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Town of Grantham Grantham Conservation Commission

WETLANDS INVENTORY PUBLIC FORUM September 25, 2012

Commissioner Merle Schotanus opened the Wetlands Inventory Public Forum on Tuesday, September 25, 2012, at 7:14 p.m. The Wetlands Inventory Public Forum was held in the Lower Level Meeting Room at Grantham Town Hall located at 300 Route 10 South in Grantham, NH.

Commissioners Present: Chairman Richard (Dick) Hocker; Merle Schotanus; Lindsey Lefebvre; Kristina Burgard; Joe Watts (*Alternate*); and David Wood (*Alternate*).

Members of Public: Dr. Rick Van de Poll; and approximately 35 members of the public.

Handouts: *None*

Mr. Schotanus welcomed everyone to the Wetlands Inventory Public Forum and indicated that the original purpose of the evening was to provide the public with a first look at the final results of the Wetlands Inventory. Unfortunately, upon his arrival tonight Dr. Rick Van de Poll, the wetland scientist leading this project, advised the Commission that he was not able to finalize the results yet as he still has not finished his review of several wetland evaluation units and needs to follow up on some points with volunteer evaluators. As a result, there will be no handout.

Mr. Schotanus stated that instead, Dr. Van de Poll has indicated he will discuss the project in general, identify the sections of the 2011 Revised NH Method, provide a high level look at the interim results for wetland evaluation units in Grantham, and discuss next steps. Mr. Schotanus announced that a sign-up sheet was at the back of the room, and anyone interested in getting a copy of the final results once they are received should sign up there, and that the results would also be posted on the Town's website.

Mr. Schotanus then introduced all the Commissioners, and Dr. Van de Poll, and thereafter asked that Dr. Van de Poll proceed with his discussion.

Dr. Van de Poll opened by going down the list of volunteers that performed evaluations, and thanked them all in general and individually thanked those that were present. He then discussed his qualifications and experiences, including that he is one of the drafters of the original NH Method, as well as all subsequent revisions thereto. He indicated that this method is not only used in New Hampshire, but around the country, as an objective means of evaluating the characteristics of wetlands and determining which are most important to the public.

Thereafter, Dr. Van de Poll discussed how he identified fifty-four (54) wetland evaluation units in Grantham using high-resolution aerial images that include an infrared component. He pointed

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out how much more accurate the new aerial images are, and showed how the infrared allows you to see which trees and other vegetation are more or less wet than others, which gives an indication of a wetland's edge. He discussed how he used these aerial images, along with roadside visits where possible, to generate maps for each wetland evaluation unit he identified in Grantham.

Dr. Van de Poll then discussed the extensive revisions that were made to the NH Method in 2011, and how these revisions made evaluations performed using this method even more accurate and less subjective. He went on to discuss each of the twelve sections of the 2011 Revised NH Method, and that with the exception of two sections, each question in a section is given a score between 1 (& occasionally zero) and 10, and then for each section, the scores for the questions in that section are averaged to give one average score for that section. The twelve sections are Ecological Integrity (10 questions), Wetland-Dependent Wildlife Habitat (10 questions), Fish and Aquatic Habitat (11 questions), Scenic Quality (7 questions), Educational Potential (9 questions), Wetland-Based Recreation (6 questions), Flood Storage (7 questions that yield the wetland's flood index), Groundwater (4 questions), Sediment Trapping (7 questions), Nutrient Removal/Retention/Transformation (5 questions), Shoreline Anchoring (4 questions), and Noteworthiness (8 questions).

Thereafter, Dr. Van de Poll showed a chart listing the numbers and names of the 54 wetland evaluation units he identified in Grantham, and then showed bar graphs for each of the twelve sections of the Revised NH Method, where each contained the interim scores of all 54 Grantham wetland evaluation units in connection with a particular section. When discussing the Noteworthiness section, Dr. Van de Poll pointed out that for this section, each question either receives a score of zero or 10, and that the scores for all the questions in this section are not averaged, but instead are added together. That is because this section focuses on characteristics that if present, make a unit particularly unique, such as it contains wildlife habitat that has been ranked in the State's Wildlife Action Plan as being highest ranked habitat in the state or region, or the unit contains an important historical or archaeological site. He noted that, even though the scores in the Noteworthiness section are totaled rather than average, when comparing the units to one another, you still see that there is a mean value for this section, and that some wetland evaluation units clearly score well above that mean indicating that they contain more than the average number of additional noteworthy features.

