

Planning Board
December 8, 2022
7:30pm

Members present: Chip Current, Barry Hantman, Chris Smith, Steve Woitkun, Leo Traverse, Charles Underhill

Others present: Gail Turilli, Carol Baird, Judy Jervis, Dottie Billbrough, Sheila Johannesen, Carsten Springer, Vince Edwards, Stacy O'Connor, Joshua Manning

The meeting minutes from 11/10/22 were reviewed and there were no comments from the Board. Barry **made** and Chris 2nd a **motion to accept the minutes as written**. All in favor, with Chip abstaining. **Motion passes.**

Barry mentions the Board received a follow-up letter from Sandra York of 199 Colby Road who came before the Board at the last meeting to discuss Agricultural use, Article IV.A.1.C of the Zoning Ordinance. She had requested that a question be put on the March ballot in regards to limiting agricultural uses. There are some things that could be put forward as warrant articles but, due to time constraints, the Board may want to look at this in the coming year.

Public Hearing for Proposed Warrant Article XIII.B.9 Amendment Change:

There are no comments from the Board and Chip opens the public hearing. Carol Baird, co-Chair of the Heritage Commission, reads to the public, the letter that was sent to the Planning Board. She explains that the Heritage Commission was not consulted on this proposed warrant article amendment prior to taking action to it and that there is new information and documents the Planning Board did not have when they voted to put this forward. The Heritage Commission has met to review information and discuss this proposed amendment and concluded that it should not go forward for the following seven reasons:

1. The process that was used to present this amendment may be flawed and subject to a Legal challenge.
2. The proposed amendment to change specific paragraphs in the ordinance is misrepresenting what the intent of those paragraphs was when the ordinance was written and adopted.
3. There are legal opinions about what has been proposed, including an opinion from the town's attorney why something like this should not be done.
4. The proposed amendment could be interpreted to exempt the Forestry Committee from Historic District review for Tuckertown Road. The voters have never designated Tuckertown Road as "town forest" property. The Forestry Committee has no authority over Tuckertown Road.
5. The proposed amendment is contrary to the recorded conservation easement of the Town of Danville and the Audubon Society signed in 2009.
6. There is no evidence that the Historic District ordinance is a hardship for the Forestry Committee or impedes or prevents them from managing the town forest.

7. The proposed amendment is not consistent with the clear intent and will of the Danville voters when they approved the Historic District ordinance and is not consistent with the community goals in the Master Plan.

Mrs. Baird asks that a copy of the state statute that explains how the historic district ordinance may be amended be attached to these meeting minutes as she feels the process was not followed. The Heritage Commission recommends paragraphs f, g, h, and i can and should be deleted from this ordinance in their entirety as it will clean up the language about things that no longer exist or apply. Copies of Attorney Hallquist's opinion letter dated 6/15/2007 and Attorney Peter Loughlin's opinion letter dated 6/27/2008 have been requested to be attached to tonight's meeting minutes. The entire length and width of Tuckertown Road is in the Historic District. Though the Forestry Committee may use Tuckertown Road, as is, the road is not town forest property and the Forestry Committee has no authority over it and no authority to make changes to it. The Heritage Commission is requesting that an article about town forests by Attorney Hallquist, published in the March 2007 issue of NH Town & City be attached to the minutes of this meeting. A copy of the 2003 warrant article has been provided and is requested to be attached to the minutes of this meeting as there was a legal town vote to place a conservation easement on the town forest land. When the conservation easement document was signed in 2009, the Audubon Society was given the authority to oversee all forest management activities in the town forest and there are now easement regulations that the Forestry Committee must follow. Nothing has been presented confirming Audubon has received notice about the proposed change to exempt the Forestry Committee from the town's historic district ordinance and whether they agree to it. The purpose of zoning amendments is to update or clarify things, not to create future conflicts and problems. Without information from Audubon about this proposed change, that zoning purpose is meaningless and defeated. Mrs. Baird also noted that a comment was made at the last meeting that the Historic District ordinance is hindering the Forestry Committee. Nothing specific was identified and no evidence was given to support that. A copy of the list of activities the voters approved that require review under the Historic District ordinance was given to the Planning Board. These activities have not changed since the ordinance was approved in 1999. There is nothing that prohibits or restricts tree cutting, wood cutting, or timber harvesting. Mrs. Baird concludes that this proposed amendment was not presented properly, there are too many moving parts and parties, it's against the will and intent of the voters, it's contrary to legal advice that's been given, and it is not in the best interest of the town. The Heritage Commission respectfully requests that the Planning Board withdraw this proposed amendment.

