

**Franklin Conservation Commission
Regular Meeting Agenda
May 14, 2019
City Hall Basement – 7:30 pm**

Call to Order

- Approval of the April 9, 2019 meeting minutes

Old Business

- Great Gains Forest – proposed mountain bike trails
- Replacement tree at police station

New Business

Other Business

Adjournment

FRANKLIN CONSERVATION COMMISSION

Meeting Minutes

April 9, 2019

Present: Nita Tomaszewski, Bob Morin, Glenn Morrill, Mike Mullavey, Roy Gilbreth (by telephone)

Next meeting: May 14, 2019 - 7:30 pm, City Hall Basement

Meeting called to order by Nita at 7:32 PM

Minutes of the March 12, 2019 meeting were distributed for review. Roy moved and Glenn seconded the motion to approve the meeting minutes. The motion passed.

I Old Business

BioBlitz Assistance for NH Towns Update – Bob reported he completed the online pre-application and that once reviewed the BioBlitz, the Commission will be informed of the outcome of the pre-application. Nita suggested Colby Sawyer might be a suitable partner in the program if Franklin is selected.

The Commission was informed that the Funding Request for FY 2020, in the amount of \$515, was submitted to the City Manager on March 18th.

NH Stone Wall Mapper Project – Bob provided sample printouts from the mapper project website to demonstrate the use of LIDAR technology in locating and mapping stone walls.

II New Business

Wetlands Permit Application, Map 73-8, 90 Pine Colony Rd - The Commission reviewed the permit application submitted by Stuart Tracy. Bob moved and Roy seconded the motion that the Commission certify that it has no objection to permitting the proposed work. Motion passed.

The Commission reviewed the NH DES Notice of Acceptance of Permit Application, Map 75, Lot 27 & 23, 186 Webster Ave.

Nita briefed the Commission on the pending changes to the NHDES permitting process, stressing that the proposed changes are meant to streamline the process and that efforts are being made to ensure that local advisory councils and conservation commissions are afforded the opportunity to intervene in the eventual process.

The Commission reviewed information from the Student Conservation Association (SCA NH) and UMLAC. No actions were required.

III Other Business

Glenn briefed the Commission on past efforts by the New England Mountain Bike Association to install bike trails in the Great Gains Forest.

Glenn spoke of the cutting down of the maple tree that was located in front of the police station and suggested the Commission might sponsor a replacement. Mike offered an elm tree might be a suitable replacement and offered to investigate this option.

Adjournment

The meeting adjourned at 8:32pm.

What is the Role of Municipal Conservation Commissions in Wetlands Permitting?

By Natch Greyes

Municipal conservation commissions are best known for their role as local conservation volunteers working to study and protect local natural resources, but they also play a critical role in the permitting of filling and dredging in wetlands. In addition, newly effective provisions of RSA 482-A:11 have altered the role that conservation commissions play during the New Hampshire Department of Environmental Services (NHDES) permitting of filling and dredging in “prime wetlands.”

Editor's Note: At the time of publication, NHDES was finishing the rulemaking process in light of the legislative changes and final rules are expected June 2019.

Q. What areas require a permit from NHDES to fill or dredge?

A: RSA 482-A:2 defines a “wetland” as “an area that is inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions.”

RSA 482-A:3 states that “[n]o person shall excavate, remove, fill, dredge, or construct any structures in or on any bank, flat, marsh, or swamp in and adjacent to any waters of the state without a permit from [NHDES].”

Q. What is a conservation commissioner's role with regard to this permitting process?

A: Conservation commissions have two roles. First, they are the only municipal body with the authority to “intervene” in the permitting process and investigate an application for a dredge and fill permit filed with NHDES's Wetlands Bureau under RSA Chapter 482-A. Second, prior to the beginning of any particular permitting process, a conservation commission may designate, map, and document “prime

wetlands” lying entirely or partially within the boundaries of its town or city under RSA 482-A:15.

Q. What steps must municipalities take when a landowner wants to fill or dredge a wetland?

A: Landowners who want to fill or dredge wetlands must first apply for a Wetlands Permit by taking their applications to their local town or city clerk prior to mailing the permit to NHDES. The clerk will sign the original application form and four copies. The original form will be provided by the applicant to NHDES, but the other four copies will remain with the clerk. The clerk will provide a copy to each of the following: Municipal Conservation Commission, Board of Selectmen or Town/City Council, and the Planning Board. The last signed copy will be retained along with a complete set of any attachments and will be made reasonably accessible to the public.

