

DEERFIELD CONSERVATION COMMISSION
1967 – FIFTY-FIVE YEARS AND COUNTING – 2022
Meeting Minutes – February 13, 2023

Attendance: Haley Andreozzi, Josh Freed, Serita Frey, Wes Golomb, Erroll Rhodes
Members Absent: Chloe Gross
Visitors & Guests: Steve Nogueira, Resident

Serita Frey convened the meeting at 7:12 pm

DCC Proposed 2023 Warrant Articles:

The meeting opened with members addressing the two petitioned warrant articles placed on the ballot at the February 4th deliberative session. Article 21 requests an increase from 50% to 100% of the LUCT collected by the Town to be placed in the Conservation Fund. Article 23 would authorize the conservation commission to expend conservation funds toward purchasing or facilitating a purchase (through a ‘qualified organization’) without the need for the Town to become the backup, i.e., the *secondary interest holder*, as part of the transaction.

Since there was no line on the petition to indicate who the petitioner was, and uncertainty if the commission could be the sponsor, it was thought that Serita Frey had assumed that role. Since the members did not vote to place the warrant on the ballot at its January meeting, and since there was member objection to placement of warrant article #23, it was decided that the members would now vote on the action, making DCC the sponsor of the article. Members were reminded that there had been discussion of acquiring this optional power at its 2022 meetings in February, June, July, and September.

Motion:

Serita Frey moved to approve Warrant Articles #23 to be placed on the ballot.

The motion was seconded by Josh Freed.

Discussion:

Erroll Rhodes objected to the practice of the Town contributing toward conservation projects without the Town holding an executory interest in the property, which is the power that passage of the article would give the commission. Accordingly, Mr. Rhodes objected to having the DCC place an article on the warrant that would seek that power.

Mr. Rhodes asked, **without an executory interest, what the Town was getting for its contribution;** that without that interest, the contribution was the equivalent of *charitable giving*. Mr. Freed countered that the **Town gets the benefit of the conserved land without all the obligations**. Mr. Rhodes was reminded that the warrant article was not related to the SELT request for funding related to the Rix easement; that the discussion surrounding the optional powers offered to conservation commissions in RSA 36-A:4-a began prior to SELT making its request to the DCC. **DCC already has the ability to contribute to conservation projects sponsored by qualified organizations; however, under the current model, the Town must retain an interest in the property.** Passage of this article would not give the DCC the ability to contribute to projects that were *outside the boundaries of the Town*. That authority would require passage of a separate *optional power* that DCC is not seeking.

Chair Frey noted that the practice of **the Town holding an interest had been a sticking point in the conveyance of a previous easement**, and that having the ability to contribute without the need for the Town to become a secondary interest holder could address those concerns. Mr. Rhodes felt that any **fears or objections could be alleviated with proper education of landowners** on the nature of the practice.

Mr. Rhodes objected to characterizing the executory interest as a liability and further argued that an executory interest provides the Town with legal standing if the terms of the easement needed to be upheld; that the Town’s interests would not be adequately defended if there was a need to relinquish that responsibility to the State in the event that the terms of the easement were violated. Mr. Rhodes described the executory interest as a *legal tool*, not a burden or a liability. **Ms. Andreozzi noted that there are instances in which Towns, acting as the secondary interest holders, have been required to spend conservation funds to legally defend the terms** of a conservation easement. It is possible that a commission could deplete conservation money or possibly need to ask the Town to cover the legal expense. **Josh Freed noted that the Town can be mandated to pay legal fees.** It was further noted that the DCC was obligating future generations of DCC members to uphold the Town’s interest in an easement if the primary interest holder failed to address a violation of the terms of the easement. The NH Attorney General acts as a backup interest in all conservation easements.

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An additional point made was that the **DCC was charged with overseeing responsible management of the monies in the Conservation Fund.** Ms. Andreozzi echoed the members' beliefs that the proceeds of the Conservation Fund needed to be spent judiciously. Mr. Rhodes felt that if the commission was going to expend conservation monies, that it should be willing to take on the stewardship responsibilities or obligations of managing the easement, should that be necessary; that it was what the commission was mandated to do. Ms. Andreozzi favored being able to contribute toward a project, and to allow a land trust that has the expertise and resources to take on management and any legal obligations. Wes Golomb felt that it was the commission's job to conserve the land and it should trust the land trust to do its job. Chair Frey felt that being a volunteer organization, the commission did not have the bandwidth to oversee the current easements in their entirety, given their jobs and personal obligations.

