



TOWN OF NEW LONDON, NEW HAMPSHIRE

375 MAIN STREET • NEW LONDON, NH 03257 • WWW.NL-NH.COM

APPROVED Minutes of the April 17, 2013 Conservation Commission Meeting

MEMBERS PRESENT: Bob Brown (Chairman), Andy Deegan, Rick Anderson, Terry Dancy, Laura Alexander, Emma Crane, Dan Allen, Sue Clough

MEMBERS ABSENT: Ruth White,

OTHERS: Bob Crane, Lucy St. John (Planning & Zoning Administrator), Debbie Stanley (Ausbosn Sargent), Leo Maslan, Malcom Milne, Tina Helm (Selectman)

Chair Brown called the meeting to order at 9:00am. He introduced the visitors to the meeting, including Debbie Stanley, Leo Maslan and Malcom Milne. Chair Brown expressed his appreciation to Mr. Maslan about how pleased the Conservation Commission was with the Philips Property cutting. He felt that Mr. Maslan's selection of a logger was excellent and he thanked him for being a part of the tour of the property on March 24th which was well attended by about 25 people.

Mr. Maslan and Mr. Milne were given the floor to discuss the American Tree Farm System. Mr. Maslan said the program had been around since 1941 and helps bring attention to landowners who care for their forests in a responsible way. Municipalities are now able to be a part of the tree farm system. To do this, they must have updated forest management plans, which they already have in New London. Mr. Maslan shared that he is a tree farm inspector and showed the commission a form that they could fill out to gain acceptance into the system. The benefit of belonging to the Tree Farm System has to do with public relations and showing people that they are responsible with their forest. The program is non-binding and if the Town decides to discontinue membership they can let their membership lapse. Every five years they will be visited by an inspector. Every 10 years they may be asked to update their management plan, which would likely be done anyway by those who are responsibly caring for their woodlands. Mr. Milne said he works at Durgin & Crowell (Springfield, NH) and is chair of the State SFI committee.

Chair Brown wondered what the financial obligations were of being a member of the tree farm program. Mr. Maslan said that he wasn't aware of any further financial obligations. They had already paid for their management plans to be done. He added that as a Tree Farm Inspector, inspections are voluntary. Currently there are no membership fees or annual dues.

Ms. Stanley said that Stanley Farm has been a member of the Tree Farm Association and they find it to be an honor to be part of the group. They went through a lot of work to be able to join and find it helpful that every five years they are audited and it helps keep their forests managed. They also appreciated that there are no costs associated with being a member. Ms. Alexander agreed with Ms. Stanley and was in favor of the program. She thought that when people look at timber harvesting, this kind of thing reminds people that working forests are necessary and can be done sustainably.

Mr. Anderson wondered if certification could be revoked if an audit revealed certain things that needed to be done. Mr. Maslan said the inspection weren't audits. They look at the plan with the owner and talk about what, if anything, has happened with the land since the last inspection. The audits are randomly selected and those farms that are due for inspection are chosen at random. They alternate between making audits in ME, NH and VT each year. If there are justifiable reasons for holding off on doing the things needed to manage a forest, property owners will be OK. They may be asked to de-certify if owners decide to not harvest wood at all. At some point, members have to agree that they will harvest some forest product from the property.

Mr. Deegan felt public relations would be easier if they had the tree forest program designation to show they are being held to a high standard where tree farming comes into place. It could also make other large landowners look and see what the Town has done and make them consider doing it themselves.

Mr. Milne suggested that more information could be found on the American Tree Farm website:
www.treefarmssystem.org

Mr. Deegan thought joining the association would be a great thing to do and they could put an article in the Intertown Record about it. It could be a great educational tool in timber harvesting and forest management. Mr. Maslan noted that New Hampshire has one of the strongest tree farm programs in the country.

