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Town of Grantham Grantham Conservation Commission

MEETING MINUTES July 18, 2011

Chairman Richard L. Hocker called the Conservation Commission to order on Monday, July 18, 2011, at 7:02 p.m. The meeting was held in the Jerry Whitney Memorial Room at Grantham Town Hall located at 300 Route 10 South in Grantham, NH.

Present: Chairman Richard (Dick) Hocker; Merle Schotanus; Andy Eastman; Joe Watts (*Alternate*); and Kristina Burgard (*Alternate*).

Absent: Jeremy Turner; Lindsey Dixon

Members of the public: Town Administrator Becky Newton; Mike Whipple; Jeff Walla; Missy Walla; and Jeremy Walla.

***SPECIAL PUBLIC HEARING ***

Public hearing regarding disbursing ten thousand dollars (\$10,000) from the Conservation Fund to the Upper Valley Land Trust for conservation management and stewardship in connection with conservation and protection of Grantham property located on Leavitt Hill Road identified as Lot 208-002.

Chair Hocker explained that at the present time the Town of Grantham is actively pursuing with the help of Upper Valley Land Trust the purchase of the subject property in order to conserve the property. The 97-acre parcel located at the top of Levitt Hill Road contains largely upland woods with about 8 acres of wetlands towards the lower half of the property. The intent of the purchase is to conserve the land under a conservation easement in order to protect vital natural resources, while also using conservation of this property in connection with mitigation for the wetlands that will be impacted by construction of the new ball field.

The \$10,000 will come from the Commission's Conservation Fund, which contains money dedication to the Conservation Commission that is paid to the Town of Grantham from properties that are taken out of current use.

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Chair Hocker asked if there were any questions or comments. J. Walla asked if this would mitigate all of what is needed for the ball field. Town Administrator Newton stated that this will provide what is needed and then some and that DES guidelines will all be met to DES's satisfaction.

Chair Hocker explained that up to \$60,000 will go to the Upper Valley Land Trust for the purposes of acquiring the land, and that it looks like there will be a closing as early as August 15, 2011. At that point in time, the Upper Valley Land Trust will help with preparation of the mitigation package, turn it over to the Town Selectmen who will then forward it on to DES in Concord.

Burgard clarified that there are actually two pieces to this - acquisition of this land that is not currently owned by the Town and a conservation easement. The Selectmen, as the agents to expend, are authorized to take funds from the Land Preservation Capital Reserve for purchase of Grantham property deemed vital to preservation and conservation of Town natural resources, and at the June meeting, the Conservation Commission voted to support the Selectmen's withdrawal of up to \$60,000 for acquisition of Lot 208-002. Then with regard to the conservation easement, a stewardship and management endowment is needed, so the Commission is proposing to use \$10,000 from the Conservation Fund is for that purpose.

Schotanus added that if everything falls into place by August 15, 2011 the timing will be very significant as this would give the Town of Grantham an opportunity to do something with the soccer field this construction year; if this does not go through by that time, then it is not likely anything would be done until next construction year.

Walla asked who would actually own this land - the Town, Upper Valley Land Trust, or the Conservation Commission. Chair Hocker explained that the land would be purchased/owned by the Upper Valley Land Trust with a Conservation easement placed on the property that will dictate how the property can be used. Burgard explained that land used for mitigation needs to protect greater or equivalent wetlands than those impacted by the proposed build, plus a significant amount of upland buffer as specified by DES, and DES dictates and approves the terms of conservation easements placed on property used for mitigation.

Walla asked if the Selectmen were in support of this purchase; Town Administrator Newton confirmed that they are in support of this acquisition. Chair Hocker confirmed that this is essentially the last step relative to the Conservation Commission.

Chair Hocker asked if there were any further questions. No with further questions or comment Chair Hocker closed the Special Public Hearing.

At 7:25 p.m., Chair Hocker called the regular meeting of the Conservation Commission to order.