He stressed that values in bar graphs he showed are not final so right now it is not important to look at particular scores, but from these interim graphs for each evaluation section, you can see that when the scores are compared to each other, there are some wetland evaluation units with average scores well above the mean for a section, and when you looked across all evaluation sections, a few show scores above the mean for quite a few evaluation sections. These are wetland evaluations units that distinguish themselves as being particularly valuable with regard to the features being analyzed in a section.

Dr. Van de Poll then indicated that in his report with the final results, he would use the evaluation scores for the wetland evaluation units and for each feature/section, would compare

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them to one another to select recommended candidates for prime wetlands. He stated this process also involves to some extent determining which features are most important to Grantham, which generally means looking to the town's Master Plan. Dr. Van de Poll then showed a number of charts and examples from other towns in New Hampshire where he used evaluation results and features considered important to the town to identify wetlands that were particularly valuable to that town, as well as charts showing how using the 2011 NH Method gives even more accurate results for wetlands in these towns than earlier versions of the method.

As Dr. Van de Poll continued to discuss examples from other towns, Ms. Rosie Bard interrupted politely and requested that Dr. Van de Poll turn the discussion back to what is happening in Grantham, rather than other towns. Dr. Van de Poll indicated the purpose of the discussion of other towns was to provide an example of how evaluation results are used to identify recommended prime wetland candidates, and then briefly discussed two more points in this regard.

Dr. Van de Poll then indicated he was finished, and asked Mr. Schotanus to facilitate a questions and answers period. Mr. Schotanus opened the floor for questions.

- **Realizing that this is just a preliminary, I thought I read in the letter that came to us that this is just one step in designating principle units, or prime wetlands, with that designation I also heard about new regulations in Grantham. Are those going to be restricting the ability of landowners to make any changes to their property?**

Mr. Schotanus: No, but Rick please explain.

Dr. Van de Poll: Part of the balancing act of zoning ordinances is to protect the public by providing for protection of those wetlands that provide valuable benefits to society, and at the same time not restricting landowner rights to develop as they see fit. Well, the way I see it, having been at this for some 30 odd years, is that ultimately, if you are a private landowner if you want to do something that the state law allows you to do, you'll be able to do it. If there is something that the state law says is in the public interest and they aren't going to allow you to fill in that wetland, then that's going to be the guiding document. How the town interprets that is another story. Towns have the ability to determine, for example, that while the state protects the wetlands themselves, they are not protecting what happens next to the wetlands. For example, based purely on political agenda and not on science at all, the state legislature this year got rid of prime wetland buffers. Up until this change, if all the high value wetlands in Grantham were designated with the state, they would have had an automatic 100 foot buffer that would require a permit if you wanted to do something in that buffer, like build a road, expand the house, or expand the footprint of your grandfathered shed or whatever. That went away by the legislature in this past year, and with changes in the legislature, it may or may not come back again in some form. So, now the town has the opportunity to regulate at the local level for the benefit of Grantham citizens to say, provide for buffers in its local ordinances that regulates what happens within a certain distance of the most important wetlands to the citizens of Grantham, such as those that have the best ability

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to supply drinking water. The town can do that, and that's what the ordinance is about. It's about providing reasonable regulations that will protect the values of these wetlands and prevent their destruction. Some people will agree with these regulations and some will not, and that's why it comes to a ballot vote, and the votes of the town as whole will determine whether it passes or whether it fails. The town selectmen and the Planning Board have their own change, and the Conservation Commission advising them, to update the Master Plan, which is then voted & adopted by the town, and once adopted, to follow and carry out what is specified in the Master Plan in terms of protecting various public values and resources of the town, and the health and safety of the town of Grantham.

- **Bob MacNeil, here. This is a discussion we had last time you made a presentation, in reference to the continuation of 4th order streams. The discussion falls right back in the same place it was the last time. There's science and there's politics. If the state has the science and they determine a certain regulation, why would Grantham be so much smarter than the state and impose additional restrictions. Explain that to me, you didn't the last time and I hope you do this time.**

Dr. Van de Poll: Yes, there's science and there's politics, I'm glad you pointed that out. The science says if you have sand and gravel soil, and dump a bunch of fertilizer in that soil, it's going to take it about 160 feet before that fertilizer is dissipated before it hits the surface water body next to it. All right? Politics says right now, if you have a prime wetland, we don't care where you dump the fertilizer, you can do whatever you want. My opinion, only my opinion, but I've watched the legislature for 30 years change the regulations based solely on political persuasion. So, it should be no surprise and I think should be very well known by most people, that there are certain elements in the legislature that tend be more conservative and want to get rid of regulations and then there other elements in the legislature that want make sure there are regulations that are for the protection of the resource.