Mr. Maslan concluded his presentation by leaving some reading material about the program with the Conservation Commission members. Chair Brown thanked the two gentlemen for coming and said they would need some time to discuss the program and would like to share the idea with the Planning Board and the Selectmen.

Review of Minutes from March 20, 2013

IT WAS MOVED (Laura Alexander) AND SECONDED (Rick Anderson) to approve the minutes of March 20, 2013, as amended. THE MOTION WAS APPROVED UNANIMOUSLY.

P3. Carroll property: Garre (name)

P3. Phillips: Sunday, March 24th.

P2. Rick Anderson... “Ms. Hallquist had asked...(in a separate meeting had asked)...

OEP, UNH, NRCS (add)

He thought they’d have the opportunity to “review.”

Phillips Memorial Preserve Conservation Easement - Kim Hallquist

Chair Brown said that there has been some confusion regarding the easement language as there were concerns with it both on the part of Ausbon Sargent and the Town.

Mr. Deegan said that in the past, he has been the one to draft the easements and forwards them to the Conservation Commission for review. It is then given to the Town Administrator. Ms. Hallquist said she is fairly new to the Town and has looked at it closely because she wasn’t sure how they had handled easements in the past. She recalled that Town Meeting voted for a Conservation Easement to be put on the property. The details are then left to the Conservation Commission, the Board of Selectmen and the entity that is being asked to accept it; in this case, Ausbon Sargent. She had not seen any prior easements and came up with several items that she thought should be fixed. Many of the issues she took with the language were minor and she and Mr. Deegan were able to clear them up. She shared that the Town had never signed an easement like this one before and said it is different than even the Messer Pond easement. The “hold harmless” clause is different and they decided to take this part out.

Mr. Deegan said that Ausbon Sargent forwards their easement language to their attorney, who is well-known in the field. It was he who suggested adding the hold harmless clause to the easement. Every easement is different because every property is different. Ms. Hallquist agreed with this thinking and added that easements do have to change with the times. There may have been portions of easements that were once acceptable to the Town that are no longer. It is a give and take and each easement has to be looked at for a long time. There were other provisions in the language that she and Town Counsel thought could be potential problems. They have to consider how much risk the Town wants to take to protect the property. Ms. Hallquist said going forward 25-50 years from now, this has to be considered even more. She looked at an easement from Bedford, NH and found differences that show there are ways to conserve property without using the same terms that would potentially cost the Town money. If Town Meeting decides to do something with the property that is against the easement, will they understand that they could be sued if they move forward. Voters need to be aware. Ausbon Sargent has not agreed to accept the language as the Town is asking.

Ms. Hallquist suggested that there were a few solutions to this problem:

1. Make their argument clear to the Board of Selectmen who could sign the easement that day
2. They could force the Board of Selectmen to sign it by a vote at Town Meeting.
3. They could have more discussion on the language and work out further changes.

Mr. Anderson said there are things put into the language by the drafting lawyer to keep risks low. He saw it as a matter of identifying business decisions and perhaps the lawyers could give up on one or two of those things so they can find agreement.

Ms. Hallquist said the Board of Selectmen doesn't feel comfortable signing the easement because of what she and Bart Mayer (Town Counsel) have said about the language. One issue was that if the parties go to court, the court fees are responsible to be paid by the party found at fault. Mr. Deegan said that there are many steps that are laid out in the language that both sides pay for their own fees and would prohibit this from ever going all the way to court.

Ms. Hallquist said in 25-50 years they don't know what or who will be around. New London will still be here, but what about Ausbon Sargent? Who will be dealing with these documents in the future? She is looking at it as a contract that is forever. Ms. Stanley said that at this point, Ausbon Sargent has shelved this project.

