

TILTON CONSERVATION COMMISSION
December 20, 2021
MINUTES

Members present: Chuck Mitchell, Chair; Bob Hardy; Jim Cropsey; Paul Rushlow; Jon Scanlon;
Ben Wadleigh; and Kathi Mitchell

Guest: Ken Norton

Meeting was called to order by the Chair at 7:00 p.m.

- 1. Winnepesaukee River Project** – Ken was contacted, as an abutter, by Samantha Fifield from NH DOT, District 3. They discussed the proposed NH DOT Rehab Project M313-1. Ken discussed his concerns including river flow, historical aspects, impact on river downstream, property rights-of-way, safety issues, depth of the river impacting velocity and volume of water, and possible impacts to the railroad piers. It was agreed that it will be imperative for the Tilton Island to be protected. Members were cautiously optimistic that moving the utility poles would provide a better view of the river, but had serious concerns over the feasibility of doing so. It was suggested that the chair contact NH DOT to set up an informal meeting to get an update on where things stand and to share concerns and ideas. The secretary was tasked with locating properties owned by the State in the town of Tilton.
- 2. Minutes** – The November minutes were reviewed. Jim made a **motion** to approve the minutes and Bob seconded the motion. All were in favor.
- 3. Old Business:**
 - a) Joint meeting with PB and ZBA on November 16** - Members who attended reported on the format and the discussion. There was a question about when the ideas generated at this meeting will be distributed to the various groups.
- 4. New Business:**
 - a) Annual Report 2021 for Town of Tilton** – A rough draft was presented. It was suggested that information about other activities and responsibilities of the TCC be added. The secretary will make those additions and email the final draft to the commissioners before sending to Town Hall.
 - b) Discussion about an Expedited Permit application received from Daniel Chisholm 589 Laconia Road** - After discussion, a **motion** was made by Jon and seconded by Ben to not sign the application. The motion was approved unanimously. The Town Clerk will be notified and asked to contact Mr. Chisholm.
 - c) Policy for NH DES Expedited Permits** – The TCC reviews expedited permits at its regularly scheduled meetings provided the documents are received a week in advance. A site walk may be required, and multiple copies of the application shall be available prior to the meeting. A quorum of the TCC is required to consider the permit application and to determine whether or not to sign it. This policy will be reviewed again next month.
 - d) NH Fish & Game Habitat Improvements Small Grants Program** – Members will consider whether this program could be of assistance to the community.

5. Correspondence:

- a) NH DES File #2021-03621** Shoreland Permit Application for YTKE Trust 785 Laconia Road

- b) **NH DES File# 2021-03568** Shoreland Permit Application for Appaloosa Circle Realty Trust 46 Hill Road Shoreland Permit Application
- c) **NH DES File # 2021-03539** - Expedited Permit application for Pat and Sukie Clark 55 Calef Hill Road
- d) **NH DES File #2021-03314** - More Information Requested for Brad/Vicki Ewens Silver Lake Road
- e) **NH DES File #2021-02122** – Outstanding Item(s) Request for Enforcement for Fouad & Susan Youssef 528 Laconia Road
- f) **Email from Tilton Land Use Office re: Douglas and Jaime Potter** – They seek an Equitable Waiver for 100 Colby Road – The property owner constructed part of his foundation less than twenty-feet from the wetlands. His home is 70% completed and he does not have the money to relocate the foundation. The TCC was notified in May 2021 that the owner wanted a variance to place his septic system within 75’ of the wetlands instead of the required 125’. In June, the TCC contacted the Land Use Office after a local resident reported that a backhoe was digging in a wet area. At that time, the Land Use Office stated that they were aware of the work being done and that it had been approved by both the Planning Board and the ZBA. After discussion, the TCC response is below:

While the situation at 100 Colby Road is most unfortunate, approving the equitable waiver only covers up a problem that should never have happened in the first place due to a “failure to inquire” 674:33-a-1b.

The property owner noted in his April request to the ZBA for a variance for a setback for the septic system that there were “a large amount of wetlands” on the site and that they had increased over the years. Yet, he never contacted the Conservation Commission to discuss wetlands issues prior to construction. The wetlands were mapped in late April, but, again, the owner chose not to meet with the conservation commission.

In addition:

1. The property owner writes that the encroachment on the wetlands buffer was “a good faith error in calculation” but is it not the responsibility of the town to review all building plans prior to granting approval? Did the Planning Board not note that the home was being constructed too close to the buffer? Was the April 27 wetlands delineation used in decision-making? Did the survey not show the exact location of the buffer? Was there a failure to inquire?
2. Who was monitoring the building process who might have intervened prior to the foundation and house being constructed? Was there a failure to inquire?
3. The property owner states in the equitable waiver application that a land surveyor and wetlands scientist have been retained now, after the problem has been discovered. It doesn’t make sense for the ZBA to approve this waiver when they have no idea what the surveyor and wetlands scientist may report. No one should approve a project unless there is current and exact information available. Would the Planning Board need to review any changes? What is the likelihood that the new plan will be followed correctly and that there will be no more good faith errors? In addition, zoning regulation 3.6 Wetland Delineation states that no wetland surveys conducted between December 1 and March 31 will be accepted. (document attached)
4. One TCC member who is familiar with Colby Road noted that the driveway is located on a state road and recalls that there once was a driveway in this area that was closed due to site distance issues. Is there an approved driveway permit from the state for this house?

5. The property owner's April 29, 2021 application for a septic tank setback repeatedly mentions wetlands, a narrow lot, and a concern that the lot could be unbuildable without a variance. The Avitar Assessing tax card also notes that the lot is "wet". This information should have been a red flag for both the owner and the town to check the plans carefully before granting any approvals. Failure to inquire?

6. On June 17, the TCC reported a citizen concern about wet soils on the property. The response from the town was that "we are aware of the work being done at Colby Road. This is the result of the application and approvals they received from ZBA and Planning." By approving this equitable waiver, the town suggests that regulations and oversight can be overlooked or ignored without any consequences.

7. If an equitable waiver is granted, it is hoped that there will be no future waivers, variances, exceptions, additional building permits, or intrusions and/or disturbances within the wetlands and the buffer for this property. It is also hoped that the town of Tilton will make serious and substantive changes to the way that it handles approvals for site plans and properties involving wetlands.

g) WWN notice was received stating that the town of Tilton had supported their milfoil removal program.

6. Other:

a) The Town plans to install adjustable LED street lights

Jim made the **motion** to adjourn which was seconded by Paul. All were in favor.

The meeting was adjourned at 8:47 pm.

Respectfully submitted,

Kathi Mitchell, secretary