Chip states that the process that was used was not flawed but, followed 100%. This was not put forward by the Forestry Committee. The recommendation was made by Forestry to the Planning Board. The Planning Board has put this forward to this public hearing to have a debate to this zoning amendment. This is 100% the process to make zoning amendment changes. Barry added that copies were given to the Board of the RSA that controls amendments to Historic District ordinances. It states that amendments can be made by the Planning Board or Historic District Commission. In Danville, we do not have anything named Historic District Commission, we have a Heritage Committee. Therefore, in Danville, that is the role of the Planning Board who did put this forward. Chip asks if there are any questions from the public.

Carsten noted that this seems to be drawn out of proportion as this is for zoning language clarification only. It neither gives or takes authority from Heritage or Forestry. The lot specified

by number many years ago when the Heritage District was put in place have changed and will probably continue to do so. The best thing would be to specify the areas of the town forest. Any future changes to the town forest areas would thereby be incorporated without additional zoning amendments. This is something that has not been looked at in about 25 years. Forestry has been in existence since the 1940's, long before Heritage. The Forestry Committee was written to the Board of Selectmen in 1999. There are so many parts of this letter that support what Forestry is trying to do.

Josh Manning states that there seems to be a lot of reference to the will of the voters 23 years ago. There is a process in place, recognized by state law to amend zoning. The will of the current voters would get to weigh in on that at the ballot. Things have changed and, there is a new set of voters that should have the ability to weigh in changes. That is why the process is what it is.

Vince Edwards notes that he finds the irony of striking of language that refers to activities that no longer exist, that are historic artifacts, that we're striking out of the language of this ordinance. The Historic Committee would probably like to celebrate the historic activities and not take them out of the language that exists today.

Judy Jervis mentions to Barry that he stated that the town doesn't have a heritage commission. Barry explained that we do not have what's referred to in the RSA's as a historic district commission, we have the Heritage Committee. He also stated that he is not aware of anything in town named the Historic District Commission. Judy re-iterated that the best paragraph to summarize is #2 where it states to have sub-sections f., g., h., & i deleted. This would clean up all of the language instead of confusing it. Delete those because things do change and Heritage agrees with that.

Carol Baird clarifies that the Heritage Commission was created by town vote in 1996. The town knew that their first task was to create the Historic District Ordinance. In that same town vote, they gave Heritage the authority to assume all the duties and responsibilities of a Historic District Commission. At that time the town didn't have a Historic District. Barry asked if that information is within the documents that were given to the Planning Board to which Carol stated no but, can be located. She also pointed out that dual status of a Heritage Commission and Historic District Commission is allowed by state statute. Danville was one of the first towns to do that where many towns keep them separate. Once the Historic District ordinance was approved by voters, they became also a Historic District Commission. Barry noted that he was not aware of that but, will take Carol's word and, he notes that his point is that the state RSA's state Planning Board or Historic District Commission, therefore believes that the Planning Board acted appropriately. Carol mentioned the gentleman who spoke about deleting historic references. The Heritage Commission does everything it can to celebrate historic resources and history in the town. Those particular paragraphs were not put there for that reason but, because when the ordinance was being drafted, there were people concerned it would take that away. Those paragraphs were only put there to document what they were and would have gone away anyway. She points out that the Forestry Committee that exists today was created by the Board of Selectmen in 2000, town reports reflect that and wanted to clarify that fact. She also mentions

the person who stated that we have new people now for town vote. She reminds the Planning Board that 2 attorneys have stated that this is not the right thing to do, to exempt one group.

Carsten mentions 3 items he would like to comment on from the letter that Heritage provided to the Planning Board and feels that the proposed amendment has been misunderstood by Heritage.

