



Londonderry Conservation Commission
Tuesday, September 10, 2019
Minutes

1 **Present:** Marge Badois, Chair; Gene Harrington, Vice Chair; Mike Noone, member; Bob Maxwell,
2 member; Deb Lievens, member; Mike Byerly, member; Richard Floyd, member; Jocelyn Demas,
3 alternate member; Mike Speltz, alternate member and Susan Malouin, alternate member
4

5 **Absent:** Town Council liaison member
6

7 **Also present:** Amy Kizak, GIS Manager/Comprehensive Planner; Beth Morrison, Recording Secretary
8 and David Ellis, Londonderry resident
9

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

11 **ZBA application review – 8 Tanager Way – Lot 005 010 34:** Ryan Ouellette, owner of 8 Tanager Way
12 introduced himself to the Commission. R. Ouellette informed the Commission that he was here tonight
13 to apply for a new variance, as the structure was deemed an addition rather than an accessory
14 structure. He pointed out that he is going to have composite shingles instead of asphalt shingles if this is
15 approved by the Zoning Board of Adjustment (ZBA). A Kizak told the Commission that additions are only
16 allowed in the CO district if the house was built before the adoption of the CO district by the Town
17 Council and Richard Canuel, Senior Code Enforcement Officer has determined that this house was built
18 after the adoption of the CO district; therefore, an addition would be prohibited. M Speltz asked if R
19 Ouellette was still offering the storm water treatment system with the new variance request. R
20 Ouellette responded that he was. M Byerly started to review the five points of law with the Commission.
21 He said that the first point of law is if the variance would be contrary to the public interest. M Speltz
22 stated that he believes it is a balancing act, as the addition will encroach the buffer but, by adding the
23 storm water treatment system, storm water will be taken from a larger area and directed to the dry
24 well, which is a better outcome than if the addition was not built. M Byerly said that the second point of
25 law is regarding the spirit of the ordinance. M Badois pointed out that the ordinance specifically states
26 that an addition is not allowed and asked if this would set a precedent. M Speltz responded from his
27 experience, there are no precedents set at the ZBA, as the ZBA considers each case on its own merits. B
28 Maxwell commented that he is struggling with this as he feels that the home owner is not being truthful
29 and was trying to do something he knew he could not do. M Speltz said that should not be a factor in
30 the decision and it should be treated as if nothing was built yet. M Badois said the purpose of the
31 ordinance is to protect the wetlands. D Lievens stated that by building the addition, the spirit is not
32 being addressed, but by mitigating more than the impact there is a positive outcome to the CO district.
33 M Speltz added that if the Commission were to recommend approval of this application to the ZBA there
34 should be a caveat that our recommendation is conditioned on the assumption that overall the buffer
35 will be better protected with the addition and storm water treatment than without the addition and
36 storm water treatment, to be confirmed by the Department of Public Works (DPW). R Ouellette said



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37 that when he spoke to Richard Canuel, he was told that the DPW would not do this for residential and
38 asked if this condition could be performed by someone other than the DPW. M Speltz responded that if
39 the DPW would in fact not do this than it should be the Town's consulting engineering firm. M Byerly
40 said the third point of law is regarding substantial justice, which means the loss to the individual
41 outweighs any gain to the general public if the variance is denied. M Speltz commented that the benefit
42 to the public is the increased protection from the storm water treatment system. M Byerly told the
43 Commission that the fourth point of law is regarding if property values would be diminished by granting
44 the variance. He said that he felt there was no determination on this from a conservation point of view.
45 He told the Commission that the fifth point of law is to determine if there is something unique about the
46 property to distinguish it from others around it. M Badois noted that she felt this property was not
47 unique as there are 32 other properties in the neighborhood that border the CO district. M Speltz added
48 that the home owner bought the house knowing the CO district was there. He said he would be explicit
49 in the response that the improvement to the buffer would be greater than the detriment to the buffer
50 caused by the addition subject to the concurrence of either the DPW or the Town's consulting
51 engineering firm. G Harrington stated that the Commission is making a recommendation on the
52 environmental impact and the applicant is offering an off-set to the encroachment so therefore there is
53 not an environmental detriment. D Lievens made a motion that the Commission's reaffirms their
54 judgment that the improvement to the buffer is greater than the impact of the encroachment subject to
55 the installation of run-off mitigation approved by the DPW or the Town's consulting engineering staff. M
56 Byerly seconded the motion. The motion passed, 5-2-0. M Badois asked the dissenting commissioners
57 for their point of view. M Noone said that he feels residents and/or businesses should stay out of the
58 buffer regardless of a storm water mitigation system. B Maxwell said he felt the same way and would
59 not want to set a precedent by allowing this.