Ms. Stanley said that Ausbon Sargent is an accredited land trust. In 1977 the IRS had legislations for conservation. About 10 years ago the IRS started doing some audits of conservation easement deeds and found people were abusing easements for tax relief or charitable intent. Ausbon Sargent and other reputable organizations were frustrated about this and five years ago, worked with the IRS to create an independent accreditation commission. It took Ausbon Sargent three years to get ready to be accredited. They submitted an application weighing 50 pounds, and waited a year before they were accredited. They have earned their status of accreditation, which only 10% of land trusts have. They are not about to jeopardize this. In these negotiations with the Town, they are down to two provisions that have been in their easement template, which was approved by the accreditation commission. Ms. Stanley opined it was better to go for excellence and high management and not dilute the easement language. The final two provisions have been there a long time and they at Ausbon Sargent are saddened that this is not being accepted by the Town.

One provision, Mr. Deegan explained, was the matter of the payment of attorney's fees. The other is section 9e, which is that grantee (Ausbon Sargent) should be allowed to recover charges for any damage to conservation values. If damage is caused by a 3rd party or act of God, the Town would not be held responsible. They can recover damages for the actions taken on the property by the Town, not third parties. He said if they don't want that to have an effect, don't violate the easement. There is no reason to have an easement if this part can't be upheld.

Ms. Hallquist said she has nothing but high regards for Ausbon Sargent and has heard nothing negative about them. However, this is not the point. She understands the need for enforcement but on the other side of the coin, do the citizens of New London understand what they voted for? Are these the risks they understand they are taking? This could be problematic for the Town some day. Ms. Hallquist said this issue could be put on the warrant and the voters could decide if these risks are what they are in favor of.

Mr. Dancy said the difference in the language was not enormous and they need to find a way to agree. Mr. Anderson agreed with Mr. Dancy and didn't see a very large discrepancy in the language. His interpretation was that they have come down to things that are probably not worth taking to Town Meeting.

Ms. Hallquist said the question is how to get the Board of Selectmen to be appreciative of the language and why Ausbon Sargent has to have it in there.

Ms. Stanley said that she had a personal relationship with the late Mrs. Phillips, who made this gift prior to or at the time that easements were beginning. They need to look at the donor's intent and it is what she wanted in

her wish. Ms. Hallquist said the same conversation would arise; do they want to accept the gift with these kinds of restrictions on it? Ms. Stanley felt it was a risk worth taking because conservation land is so important to the Town.

Mr. Deegan said other easements have been signed with the Town that have the same language in 9e and 9h.

Mr. Allen wondered how Ms. Helm felt about this issue. Ms. Helm said the Selectmen had not voted on this and they have not had enough of a discussion about it to speak for the board. She has personally tried to work with Mr. Deegan and Ms. Stanley on this issue. Because she was not sure how her colleagues felt about the issue, Ms. Helm was cautious to speak out without having them there. Personally, she felt that there were three definite steps of negotiation that the Town and easement organization would go through before going to court. To get to the fourth level (court) is probably a slim possibility. Ms. Helm agreed with Mr. Anderson that it wouldn't be very beneficial to bring this to the voters at Town Meeting.

Mr. Anderson thought the Conservation Commission should discuss this issue amongst themselves and make a recommendation to the Board of Selectmen. Ms. Hallquist indicated that this property will be under the advisement of the Conservation Commission. Mr. Deegan said that lands that fall under the Conservation Commission are under the responsibility of the Conservation Commission to manage. But, as they can see, the management of timber was done by them on the property but the income from the cut went to the general fund and not the Conservation Commission. Ms. Hallquist said that this was because there was no vote taken at a Town Meeting to allow this to happen any other way. The trees are considered Town property and so income from the cut was put into the general fund. Mr. Deegan said that he didn't feel that other groups, such as the Board of Selectmen wanted to manage the forests/timber management. Ms. Hallquist said they should make a list of all forests that they believe they are managing and at Town Meeting they could vote to make them official managers and thus would get the income from future timber cuts. (?) If land is under the jurisdiction of the Conservation Commission, the Board of Selectmen couldn't sell, lease or manage the property.

