

**MINUTES OF MEETING
CONWAY CONSERVATION COMMISSION
May 12, 2010**

A meeting of the Conway Conservation Commission convened at 6:30 p.m. at the Whitaker Homesite in North Conway, NH. Present were: Paul Pinkham, David Weathers, Rob Adair, Karla Allen, and Alternates Linda Kearney and Conrad Briggs. Also present were Forester, Don Johnson; Wink Lees of TNC; Larry Garland of USVLT; Dick Fortin, and Atty. David Hastings.

1. **Approval of Minutes: 4/14/10** – It was decided to dispense with approval of the Minutes until the June meeting as all members had not had an opportunity to review them.

2. **Public Comment:** None.

3. **Reports:**

a. **Discussion of Town Land and Conservation Easements** - Atty. David Hastings was in attendance to discuss conservation easements as they pertain to town-owned land and land under the jurisdiction of the Conservation Commission. There was considerable discussion of the pros and cons of simply altering the deeds and placing easements with a second party as lease holder. Mr. Hastings noted the CCC presently manages a fair amount of town-owned property for conservation purposes and question has been raised as to how this conservation land can be made permanent so that the Town Meeting or the Selectmen could not convert some of it to developed land, or sell it for someone else's purposes. Mr. Weathers said if the Selectmen choose to do so, they can dispose of a particular parcel of land and the Commission wants safeguards so that that cannot happen. Mr. Hastings advised if it was deeded in with a restriction, then the land is bound by that restriction – if the land came with the restrictions attached, they cannot be taken off by the Town Meeting or the Selectmen. He pointed out conservation easements require two independent parties - the problem with putting a conservation easement on town-owned land is, it is the owner putting a restriction on its own land; an owner can restrict his own land as long as he wants to, but can also take that restriction off. He said the Town Meeting or Selectmen could put on record a restriction on the property that it could only be used for conservation purposes; however, as long as it is owned by the town, the town can take that restriction off. He suggested the only way for a conservation easement to work would be to bring in another party – usually a public land trust such as Upper Saco Valley Land Trust. The land owner deeds to USVLT, keeps the title and all development rights and rights to use the property except what they want to keep back. The land owner then cannot take that back – the land trust can give it back, but they generally do not do it - the land owner gets a tax deduction, but the trust owns the rights to the property.

Mr. Hastings noted the CCC may qualify to take conservation easements from someone and hold them, the problem is the town and the CCC are one and the same thing. Ultimately it is controlled by the Town Meeting. CCC is not separate from the town.

Mr. Weathers noted any parcel of land that came from another entity with restrictions, we do not have many concerns with; however, the common land are the areas we have some concerns with. Mr. Pinkham said the intent has been to use the UVSLT to put conservation easements in place to protect them. He feels the CCC has Selectmen's approval to go forward with this.

Mr. Hastings said the basic rule is a town can only convey land with approval of the Town Meeting. He said there is a statute that allows the Selectmen to have the authority to sell land; to do that, they have to go to the Planning Board and Conservation Commission, and hold public hearings. The Selectmen have no authority to sell town-owned conservation land which is managed by the CCC; however, someone could still put an article in the town warrant to sell the common land. If the vote passes at Town Meeting, the town could sell the common land. He suggested the only way to prevent that would be to enter into a conservation easement with a land trust. It would probably require Town Meeting approval.

Mr. Weathers said he does not see the town/Selectmen granting approval to enter into agreement with UVSLT for land we already have under our control. He said we have money, and rather than purchasing land, he felt it would be more prudent to take that money and, working with the UVSLT, acquire land to put into conservation easement. Mr. Pinkham noted Town Meeting a year ago passed an article allowing us to do things without going to the town in each instance. Mr. Adair stated we donated \$10,000 to the UVSLT to acquire easement on the Kennett property; Mr. Sires felt it was prudent to go to the Town Meeting to do that.

Mr. Weathers suggested taking the funds we have now and putting them toward conservation easements, would be more prudent. Wink Lees noted the difference is, you do not hold that easement - the town would not have a legal interest in that property. Mr. Hastings said the Town Meeting may vote to authorize to expend funds for contributions to qualified organizations to purchase conservation easements - that would allow you to donate your money to a land trust to allow them to purchase easements (that is dealing with land you do not now have any control over). He said the town can still sell land given to it with restrictions, but those restrictions remain with it; the only way to remove them would be for the two parties to agree. Mr. Lees suggested that once an easement is recorded it is a done deal; you cannot violate the conservation purposes of the easement.