Josh Freed's view was that the State supported and had empowered conservation commissions with the tools that are embodied in the *Optional Powers* that would allow them to better do their jobs. These options are a part of Chapter 36-A, the statutes that direct the actions of conservation commissions, and must be approved by the *legislative body* of the Town. **Having these powers does not preclude the option to require an executory interest at any point.** It only gives the commission another option...another tool, as it were, that it can choose to use, or not, at its discretion.

Mr. Rhodes provided a draft of information that he intended to place in a periodical being sent to the residents. Members reviewed the language and suggested edits to maintain the accuracy of the article.

Vote:

In Favor: Serita Frey, Haley Andreozzi, Wes Golomb, Josh Freed

Opposed: Erroll Rhodes

Clerk's Note – Motion to Place Article #21 on the Ballot

This notation is being recorded in the minutes, in the absence of documentation in the clerk's notes. It is unclear if there had been a motion to approve placing Warrant Article #21 on the ballot. These minutes can be amended for clarification at the March 13th meeting at the discretion of the members.

Public Outreach:

Members viewed two video presentations created by Wes Golomb featuring Chloe Gross narrating an **explanation of warrant articles #21 and #23.** The videos will be posted on the Town's website and DCC's Facebook page.

Explanatory narratives for warrant articles #21 and #23 were submitted to the Town for publication in the upcoming Voters' Guide.

Cameron Prolman reached out to the DCC for assistance in identifying and mapping recreational sites in Deerfield that might be appropriate for **Southern NH Planning's Pathways to Play project.** The goal of their initiative was to encourage elementary school children to become more active. An updated spreadsheet offering information about suitable conserved areas was completed and sent to Mr. Prolman.

Easements and Land Conservation:

Haley Andreozzi informed the members that **The Southeast Land Trust (SELT) acquisition of the William Rix property, Map 424 Lots 103 and 108, had been completed,** although the project is not yet fully funded. SELT is currently accepting donations in order to achieve its goal.

Regulated Wetlands & Shorelands – Permits/Applications/Potential Violations:

House Bill 592 Relative to Buffers Around Wetlands:

The NH Association of Conservation Commissions informed the DCC about **House Bill 592** and recommended contacting legislators to oppose its passage. This bill **exempts temporary impacts and small impervious surface impact projects from local overlay districts and permits for construction, excavation, or filling near wetlands.** It would amend RSA482-A:3 by inserting the language: *For projects with 3,000 square feet or less of permanent impervious impacts within 50 feet of a wetland, no additional local land use permits or overlay districts shall be required or apply to the project.*

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Motion:

*Josh Freed moved to send a letter in opposition of the bill and determine who can best write it.
The motion was seconded by Wes Golomb.*

Discussion:

Passage of this bill would gut local zoning and undo the progress that was made by DCC to successfully amend Deerfield's wetland zoning ordinances. It would undermine the ability of a community to determine how it protects its wetlands. Serita Frey volunteered to prepare a letter on behalf of the DCC.

Vote:

The vote was unanimous.

Planning Board Public Hearing: Wednesday 2/8/2023 (Great Brook - Back Creek)

The Planning Board will be reviewing an application submitted by Denise and Michael Gallant of Danville, NH. The applicants are requesting approval for a Major Subdivision for property located on **206 Nottingham Road (Map 416 Lot 28) consisting of 66.71 acres** and owned by the applicants. The property is located south and east of Dowst-Cate/Weiss Town Forest, and in the vicinity of the parcels that make up the Great Brook Corridor. **Back Creek and its associated wetlands occupy the northern portion of the acreage.** Erroll Rhodes walked the parcel with members of the Planning Board, observing that the owners have a significant amount of work to do. The plans for the project are incomplete which will likely affect the timing of the project. Link to Town Map: <https://next.axisgis.com/DeerfieldNH/VVVf2hdu2EsN>

Moschella – Map 416 Lot 69

In April of 2022, DCC filed a complaint with the NH Department of Environmental Services (DES), reporting activities that were deemed to be impacting a stream on property located at 115 Nottingham Rd. To date, DCC has not received any feedback from DES; however, since that time, the placement of a tank-like object into the stream has been observed. It was suggested that DCC ask DES for an update to clarify the situation.

