

## Highland Lake Leadership Team: Ordinance Committee Meeting

February 28, 2018 11:30 am / Falmouth Town Hall  
Meeting Notes

In attendance:

John MacKinnon, Kimberley Darling, Heather True, Ethan Croce, Jeff Dennis, Chantal Scott, Damon Yakovleff, Tom Peterson, Tony Plante, Dennis Brown (phone), Ben Smith

### Follow-up items underlined

*CCSWCD Memo Recommendations/Possible Next Steps: Listed Below*

- Approval of 1/11/18 committee meetings
  - Kim Darling: Is p. 2 – Sources of Phosphorous – channel scour a typo? Jeff Dennis: No.
  - Jeff moved, Tony seconded – approved
  
- Review CCSWCD documents:
  - Map of land use zones
    - Drainage map
      - Is too large to email – Damon has shared online link
      - Chantal requested copy of printed map for forum – Damon gave print out he brought
      - Lidar-based computer model, shows elevations at a more precise scale than has been shown in the past – looks at 2-meter squares
      - Drainage based on how many squares flow into one square
      - Broke down subwatersheds into small (0.05-3 acres) and large (3-acres and more)
      - Could be useful for watershed survey
      - Only looks at surface drainage, not subsurface; Also, does not pick up on many of the development changes – can only make assumptions at this point
      - Is a tool, does not take the place of actual field verification
      - Picked up on actual watershed boundary – Jeff has created an updated watershed boundary. This is important to provisions applied to the watershed such as the moratorium. Jeff: If there is something going on near the boundary, need to look on the ground to see where drainage is going. John: Also, groundtruth near the boundary for the watershed survey
    - Integrated zoning map
      - Includes Windham and Falmouth, does not include Westbrook
      - Damon has made edits from feedback from Ethan

- Shows the new watershed boundary Jeff Dennis has provided which is more accurate
    - Jeff: Some places on Route 302 that he couldn't tell if there was a culvert or not, will review when return from Florida
  - John: USM students can use the new boundary map for the survey and will fill in the Westbrook portions of the zoning
  - Damon: In Falmouth, section of watershed not covered by overlay zone. Falmouth is looking into why this is the case. There is not much in this area, mostly Town conservation land. Jeff: Is the Rand Stable horse farm in this area? Almost all of this property drains into MacIntosh Brook. Ethan: Would be good to get file from Damon and put with parcel maps to see which ones are left out. Damon: Will put on OneDrive for everyone to access.
  - Tony – very useful visual, thank you
- Falmouth/Windham zoning comparison table
    - Attachment C and D of Memo
  - Memo with findings and recommendations for zones and standards
    - Heather: Approximately 95% of CCSWCD's work for this task has been completed; GPCOG available for review; CCSWCD's remaining tasks are: 1) to finalize the draft memo and 2) present the information to Windham's and Falmouth's Councils
    - Attachment C and D = Tables
      - Zoning tables and policies
    - Attachment E = Phosphorus Control Permit Scoring Table
      - John: Allows for easier way of comparison between Falmouth and Windham
    - John: John, Ethan, Ben, Heather, and Damon met to review and provided comments on 2/14/18
    - 1. Enforcement
      - Damon: Providing consistent education is key
      - John: Is this the responsibility of the Towns?
      - Tony: CEOs take trainings when they are available; Shoreland zoning is one
      - Ethan: Same for Falmouth, take trainings in order to be certified in shoreland zoning
      - Tony: Good to have some coordination between Planning and CEO to make sure things are being applied comparatively in Highland Lake
      - Jeff: May be good to have information on standards and examples of complexities CEOs may face in the field. For example, "implement buffer standard to maximum extent possible/reasonable" can be interpreted differently. What is reasonable? Things are not always black and white.
      - Damon: Joint Highland Lake training may be beneficial

