

APPROVED

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**MINTUES OF THE NEW CASTLE CONSERVATION COMMISSION
Tuesday, February 6th, 2018 – 5:00 p.m. (Macomber Room)**

Members Present: Lynn McCarthy, Chair, Conni White, Vice-Chair, Rebecca Audet, Beth Barnhorst, Darcy Horgan, Bill Marshall, Ron Pascale, Brandon Tanguay.

Members Absent: Tracy Degnan, Rockingham County Conservation District, Jim Rini.

Others Present: Jim Cerny, Chair of Cemetery Trustees

1. Approve Minutes.

Ms. McCarthy called the meeting to order at 5:06 p.m. and asked attendees to sign in. Ms. Horgan made edits to the December minutes. Ms. Audet made a motion to approve the December minutes with Ms. Horgan's corrections. Mr. Tanguay seconded. The motion carried unanimously.

2. Work Session / Applications.

Mr. Cerny, Chair of the Cemetery Trustees of New Castle, was present to discuss the conveyance of 160 square feet of property owned by Mark E. Hughes to the Riverside Cemetery. Mr. Cerny stated that Laurie Clark's parents, the Pages, created a family cemetery on their property adjacent to the Riverside Cemetery. In 1969, the area of land encompassed by the family cemetery was given to the Town of New Castle in a deed outlining the gift. The land included the plots of five Page family members. Last year, when Ambit Engineering was surveying the property, Ms. Clark realized that a 160 square foot portion was not included in the gift to the Town. She would like to give this 160 square feet of land to the Town, thereby ensuring that all five members of the Page family are officially included in the land given to the Town. The Town would then give Ms. Clark a cemetery deed back, which would allow the land to officially become part of her family's plot.

This area currently consists of pachysandra over the grave stones, which are surrounded by a stone wall. The pachysandra and stone wall would remain, and a fence would likely be added to loop around the land comprised of the family cemetery. On December 11, 2017, Ms. Clark and Mr. Hughes signed a legal document upon closing of the property, which acknowledged Mr. Hughes' approval of the 160 square foot piece of land to be given as a gift to the Town of New Castle. Holly Fraumeni, who abuts the property, is an alternate on the Cemetery Committee and has not raised any issues with the proposed conveyance of land.

Keriann Roman, the attorney for the Town of New Castle, was consulted for legal advice regarding the gift of land. A title search was conducted, and Ms. Roman outlined the five-step procedure that must be followed for the Town to legally receive Ms. Clark's gift. RSA 40:14-A states that the gift must go before the Planning Board, followed by the Conservation Commission, and then be presented at two public hearings before the Select Board can make a final vote regarding the acceptance of the gift.

Ms. Barnhorst made a motion for the Town to accept the 160 square feet of land as a gift. Mr. Pascale seconded. The motion was approved unanimously. Ms. McCarthy will write a letter expressing the Commission's approval to the Select Board and give Mr. Cerny a copy so that the process can move forward.

3. Unfinished Business.

Tracy Degan of the Rockingham County Conservation District (RCCD) was not present to provide an update on the wetland education project being conducted with the RCCD. The Commission voted on the approval of the payment of invoice number 85891 in the amount of \$547.86 to the RCCD for their work regarding grant management. Ms. Barnhorst made a motion to approve the payment. Mr. Pascale seconded. The motion carried unanimously. The Commission also voted on the approval of the payment of invoice number 182 in the amount of \$266.00 to the New Hampshire Association of Conservation Commissions (NHACC). Ms. Barnhorst made a motion to approve the payment. Mr. Pascale seconded. The motion carried unanimously.