Eversource CUP Application Review

A presentation by VHB, the engineering consulting firm representing Eversource regarding an **application for a Conditional Use Permit (CUP) for work on an Optical Ground Wire** near the Deerfield substation, along its Right-of-Way in Deerfield and adjoining towns, has been postponed. According to the email, the work is anticipated to begin in Spring/Summer 2023, and would utilize matting and best management practices to minimize wetland impacts, none of which are anticipated to be permanent.

Approval of Minutes:

Motion:

*Josh Freed moved to approve the minutes of the January regular meeting.
Haley Andreozzi seconded the motion*

Vote:

The motion to approve the minutes as submitted was approved with Erroll Rhodes abstaining.

Finance:

The balance in the Conservation Fund at the end of January was \$349,178.49, unchanged from December since no interest or LUCT had been posted. According to information received from the Accounting Department, **back interest for December and January (\$560.04 and 623.50 respectively) will bring the balance in the account to \$350,362.093 when posted.** A change in the nature of the bank account had caused all the interest received to be allocated to the Town's *General Fund*. The Town's relationship banker was aware of the issue and is in the process of making the necessary corrections. There was no information available on the amount of LUCT for 3rd Quarter 2022 at the time of the meeting.

Visitor Comments:

Chair Frey recognized visitor Steve Nogueira who has resided in Deerfield since 2003. Previously a resident of Nashua, Mr. Nogueira loves the seclusion Deerfield offers and has enjoyed following the activities of Bear-Paw and the DCC. As a resident on Mt. Delight Rd., Mr. Nogueira echoed the sentiments of other residents and DCC members who have objections to the Cross 18-home, open-space subdivision. Serita Frey acknowledged that DCC was aware and would not disagree with Mr. Nogueira's unfavorable characterization of Mr. Cross's development activities. Chair Frey

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explained that DCC operates in an *advisory only* capacity and has limited impact in these situations, other than to advise the Planning and Zoning Boards of its opinion. Mr. Nogueira wondered about the logic of paving all open land in the name of progress.

Josh Freed explained that the *Open Space Plan* had given discretion to the Planning Board to deal with open space subdivisions containing a lot of wetlands. Unfortunately, the result was that builders placed the homes on the only suitable dry areas, leaving the unusable portions as the “open space”. The configuration of these areas made them unsuitable as wildlife habitat and wildlife corridors. The location of the proposed Mt. Delight subdivision is not suitable for 18 additional homes, given the anticipated resulting increased traffic, site distance issues and impacts on the infrastructure, not to mention the potential additional burden on the school system.

Additional DCC involvement and representation to follow the project was suggested, noting that written comments would have added impact. Previously, residents affected by the subdivision on Range Rd. pushed back when damage was occurring. They put pressure on the Planning Board, made their voices heard and the outcome was positive.

Stewardship/Easement Monitoring:

Representatives from the *Conservation Land Stewardship Program* (CLS) will be visiting the parcels that make up the Great Brook Corridor. These easements were made possible with the use of State funds from the *Land Conservation Investment Program* (LCIP). In addition to the annual monitoring reports submitted by local volunteers, representative from CLS visit the parcels every four to six years to ensure compliance. The parcels that make up the Great Brook Corridor are the 107-acre Burbank parcels, which are now Bear-Paw owned, the 56-acre Pendleton, the 111-acre Jaeger, the 342-acre Curry parcels, and Deerfield’s donated, 128-acre Marston Family Town Forest, formerly Pendleton. You can read about the history of this remarkable accomplishment on the DCC webpage of the Town website using the link below.

https://www.townofdeerfieldnh.com/sites/g/files/vyhlf4316/f/uploads/great_brookcampelia_article.pdf

Energy Committee Report:

Wes Golomb asked for support for the two warrant articles that were successfully placed on the ballot. The articles ask that the voters instruct the Town and School to **work jointly...on a solar energy project for the purpose of powering the school and the town buildings to reduce energy costs**. They are hoping to receive several proposals to fund the project; ideally, one that would require no out-of-pocket outlay.

A *Motion to Adjourn* made by Serita Frey at 9 pm was seconded by Josh Freed and passed unanimously.

The next regular meeting is scheduled for Monday, March 13, 2023

(Please check the website [townofdeerfieldnh.com](https://www.townofdeerfieldnh.com) for scheduling changes) These minutes were prepared and submitted by Judy Marshall. Revisions, if any, will be contained in the minutes of the next meeting and posted to the Town website, after approval by the Deerfield Conservation Commission