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## Town of Grantham – Conservation Commission Meeting Minutes October 19, 2009

A meeting of the Conservation Commission was called to order at 7:04 PM by Chairperson Richard Hocker.

Present: Dick Hocker, Andy Eastman, Adele Furdyna, Jeremy Turner, Patricia Woolson, Merle Schotanus, Tom Vogel, Conrad Frey and Becky Newton, Town Administrator.

### ADMINISTRATIVE

Approval of September 19, 2009 minutes

J. Turner asked a question with regard to the Flewelling lot. It is known that the existing right-of-way goes through the front yard of the owner's lot. Would there be another way to introduce a right-of-way in another location to maintain the owner's privacy? It is also known that the board and the local snow machine club should work with the owner to find a suitable snow machine access route.

R. Hocker explained that the Commission would like to work with the current property owner to locate a suitable location for the snowmachine trail.

Motion by A. Eastman and second by P. Woolson to accept the minutes of the September 19, 2009 meeting with the following changes:

Eastman management plan protocol discussion: "Vogel stated that this is not a commission of Eastman; it was a commission of Grantham and whatever standards need to be put in place, need to recognize the needs of individual property owners and not community property." Remove the word "not."

### NEW BUSINESS

None

### OTHER BUSINESS

#### Approval of payment of \$9,500 to Upper Valley Land Trust

This payment represents work to date. The remaining \$5,000.00 payment would be approved by the Conservation Commission once the closing on the property takes place. Motion by M. Schotanus and second by P. Woolson to approve the payment of \$9,500.00 to Upper Valley Land Trust. **Unanimously approved.**

#### Smith lot and other conservation efforts Conservation Easement Process

R. Hocker introduced the topic by saying that the Conservation Commission needs to discuss the process whereby a Town property would be placed into a conservation easement. This is with regard to the Smith lot which was a property that the town acquired by non-payment of back taxes. After reviewing statues and emails, it is the consensus of the board that the Town could dispose of property taken by tax

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deed in any manner it wished. Town's Counsel's opinion was that the matter needed Town Meeting approval. The Commission is seeking clarification on how to proceed.

B. Newton pointed out that there is a set of State statutes that particularly regulate a duly designated "Town Forest." B. Newton pointed out that all Town owned land is not necessarily a Town Forest but it is common that those terms are used interchangeably. B. Newton did some research with the assistance of the Town Clerk/Tax Collector and the Town Archivist on the history of the parcel. It appears that no vote was taken at Town Meeting to make the Smith lot an official legal "Town Forest." Absent this vote, the land is in control of the Selectmen.

A tax collector's deed from the 1950's was located on this parcel. It wasn't until the 1970's that State law allowed a Town to designate land as a "true" Town Forest. The research suggests that the land was never adopted as a Town Forest and that it was owned by the Town "in fee simple absolute" which means that the Town could do anything it wanted to with the land without any restrictions.

Conversely, Town Counsel feels that a Town Meeting vote could be held and that the legislative body is in charge of the property. According to State law, if a Town wants to dispose of property taken by tax deed, it can dispose of it by 1) bid; 2) by offering the property back to relatives of the people the property was taken from; or 3) the Selectmen may "dispose of the property in other ways as justice may require."

In 2007, the Selectboard voted that they were in favor of placing the conservation easement on the Smith property and the research revealed that this vote did take place. As the Selectmen are the parties in charge of the property, would it make sense that the Selectmen could dispose of the property "as justice may require" having already taken the necessary vote? When that suggestion was made to Town Counsel, the opinion came back that the property still needs a vote at a Town Meeting.

In 2009, there were two warrant articles adopted by the Town that allow the Conservation Commission to do certain acts without involving the Selectmen. Neither of these articles covers this transaction as the town will retain an interest in the land. Therefore, if the property were to revert to ownership other than Town land, there would be restrictions as to what could be done with the land. The same holds true for Corbin Park. B. Newton pointed out that Zoning is fluid and not as permanent as a deed restriction or covenant—Zoning can be changed and deed restrictions or covenants are permanent and run with the land. People could petition to change zoning.

The board reviewed the response from Town Counsel and felt that Town Counsel states that the matter "can" be put before the next Town Meeting, not "shall" be put before the next Town Meeting.