1. Tuckertown Road has never been planned as Town Forest. It was stated in the letter as Town Forest and it is not and is covered by zoning. The Forestry Committee has no intent of using or violating zoning for Forestry activities. If there is reason to use it, Forestry would consult with Heritage per zoning. There is nothing that is being discussed tonight that would change that. Whether this changes or not, Forestry is still adhering to that. Barry states for the record that all are in agreement that Tuckertown Road is not part of the Town Forest. Carsten noted that there are in the Heritage part of the Historic District section, many references to roads, trails, etc. There are parts of the Town Forest where access is needed. Forestry have been extremely careful in the last 10 years, even put in a one mile road to access for fire and future logging activities for emergency access.
2. Legal opinions cited from many years ago, one that mentions the Supreme Court, doesn't relate to Forestry. It was related to Terra for using Tuckertown Road for gravel trucks. Legal opinions that Heritage cited from the early 2000's actually support Forestry and the language clarification needs to be considered. Exception language was originally included, used in zoning, and should be kept in an updated manner. There are lot numbers that were listed that are no longer accurate. If these change, they still will not be accurate in years to come so, let's just say "Town Forest." The Town Forest is bigger than the Historic District. If the Historic District changes in size or shape and the same occurs with the Town Forest, the zoning that applies to the Historic District is the only issue that is being discussed tonight.
3. Zoning changes should be primarily decided by the will of the voters. They may or may not marry up to what is going on now. He states that we are all aware of what happens to Forests that are not taken care of and gives California as an example. Re-visiting articles with well reasoned language doesn't take away or add anything, just simply clarifies and removing it would violate the intent.

Sheila Johannesen asks why this would be brought forward without consulting Heritage. Chip, author of the proposed article, apologized to Heritage, and stated that this is not a big change, just clarification. He also mentions that, "at the time of this ordinance" should not be used.

Carol mentioned that she heard a question come up about using lot numbers. The recommendation to use lot numbers for the Historic District was made by the NH Division of Historical Resources and provided a template for the ordinance. Chip asked for clarification and if Carol was referring to the lot numbers that create the Historic District or the lot numbers that are referred to in these 4 exceptions. Carol stated that the lot numbers in the exception paragraphs are part of the Historic District. Chip mentions that the point that the gentleman was making was that this was done before there was a Town Forest by the Town Forest being the actual vote of the people to create a Town Forest. Now all of these lots are in the Town Forest and there is one lot that says Town Forest. Having one lot that is Town Forest, makes it much clearer. Carol noted that the vote to make the Town Forest was by lot number. She also stated

that the NH Division of Historic Resources knew that there were no professional surveys of this property. When the Conservation Easement was done, the outer bounds only of the proposed Town Forest under the easement was done. The interior boundaries have never been surveyed. This is why Heritage was advised to use lot numbers.

Carsten stated that he would like to remove lot numbers from his comments. He also mentions that he would like a clear understanding, that in the Forest Management Plan in accordance with bequests, any wood that has been evaluated or cutting that may be done is to be very carefully cataloged and for the net proceeds to go to the appropriate things, such as, the schoolhouse, library, meetinghouse, etc. The Board of Selectmen actually changed that parsonage to the meetinghouse years ago. This is all in accordance with zoning. He feels that someone thinks that Forestry is trying to do something, when all they are trying to do is manage the Town Forest. There are many parts of it that are dying, diseased, and a fire hazard. The town is also losing money. This is language clarification to specify when Forestry can occur under the direction of the Forestry Committee per town vote and Heritage is not going to be supervising.

Carol states that she thinks the consensus of the Board was that the Heritage Commission does not want to be involved in Forest Management unless they are doing something on that list of activities requiring review. She also mentions that Heritage isn't the only entity with regulations about roads and trails. The Conservation Easement also contains that. Heritage is not interested in roads and trails that Forestry may need unless they are going to plow through a stone wall or something they may find that is existing. Chip stated that any Historic artifacts discovered will be reported and not disturbed. Carol stated that Heritage is trusting Forestry to do that but, if there is something that they cannot work out of, come before Heritage for discussion to see what can be worked out so that it can be approved. Barry **made** and Steve 2nd a **motion to close the public hearing**. All in favor, **motion carries**.