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ADMINISTRATIVE

Approval of Minutes for 20 June 2011 Meeting

Chair Hocker asked the Commission members if there were any additions, corrections, or modifications to be made to the draft minutes for the June 20, 2011 meeting. Burgard indicated that there were a number of changes and requested the following revisions:

Page 1, New Business, Para 1, Line 4. change “Committee” to “Commission”;

Page 2, New Business, Para. 1, Line 1, add “accepting” after Selectmen,

Line 2, add “Flewelling’s” before “request”, remove “the” after “request for” and add “posting” before “Flewelling’s Memorial Plaque”, and change “posted” with “placed”;

Para 2, Line 1, replace “board” with “Commission”, Line 2, before “appraisals” insert “proposal for” before appraisals, Line 3, after “208-002” insert “and the quote relating thereto” and replace “the” with “a” after “Due to”, and line 4, change “of procedure” to “in priorities”;

Other Business, Para 3, Line 1, change “board” with “Commission”, and line 5, change “on” to “at” and delete “next”;

Land Acquisition, Para 4, Line 1, change “interest in” to “support for”, Line 2, change “was” to “is”, delete “with each case they the commission would proceed independently” and insert “lot could be pursued independently, if necessary”, Line 6, before “she would” add “, if possible,”, Line 8, after “Jeanie McIntire” insert “of Upper Valley Land Trust”, Line 9; after “agreed upon” add “at that time”, Line 10, change “where withal to” to “necessary recommendations to support”, Line 11, remove “for them to buy” and add “acquisition and protection of” before “the land” and remove “and for the Conservation Commission to reimburse the Upper Valley Land Trust for the purchase”, Line 13, replace “confirmed” with “stated” and remove “the bulk of the” before “money” and add “related to purchasing property might be requested”, Line 14, remove “was to come” and add “Land Preservation” before “Capital” and capitalize “reserve”;

Page 3, Para 1, Line 1, remove “to be” before “deemed” and add “to be” after “deemed”,

Line 2, add “Funds relating to stewardship would have to come from another source.”, Line 4, delete “a couple of” and insert “and contains several”, Line 5, after “provide” insert “important functions and values, such as”, Line 6, after “water quality” insert “and flood storage. The property is also”, Line 7, after “plant habitat”, insert “, and is contiguous to existing protected land.” ;

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Page 3, Para 2, before the paragraph, insert “Burgard noted that the Town adopted RSA 36-A: 4-a, I (b) in connection with property located in Grantham by unanimous vote at the 2009 Town Meeting.”;

Page 3, Para 3, in the Motion, line 5, change “Conservation” to “Preservation” before “Capital Reserve Fund”;

Page 4, Para 2, Line 2, change “Rick” to “Dr. Rick Van de Poll”, Line 4, remove “;especially in Eastman”, Line 5, remove “other than the main lake or pond associated with wet lands complexes”, Line 6, change “add a mix to” to “identify” and after “but” insert “other than the main lake or pond associated with wetland complexes”, Line 8, after “difficult” insert “, especially in Eastman,” and change “since all” to “where many”;

Para. 5, line 1, delete “they”, insert “the” before “second” and change “to the owner” to “landowner”, Line 2, change “letters” to “letter draft”;

Page 5, Para 1, Line 1, change “responsibility” to “responsible”, Line 2, after “subcommittee” insert “to address proposing criteria for local Shoreland Protection requests”;

Para 2, line 4, change “ex-official”, both occurrences, to “ex officio”, Line 6, change “said the alternative is” to “noted” and change “five statues and” to “NH statutes provide that”, Line 7, after “actually” insert “simultaneously serve as a full” and delete “be a full binding”, Line 8, after “member” insert “of the Planning Board, and thus the Select Board can appoint a Conservation Commission when a position is vacated”, and Line 9, remove “according the RSA 36:2”; and

Para. 3, line 4, change “ex official” to “ex officio”.

With no further corrections to be made a motion by Schotanus to approve and accept the June 20, 2011 Minutes as modified; second by Eastman. There being no further discussion, the motion was put to a vote.

Unanimously Approved & Accepted

***OTHER BUSINESS**

Flewelling Brothers plaque placement

Chair Hocker explained that the Board of Selectmen essentially placed this issue on hold at their meeting on July 13th. There are a number of issues that need to be worked through. The last communication Chair Hocker had with Bruce Flewelling is that they are holding the Memorial Service on July 30th.

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Chair Hocker explained that one of the issues the Selectmen have is that there is currently a sign already up there and the placement of the sign is a concern as well. The Selectmen would like to resolve the access problems regarding this property.