- Chantal: Explaining the why helps
- Kimberly: Who would do the training? DEP, CCSWCD?
  - John: Perhaps through the towns
  - Chantal: Good for HLA to be a part of training in the future: education entity and not enforcement
  - Ben: Beyond state-required training? John: Yes
- Action Item: Look at joint training
- 2. Relevant Ordinances
  - No real recommendations, just a reference
- 3. General Zoning
  - No real recommendations, just a reference
- 4. Overlay Districts
  - Shoreland zoning, 2 resource protection districts
  - Falmouth to look at area near MacIntosh Brook area
  - Review watershed boundary and update over time
  - Ethan: Does anyone ever certify/verify watershed maps?
    - Jeff: No. Can send an email to say this is the best to our knowledge.
    - Jeff: If development is occurring near boundary, it is up to developer/town to investigate if they are in or out.
    - Ethan: Would help for Town to say that DEP has looked at this
      - Can say best available but on the ground can verify
    - Tom: Survey very important for developing land or lots, any plan to work with surveyors?
      - Jeff: If someone is working with surveyor, may have site change due to installing a ditch; Issue can arise when development exists and some is in watershed and some is out and then they want to spilt development and don't know what applies
      - Tom: Afraid there are lot of cracks that things can fall through
      - Jeff: Surveyors don't deal with elevation, use 2-ft contours as existing plans
      - Dennis: In appeal for Highland Views, a real challenge for towns and DEP is to take the time to understand all the regulations and go through and look at all things. There were a number of things that weren't looked at that should have been Not blaming towns and DEP, they are hit with a lot at once. Challenge is to get this to the ground to make sure they are implemented as intended. Our overall system has a number of vulnerabilities.
      - Damon: Intent is a big part of the trainings we have proposed.

- Dennis: Falmouth requires 3<sup>rd</sup> party review and Windham sometimes does. When stormwater permit is reviewed, it is pretty much just a review of the calculations yet there are so many other things that should be reviewed. Towns need to be clear on what expectations for reviews are from their 3<sup>rd</sup> party reviewers. Want to know if the correct numbers went in.
- Chantal: Reviews should not be a review of what was done, need to relook at the site.
  - Jeff: Don't want consultant to redesign project. Yet when review occurs, DEP and 3<sup>rd</sup> party need to assume that the information given to them is accurate. For example, that buffers are as described, that they do not have channeling or are compromised.
  - John: Will take a cultural shift to review in the field
  - Jeff: Looking into revising buffer standards; this would help
  - John: What can be done to make more accurate, not rely strictly on 2ft contours
    - Jeff: Can do, will cost more
- 5. Shoreland Zoning
  - Standards are fairly consistent; Differences: Falmouth uses FEMA 100-year flood and some inconsistencies in how the in-stream protection is applied – Ben is aware of this
  - Action: Windham to look at layers from DEP/delineated stream buffers and update
- 6. Site Plan Review
  - Review thresholds are similar. No commercial zoning in Highland Lake watershed in Falmouth.
  - Recommendation: More comprehensive review of conservation practices that would affect water quality
- 7. Subdivision
  - No real recommendations
- 8. Water Access ROW Provisions
  - Current shoreland zoning seems to address well
  - Dennis: Slight nuance – 40-acre lot – funnel development where a developer could give access to all lots through this ROW; Not a water quality issue from phosphorus but adding dockage for boats which will change nature of a small body lake; Looking at restrictions put on northern lakes