Mr. Pinkham stated we need to understand what we need to do next with the town to begin the implementation of this protection. Mr. Hastings said he would think the way to get there would be to start negotiations with whatever land trust the CCC plans to use and bring in an expert to draft it, adding that an agreement would require a vote of Town Meeting. Mr. Pinkham said he questions the ability of the NH Society for Protection of Forests to do it. Ms. Allen stated we would have to go by their guidelines and they are very restrictive, and felt for the town's purposes we may not want to go that route. She offered to do more research to find out what would be more in line with the town's wishes or purposes.

Mr. Hastings suggested they may be able to negotiate with a friendly land trust and "give them the right to enforce," but that they have to separate the ownership of the land from the

holder of the easement. Mr. Lees said the aim is to try to preserve/ensure against development for years down the line; the CCC can have reserved rights to do certain things. The land trust's responsibility is to enforce the terms of what you decide you want to protect that for - you cannot own the property and at the same time hold the easement.

Mr. Briggs felt we should have enough faith in the CCC to continue as we are going now, drop this and move on. Ms. Kearney questioned whether there is any reason to suspect the town may want to sell this land. Mr. Weathers stated no, it has never been discussed. Ms. Allen noted that usually when that happens, it is because the town needs to use it, for instance, to build a garage. Mr. Pinkham said the Commission has agreed to go forward and we will proceed to protect the town's land. Mr. Weathers volunteered to research the deeds to see what the restrictions are. It was Mr. Johnson's opinion that the CCC would be much safer with easements than with deed restrictions.

b. USVLT Update – Larry Garland said UVSLT has been contemplating a strategic conservation plan for three years. They have been willing to accept donated lands from willing landowners, which was the source of their protection efforts. He said we realize there are a lot of nice pieces of land in the valley that are not going to be offered to us, and we have to proactively identify them and see what we can do to protect them. They began in 2009 to set it up, applied for funding, and appealed to the town of Conway, and were able to write requests for proposals. They received five, made a selection, and signed with a consultant in Dec.

Mr. Garland explained the initial phase is to collect geographic information on things people generally deem to be worth conserving. He provided maps showing a list of categories of natural communities. They are now collecting and interpreting the data. The next step is to meet with the consultant and get an interpretation of the maps to see where the focus areas are. They will then set up some public relations meetings and campaigning.

c. Don Johnson – Mr. Johnson reported that last week he got the ski trails stabilized in Whitaker Woods – seeded, limed, fertilized and mulched. He got the work agreement signed by the Town Manager today, which is based on the proposed budget, and includes Compartment #1 on the Hurricane Mt. side. He will be going back to do some touch up work, as well as some work on the Hubbard-Davis site.

Mr. Johnson has met with Shane Gurney, a tree climber from Northern Tree and Shrub, at the Abenaki site and he is ready to start climbing and getting those trees down. He will work with him on that by supplying a skidder, etc. He stated the work can be accomplished within the budget.

Mr. Pinkham asked Mr. Weathers whether there has been discussion with the Town Manager concerning the State historic people and if we need to get permission as regards their wishes. Mr. Weathers said he will check with Mr. Sires, but pointed out the Indians have given up their rights due to the passage of time. He said it has all been inventoried. Mr. Pinkham expressed concern that before we go in and do any work other than making it safe, whether there are things we need to be aware of that the State wants done – we do not want to violate

any sacred grounds, we need to make a reasonable effort to discover what has to be protected. Mr. Weathers said the State has said they have no funding or resources, but has expressed that they would like some things preserved. It was agreed Mr. Johnson will wait until we get back to him before proceeding.

Mr. Johnson noted the access into the Abenaki land for removing timber is through the parking lot to the east, and there is a Waste Management dumpster in the way which serves the condominiums. It could be moved. He was advised to call Waste Management to find out what their policy is.