60 **Unfinished Business**

61 **Mike Considine memorial:** M Badois told the Commission that they have poured the base for the bench
62 and decided to move the bench out of the way of the map. M Byerly asked if there would be a ceremony
63 after the bench was installed. M Badois said she thought so, but she did not have any details as of yet.
64 She asked if the Commission still wanted to rename the Shoots & Ladders Trail to the Mike Considine
65 Memorial Trial Shoots & Ladders. The Commissioners agreed on the renaming. A Kizak told the
66 Commission that the new name would fit on the map of the Musquash.

67 **Scobie Pond vegetation:** M Badois told the Commission that they identified the vegetation as common
68 milfoil that is a native species, so there is no need to worry. D Lievens said that this is a common aquatic
69 plant, but she has not contacted the Wetlands Bureau for their advice on how to remove it. She said she
70 thought the Commission would need to remove it manually versus any chemicals. M Badois stated that



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71 she thinks the residents abutting Scobie Pond should be informed and see what they have to say about
72 removing it. She added that there is something else called Arrowhead that is mucking up the boat
73 launch. D Lievens suggested going back out next summer earlier in the season to check for better
74 identification. J Demas informed the Commission that they also came across a pipe when kayaking on
75 Scobie Pond and she has contacted someone at New Hampshire Department of Environmental Services
76 (NHDES) about it and they are going out to the property to investigate.

77 **NHACC Nov 2nd:** M Badois informed the Commission that they have published the courses they will
78 have but registration is not live yet, so she will keep checking.

79 **Articles:** D Lievens told the Commission that she needs an article in three weeks. J Demas said she has
80 an article, but it needs to be pared down as it is 900 words. M Byerly said that the Times would accept
81 anywhere from 500 to 1,000 for a story. J Demas said that she would edit it a little bit and send it to D
82 Lievens.

83 **Kendall Pond Gate:** M Noone told the Commission that G Aprile checked with both the Fire and Police
84 Department about getting a new gate and both departments are okay with that idea. He informed the
85 Commission that the old gate will be harder to move than getting a new gate. He said that he is waiting
86 to hear back about a quote for a gate and the new gate will be placed where the log is.

87 **Stream Brochure:** M Noone informed the Commission that they have the right format for the brochure
88 now. He asked how many the Commission would like to have printed so he can obtain a quote. M Speltz
89 asked if it would be available online. A Kizak said that it should be available online. M Speltz said that he
90 thought they might want to print out a couple hundred and suggested mailing them residents who abut
91 streams. He asked if A Kizak could run a program on the GIS system to obtain the residents who abut
92 streams. A Kizak responded that she could to that.

93 **New Business:**

94 **NHDOT at Gilcreast:** M Badois told the Commission that New Hampshire Department of Transportation
95 (NHDOT) sprayed the phragmites at the mitigation site and had to cut a log that had fallen over and was
96 blocking the way. She said they encountered another one that needs to be cut down, but does not know
97 how to remove the log from that trail. G Harrington asked if the log to be removed was on the town of
98 Londonderry's property. She said that she is unsure and will have to go check it out.

99 **Nevins:** M Badois told the Commission that a resident of the Nevins, who has property on the side
100 where the variance was granted, had contacted her because he wanted to do something in his backyard
101 and asked her for the rules. She told him that his association should have the rules, but he told her they



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102 know nothing about it and do not have a copy of such rules. She said that she would think if someone
103 was pulling a permit the restrictions attached to their property would come with it. A Kizak told M
104 Badois she would follow up with Building regarding this.

105 **Shooting Ranges:** D Lievens told the Commission that she received a phone call from a resident who
106 lives on Alexander Road about the noise from the ranges. He asked her if he could come to a meeting to
107 discuss this with the Commission.

108 **Water studies:** M Speltz asked if A Kizak could update them on the water studies at this time. A Kizak
109 said that the quality study is not done and the quantity just recently had the final draft, which is being
110 reviewed by the steering committee. She said she is waiting for comments back from the steering
111 committee and then she will set dates for public meetings with the Commission, Planning Board and
112 Town Council. M Speltz suggested inviting the steering committee to come to the meeting. A Kizak said
113 that the steering committee is planning on coming to the meetings.

114 **Minutes:** The Commissioners went over the minutes from August 27, 2019. M Byerly made a motion to
115 accept the minutes as presented. B Maxwell seconded the motion. The motion passed, 7-0-0.

116 **Adjournment:** M Byerly made a motion to adjourn the meeting at 8:39 p.m. B Maxwell seconded the
117 motion. The motion passed, 7-0-0.

118 Respectfully Submitted,
119 Beth Morrison
120 Recording secretary