- Damon: Current shoreland zoning says that piers and docks can't be put in that impact water quality
  - Chantal: have an area near in which there is an overburdening of a ROW – docks are too close together; Want things to be clearly stated so there is not an overburdening of a ROW
  - Damon: are they temporary docks?
  - Chantal: yes
  - This is a loop hole, need to define temporary
    - Jeff: Would need an NRPA permit for permanent
  - John: Winslow Commons did a good job
  - Ben: This feels beyond the scope of this work group unless it is a water quality
    - Damon: Worth looking at
    - Dennis: For issues like this, it is not just water quality but quality of being on the lake; Want to keep this broad enough to review
    - Jeff: Some resuspension of phosphorus with outboard motors; Yet Highland has relatively few motorboats compared to other lakes in Maine and has steep drop-offs that reduce resuspension of phosphorous from the lake bed.
      - Has an indirect water quality issue – may not be as valuable to develop if it does not have lake access
      - Indirect: more or dense growth if this development is ok – won't make much of a difference 30 years down the road as it will be completely built out
      - Great ponds are owned by the State. HLA has a pretty elite situation. Is nice to not have as many boats. Others in the state don't agree.
      - Dennis: Winslow Commons is good, has a lot of frontage, Highland Views had before it was configured. In the north, have 25 ft.
- 9. Cluster/Conservation Subdivision
  - Damon: Is not to allow for water quality impact in how it reads – Windham is the only one that has the cluster development
  - John: Priority item of HLA
  - Ben: Ordinance had been changed to incentivize cluster development for open space. Because it is cluster, roads are shorter, infrastructure is less, more of access to open space.
    - Dennis: Part of issue is positions taken earlier yet better understanding after discussions with Jeff and John.

- However, think we lost something when we changed old rules to the new – will get to this later.
- When you add additional cluster houses to a cluster development, could be a phosphorus issue. Could add bigger buffers in some areas.
- John: Struggle between water quality issue and access to recreational areas
- Chantal: Difficult when these areas are in wetlands
- Damon: At least 50% of parcel needs to be developable in Windham
- John: HLA priority is water quality impacts, takes precedent over additional access
- Jeff: Cluster development is good for reducing phosphorus export because you have fewer, shorter roads and less disturbance. For buffers to be effective, need to be adjacent to what they are treating and downhill. Often easier to buffer lots when more spread out. Good buffers on cluster development works nicely when topography works for you. Yet less to treat with clustering. Typically trickier to treat with cluster development.
- Dennis: With Windham, developer had to provide two plans, one with cluster and one without and Planning Board would have to vote. This went away. Some parcels, could have 20 acres with wetlands spread throughout. Potentially adding a lot more houses than could be done with old rules. Curious as to why this changed?
- Chantal: two options provided to the Planning Board makes it an education opportunity.
- Ben: Layout of any given property is unique from property to property. Provision for 2 applicants went away because we were getting plans that were “gaming” the system. Example, they were bringing in a crappy 2<sup>nd</sup> option on purpose based on what they wanted to develop.
- Ben: Example, development, open space in back to build a shorter road. Not a good buffer but had other benefits to that open space. Purposely built in flexibility. Understand that there are competing community values – this group represents just one of those values.
- Role of Planning Board is to review projects, not able to design them. At end of day, have to review based on ordinance.
- Tom: can't set a standard that fits all
- John: we can set the priorities for planning Board to follow
- John: Ordinance update in Windham presented to Town Council? Tony: Yes

- Jeff: Pre-planning guidance for developers? Ben: Yes, pre-submission/pre-application meeting. Jeff: If developers are aware of concerns, are more likely to include in submittals. Can they meet with Planning to discuss ideas? Ben: Yes, but you can't make them. Pre-submission meeting they may already have gotten engineering done.
- Ethan: If they come in sooner, the more likely they will get approved. Difficulty is doing with those who don't build all the time. Others know that this is the case.
- Tom: Do all developers know this is available? Ben: Yes, sometimes they start with CEO.
- 10. BMP Inspection and Maintenance Requirements
  - Damon: Need better inventory of what is in the ground.
- 11. Standards for Drainage Ways
  - Similar for both towns, important to be educated
- 12. Septic System Standards
  - Propose one idea for grandfathering direct discharge systems and provide a grace period. Goal is to identify these and improve.
- 13. Pollutant Loading Standards
  - Read through and consider ways Towns can improve by lowering the threshold.
  - Perhaps change fee-in-lieu threshold. Or make an annual fee. Consider this.
  - Dennis: Talked about a number of options such as finding offsets that could be addressed. Yet this an additional burden on the towns to follow-up on. So, this and the current condition of the lake, no phosphorous should be added.
  - John: establishing a program to monitor could be complicated. Yet keep minds open to modifications down the line.
  - Dennis: Difficult to do for small development. Yet need to set a standard for larger development. Lot of discussion at Windham's Town Council meeting last night. Are we aiming everything at people who are not on the lake yet? Answer is no. Need to look at what's there and their contribution of phosphorus.
  - Jeff: Reason we had a compensation fee option in Chapter 500 is because of small commercial properties that are unable to treat 100% of the phosphorus – the in-lieu fee is a compromise that would allow them to survive.
- Table 2 addresses HLA Priorities directly
  - 1. Remove Windham Mobile Home Park Overlay – not an option
  - 2. Incorporate requirements into single-family development
    - 3<sup>rd</sup> Party review
    - Adding a conservation zone
      - John: Benefit to identify it is a conservation zone?

