



Londonderry Conservation Commission  
Tuesday, November 13, 2018  
Minutes

1 **Present:** Marge Badois, Chair; Gene Harrington, Vice Chair; Bob Maxwell, member; Mike Byerly,  
2 member; Mike Noone, member; Roger Fillio, member; Richard Floyd, alternate member and Mike Speltz  
3 and Deb Lievens, member (arrived at 7:54 p.m.)  
4

5 **Absent:** Julie Christenson-Collins, alternate member and Ted Combes, Town Council member  
6

7 **Also present:** Amy Kizak, GIS Manager/Comprehensive Planner and Beth Morrison, Recording Secretary  
8

9 Marge Badois called the meeting to order at 7:30 pm.

10 **Woodmont Commons – Dylan Erickson - Conditional Use Permit Application - Wetlands Dredge & Fill**  
11 **Application** - M Badois informed the Commission that this had been rescheduled until the next  
12 Conservation meeting.

13 **Old Business**

14 **Cross Farm:** Jack Kalantzakos, from Cross Farm and Elizabeth Hartigan, Esq. from Gottesman & Hollis,  
15 P.A., Nashua, NH introduced themselves to the Commission. E Hartigan said she was here to go over the  
16 final draft of the Declaration and Covenants for the Conservation restriction for Cross Farm so it can be  
17 sent to New Hampshire Department of Environmental Services (NHDES) for finalization. She stated she  
18 had received questions from M Speltz to which she had answers and started to review them with the  
19 Commission. She said the word Conservation can be added to the title of the declaration as long as the  
20 state does not have a problem with it. She noted that when looked up in the registry of deeds, it is going  
21 to say declaration. M Speltz said that in Section 2.c of the declaration there a definition of the word  
22 buffer, which he thought was a good definition, but it is not used ever again in the document and asked  
23 why the definition was there in the first place. E Hartigan answered that she actually had asked this  
24 same question and the state said it is a state form and they want to see that language used. M Speltz  
25 said he wanted to use that definition, as he thought it was the state's attempt to say that any  
26 intermittent stream, year round stream or wetland would have a buffer around it. E Hartigan pointed  
27 out that the only reason this particular document exists is if some reason the Londonderry ordinances  
28 change or disappear, the state will have these specific areas protected, but right now the Londonderry  
29 ordinances apply to these areas. M Speltz stated this was not exactly true because the Londonderry  
30 ordinance only applies to wetlands larger than 0.5 acres, and this definition applies to all wetlands;  
31 therefore, a wetland less than 0.5 acres would be governed by the state. E Hartigan replied that in these  
32 cases the state does not think there needs to be buffer and that is why it is not mentioned. M Speltz said  
33 that is not clear from the definition in the document as it says all buffers, which would be applied to all  
34 wetlands and intermittent streams. E Hartigan stated that there are not any wetlands or buffers that  
35 this applies to and is just carry over language from the state. She said that she could bring it up to the  
36 state and ask to have the definition taken out, but she has heard that is not a likely response from the