- **How is that any different than someone standing up at Town Meeting and saying, "Do people want to protect the water in Grantham?" Everyone is going to say, "Yes." Well, then pass this ordinance. That seems to be as extreme as the example you just gave. My point is that if in fact the state has criteria, DES has professionals on staff, they have these regulations and they are pretty standard. Now you can say there's a lot of politics in there (Dr. Van de Poll: There is.), but that politics is driven by science as well.**

Dr. Van de Poll: Well, again what I am saying is that the science does not support the current regulations, so at least these current regulations that remove buffers are not based on science. The science suggests...(interrupted by questioner)

- **So what happens if the Town of Grantham in good faith decides that an area that could be developed under state regulations now is restricted by Town ordinance. Is that a legal taking?**

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Dr. Van de Poll: I'm not going to answer that because I'm not a lawyer. But what I will say...(interrupted by the questioner)

- **If that is a legal taking, is the Town of Grantham prepared at that time to compensate the property owner for the legal taking?**

Dr. Van de Poll: I guess if it is legally determined to be a legal taking, the Town's answer would have to be, "Yes," as much as the Town has a right to raise your taxes when they end up spending \$150,000 to fix a road because a wetland was blown out and there's no more flood storage.

- **Will the presentation for the wetlands ordinance, because there will be someone speaking in favor of this ordinance, will those points be brought up?**

Dr. Van de Poll: Absolutely.

- **All those points we brought up?**

Dr. Van de Poll: You're bringing it up today and I'm glad you did (Questioner: I'll probably bring it up again (general laughter)). I hope you do. That is a completely valid justification for seeking a particular answer, up/down, yes or no, answer to a particular vote. That said, speaking as a scientist, I have seen too much destruction of wetlands that have caused unnecessary economic harm to my community in Sandwich, let alone a number communities around the state - I could just list them off - from flood storage failures. And a lot of those have to do with the increase, for instance in the southeast part of the state, the increase in impervious surfaces - roof tops, parking lots, roadways. Science now has a very definitive document out there that points to a 10% impervious limitation to avoid impact to wetlands ability to adequately store floodwater, and provide water quality remediation of run-off that comes into it. Ten percent. In most communities in the southeast part of the state, that number is now at about 20-25% impervious. I'm not saying that Grantham is there; Grantham isn't there yet, thankfully. I think the amount of impervious currently in Grantham is somewhere around 2.5-3%, so it's much lower than average right now. But, there could come a time when something like that could contribute to someone else's property being damaged because the Town didn't protect the upstream side of it. And that's the tough part. Nobody has a perfect crystal ball to predict when this might happen, but I tend to err on the side of caution. It's like an insurance policy, in that you're doing something in advance that will hopefully allow people to enjoy that river frontage that they've always enjoyed without it blowing out.

Mr. Schotanus: Yes, Amy.

- **I'm going to give you an example of politics versus science. I live in Springfield and I did some evaluations here, and one of the reasons I did is because about 15 years ago**

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the Town of Springfield allowed a company to dump sewage and septic system stuff above Bog Brook. And this went on for 3-4 years. So, somebody after they'd emptied your septic system would come over to this place, backed up his truck, and dump it. Day after day after day. It was legal, and the state allowed it, but it's right above Bog Brook, and I drink water out of Bog Brook.

Dr. Van de Poll: Did you have any harm to your well?

- **It isn't a well. it is Eastman. This is where Eastman's water comes from. And this was legal at the time. Springfield was able to demonstrate the harm and eventually shut it down. But this is an example of legal versus politics and what is scientifically sound and safe for the public. And at the time, I didn't have a way to shut it off.**

Mr. Schotanus: Thank you. Yes, the gentleman in the corner.

