present; strike Nancy Byrd
Page 2, 5th paragraph to read as follows; "Lenore Clark confirmed that the easement would be a right-of-way easement and not a conservation easement.
Page 2, 7th paragraph; strike "such" & replace with "becoming an executory interest holder."
Page 3, 9th paragraph; change "prohibit" to "discourage"
Page 4, 3rd paragraph, change "he" to "she"
Page 6, 2nd paragraph, last sentence; change "would" to "could"

It was moved by Dan Coons and seconded by Art Slocum to approve the January 28, 2020 Wolfeboro Conservation Commission minutes as amended. All members voted in favor. The motion passed.

Dredge & Fill Minutes

December 21, 2019

It was moved by Dan Coons and seconded by Brian Gifford to approve the December 21, 2019 Wolfeboro Conservation Commission Dredge & Fill minutes as submitted. Lenore Clark, Brian Gifford, Dan Coons voted in favor. Art Slocum, Warren Muir, Nancy Byrd abstained. The motion passed.

January 28, 2020

It was moved by Warren Muir and seconded by Art Slocum to approve the January 28, 2020 Wolfeboro Conservation Commission Dredge & Fill minutes as submitted. Lenore Clark, Art Slocum, Warren Muir, Dan Coons voted in favor. Brian Gifford, Nancy Byrd abstained. The motion passed.

III. Other Business

- Moose Mountains Regional Greenways annual meeting scheduled for 3/16/20 at the Inn on Main
- "Return of the Cougar" presentation sponsored by Moose Mountains Regional Greenways scheduled for 2/21/20

IV. Correspondence

The Commission received the following correspondence; NHDES correspondence.

V. Non-Public Session

N/A

It was moved by Art Slocum and seconded by Brian Gifford to adjourn the February 10, 2020 Conservation Commission meeting. All members voted in favor. The motion passed.

There being no further business before the Commission, the meeting adjourned at 9:04 PM.

Respectfully Submitted,

Lee Ann Hendrickson

Lee Ann Hendrickson