Barry then asks the Board if deleting the aforementioned paragraphs in the proposed amendment would suffice, prior to reading the letter received from Heritage. Chris noted that it seems like 2 different things to him. There was a lot of discussion about the will and intent of the voters and he mentions that he is unfamiliar with the activities of the Forestry Committee and the Heritage Commission. As a voter, none of this is clear to him and sounds rhetorical. The difference between striking those paragraphs versus replacing them with something for intended clarification, which was brought forward at the last Planning Board meeting, is that one changes nothing and the other removes possible or prospective hinderances and it is not clear what the hinderances are. Chip agrees with Chris that they are very different. Carol's last comments, about not wanting Heritage involved at all in tree cutting or Forestry activities in the Town Forest, makes the case for changing those 4 things, which are all in the Town Forest, into one that says, "The Town Forest is in the purview of Forestry. The rest of the Historic District, including parts of the Town Forest, are in purview of the Heritage Commission, all of which are under the synopsis of the Audubon. Forestry is well aware of the Audubon Easement and the first place they went to was Audubon when the Forest Management Plan was updated. It couldn't be presented to the people without their permission. They are restrictive, rules have to be followed and the voters decided to accept the easement. Fundamentally, the intent of this was for clarification. Chris asked if there is any concern with the point made by Audubon and if there is any conflict. Chip mentions that Barry has some updated changes that would make this

more clear. He also states that the Audubon Easement is something that we live with everyday and probably will until it no longer exists. It is a requirement and he doesn't feel there is any conflict. Chris asked if there is a procedural requirement to review amendments to the Heritage ordinance with Audubon. Chip noted that there is nothing that states that in the easement. Barry mentions that he is also not aware of anything that states that and the easement cannot be changed without Audubon agreeing.

Chris noted the comment about the genesis of the Forestry Committee and that it wasn't by a vote. He questions if that is the case. Chip refers to one of Carol's supporting documents that mentions the creation of the forest. It explicitly states, "The Danville Forestry Committee." As far as he is concerned, that is authority. It is not germane to this discussion but, shows the document to the Board that was in town warrant specifically giving covenants to Town Forest. Chris points out that the fact that the Forestry Committee wasn't established by town vote but by the Board of Selectmen per RSA, and asked if there is a conflict as to which was first (Heritage or Forestry) and if that is a concern. Barry stated that any subsequent votes later date appoint of what the town was feeling. The Town has the ability to update and revise what they have passed. Chip stated that part of the Planning Board's job is trying to be forward thinking to what the town may look like in 50 years and feels this helps with that too. He also mentions Carsten's point that the Historic District and the Town Forest will change. Things may be added or removed and there is no telling what people are going to do in 25 years. Chris asked if there is a hinderance, if Tuckertown Road is an issue, or if there is some other hinderance. Chip notes that there have been lots of headwinds for doing the best forest management practices in this town, not necessarily with Heritage. When this was brought up originally, he thought all the Forestry Committee was doing was clarifying the language that was already in place. Changes are proposed in zoning all the time to try and make things cleaner. Chip further explains that Forestry talks all the time with urgency about getting into the Town Forest. There are 2 major problems going on now with Emerald Ash Borer and Wooly Adelgid. He states the town is not going to have an Ash tree in about a year or a Hemlock tree in about 5 years, but to Chris' other point, feels there is no hinderance.

There are no further questions or comments from the Board. Barry states he would like to put forward an amendment that was sent out to the Board previously. He states that paragraphs f., h., and i are duplicative and are covered by paragraph g and proposes to add some words and re-number the existing subsections to read as follows:

"To see if the Town of Danville will vote to amend the Town of Danville Zoning Ordinance to clarify review requirements for Forestry activities in the Town Forest. Specifically, this will change Article XIII.B.9 subsections f, g, h, & i by replacing all four subsections with clarified exemption language contained in a new subsection f and renumbering existing subsections j & k accordingly. The new Article XIII.B.9.f will read as follows: All wood cutting activities and Forest Management practices of the Danville Forestry Committee, or their agents, within the Danville Town Forest, subject to all Easements, Covenants, Legal Agreements and Bequest Restrictions."