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37 state. G Harrington echoed M Speltz's suggestion as the Londonderry town ordinances may change. M  
38 Speltz noted that right now the buffer is defined by the plan, which is 50 feet beyond the edge of wet,  
39 but the definition is defined by what is actually on the ground, and there could be potential for conflict  
40 between the definition and the plan. E Hartigan stated that she was not actually clear on what the  
41 Commission was trying to say, as she thought there was not a buffer issue that had been recognized and  
42 did not want to start raising an issue that she was not clear about. M Speltz said that in his opinion it  
43 should not just be there because the state is using a template, as there is a reason to have a 50 foot  
44 buffer from a conservation point of view, which may or may not go above what is on the plan. J  
45 Kalantzakos stated that Benchmark has defined the proposed 4 wetlands to be restricted with metes,  
46 bounds and buffers that are associated with them, and asked what else the Commission was looking for,  
47 as it is all protected. M Speltz clarified that he would add another restriction that states that all wetlands  
48 and intermittent streams on the property shall have a buffer as defined by section 2.c. J Kalantzakos  
49 asked if that was already covered in the site plan. E Hartigan noted that the developer has complied  
50 with all buffer requirements with the town and the state, and now the state wants these additional  
51 restrictions for the specific areas, not all buffers on the plan. M Byerly asked M Speltz if he was  
52 concerned specifically about wetlands less than 0.5 acres on the site. M Speltz stated that there may be  
53 additional wetlands on the plan that are not part of the four restricted areas. J Kalantzakos said that it  
54 was a lot of work to define wetland #1 and asked if it is fair to have to go back and define every wetland  
55 on the site with metes and bounds. M Speltz said he was not suggesting that, rather just to have the  
56 provision in the declaration. E Hartigan stated that these four wetlands are the wetlands the state has  
57 specifically asked to protect in case Londonderry would ever change their ordinances. She said all the  
58 other wetlands are covered by the town ordinances. M Speltz said that he is trying to make sure the  
59 other areas outside of the four defined wetlands by the state will continue to be protected no matter  
60 what the town does. M Byerly said that if something is defined in terms of a legal agreement, but never  
61 used, than it has no legal meaning. M Speltz again stated that he believes the buffer should apply to all  
62 wetlands or intermittent streams on the property. E Hartigan stated that she did not have an answer to  
63 this question and had a hard time trying to apply this definition to things that both the town and the  
64 state did not require approval of. She said it was unfortunate about the timing, as this is the end of the  
65 process, and wished she had known about this earlier. M Byerly said he thought this was late in the  
66 game to expand the restriction and place this on every wetland on the property. J Kalantzakos expressed  
67 his frustration that they have worked tirelessly with both the town and the state to define the 51 acres  
68 of conservation restriction area and now he does not know what the impacts might be of what the  
69 Commission is asking, as he is not an engineer. M Speltz said that he felt there should be language in the  
70 declaration stating that within the buffer they must comply with the Londonderry ordinance as of this  
71 date, which would meet his concern and not cause any extra work for the developer. M Byerly asked if  
72 this was just defining the four conservation areas. M Speltz stated no, it would apply to the project as a  
73 whole. J Kalantzakos stated that if it is as simple as locking in the buffers that have been agreed upon, he



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74 does not see the problem, but would like an engineer to review this. M Speltz offered another solution,  
75 which would be to have NHDES take the definition out of the declaration. E Hartigan said she would talk  
76 to the state and see if the definition can be taken out, and if the definition cannot be taken out, ask to  
77 add the language regarding complying with Londonderry zoning ordinance as of this date. She stated  
78 that there was a question regarding the labelling on the plan, specifically the word easement. M Speltz  
79 said it is not a conservation easement but rather a conservation restriction and asked if it could be called  
80 a conservation restriction. E Hartigan said she wished it was that easy, as any change to the plan will  
81 take months and a lot of money. She stated that the reason it took them so long to get back to the  
82 Commission was regarding the two changes to the plan last time and noted that this document is what  
83 is holding up the Alteration of Terrain (AOT) permit. G Harrington noted that an easement implies  
84 ownership and there is no owner in this case, so it is a restriction that does not require a third party. E  
85 Hartigan stated that anyone can label a plan any way they like and the document attached to the plan  
86 will clarify the plan. M Speltz asked what the title of the plan is. E Hartigan said the title is Easement Plan  
87 Cross Farm Phase Two. D Lievens asked what the town's legal department thought of this. M Speltz  
88 stated he copied the assistant town attorney on his email with the questions, but has not heard back  
89 from him. J Kalantzakos said that he thought it would be possible to correct the language to make it  
90 clear about being a restriction. E Hartigan asked if Conservation Restriction A and Conservation  
91 Restriction B sounded like appropriate language. The Commissioners agreed. E Hartigan read from the  
92 document about third party holder and said the state requires this language but has no interest in the  
93 property. M Speltz stated that if there is a third party, then there has to be a first and second party. He  
94 said that the first party would be the declarant, but asked who the second party would be. E Hartigan  
95 stated it was a state term they use being the third party and said the first would be the declarant, the  
96 second would be the unit owners, noting the town and state have the right to enforce these restrictions.  
97 M Speltz said that he felt this compounds the ambiguity of this not being an easement, but rather a  
98 restriction, with the third party language. E Hartigan stated the state is a third party with an interest in  
99 the right of enforcement. M Speltz was unsure about this and said he was going to email Lori Sommers,  
100 NHDES, to try and change this language and would copy E Hartigan on the email. E Hartigan concluded  
101 by stating that they do not want to have to come back in two months to the Commission, as they would  
102 like the Commission to write a letter to NHDES giving the okay regarding the declaration, but realizes  
103 there are four outstanding issues. She asked if the Commission would conditionally approve the  
104 declaration if she could resolve the four outstanding issues which are:

- 105 1. Putting Conservation in the title line.
- 106 2. Either delete the buffer definition or add the language of subject to the Town ordinance as of this  
107 date.
- 108 3. Change the plan to Conservation Restriction, not easement.



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109 4. Remove third party language.

110 G Harrington made a motion to authorize the Chair to communicate the Commission's approval to  
111 NHDES subject to being satisfied with the four changes as noted above. R Fillio seconded the motion.  
112 The motion passed, 7-0-0.

113 **Wetland permit Exit 4A:** G Harrington informed the Commission that he read through it and cross  
114 referenced with other documents and it appears they are fairly close to minimizing impacts within  
115 Londonderry. He stated he does not have an objection to it. M Speltz asked if it addressed mitigation in  
116 the permit. G Harrington stated the only mitigation would be to put it in the Aquatic Resource  
117 Mitigation (ARM) Fund. M Speltz said that the Commission does not have any projects right now. D  
118 Lievens informed the Commission that she was at the Wetlands Council and heard from Lori Sommers,  
119 NHDES that they are going to allow an extra month on the call for proposals for the next round of ARM  
120 grants to allow towns to really come up with projects as there is 8 million dollars to grant. G Harrington  
121 made a motion that the Commission does not see any attempt at mitigation in the Wetland Permit Exit  
122 4A. R Fillio seconded the motion. The motion passed, 7-0-0.

123 **Water Resource Plan:** A Kizak informed the Commission that two proposals were submitted with a vast  
124 difference in price. She stated that they are going to be in contact with both companies to clarify some  
125 questions. M Byerly asked if they both fell within the price the Commission asked for. A Kizak stated that  
126 one was slightly over. M Speltz clarified that the Commission decided to vote on money when the  
127 contracts are in front of the Commission. M Speltz also informed A Kizak that a construction company  
128 from Bangor, ME contacts him weekly asking about the project.

129 **Mathes trail:** M Badois stated that she emailed Fish & Game about signs and has not gotten a response.  
130 She informed the Commission that she received an email from someone asking if he should ignore all  
131 the new trail signs that were put up. She said she emailed him back and told him to respect the signs  
132 and made him aware of the transfer of ownership of the land. She noted that she spoke to Charlie  
133 Goodspeed and he told her that the bikers were just going to keep riding on the trails anyways and told  
134 her he worked out a deal at Bear Brook State Park.

135 **Kendall Pond improvements:** M Badois informed the Commission that the sign is 18x24 now for Kendall  
136 Pond. M Noone said that Steve Cotton, Administrative Support, has the requirements to put the  
137 observation platform out to bid. He stated that the picnic tables and benches can be built by the prison  
138 and they would be built in the spring. He said that he took a look at the kiosk and feels like structurally it  
139 is in good shape, just needs some new cosmetic work.

