

**New Boston Conservation Commission (NBCC)**  
**Meeting Minutes**  
July 12, 2018

**Members In Attendance:** Laura Bernard, Rebecca Balke, Ed Boyle, Barbara Thomson, Marty Kelley, Louise Robie, Gerry Cornett, Betsy Whitman

**Members Absent:** None

**Guests In Attendance:** Ken Lombard, Tom Jones

**Secretary's Report:** Ed moved to accept the minutes of June 7, 2018 as amended. Seconded. Approved.

**Treasurer's Report:** Rebecca reported the account contains \$643,718.71. The Open Space portion is \$470,414.56 with \$280,000 committed for a potential land purchase and the CC portion is \$173,304.15.

**Appointments:** Ken Lombard, Open Space Committee Chairman. Betsy moved to support the Open Space Committee entering into the proposed agreement with PLC to purchase 30 acres at map/lot 2-25 for up to but not exceed \$30,000. Seconded. Approved.

**New Business:**

- *Americorp*: Discussed.

**Old Business:**

- *Grant Update(s)*: Discussed.
- *Trail Camera Shots*: Discussed.
- *Fundraising*: Discussed.
- *Monitoring*: Discussed.

**Correspondence Received:** Discussed and attached.

**Any Other Business That Comes Before The Commission:** Discussed.

Marty moved to adjourn the meeting at 8:26 PM. Seconded. Approved.

Respectfully submitted,  
Maralyn Segien

*Next meeting scheduled for Thursday, August 2, 2018 at the Town Hall Conference Room*

To: Selectmen of New Boston  
From: Deanna and Michael Powell, 127 Bunker Hill Road, New Boston

Date: 7/11/2018

Subject: Conservation Commission Rail Trail "Leash Law"

In the latest issue of the New Boston Beacon, we noticed that the Conservation Commission declared that they had adopted a "leash law", requiring that all dogs be leashed on the Rail Trail at all times. We believe that the Conservation Commission has overstepped their duties and authority for the following reasons:

1. The appointed members of the Conservation Commission have no authority to make "laws".
  2. The Conservation Commission exceeded their authority under RSA 36-A:4 by adopting rules that are beyond the scope of RSA 36-A:4.
  3. The Conservation Commission erroneously asserts that the Public Lands of the town of New Boston that they oversee are independent of established laws and ordinances of the town.
  4. The "leash law" adopted by the Conservation Commission is in direct conflict with RSA 466:30-a and RSA 466:30-b which was duly adopted through a warrant article by the Town of New Boston by a majority vote of its citizens.
1. The appointed members of the Conservation Commission have no authority to make "laws". The powers of the Conservation Commission are detailed in RSA 36-A:4. They are not elected officials nor are they a legislative body. As such, they cannot make "laws". There are no minutes of the Conservation Commission Meeting for June. If these minutes suggest that the Commission voted on a "law", as reported by a Commission Member in the New Boston Beacon, this would be an invalid vote.
  2. The Conservation Commission exceeded their authority under RSA 36-A:4 by adopting rules that are beyond the scope of RSA 36-A:2. RSA 36-A:4 details the powers of a Conservation Commission. These powers include the management and control of the town's conservation properties "*for the purpose of this section*". The purpose of RSA 36-A:2, as written is "*for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town*". As such the purpose of RSA 36-A overall is for natural resource conservation, not dog control. Dog control is a separate and specific RSA, detailed in RSA 466:30-a under which the Conservation Commission has been granted no authority.
  3. The Conservation Commission erroneously asserts that the Public Lands of the town of New Boston that they oversee are independent of the laws and ordinances of the town.
    - a. RSA 36-A:4 states that lands that the Conservation Commission may acquire and control are done so "in the name of the city or town". As such, these are New Boston public lands, not Conservation Commission lands.
    - b. Furthermore, the town of New Boston, by majority vote of the citizens of the town, adopted a Town Ordinance governing "Conduct on Public Grounds". This ordinance defines public grounds to specifically include properties overseen by the Conservation Commission and details the operating policy for these public grounds. The Conservation Commission creates confusion and conflict with the existing "Conduct on Public Grounds" ordinance by erroneously making a "leash law" independent from this duly adopted ordinance.
  4. The "leash law" adopted by the Conservation Commission is in direct conflict with RSA 466:30-a and RSA 466:30-b which was duly adopted through a warrant article by the Town of New Boston by a majority vote of its citizens. The Town of New Boston adopted RSA 466:30-a to govern dog control within the town. The process used is defined in RSA 466:30-b. This is the established Dog Control law in New Boston. RSA 466:30-b (V) states that "*A town or city which either does not adopt, or rescinds its adoption of, RSA 466:30-a, may adopt other ordinances pertaining to dogs running at large under RSA 31:39 or RSA 47:17, XI*". Since the town has adopted (and has not rescinded RSA 466:30-a), it may not adopt additional ordinances pertaining to dogs running at large.