Barry stated that he added agents because it is not always the Forestry Committee members that do things, sometimes people will be hired. He also mentioned that he thought it was important to add words about existing easements, covenants, etc because we are taking out the specific names

of lots. Those names of lots in the ordinance today remind people that those lots have restrictions on them and by adding those words, he thinks it helps to remind people in the future. This does take out wording in the existing ordinance. This will remove the words, “at the time of adoption of this ordinance”. He also states that he understands the intent of the voters when this was put in place. Good Forest Management practices change over time. It is important to remove those words to allow the Forestry Committee to implement the best practices for forest management. They are required to update a forest management plan every 10 years and it has to be approved by Audubon. We had this approved by the town so the town has a say in what those practices are. Barry **made a motion to make the proposed amendment change** and Chris 2nd the **motion**. Chip feels the last bit is redundant. Barry noted that this is an extensive change and if the Board chooses to go forward, it would require a second hearing which would be held on January 12. Chip then asks if there are any comments to the proposed amendment to the amendment. Carsten notes that Barry’s suggestions are excellent and that it goes further than what Forestry was requesting. Chip agrees with Barry that adding that last bit would require a second hearing.

Carsten noted that as far as Forestry is concerned, we would have to be going against the will of the attorney general of the state of NH and the trust division. Chip interrupts and stops the commenting at this time. Carol asked if some language can be added to state that this does not include Tuckertown Road. Her reasoning for this is that Tuckertown Road is not in the Conservation Easement and the only protection for this road is the Historic District Ordinance. Tuckertown Road use is part of the Forest Management Plan and the voters need to know that this doesn’t include it. Barry stated that a sentence could be added to make it clear that Tuckertown Road is not part of the Town Forest and therefore not covered by this exemption but, he does feel it would be confusing. Chip is not in agreement with adding a sentence as Tuckertown Road is not part of the Town Forest and wouldn’t be germane to that bullet item. Carol noted if 8 years from now, if someone is interpreting the ordinance this way, they would look at zoning and not go back to find Planning Board minutes or the article that references the LGC attorney. Chip stated that Tuckertown Road is not in there. Carol also mentioned that it is also not part of the easement to which Chip again noted that it is not part of the Town Forest. Carol noted that she is just thinking of the clarifying issue going forward. Chip feels it is just muddying the waters. Carol feels the voters should know that Tuckertown Road was one of the main reasons for the Historic District Ordinance and is mentioned in many of the activities requiring review. Barry proposed to add a note that states: Tuckertown Road is not a part of the Town Forest and is therefore not covered by this exception, and also made a **motion**. Steve 2nd the **motion**.

Stacy O’Connor noted, as a voter, adding in that last part seems confusing because as previously stated, it was noted that it was specifically Town Forest. Barry mentioned that he is not sure that most people in town know whether Tuckertown Road is or isn’t in the Town Forest. Carsten mentions that he understands what Carol is trying to propose and states that people who use the Town Forest would assume that Tuckertown Road is part of that. He feels that the language is redundant and confusing. Vince Edwards agrees that this is muddying the waters of what is being discussed. Chip mentions, if at some point, the voters decide to put Tuckertown Road in the Town Forest, the zoning would have to be changed. The definition of Town Forest is in zoning but, not the lots included within which is done by town vote. He also states, adding that

is a little contrary to the spirit of what is being proposed. Barry suggested to vote on this in two parts: make a motion not including the sentence then make another motion to add that sentence. Charles states that he is lost on this discussion and asks if Tuckertown Road is a defined road. Chip stated it is a historic, classic trail and that old roads show in deeds as roads. Charles asks if there are any other roads that are adjacent to the Town Forest. Barry noted that there are trails, a powerline easement road, and other things running through the Town Forest. Charles mentions to Carsten's point, if someone has a path through the Town Forest to get trucks in and out that it doesn't create a public ROW. If it is a defined public ROW, then it would not be part of the lots associated with the Town Forest.