- **I appreciate what you've shown today, but I was kind of waiting for the kicker slide that showed the ranking of what we might consider prime. Is that in our preliminary report?**

Dr. Van de Poll: Again, the results are not yet final, so I did not feel comfortable releasing those sort of highest and best rankings yet. I could give you a short list of some that without question are going to be in the top list of 20. But I didn't feel comfortable until that final data is in to provide that yet. Let's be clear, this is not an arbitrary decision. From my perspective, I'm going to give the Commission a scientific analysis that shows data based on existing values that are accurate, and if I don't feel comfortable with the accuracy of the values, then I'm not going to use them. So I don't have the finishing slide yet. I can tell you Bog Brook, right away, is going to be one of the places. Leavitt Pond and Leavitt Pond North and Leavitt Pond Northeast, all those are very highly intact, unfragmented, that have a good diversity of habitat, and a great ability to store floodwater. So there's a couple that are right on the top of the list. Miller Pond is very highly ranked, as well. You might think that our largest lake, Eastman, is highly ranked, but it isn't really in a lot of areas because it has a) an artificial dam structure at the outlet, b) it also as a consequence changed a lot of fringe wetlands that were present, there are not as many fringe wetlands now, and c) it also has a lot of activity in the 500 foot buffer. That said, the quality of the water is very high, but it doesn't ranked as high as some of the other ones that have a lot of open water associated with it, like Butternut Pond or Cole Pond even though Cole Pond is mostly in Enfield. So Butternut Pond would be another one of those areas.

Mr. Schotanus: Mary.

- **After we get your report, Merle mentioned a meeting, so I am assuming there will be another question and answer session?**

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Dr. Van de Poll: Oh, yeah, absolutely. Right now, this is just sort of a teaser and you're not getting the final data piece that perhaps some of you came here tonight to get.

- **I think most of us thought we'd get pretty much what we've gotten, so there will be another session after we get the final?**

Mr. Schotanus: Yes. Sure. Are there other questions? If not, that's a great segue into a finale.

Ms. Burgard: I think there is a question right there.

Mr. Schotanus: Mr. Barton, how are you?

- **I'm not sure this is the right place for this question, but the Town says I have about 15 acres of land, and almost half of it is a ravine and underground water. The ground all around it is wet. What you're doing, if it is recognized as a wetland, is that...that's not going to help my taxes, right?**

Dr. Van de Poll: It's a good general question about taxes and taxation, and I get this question a lot. If the Town publishes, as it has to, the map that I produce where wetlands ostensibly occur, can the landowner use that map to seek, say, a tax abatement on the value of their land because they have wetlands on it. As you know, wetlands factor into the lowest tax bracket and have the sort of unique ability of doing so even though you're not in current use, say you have less than 10 acres of land that's registered in current use. I say I'm leaving that up to the landowners and talk with your town tax collector about that and seek your own relief if that's something that you see fit. It's really up to them. I can't say yes or no because every town treats it differently. I've appeared at hearings where I was asked to testify that in fact the site that I mapped was a wetland, and I did so and provided all the data and it was quite obviously a wetland, but the town fathers said sorry we are not honoring the abatement. That's their prerogative, I have no say in that.

Mr. Schotanus: All right. Ernie.

- **I guess this may be premature, but when you're talking about wetlands such as Bog Brook, it's all going to be evaluated as one piece and yet the Town had its dump for all those years in that area. All those high scores, you can't convince me that they'd be the same if I was standing there versus some place else in the wetland, yet it seems they are going to be treated exactly the same.**

Dr. Van de Poll: Well there was a lot of discussion about this and Bog Brook. I am using the Method's guidelines in considering it one wetland, and here's the reason why. Even though the Town dump was there, and yeah, I stopped and looked and could see some leachate and evidence of leachate, and I know that part of the Bog Brook wetland is affected and low value, 85-90% of it is actually in very pristine condition. I also looked at this on the Eastman side and saw that as well. So, in other words, do you throw the baby out with the bathwater, or whereas you can say that one area of Bog Brook has been compromised, and it gets lower

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scores than others for the amount of fill than others so it actually gets a lower score than others for Ecological Integrity, but then look at the Flood Storage scores and wow, it is like one of the best. So then, do you throw that out and say go ahead and continue to impact Bog Brook, go ahead and fill out, go ahead and open up another hazardous waste facility, whatever you want to do, or do you say flood storage is very important so if nothing else, if we can prevent lower Bog Brook and going on into the North Branch, from flooding out ... (interrupted by questioner)

- **You can say fill, but isn't also the other opposite, I mean how far are you going to go back because most of 89 was developed off of gravel and stuff that was taken out of there. So, its been filled but its also had stuff taken out, so how far back do you take a look at it?**