Mr. Johnson noted that Shedd Woods looks good. He said the climber he has hired for the Abenaki site is not afraid of poison ivy and has offered to brush out Shedd Woods. Mr. Johnson was advised to proceed with that project.

d. TNC – Wink Lees – Mr. Lees reported that summertime seasonal personnel have started trail work on Green Hills and Pudding Pond area. Mr. Adair noted at the bottom of Black Cap connector there are some trees down and offered to have them taken care of.

e. Treasurer's Report – Ms. Lyman was not present for a report.

Report on Wetlands Application – Mr. Fortin, working with Tin Mt. Conservation Center in collaboration with Nature Resources Conservation Service, reported on a project being undertaken to improve the native brook trout habitat, which has been declining for years. He made reference to projects being done by Fish & Game in northern NH. They would be adding woody material to our streams, when it falls in the stream it changes the configuration of the stream bed and creates a pool, scours out, deposits sandy material upstream, and improves spawning purposes. He said they are now adding material to start creating these pools, as well as provide cover for fish. The woody material acts as a buffer.

Mr. Fortin stated Tin Mt. signed on for the manpower and will be retrieving material from outside the riparian zone. It will be done in increments of 1,000' of stream, which is manageable. He said they will be doing a lot of water sampling, determining the amount of fish within a certain area. He explained that in prior projects they have found brook trout to increase in number and in size – they are trying to perpetuate the native brook trout population.

Mr. Weathers said this a different application compared to other projects we have had. He understands what Mr. Fortin is proposing, but if they are slowing up the velocity, it has to go somewhere – the restriction is serving a purpose as far as the trout habitat goes, but is also going out around it. Mr. Fortin said they use longer logs so they have 18' to 20' on either side so those logs are also acting as sediment traps, stating that whatever you put in there, you have to anticipate the water will go over the banks at some time.

Mr. Fortin reported the areas they are looking at in Conway are Mason Brook tributary across from the road that goes into the dump, which is small and manageable, and Whitelaw Brook.

Motion was made by Mr. Adair, seconded by Mr. Weathers, that the Conservation

Commission accepts and supports this proposal on the wetland application in the name of Tin Mountain and Sut Marshall. Carried by unanimous vote. Mr. Fortin will advise members when this will take place.

f. Selectmen's Report – Mr. Weathers reported Selectmen have recommended all the suggested appointments as follows: Karla Allen to be appointed a full voting member for a two year term; present members, Paul Pinkham and Dan Lucy, to be reappointed for three year terms, and Linda Kearney and Conrad Briggs Alternates) to be appointed for two year terms.

Mr. Weathers reported the town of Conway has received a copy of a letter from Clipped Wings Ski Club to NHDES regarding an application on Justamere Road stating they would be supportive of erosion control measures that satisfy certain conditions, including that the project must include the entire length of the destabilized bank, and a list of eight questions to be addressed. They are not in favor of it the way it is being proposed. It was agreed the letter would be made a part of the Minutes of this meeting.

4. Other Business:

a. Mr. Pinkham made reference to a Subdivided Improvement Agreement between River Valley Realty Trust and Conway Village Fire District which has been submitted because the Planning Board and CCC need to approve the acceptance of land on which there will be a fire pond constructed (this one across from Frechette Tire on Passaconaway Road). It was noted there has to be either a letter or Minutes of a meeting agreeing that the town can or should accept this donation of land.

Mr. Weathers explained for all fire ponds there are no agreements granting CVFD easements. The Fire Chief is in the process of addressing this. Mr. Weathers said the fire pond in question would be at the cost of the developer and he recommends going along with it, that we agree in principle that it is needed. **Motion made by Ms. Allen, seconded by Ms. Kearney, that the Commission agrees in principle with the Subdivision Improvement Agreement. Carried by unanimous vote.**

b. Land Use Study - Mr. Pinkham reported a copy of Conservation Natural Resources Inventory done in 1986 has been located and we are now looking for the Land Use Study of 1992 (which may be a component of the EIS for the bypass). Ms. Lyman will continue to research this.

5. Next Meeting – June 9, 2010 at 6:30 p.m.

6. Adjourn: Motion was made by Ms. Kearney, seconded by Mr. Weathers and carried, that the meeting be adjourned at 8:06 p.m.

Respectfully submitted,
Gail T. Currier, Recording Secretary