Burgard noted that the issue of access to the property has been an open issue for a while now, and there appear to be a number of misunderstandings and miscommunications that are complicating matters. For example, in the minutes from a recent Selectmen's meeting reference is repeatedly made to a "Town Forest" sign to which the current property owners object. The property in question is called Sherwood Forest, and it is not part of the Town Forest, nor is there a Town Forest sign on this property. So it is unclear what sign is actually at issue.

Burgard explained that there are a number of interested parties here by virtue of the conservation easements, which were supported by the LCHIP program. Those parties include the Selectmen on behalf of the Town as the conservation easement grantees, the Conservation Commission as the Selectmen's advisors, the current property owners, believed to be Karyn Partin and her brother as administrators of their father's estate, the Flewelling heirs or assigns on behalf of the original easement grantors, and the State of New Hampshire. Burgard indicated she felt that the best way to move forward is to get all the parties together at the same time, and recommends that a meeting be held with all involved parties, and their legal representatives if any, in order to discuss all issues relating to this property and the easements, and attempt to work through and resolve those issues in an open forum with all parties in attendance. Newton also added that the Selectmen, and Warren Kimball specifically, would like to do an onsite walk that could be beneficial. Chair Hocker offered to join them on this walk. Schotanus and Eastman suggested that the meeting with all parties be held before the walk of the property.

Eastman asked if someone could explain what a violation is. Burgard indicated that it is her understanding that a violation means doing something that is not permitted or failing to do something that is required by the terms of one of the conservation easements. Responsibility for resolving violations resides with the Selectmen on behalf of the Town of Grantham, who is the easement grantee, and the role of the Conservation Commission is an advisory one to the Selectmen. The State also has a role in enforcement of the easements by virtue of the easements being supported by the LCHIP program.

Chair Hocker stated that the issue that had to be paramount is that under the easements, the public has a right to access that property and the current owners have indicated that they would prefer that the public be excluded. The Town is in a position where they are required to uphold the terms and conditions of the easement, which provides for public access, and they cannot

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agree to do something that goes in the opposite direction from the terms of the conservation easements.

Schotanus agreed that Burgard's recommendation of a meeting of all involved parties is right on the money and should be the starting point. Burgard indicated that it would be advisable to hold the meeting in the near future before taking any further enforcement actions in an effort to get all issues on the table and work toward amicable resolutions. Newton asked who would coordinate the meeting and invite all interested parties. Burgard indicated that it is her opinion that the Selectmen should organize the meeting, but that the Commission could provide a list of involved parties.

****Land Acquisition – Stewardship Endowment***

Chair Hocker stated that the Commission has heard the comments from the public regarding disbursing money from the Conservation Fund; the task for tonight is to formulate a motion after a discussion as to whether or not to proceed the approving the \$10,000 donation to Upper Valley Land Trust.

Chair Hocker opened it up for any questions or concerns. Burgard stated that the Commission did not hear any objections or concerns at the earlier public hearing regarding the proposed \$10,000.00 donation for endowing a fund for stewardship and management of Lot 208-002 under the terms of a conservation easement.

A motion was made by Burgard that *contingent upon the purchase of Grantham Lot 208-002 for conservation purposes, the Conservation Commission donate to the Upper Valley Land Trust ten thousand dollars (\$10,000.00) taken from the Conservation Fund to endow conservation management and stewardship of Grantham Lot 208-002 under the terms of a conservation easement*; seconded by Schotanus.

Unanimously Approved & Accepted

****Planning for Conservation –***

Continue Planning for Wetlands Inventory project – Next steps

Schotanus explained that he has not heard anything from Dr. Rick Van de Poll since their meeting on June 28, 2011. Schotanus explained that they had a discussion on connectivity of wetlands and what constitutes one wetland complex, e.g., how far upstream they were going to go on Bog Brook as one complex. Schotanus stated that he felt confident that this was resolved. Dr. Van de Poll discovered that the wetlands in Grantham are much more extensive than he originally thought - 2,500 wetland units, 1,880 acres of wetlands, 200 culverts, 123 ditches and 22 bridges all having to do with connectivity of wetlands, plus 22 significant evaluation units and between 75-80 evaluation units.

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Schotanus explained that with this information and the number of teams, more than likely each team will be required to evaluate between 3-4 units. Dr. Van de Poll is currently in the process of finalizing the evaluation units and looking over the roster of volunteers to assign volunteers to their evaluation teams. Watts asked if volunteers were going to be assigned to teams before permission is given by the landowners to do the evaluation. Schotanus confirmed that the teams will be assigned prior to landowner notification, but no evaluations would be done without permission, and that as soon as Dr. Van de Poll sends the Commission a list of the units and landowners, letters will go out to all of these landowners from whom the Commission does not already have access permission. Schotanus stated that he believes that this will all take place in the next couple of weeks.