B. Newton explained that Town Counsel's email came in late in the day and the Selectmen probably had not had the opportunity to review it prior to tonight's meeting. Board consensus was to get on the next Selectmen's meeting to discuss the Smith Conservation Easement. The Conservation Commission feels that the Board of Selectmen has already made a binding decision to permit the Smith lot Conservation Easement and that this decision should not be revised by Town Counsel. The Conservation Commission recommends to the Selectmen that they approve the transfer and close as soon as possible. The Commission feels that with the existing "paper trail," the conveyance would stand up in court. R. Hocker asked if this would be a precedent setting event. B. Newton stated that "the devil is in the details" in how each property was acquired. If, as in this case, the property was acquired by Tax Deed, the Selectmen may have more latitude in how the property is disposed of. If, however, the property was purchased by a vote of Town Meeting, for example, she would feel that the property definitely needs to go back to the legislative body for a vote on how to dispose of the property since Town Meeting was the original authority to begin with. Of note would be a property acquired by the Town for a particular purpose such as a school lot. If you are changing the purpose of the use of the land, it should always go back to Town Meeting.

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J. Turner and M. Schotanus feel that accepting Town counsel's opinion will set a precedent with regard to the fact that all Town property for which Conservation seeks an easement will have to go before Town Meeting

The Conservation Commission will write a letter to the Selectboard indicating that they feel the matter does not have to go before Town Meeting.

The Conservation Commission feels that the emails and minutes of meetings create an adequate "paper trail" for the Board of Selectmen to proceed in acquiring the conservation easement. M. Schotanus mentioned that the current Board of Selectmen would be bound by decisions on the record of previous Board of Selectmen.

The next meeting of the Board of Selectmen is Wednesday, October 28, 2009 at 5:00 PM.

### **Eastman "Frog Pond."**

The Eastman Council had to offer up a property to the State in return for wetland impacts when the tennis courts were constructed. They decided to offer up "Frog Pond" to the State for conservation. Eastman Council will grant the Town of Grantham Conservation Commission a conservation easement on this property.

B. Newton asked what criteria the Conservation Commission used in deciding if the easement will be held by the Conservation Commission or by another qualified organization such as the Upper Valley Land Trust. The Commission stated that fewer easements should be held by the Town because other entities such as the Upper Valley Land Trust have more resources and personnel to monitor and enforce easements.

The Frog Pond parcel is a travel lane for moose and deer and people have seen bobcat and snowshoe rabbit in this area.

The "frog pond" land is the first project where it was suggested that the Grantham Conservation Commission hold the easement. In the past, other organizations such as the State of New Hampshire have held the easement.

One member suggested that the Conservation Commission hold as few easements as possible as it may become a future burden on the Conservation Commission to monitor these easements. It was reiterated that a land trust has more resources and personnel to handle these activities.

B. Newton asked if there would be any cost to acquiring the Frog Pond Easement. The only cost would be for the "passing of papers" and legal work. Eastman will remain the owner of the parcel and the Conservation Commission will hold the easement. B. Newton reviewed Article 22 of the 2009 Town Warrant to see if that language would allow the Conservation Commission to acquire the Easement. It was decided that Article 22 would not cover the matter since the Town will retain an interest in the property. At this point, the matter was tabled for further discussion. Would the Frog Pond land be a gift of an interest in property? If so, B. Newton feels the matter may only require a public hearing to acquire the Easement. The Conservation Commission will present a letter to the Selectmen with regard to the Frog Pond easement.

### **Comprehensive Shoreland Protection Act (CSPA)**

Building permits come into the Town Office and the Town Administrator and staff decide whether or not the permit application needs to go to planning, zoning or conservation for review. The Town Office wants

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to make sure that paperwork moves along expediently so that applicants don't wait month's to obtain their approvals.

C. Frey indicated that Grantham has had a CSPA paragraph in its zoning ordinance since 1992. The latest changes in the Grantham Zoning Ordinance were made in 2008. B. Newton stated that it appeared to her by reading the Town of Grantham Ordinances that the Town wanted to have more local control over CSPA matters than the State. More local control is allowed according to State of New Hampshire CSPA.

B. Newton compared the State CSPA and the Grantham CSPA. She determined that one pond (Lily Pond) would not be covered under the State CSPA but would be covered under the local CSPA. She also determined that the entire Sugar River as well as certain sections above the 4<sup>th</sup> order streams in Grantham would be covered by the local CSPA but not by the State CSPA. Sawyer Brook, for example, only becomes 4<sup>th</sup> order where Skinner Brook joins it. B. Newton feels that pursuant to the language of the ordinance, the local CSPA would control all of Skinner and all of Sawyer Brook--not just where they become a 4<sup>th</sup> order stream. B. Newton is seeking clarification from the Conservation Commission over whether or not Building Permits for projects adjacent to these waterbodies require local Conservation Commission/CSPA review. It was agreed by all that the most stringent regulation would apply. B. Newton indicated that she was confused by the fact that the Zoning Ordinance states that CSPA applications would be to the "Zoning Board." Is this a typographical error or was this the intent?