- Damon: Surface water protection is in effect a conservation zone?
- John: Serves the same purpose? Ben: Yes
- No need to name as a “zone”
  - ROW (previously discussed)
- 3. Enhanced phosphorus requirements (previously discussed)
- 4. Cluster subdivisions (previously discussed)
- 5. Enhance Buffer Requirements
  - Falmouth relies extensively on buffers; Windham allows for more BMPs
  - John: Were thinking of bolstering Falmouth’s BMPs; Ethan: Giving additional options / tools to property owners with preference towards buffers; John: Can discuss in more detail at future Ordinance Committee meeting.
- 6. Septic Design and Inspection Requirements (previously discussed)
- 7. Lawn Fertilizer Restrictions
  - Possible follow-up option for CCSWCD
  - Chantal: Windham Town Council looking at fertilizer ban
    - Dennis: Not a “ban” necessarily. Good to have expert input (DEP and CCSWCD).
  - Tom: Did some quick research. Called Aubuchon in Naples, have a 10-0-10 product. Could require it for the whole time. NY state requires this statewide.
  - Damon: CCSWCD has Yardscaping Program that can offer education materials and trainings
- John: Working with Chris Hansen (Windham’s CEO) to implement Windham’s Stormwater Ordinance
  - Looking at NH Homeowners Guide to SW Management
  - Cookbook way to implement a BMP – Could transfer into Falmouth ordinance language

#### **Action Item Recommendations from CCSWCD’s Memo**

- Convene joint Shoreland Zoning trainings for the Planning Boards and Code Enforcement Officers from both municipalities.
- In regard to Overlay District maps(s):
  - Add northern portion of the lake watershed delineated as a portion of MacIntosh Brook (a direct tributary of Highland Lake) to Falmouth’s Highland Lake Conservation Overlay District.
  - Adopt/upgrade watershed boundary maps in both towns to reflect new 2-foot contours provided by the State’s updated LiDAR data.
  - Conduct periodic updates to the watershed boundary maps.
- Update Windham’s Stream Protection zoning layer based on desktop analysis of GIS stream data layers.
- Both Towns should continue to update their Shoreland Zoning based on changes due to development and redevelopment.
- Each Town should consider expanding the Site Plan Review process, or at minimum thresholds for review of conservation practices, for additional development and redevelopment types.



- Clarify what constitutes “temporary” in both Falmouth’s and Windham’s ordinance in regard to piers and/or docks.
- If Falmouth adopts density bonuses, Windham’s ordinance should be used as a basis.
- Adopt ordinance requirements in both towns that increases the frequency of BMP inspections and maintenance beyond the requirements in Chapter 500 to all stormwater BMPs in the watershed. Ensure all BMPs installed using Clean Water Act Section 319 funding are adequately cataloged, inspected, and maintained.
- Educate decision makers (Planning Board, City Council, municipal staff) on the requirements for drainage ways/hydrology and limit waivers issued.
- Consider creating a process to identify and upgrade “grandfathered” direct discharge systems.
- Amend ordinances in Falmouth and Windham to require more restrictive phosphorus standards or restrict how fee in lieu is allowed for Chapter 500 projects. Explore requiring an annual rather than one-time fee in lieu.
- Have both towns consider third-party review of stormwater related ordinance for clarity and consistency with stormwater engineering terminology.