Dr. Van de Poll: You go back as far as your photographs show you. So in the case of Bog Brook, you can get back to about 1981 photographs that the state will recognize as viable determinants of accuracy. I've been through this. You might have photographs back to 1956, but the state doesn't recognize those, as they don't recognize the 1939 photographs. They only start at 1981-82 and after that. So, the state decides where jurisdiction starts and stops. That said, yeah, it's been going on for a long, long time, but there's a whole chunk of Bog Brook where it hasn't been that significantly altered and there's still very high values for Wildlife Habitat and very high Recreational values, lots of opportunity for Education, Scenic Value, and so on. You have a point in that not all wetlands will be the same as you look across all parts of them, especially if they are really big ones. In the end, it's really up to the voters to decided whether they think it's too compromised and so they don't want it in this batch of high value wetlands that might get some special regulations like a setback or buffer.

Mr. Schotanus: Okay. Anybody else have a first question? If not, then Bob, you can have the final question.

- **I apologize for being late, I got here as soon as I could, but I saw your charts and a lot of it seems to be factual. I don't quite understand Noteworthiness; that seemed to be a little subjective. Could you explain that a little better, as I didn't get that?**

Dr. Van de Poll: Noteworthiness is a function that was created by Allen Hammond who was one of the co-authors for years and years, who pointed out the fact that things like rare and endangered species, exemplary natural communities, historical and archaeological value of wetlands, is not being recognized anywhere in suite of functions that we had. And he said wouldn't be important to point out those wetlands that have certain particular values on their own merits. Now, what a town does with that is up to them. They can say, well this wetland has a Noteworthiness value of 20, so it's an average value and it's not going to make a difference. But another one has much higher value of 60, and so the town might say even though this wetland has medium to slightly above average scores in other functions, it also has a Noteworthiness value of 60, so that's enough to push this wetland from being a

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moderately high value into the category of higher value, prime, or whatever you want to call it, it's a special wetland that you're going to protect. It is a placeholder function for the things that are important but not captured elsewhere. I'll give you an example that we used when we worked in the work groups, was bogs. In another town's evaluation, one of the smallest wetland complexes in this particular town, but it's the only bog in the town. It has an incredible, unique value, and the town said it's the only bog and we want to protect it, even though has low scores across some of the other eleven functions. That's how it works

Mr. Schotanus: Okay. Thank you very much, Bob. Back to Mary's question about what's next. Rick will finalize his recommendations, and provide them to the Conservation Commission. The Conservation Commission will then study those recommendations and make their recommendations based on his input. We will then make our final recommendations, and then based on those, we will hold another public information meeting. We think that this will be on October 15th, which is our standard Conservation Commission monthly meeting, which will use as a public meeting to inform you of what the Commission recommends. After that, we will work in our advisory capacity with the Planning Board and Zoning Board to put together a draft wetlands ordinance, and submit it to the Planning Board who will decide if they want to adopt or amend the ordinance, and they will hold public hearings on the ordinance. If they decide to go ahead, the ordinance will appear on the Town ballot and the town voters will have an opportunity to vote on it in March. That's one of two. If prime wetlands are identified, and the Commission decides to recommend some wetlands for designation as prime wetlands, an additional warrant article will be structured for such designation, and that will go through the public hearing process right along with the budget and the warrant in January when the Selectmen have their public hearings. That too will appear on the Town ballot and be voted on by the public. That's the game plan from here to March of next year.

- **I'm just interested in what we're going to here from you folks after we get the final report.**

Mr. Schotanus: Please be here on the 15th of October and we'll do our best.

- **What if a landowner wants to appeal the decision that was made by you folks? At what point can they appeal that.**

Mr. Schotanus: They could appeal it at the public hearings with the Planning Board or the Selectmen. The Commission has no appeal or regulatory authority; we are purely advisory on this. We give our input to the Planning Board. Okay, thank you very much...(interrupted by Mr. MacNeil)

- **Merle, I have one request...(interrupted by Mr. Schotanus)**

Mr. Schotanus: I'm sorry, Bob, we're done. Come see us on the 15th, please.

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At this point, Mr. Schotanus closed the Public Forum.

Immediately thereafter, Ms. Burgard sought out Mr. MacNeil to address his request. Mr. MacNeil indicated that his request was for more information about the Noteworthiness section of the Revised NH Method. Burgard indicated she would provide him with a copy of that section of the evaluation form, as well as the instructions relating to that section, and will ask that this section be discussed at the next meeting.

Respectfully Submitted,

Kristina Burgard

Kristina Burgard
Grantham Conservation Commission