C. Frey indicated that if a project involved building in the 250 foot buffer, the applicant has to go to the State for an application and approval and not to the Grantham Zoning Board. The Grantham Zoning Board would only address matters involving local zoning, such as "uses" that are not permitted according to the Zoning Ordinance or area variances.

M. Schotanus stated that he could find no legal written authority for the local Conservation Commission to regulate matters within the CSPA zone. B. Newton indicated that if local control of the CSPA was the intent of the Conservation Commission, then additional language indicating that the Conservation Commission was the regulatory authority should be added to the Zoning Ordinance. Conversely, the Town could adopt a "stand alone" ordinance with the same language but the preferred method is to use the Zoning Ordinance authority since there are penalty provisions within that Ordinance. The Conservation Commission indicated that they want to maintain saplings and understory, for example, and that the State would not know when saplings were removed. They also felt that the State CSPA would not want applications for every cutting project that takes place adjacent to a regulated waterbody.

As Stocker and Miller Pond's are not within Eastman, they receive less consideration for cutting matters because they are not regulated by Eastman covenants. It was agreed that the New London Ordinances were a good model for additional language. B. Newton posed that the language in the Zoning Ordinance could indicate that the Conservation Commission or Zoning could be the authority. Then, if Zoning wanted to delegate it's authority to the Conservation Commission in matters involving cutting, that would be permissible. All agreed that the local Building Inspector is not to issue building permits for matters involving CSPA.

Cutting applications received from Eastman have historically been reviewed by the Grantham Conservation Commission. The Conservation Commission feels that it is the landowner's responsibility to make sure that any cutting along waterbodies is carried out according to State law. ECA is the first regulatory body; Grantham Conservation Commission would be the second regulatory body. B. Newton's recommendation was to identify the Conservation Commission's intent moving forward. Did the board want local authority to regulate every project on every pond in Grantham? If so, did they want to be the local enforcement authority? If so, they should proceed by revising the Zoning Ordinance since penalty provisions are already a part of that document. The board agreed that the State CSPA had good penalty provisions as well. The Grantham tree cutting application was discussed.

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B. Newton mentioned that if the Selectmen received an intent to cut along a shoreland body, the Division of Forest and Lands would be the regulatory authority to review the project and see if it complies with the CSPA. It was mentioned that some area towns hire a forester to review intent to cut applications at the local level. Consensus is that the Grantham Conservation Commission needs to decide if they want to become a regulatory authority. If the Grantham Conservation Commission wants to be purely an advisory board, that is also their decision. It was agreed that they should discuss this matter with the Selectboard as well.

C. Frey asked if the Town can be fined if they permit a project without CSPA State approval. B. Newton said she would look into this.

### **Critical Lands Index**

A. Furdyna has extracted all the recommendations from the Critical Lands Index. M. Schotanus would like the Conservation Commission to work on implementing these recommendations. Other boards in town may need to be educated about the various recommendations of the Critical Lands Index.

The Commission decided to form a sub-committee to review the Critical Lands Index recommendations and decide which ones to accept. The sub-committee would then compare the accepted recommendations to the mandates in the Town of Grantham Master Plan. The recommendations that fit the Master Plan mandates, would be the ones set for implementation. A. Furdyna, M. Schotanus, P. Woolson and possibly J. Turner would form the sub-committee.

### **Other Business:**

B. Newton stated that she will be asking the Conservation Commission for a budget in the near future. This would include major conservation initiatives that are paid out of Conservation funds as well as general fund expenditures.

On a related matter, it was mentioned that only "foresters" are legally able to prepare Forest Management Plans for a fee. In the past, Eastman Council had allowed "arborists" to prepare such plans. Moving forward, only foresters will be permitted to prepare 5 year management plans pursuant to RSA 310-A. Arborists will still be able to submit one time cutting plans.

### **HANDOUTS**

None

### **ADJOURNMENT**

There being no further business the meeting was adjourned at 8:45.

*Respectfully submitted,*

*Becky Newton  
Clerk Pro-Temp*