Ms. Stanley asked if the commission could take a vote that day and in their opinion make a recommendation that the Board of Selectmen vote to approve the easement language as-is.

IT WAS MOVED (Laura Alexander) AND SECONDED (Sue Clough) that they would recommend to the New London Board of Selectmen to sign the easement language as presented by Ausbon Sargent. THE MOTION WAS APPROVED UNANIMOUSLY.

Andy Deegan recused himself from the vote due to his association with Ausbon Sargent.

Planning & Zoning Administrator Update – Lucy St. John

Ms. St. John indicated that there was a tree-cutting request made by the Pesando family at 54 Checkerberry Lane. There are five trees within the 50' buffer they would like to remove. It was thought that the scoring of trees on the property after the cut would be OK. The Planning Board would most likely approve this request at their next meeting.

Ms. St. John shared that Joe DiClerico at Little Lake Sunapee also wanted to remove some trees but they were not within the 50' buffer. Some are very small and two or three of them measure 5" in diameter at chest height. It didn't appear that he would need permission to do this. Rick Anderson said he didn't see any issue with this requested cut. Ms. St. John said she had not been on the property but didn't see an issue either.

Messer Pond Geese

Chair Brown said Messer Pond has been having an issue with Canada Geese. They are making a mess and are aggressive. A family of the geese has established a home there and is coming back this spring. Attempts have been made to drive them away to no avail. The Canada Goose is federally protected so cannot be shot. The Messer Pond Protective Association (MPPA) has contacted New Hampshire Fish & Game to ask for suggestions. An application has been filled out to permit the MPPA to carry out the following suggested

practice: once eggs are in the nest they are taken and coated in corn oil which prevents them from hatching. This is the most humane way of limiting the numbers of geese in the area.

Ms. St. John asked if the MPPA does this, what would they do if there were objections from animal rights groups. She wondered if the Town was willing to take the heat. Ms. Clough wondered if there were other towns that were doing or had done this. Mr. Deegan said this method of control is done in some parts of Vermont with other bird species. It is the best way to deal with it and this is the suggested method they are asked to use.

It was felt that the Conservation Commission could sign off on the application and it didn't need to go through the Board of Selectmen.

Colby-Sawyer Athletic Fields

Ms. St. John said that the college would be on the agenda for the April 23rd meeting. The field upgrades that are being requested will comprise 5,000 square feet of wetland impacts. It was noted that the wetlands in the area were not significant and were not of good quality after being disturbed over time due to the development of the initial fields. They haven't received their State permits yet but wanted to let the Town know, via the Conservation Commission, that they would be planning this. The next evening, April 18th, would be a meeting for abutters of the college to discuss the plans.

Beach Sand Request

Lastly, Ms. St. John said that a request came in for someone to bring in sand for his beach. He has requested the maximum amount, which is six yards.

Boat House Discussion

Mr. Anderson said he found that the dock to be built by taking out shoreline or disturbing the water was allowed by the State. At the last meeting, a presentation was made about a controversial way to build a boat house over the land. Mr. Deegan said it is going to be an issue because the Town ordinance and State's statutes disagree. Neither is more restrictive. Mr. Anderson thought the Town should take a stand and work with legal counsel to outlaw this practice in New London. Mr. Deegan said that not disturbing the land within 50' of the shoreline is more restrictive than what the State is allowing. He thought they could stand up for what they want, but that they should be prepared that the State is allowing this. Mr. Anderson wondered if the commission wanted to wait and see before offering a recommendation, or be proactive and make a stand now. Chair Brown said this is clearly not in compliance of the intent of the shoreland protective act. It was noted that if they don't issue a building permit, they could enter into litigation. Mr. Deegan said they shouldn't be afraid of litigation to stand up for what is right. Since no application had yet been sent in to build this boat house, it was felt that they did not need to take a stand at this point. Ms. St. John said that the zoning ordinance is confusing and can be interpreted in different ways. She thought it should be updated.