Ms. Horgan followed up on the status of the boathouse proposal at 180 Portsmouth Avenue. The proposal went in front of the Town Zoning Board of Adjustment (ZBA) for relief regarding putting an accessory dwelling unit (ADU) on the existing structure. Ms. Horgan stated that Todd Baker, Chair of the ZBA, asked members of the Board to weigh in on the proposal. The overwhelming consensus was that the ZBA would not approve the proposal as it currently existed, with Mr. Baker preferring to see the structure repaired with better siding. Before going for an official vote, Mr. Baker suggested that Bernie Pelech, attorney for property owners Stephen and Katie Eldred, revisit the design and come back to the ZBA with revised plans. Ms. Horgan also noted that it is the New Hampshire Department of Environmental Services (NH DES) who has complete jurisdiction over adding docks into the water, as this was a concern raised by Conservation Commission members. The Town only has jurisdiction over what occurs on land.

The Commission next reviewed ordinance changes ahead of the ballot for the upcoming Town meeting in May. Ms. Horgan provided an update from the January 24, 2018 Planning Board meeting, in which Lot Coverage definitions in Section 2.3.38 were addressed. The Planning Board recommendation regarding the lot coverage definition is to address impervious surfaces as well, as the current definition does not address driveways. The current Lot Coverage definition is:

“That percentage of the plot or land area covered by the principal and accessory building areas. This includes the area of in-the-ground pools as well as above-the-ground pools that are more than 18” high and are enclosed with a deck or platform.”

The new Lot Coverage definition approved by the Planning Board reads:

“That percentage of the plot or land area covered by impervious surfaces including but not limited to paved, bricked, or gravel areas, buildings or other structures, decks, patios, driveways, walkways, sheds, tennis courts, swimming pools and hot tubs.”

One of the key changes in the Lot Coverage definition is that pervious surfaces would not count in the lot coverage of a property, with the goal being to limit the increase in impervious surfaces in New Castle.

Also approved by the Planning Board at the January 24 meeting was Section 2.3.35, which defines Impervious Surface as:

“A modified surface that cannot effectively absorb or infiltrate water, including but not limited to, decks, patios, driveways, parking areas, walkways, tennis courts, swimming pools and hot tubs, unless such structures have been designed to effectively allow for water to infiltrate or be absorbed. Roofs are always considered impervious surfaces regardless of infiltration systems.”

According to Ms. Horgan, Mr. Baker felt that the new lot coverage definition would result in a significant increase in cases heard in front of the ZBA. A public hearing will still be held in May, and the ordinance changes will be moving forward.

4. New Business.

The Commission next discussed Marion Clough’s application for a seasonal dock (Tax Map/Lot #9 / 23). In a letter dated January 16, 2018, the NH DES Wetlands Bureau approved Ms. Clough’s application (File #2017-00487) to “permanently impact 280 square feet (sq. ft.) of estuarine and marine wetlands for the construction of a seasonal docking structure to include a 4 ft. x 10 ft. access ramp, a 4 ft. x 30 ft. pier with ThruFlow decking, a 3 ft. x 15 ft. aluminum ramp leading to an 8 ft. x 10 ft. float, overall structure length 60 ft., providing one slip on approximately 140 ft. of frontage along the Piscataqua River Back Channel.”

The letter outlined 12 Conditions and 26 Findings of the DES decision. The Commission highlighted concerns over several of these findings. Ms. Audet questioned Finding #19 that stated that “the pier location will not shade nor adversely impact the nearby area of salt marsh vegetation”. Other Commission members agreed that this statement is likely not true, and expressed great concerns over the impact the dock will have on the delicate surrounding environment. Ms. White also pointed out that Finding #22 stated that the applicant would have a one boat slip, yet there were two jet skis at Ms. Clough’s dock. The Commission agreed with her concern over what the DES is classifying as a boat, and whether their finding does indeed allow for two jet skis to be at one slip.

The Commission collectively agreed that a letter should be written to the N.H. Wetlands Council outlining concerns over their approval of the dock. The letter states that appeals must be filed

directly with the Council within 30 days of the decision date. Ms. McCarthy would like to look further into RSA 482-A:1, which outlines requirements that must be met in order to file an appeal.