When filling out the permit, the landowner will have to determine if the proposed work qualifies under the “minimum impact” standard pursuant to the rules promulgated by NHDES, as well as whether an “expedited review” is desired. The minimum impact classification is intended to cover those projects that, provided they are done properly, ought to be permitted with minimal oversight.

Q. What does the municipal conservation commission do with the notice of application?

A: If the municipal conservation commission elects to, it may provide written notice to NHDES that it intends to investigate the application. Under current rules, that notice must be received by NHDES within 14 days. That notice to NHDES will delay NHDES's decision until it receives and acknowledges receipt of a written report by the conservation commission or until 40 days has passed, whichever is sooner. If the commission needs more time, it may ask for

an extension of up to 40 days for good cause.

In connection with any local investigation, a conservation commission may hold a public informational meeting or a public hearing, the record of which shall be made a part of NHDES's record. Further, if NHDES does not agree with the conservation commission's recommendation, NHDES must make written findings with regard to each issue raised by the commission's report which is contrary to the decision of the department.

For any applications which seek to fill or excavate a previously designated "prime wetland," NHDES is required to notify the appropriate conservation commission. If, after the commission is given the opportunity to issue a report, NHDES decides to issue a permit, it must find by clear and convincing evidence on the basis of all information considered by the department and after a public hearing that the proposed project, either alone or in conjunction with other human activity, will not result in the significant net loss of the public good and welfare as described in RSA 482-A:1. That standard is more stringent than the standard used for other kinds of wetlands.

Q. What are "prime wetlands" and why are they special?

A: RSA 482-A:15, I-a defines "prime wetlands" as areas that, because of their size, unspoiled character, fragile condition, or other relevant factors, make them of substantial significance and are (1) contiguous areas and inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that, under normal conditions, support a prevalence of vegetation typically adapted for life in saturated soil conditions; or (2) all lands submerged by mean high tide in addition to areas within 100 feet of the highest observable tide line where the tide ebbs and

flows and all sand dunes; or (3) all ponds or lakes of 10 acres or more and all surface waters of the state which contain fresh water, including the portion of any bank or shore which borders such waters and any swamp or bog subject to periodical flooding, wherever fresh water flows or stands. This definition has been specifically carved out compared to other wetlands, which encompass, essentially other areas which are inundated that are not unspoiled, fragile, or large.

Q. How are "prime wetlands" designated?

A: The designation of "prime wetlands" is where conservation commissions play a vital role in determining the protection status for certain wetlands. RSA 482-A:15 allows a conservation commission and only a conservation commission to designate, map, and document "prime wetlands" lying entirely or partially within the boundaries of its town or city. If the commission designates "prime wetlands," it shall hold a public hearing on the decision to make that designation and give written notice to the owner of the affected land and all abutters 30 days prior to that hearing. In concert with that process, the commission should map the wetland boundaries as it must inform landowners having proposed prime wetlands on their property of the boundary delineation. After a commission has mapped and designated prime wetlands it may, after approval by the local legislative body, file those maps and designations with NHDES, which shall accept and maintain them and provide public access to such maps during regular business hours.

Q. If a commission elects to investigate a dredge and fill application, what is required in that commission's report to NHDES?

A: The commission's report does not need to be elaborate, but it should

cover some basics. NHDES will want to know if the application plan and photographs appear accurate, if the wetland type is correctly identified and its relation to other wetlands, if there are alternatives to the project with reduced wetland impact and how abutters will be impacted, was any relevant additional information obtained during a site inspection, and whether there is any other specific information that should be known. Lastly, the commission should make a recommendation to NHDES. That recommendation should detail why the project should be approved or denied, or, if appropriate, what specific conditions should be imposed as a condition of approval. Any concerns should also be reiterated in the recommendation section.

Q. Where can commissions and their municipalities go for more information?

A: Barbara Richter at the New Hampshire Association of Conservation Commissions (NHACC) provided invaluable assistance for this article. The NHACC's website is available at www.nhacc.org and is a great resource for conservation commission-related matters. The NHACC is keeping abreast of NHDES's rule-making process and will be publishing updates as those rules are finalized and adopted.

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