**Possible Next Steps (listed in no particular order):**

Task	Responsible Party(ies)
1 Review Route 302 culvert crossings to determine watershed boundary in this area	Jeff Dennis/DEP
2 Adopt/upgrade watershed boundary maps in both towns to reflect new 2-foot contours provided by the State’s updated LiDAR data and conduct periodic updates to the watershed boundary maps. (Ethan stated this would be easier to do if Jeff/State could provide comment/email that this map is the most accurate to-date.)	Town of Windham and Falmouth
3 Provide USM students with updated watershed boundary map to print for NPS watershed survey packets	John MacKinnon
4 Have USM students fill in Westbrook’s zoning into the watershed maps	John MacKinnon
5 Provide committee with link to maps and data (DONE)	Damon Yakovleff
6 Compare overlay zone with parcel map and find out which properties are not covered by the overlay zone near MacIntosh Brook (Jeff is curious if the Rand Stables is in this area) / Possibly add this portion of the watershed to Falmouth’s current Highland Lake Conservation Overlay District.	Ethan Croce/Town of Falmouth
7 Convene joint Shoreland Zoning trainings for the Planning Boards and Code Enforcement Officers from both municipalities. Jeff suggests providing information on standards and examples of complexities CEO’s	TBD

	may face in the field.	
8	Consider methods to strengthen 3 <sup>rd</sup> party reviews / Jeff to revise State buffer standards	TBD and Jeff Dennis/DEP
9	Windham to update Stream Protection zoning layer based on desktop analysis of GIS stream data layers.	Ben Smith/Town of Windham
10	Each Town should consider expanding the Site Plan Review process, or at minimum thresholds for review of conservation practices, for additional development and redevelopment types.	Town of Windham and Falmouth
11	Clarify what constitutes “temporary” in both Falmouth’s and Windham’s ordinance in regard to piers and/or docks, and/or consider expanding regulation of temporary piers.	TBD
12	Adopt ordinance requirements in both towns that increases the frequency of BMP inspections and maintenance beyond the requirements in Chapter 500 to all stormwater BMPs in the watershed. Ensure all BMPs installed using Clean Water Act Section 319 funding are adequately cataloged, inspected, and maintained.	Town of Windham and Falmouth
13	Educate decision makers (Planning Board, City Council, municipal staff) on the requirements for drainage ways/hydrology and limit waivers issued.	TBD
14	Consider creating a process to identify and upgrade “grandfathered” direct discharge systems.	TBD
15	Falmouth and Windham to amend ordinances in Falmouth and Windham to require more restrictive phosphorus standards or restrict how fee in lieu is allowed for Chapter 500 projects. Explore requiring an annual rather than one-time fee in lieu.	Town of Windham and Falmouth
16	In regard to enhancing buffer requirements, Falmouth to consider including additional options/tools to property owners with preference towards buffers. Possibly use BMP information from NH Homeowners Guide to Stormwater Management. (Also see #8, Jeff to work on revising State buffer standards.)	Town of Falmouth
17	Consider fertilizer/phosphorous/nutrient management restrictions throughout watershed. Possibly use CCSWCD’s Yardscaping program for landowner education.	TBD
18	Both Towns to consider third-party review of stormwater-related ordinance for clarity and consistency with stormwater engineering terminology.	Town of Windham and Falmouth
19	Compare ordinance language to other lake-friendly ordinance examples.	TBD

20	GPCOG to review ordinance language changes to legally make ordinances say what you want them to say.	GPCOG
----	--	-------