Ms. Barnhorst questioned whether the Town could have an ordinance that bans motorized vehicles on Lavenger's Creek. This type of watercraft would likely stir up the saltation in the tidal areas, in addition to polluting the water from the two stroke engines. She cited an article from the University of Vermont that outlines the dangers that jet skis pose to the environment. Ms. Audet also found an article in the Seacoast Online newspaper that described a ban adopted by the NH State Department of Safety in 2007 that prohibits jet skis from operating in salt marshes in the Hampton Falls area. The Seabrook Conservation Commission also banned craft from coming within 300 feet of the salt marsh creek flowing through the Seabrook Estuary area.

Ms. Barnhorst voiced concern over the accumulative effect of docks on the creek. While Commission members felt strongly about not allowing jet skis in the tidal creek, it would likely be difficult to determine the border of where the creek physically starts. Ms. Horgan felt that a lawyer may be able to advise the Commission on the location of the border where jet skis would not be allowed. Mr. Pascale asked about the possibility of repopulating the vegetation that Ms. Clough had cut down. Ms. White commented that plantings have been disturbed in this area that is already lacking a buffer. Ms. Barnhorst proposed having buffer plantings be part of the conditions of Ms. Clough having a dock.

The Commission expressed interest in using the articles mentioned above to support a letter in response to the DES ruling. The letter would focus on the use of jet skis and Personal Water Craft (PWC) in Lavenger's Creek. Mr. Pascale felt that no combustible engine should be allowed in the creek, and other members overwhelmingly agreed. Ms. McCarthy mentioned that Ms. Degan would be a good contact person to help write the response letter, and Ms. White said that she would also help. Ms. Audet and Ms. Barnhorst would contribute the factual resources they found. Ms. Horgan would like one of the Conservation Commission's Facebook pictures of Lavenger's Creek to be included in the response to the DES. Ms. Barnhorst proposed having a picture of the creek be taken at low tide, so that the border of where the creek begins would be more clearly visible.

Ms. McCarthy would also like to draft a letter to new homeowners regarding the protection of Lavenger's Creek. Ms. White added that she would reach out to Kate Murray, Wendy Poulin, Don and Karen Welsh, Jill Jarvis, and the Rowlands, who are all property owners along the creek. She will speak with them about writing letters to the NH DES about their desire to keep the quiet, natural state of Lavenger's Creek, and to limit the pollution to this delicate area.

5. Announcements.

Ms. White commented that Jane Ballard, the part time intern from NOAA, is working on revisiting the prime wetland designation and the 100 foot setback, which was also done two years ago. This entails Ms. Ballard conducting research and composing a slide show as a form of education outreach. Ms. White noted that she and Ms. Horgan will go to property owners along Lavenger's Creek with the focus being to educate about the importance of wetlands. Ms. White

pointed out that the focus would be more on the recreational side of the wetland's value as opposed to the scientific values, as this may be an effective way to communicate the importance of wetlands. Mr. Pascale suggested the Commission should also highlight the sensitivity of the wetlands, specifically the impact of fertilizers on local food chains. Ms. McCarthy stated that there will be a fertilizer notice posted in the New Castle Islander around the end of February. Ms. White added that Ms. Ballard could work on this.

The Commission continued discussion regarding possible educational outreach strategies. Ms. McCarthy suggested using the A-frame board in front of the Town Library to advertise meetings focused on local wetlands, as well as using the notice board in front of Maude H. Trefethen School. She also proposed including information about wetland buffers in the New Castle Islander. Ms. Barnhorst added that the Commission could meet with the new Great Bay Waterkeeper of the Conservation Law Foundation (CLF).

6. Adjourn.

Ms. Barnhorst moved to adjourn the meeting. Mr. Pascale seconded. The motion carried, unanimously, and the meeting adjourned at 6:36 p.m.

Respectfully Submitted,

Meghan Rumph