140 **Ranger position:** M Badois informed the Commission that Kevin Smith, Town Manager, stated the  
141 ranger will be under the Police Department's authority and he has asked Chief Hart to come up with a



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142 job description while incorporating the Commission's job description as well. She stated the ranger  
143 would be a sworn officer of the police department and supervised by the police as well. D Lievens asked  
144 if the Commission would lose some of the functions of the ranger now that it will be handled through  
145 the police department. M Badois stated she was not sure and was questioning if the Conservation Fund  
146 could even be used now. She noted that it was put at \$75,000 in the budget. M Speltz when the  
147 Commission could expect to receive the job description. M Badois was not sure. M Speltz also asked if  
148 the Commission would be funding the salary or the salary and equipment. M Badois stated she has  
149 emailed the town attorney regarding if the Conservation Fund money can be used and she has not  
150 heard back. M Byerly informed the Commission that he spoke to Sandy Legeaux and she is in support of  
151 the ranger position and would write a letter of support. M Speltz noted that the position would have to  
152 be a warrant article if the town attorney says it is okay to do.

153 **Maps:** M Noone made a motion for no more than \$550 for 1000 trail maps from the line item budget. B  
154 Maxwell seconded the motion. The motion passed, 7-0-0.

155 **New Business**

156 **Commission application:** M Badois informed the Commission that they have received one application  
157 and that the application deadline is November 21, 2018. She asked to do the interview at the next  
158 meeting, as the deadline will be over. She also asked R Fillio if he was going to reapply as the deadline  
159 has past. R Fillio stated he was thinking it over and would let her know. M Badois also pointed out that if  
160 there is a full time member who would like to be an alternate or vice versa that could also be arranged  
161 now. D Lievens asked about the length of years for full time members versus alternates. G Harrington  
162 stated that the statute is 3 years for full time and 1 year for alternates, but the town has been  
163 appointing alternates for 3 years. M Speltz suggested that M Badois also ask the town attorney if this  
164 practice is okay. M Byerly stated that he is now a full time member, but would could go to an alternate  
165 position and wanted to offer that to the Commission.

166 **Encroachments:** M Noone noted that the Gilcreast Road encroachment is still open and they were  
167 asked to move the shed by Friday. He noted that with the Cooper parcel some encroachments are  
168 resolved and some are not. M Speltz said that the Commission should post signs off Litchfield Road. M  
169 Noone stated that the signs are already posted. He said that the Mack and Plummer properties need to  
170 be monitored. He said that he would be going out to Macks the Friday after Thanksgiving at 10 a.m. B.  
171 Maxwell reported he recently walked the perimeter of Mack's South Orchard and saw no signs of  
172 encroachment. M. Noone said he would record that area as complete. D Lievens said that she was going  
173 to try and get to Ingersol tomorrow at 9 a.m. for monitoring.



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174 **Brownfields assessment:** M Speltz stated informed the Commission that the application had been  
175 submitted and received, but have not heard back yet.

176 **Minutes:** The Commissioners went over the public minutes from October 23, 2018. G Harrington made a  
177 motion to accept the minutes as amended. D Lievens seconded the motion. The motion passed, 6-0-1  
178 with M Speltz abstaining.

179 **DRC**

180 **Hardy Road Condo Conversion (Map 12 Lot 143-1):** The Commissioners reviewed the DRC for the Hardy  
181 Road condo conversion with no comments.

182 **Page Road Site Prep (Map 17 Lot 45):** The Commissioners reviewed the DRC for Page Road site prep  
183 commenting that approval would be premature until the Commission sees the details of mitigation.

184 **Adjournment:** M Byerly made a motion to adjourn the meeting at 9:30 p.m. G Harrington seconded the  
185 motion. The motion passed, 7-0-0.

186 Respectfully Submitted,  
187 Beth Morrison  
188 Recording Secretary