Chip **made** and Chris 2nd a **motion to accept the proposed amendment without the note**. All in favor, **motion carries**. Barry **made** and Steve 2nd a **motion to add one more sentence stating: Note: Tuckertown Road is not part of the Town Forest and is therefore not covered by this exception**. 2 in favor, 4 opposed, **motion does not carry**. Barry then made a **motion to put forward the new language of this proposed warrant article change to a 2nd hearing at 7:35pm on January 12, 2023**. Steve 2nds the **motion**. All in favor, **motion carries**.

Master Plan Update:

Barry stated the 2022 update to the Master Plan is intended to provide an update to the 2020 Master Plan. The 2022 update does not include an update to every section of the Master Plan (even though some may be out of date). The goal is to update a few chapters of the plan each year to provide a living document. The sections updated in the 2022 revision include: Introduction, Community Profile, Historic Resources, and Capital Improvements Program. In addition, a new chapter, Climate Change, has been added to the plan. Additional minor updates have been made to various other sections. Carsten asked if the climate change chapter had already been written to which Barry conferment that it had. Carsten then requested a copy to look over to which the Board provided.

Chip opens the public hearing. Barry mentions that some of the data for the Climate Change chapter was taken from the RPC. Chip noted that the data retrieved was, rainfall, average daily temperature, drought conditions, etc. Barry reads the recommendation to the new Climate change section and are as follows:

1. The Town should continue to monitor climate change in the region and stay apprised of mitigation efforts initiated by the Federal Government, State, and nearby Communities.
2. Danville should ensure that drinking water sources remain adequate for the residents of the town
3. The Town should promote business in town to help mitigate the transportation impacts to climate change by reducing the distances needed to travel for work, shopping and activities
4. The Town should periodically review its stormwater protection ordinance to ensure that they reflect anticipated environment
5. Protect areas in Town that serve as carbon storage such as forests, wetlands, and other natural landscapes

6. Educate property owners regarding options for protecting properties from flooding and erosion
7. Encourage voluntary conservation easements
8. Encourage homeowners in high hazard/risk areas to purchase flood insurance

Chip stated that conservation easements are not the best way to do this to which Carsten noted that the Town Forest is a perfect example. Barry noted that the recommendation could be removed if the Board is in agreement. Carsten mentions that easements are voluntary for anyone who may want one. Chip **made** and Barry 2nd a **motion to strike recommendation #7 in the Climate Change section**. All in favor, **motion carries**. Barry explains that this section was added because of the Hazard Mitigation Plan for the town and took action to create one. Charles mentions his concern with changes that are yet to impact the town as a result of the Covid-19 issue and that a sub-committee may want to be formed to discuss an action plan as to how the Master Plan is impacted. Barry **made** and Chris 2nd a **motion to accept the Master Plan as amended**. All in favor, **motion carries**. Chip noted that there is one section, Growth Management consisting of 8 chapters, that mentions what Charles is speaking of. There are funds available to bring in an expert to help with the sub-committee. Charles states the impact would be to changes of the social dynamic. Carsten noted it would impact the school system, seasonal homes that become permanent, education/school funding. He also mentions the need to be careful on what is being addressed as there is no such thing as non-carbon transportation/heating.

Other Business:

Chip mentions that the Budget Committee has cut the Planning Board's budget for next year by \$200 which was taken from printing expenses. Barry noted that an update to the impact fees may want to be looked at in 2023 and possibly bringing in a consultant. Chip questioned the need for bringing in a consultant when a cost of living can be added to it and the Board can update the fees. He also mentions to have a folder started for 2023 changes to which Steve mentions that he did receive a fund of \$125,000 towards a new truck. He also states that builders are paying a lot for projects and doesn't want the town to become undesirable because of that. Chip mentions that there is no need to have a second meeting in December, so the Planning Board will not meet on December 22.

The updated Warrant Article will be noticed for the upcoming hearing on January 12. Steve **made** and Barry 2nd a **motion to adjourn**. All in favor, **meeting adjourned at 9:30pm**

Reference Document Attachments:



Peter Loughlin
letter.pdf



NH Town & City
article.pdf



Atty Halquist
letter.pdf



2003 Warrant
Article.pdf

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Agenda for January 12, 2023:

1. 2nd Public Hearing for Warrant Article XIII.B.9.f
2. Public Hearing for a Citizen’s Petition for Warrant Article XIII.B.9

Respectfully,

Gail Turilli