Burgard explained that a redraft of the second letter to identified landowners went out right before the June 28th meeting and feels that the letter should be finalized so that when the Commission receives the list of landowners from Dr. Van de Poll, the letter can go out right away. Burgard asked if the Commission had any concerns or comments regarding the second draft. Schotanus suggested that the second draft be resent for final comment and then finalized with any suggested changes.

Schotanus explained that he had heard from Dixon today via email and she would like the Commission to keep her informed; she will be back in Town next week.

****Shoreland Protection – Grantham Status***

Chair Hocker recognized Mike Whipple. Whipple stated that he lives on Stocker Pond Ridge, and that his house lot is in the 250-foot shoreland protection zone. His house sits back about 100 feet from the water and currently has some potentially dangerous tall pines hanging over his house that he would like to remove. Whipple explained that as far as he knows he has the right to have the trees removed because they are a hazard. Whipple explained that he has been researching this issue for some time and he understands that Grantham does have an application for cutting plan review. At this time he is unclear if he needs to go through this application process. Whipple asked if the Conservation Commission could give him some guidance on this matter. Chair Hocker explained that the difficulty the Commission has is that the authority to act on anything does not reside with the Commission. The Selectmen have full and complete authority for all actions associated with Shoreland Protection in the Town of Grantham.

Schotanus asked Town Administrator Newton if they understood the changes correctly. Newton explained that what she understood is that the more stringent protection lay in the Zoning Ordinance and the only people that can enforce the cease and discontinue under the Zoning

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Ordinance are the Selectmen. Newton stated that the Town is working on a process that will address this issue of whether a local application is needed.

Newton asked the Commission if Whipple needs to fill out a local permit when the State CSPA covers his pond and no State application is required in this situation. Chair Hocker stated that if he had to make a judgment regarding this issue he would say that Whipple would have to show that he meets the local set back criteria. Whipple confirmed that he is not cutting anything within the 50ft set back.

Chair Hocker asked Whipple if he was just planning on cutting the trees that are close to the house. Whipple confirmed that the only trees he intends to remove are the ones closest to his house that are potentially hazardous; they are within 30ft of his house and are unhealthy. Chair Hocker noted that Whipple should document what he does so that he could demonstrate compliance if challenged. Whipple explained that one of the reasons why he was in attendance at tonight's meeting is to get clarification before he does anything. He knows what the State Shoreland Act requires, but the local ordinance form appears to be out-of-date. Chair Hocker stated that the Zoning Ordinance was reorganized and renumbered, and that the applicable portion is now Section 3K, and that the older form should be removed from the Town's website. Newton stated that she believes the applicable portion of the Zoning Ordinance is now actually X-C.

Chair Hocker and Schotanus stated that the ultimate decision and authority on this lies with the Selectmen. Whipple stated that he feels he is following all guidelines according to the local Zoning Ordinances and the State CSPA. Chair Hocker stated that it would be advisable for Whipple to document and take pictures of what he is doing, both before and after, so that if someone should complain to the Selectmen about his cutting, Whipple can demonstrate what was done and why, e.g., the trees removed were hazardous or diseased.

Whipple stated that he asked Jesse Bouchard from the Department of Revenue if he needed an intent to cut in order to remove hazardous trees, and he confirmed that one was not needed to remove hazardous trees. Bouchard explained to Whipple that for any tree that could reach his house, he is able to cut without filing intent to cut. Burgard expressed that it appeared that Whipple was doing everything within his power to follow both local and State guidelines and suggested that Whipple send the Selectmen a letter advising them in advance of what he intended to cut and why as a means of documenting this.

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HAND OUTS

None

ADJOURNMENT

Chair Hocker asked if there were any further business. There being none, Schotanus moved to adjourn, and Burgard seconded the motion.

The Commission voted unanimously to adjourn at 8:24 p.m.

NEXT MEETING

The next meeting will be at 7:00 p.m. on August 15, 2011, in the Jerry Whitney Memorial Conference Room.

Respectfully Submitted,

Jessica Smith

Grantham Conservation Commission, Clerk