Carroll/P & S Garre

Chair Brown reviewed the issue with these property owners from the last meeting. He had relayed the information he had to the Garre's and said the Conservation Commission didn't feel there was a violation in the easement. He has yet to hear back from them.

Big Hilltop

This project is moving slowly but it is still in the works.

2014 Budget

Chair Brown said that at the last Budget meeting, the \$12,500 contribution to the Land Acquisition Fund was zeroed out and then brought up to \$1 for possible amending at Town Meeting. At the Budget hearing, a legal petition warrant article was provided for a \$25,000 contribution to the Land Acquisition Fund. The Budget Committee then changed the \$1 back down to \$0. Chair Brown said that this petition warrant article will come near the end of Town Meeting.

Chair Brown said that at the Budget Hearing, he and Ms. Alexander spoke in rebut of some of numbers given at the last regular Budget Meeting. They asked that the minutes be amended with the correct information. Ms. Alexander has volunteered to speak at Town Meeting to explain the need for the \$25,000.

Trails & projects

Mr. Allen said that Chair Brown had built two beautiful new picnic tables; one is on the Allen Trail and one on the Messer Pond Trail.

IT WAS MOVED (Dan Allen) AND SECONDED (Emma Crane) to make a vote of appreciation to Bob Brown for his effort in doing this. THE MOTION WAS APPROVED UNANIMOUSLY.

Chair Brown said the tables were a good winter project as there was a lot of engraving to be done. He had to thank Michael Todd for his help in getting the tables where they needed to go with the use of his snow-machine and trailer.

Mr. Allen asked that Mr. Anderson include the site where the picnic tables are on the Conservation Commission website so that people hiking the trail would know where they could enjoy the tables.

Trail Adopter Confirmation/Questionnaire

Chair Brown said he would like to meet with Mr. Deegan again about the questionnaire. Mr. Deegan agreed that this should be done.

Budget

Chair Brown said that he found they were unable to encumber funds to pay for the Ausbon Sargent easement monitoring donation without a signed document/receipt. This is \$2,500. The other item they may be unable to encumber funds for is their share of the appraisal for the Big Hilltop LLC property. He may be able to get this encumbered if he can get a quote from the appraiser.

Website

Mr. Anderson said he needed help with the new website. He would like people to confirm that the descriptions he has come up with are proper. He would like the new site to be up in May as the busy hiking season would be starting. Mr. Anderson suggested people look over the mission statement he has come up with to make sure it is accurate. He welcomed additions or corrections to the trail descriptions, projects and other areas within the site.

2013/14 Trail Maintenance Intern

Chair Brown said they had five applicants for the position. There were two from Colby-Sawyer College who seemed to be the most qualified. Ms. Alexander knows both students and had good things to say about them.

MCDOC Workdays

Chair Brown said he has confirmed four Fridays with the workers: 5/10, 8/09, 9/06, and 10/04. Work leaders are needed. He would help out on the first date, May 10th and would hope to work at the Phillips Preserve. Mr. Allen said he would help in May as well. Mr. Anderson said he would work the October 4th date.

Elkins Fish & Game Club

Chair Brown noted that the Elkins Fish & Game Club are willing to take down some trail signs, repaint them and put them back up again.

Other Business

Chair Brown said that the next meeting would be May 15, 2013. They would be presenting trail patches at this meeting. A notice would be run in the Intertown Record and the Valley News to draw attention to the program.

Ms. Crane said that she spoke with Scott Blewitt (Interim Recreation Director) who is very excited to promote the patch program.

**IT WAS MOVED (Emma Crane) AND SECONDED (Andy Deegan) to adjourn the meeting.
THE MOTION WAS APPROVED UNANIMOUSLY.**

The meeting adjourned at 11:43am.

Respectfully submitted,

Kristy Heath, Recording Secretary
Town of New London