In summary, the town has previously adopted RSA 466:30-a as the law governing dog control in the town. The Conservation Commission has erroneously created new laws, rules, or ordinances in violation of RSA 466:30-b (V) and outside the scope of their management powers detailed in RSA 36-A:4.

As such, we request that the Selectmen instruct the Conservation Commission to correct these errors and focus public communications in the manner of signs and newspaper articles on the understanding of existing law under RSA 466:30-a, its requirements and remedies for those harmed by violations of this law.

Respectfully Submitted,

Deanna and Michael Powell  
127 Bunker Hill Road  
New Boston, NH



Message

Thu, Jul 12, 2018 12:57 PM

From: **Peter Flynn**  
"Barton L. Mayer" <bmayer@uptonhatfield.com>  
To: **Laura Bernard**

Subject: Fwd: Conservation Commission Authority to Regulate Use of Town Property

Attachments: Attach0.html / Uploaded File

17K

Laura, Congratulations. Peter  
----- Original Message -----  
Peter—

It appears that there is some misunderstanding with respect to the application of several regulations and statutes.

First, RSA 41:11-a specifically vests in the conservation commission the authority to manage the use of property under its control. (The selectmen shall have authority to manage all real property owned by the town and to regulate its use, unless such management and regulation is delegated to other public officers by vote of the town, or is governed by other statutes, including but not limited to [Marker][

<http://lawriter.net/NLLXML/getcode.asp?datatype=S&userid=PRODSG&interface=CM&statecd=NH&codesec=31:112&sessionyr=2017&datatype=S&noheader=0&nojumpmsg=0> ]RSA[

<http://lawriter.net/NLLXML/getcode.asp?datatype=S&userid=PRODSG&interface=CM&statecd=NH&codesec=31:112&sessionyr=2017&datatype=S&noheader=0&nojumpmsg=0> ] 31:112, [Marker]RSA 35-B, [Marker][

<http://lawriter.net/NLLXML/getcode.asp?datatype=S&userid=PRODSG&interface=CM&statecd=NH&codesec=36-A:4&sessionyr=2017&datatype=S&noheader=0&nojumpmsg=0> ]RSA[

<http://lawriter.net/NLLXML/getcode.asp?datatype=S&userid=PRODSG&interface=CM&statecd=NH&codesec=36-A:4&sessionyr=2017&datatype=S&noheader=0&nojumpmsg=0> ] 36-A:4, and [Marker][

<http://lawriter.net/NLLXML/getcode.asp?datatype=S&userid=PRODSG&interface=CM&statecd=NH&codesec=202-A:6&sessionyr=2017&datatype=S&noheader=0&nojumpmsg=0> ]RSA[

<http://lawriter.net/NLLXML/getcode.asp?datatype=S&userid=PRODSG&interface=CM&statecd=NH&codesec=202-A:6&sessionyr=2017&datatype=S&noheader=0&nojumpmsg=0> ] 202-A:6.").

Second, RSA 36-A:4 specifically authorizes the conservation commission to manage and control the property over which it has supervisory authority for conservation purposes, consistent with chapter RSA 36-A. ("Said commission may receive gifts of money, personal property, real property, and water rights, either

within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section.”). It appears there is some dispute about whether regulating dogs on conservation land is “for the purposes of this section,” i.e., conservation. I can say unequivocally that regulating dogs is an appropriate consideration in protecting conservation land. I happened to try this very issue in the Strafford Probate Court with respect to the Tarr Conservation area in the Town of Bedford. The court clearly held that unleashed dogs could be inconsistent with conservation purposes. That property is subject to a court ordered restriction requiring all dogs on the property must be on leashes.

Third, it is suggested that the town’s adoption of RSA 466:30-a somehow precludes the regulation of town property in a different manner. This is incorrect. The ordinance is of general application. A landowner may prohibit activity on his or her or its property regardless of the existence of an ordinance.

Fourth, the ordinance cited does not preempt the conservation commission’s authority. Indeed, section 1.3(B) states, “Rules and regulations for use of Conservation or Forestry properties will be posted at those locations.” The clear import of this provision is the town meeting anticipated the conservation may adopt rules governing the use of property under its control. Nothing in the ordinance addresses dogs or precludes supplemental rules.

In conclusion, the conservation commission is acting well within its authority in adopting rules governing dogs on conservation land. These are not simply aspirational goals. I do not draw a conclusion as to the enforceability of the language merely based on the characterization of it as a policy, ordinance, rule, or regulation; nor apparently do the complaining parties. Otherwise one must conclude the conservation commission’s efforts are intended to be meaningless. I will not so interpret the commission’s intent. The rule may be enforced by removing an individual from the property in the event of a violation. Further, the