



CONSERVATION COMMISSION
Town of Greenland • Greenland, NH 03840
11 Town Square • PO Box 100
Phone: 603.380.7372 • Fax: 603.430.3761
Website: greenland-nh.com

MINUTES OF THE CONSERVATION COMMISSION

Wednesday, December 14, 2022 – 6:30 p.m. – Town Hall Conference Room

Members Present: Kathleen Babin-Johnson, Laura Byergo (by phone), Chip Hussey, Lloyd Ziel, Stephan Toth (Alternate)

By Phone: Brad Lajoie

Also Present: Paul Sanderson, Town Administrator; Steve Smith, Board of Selectmen Chairman

L. Ziel opened the Conservation Commission meeting at 6:30 p.m. He announced a quorum was present and the meeting was being recorded and live-streamed. Roll call attendance: K. Babin-Johnson, present; L. Byergo, present; C. Hussey, present; Bill Bilodeau, present; S. Toth, present; L. Ziel, present; B. Lajoie, present.

1. Cory Riley, NH Fish & Game
Dredge & Fill Permit
Glenn Cove (Emery Lane)

Cory Riley, New Hampshire Fish & Game, addressed members. C. Riley is working with Steve Sargent, Oak Point Associates. C. Riley explained the overall project and what they were hoping to do with the Glenn Cove Project.

C. Riley works for the Great Bay National Estuarine Research Reserve, which is a State and federal partnership between NH Fish & Game and the National Oceanic and Atmospheric Administration (NOAA). They focus on studying Great Bay and connecting people to and educating people about Great Bay.

Glenn Cove has been referred to as Great Bay Farms; the name was changed because there was another Great Bay Farm on that road. It has also been known as the Emery Farm and Sunset Farm. C. Riley gave a brief history of the property. Anyone working on the property and the buildings are affiliated with NH Fish & Game. The land was purchased with funds from NOAA. Anything done on the property must align with a management plan that is submitted to NOAA and approved every five years. They currently have a plan that covers 2020 through 2025. Decisions regarding what happens on the land go through a Lands Team in Concord for Fish and Game.

C. Riley explained that the 11-acre parcel is in the middle of 100 acres that were originally four different parcels. Each was purchased separately through NOAA funds and merged into one wildlife management area. There is a huge tidal range and a wide expanse of mud flats at low tide. It is considered historically significant for the agricultural character. When federal funds are received, anything done on the property must be done with consideration and input from the Division of Historic Resources.

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C. Riley explained there was a life estate agreement allowing the Emery family to live on the 11-acre waterfront parcel. In the agreement, when the family member with legal authority over the estate passed away, the property reverted to Fish and Game; this happened in 2019.

NOAA requires each reserve to include researcher housing. The Great Bay Stewards help fund initial designs and sketches of the property. C. Riley applied for two NOAA grants (2019 and 2022); Fish and Game matched the first grant, and the Great Bay Stewards are providing non-federal funds for the second grant. Plans for the property were reviewed. Included were renovations to the farmhouse, building a picnic pavilion, moving a cottage, building a new garage, and restoring access to Great Bay.

C. Riley noted that it is a wildlife management area and has its own rules. There is a precedent for exclusions for areas used for educational purposes. She used the example that the Discovery Center and boardwalk are not technically a wildlife management area. C. Riley added that because it was purchased by The Nature Conservancy and transferred to Fish and Game, they still hold a conservation interest in the property and monitor it to ensure there is no harm to endangered species or the saltmarsh community.

S. Smith stated that the parcel to the south had a hunting and trapping issue that was resolved. He questioned if their parcel would be no hunting/no trapping. C. Riley responded that the issue was being discussed and what exclusions there may be on the 11-acre parcel.

Typical wildlife rules were reviewed. Hunting and trapping will not be allowed on the 11-acre parcel, but they may allow people to water fowl towards the water. They may allow dogs on leash only on the 11 acres. A Special Use Permit will not be required for people to gather on the 11-acre parcel. Rules are available on the Fish and Game website.

They have been working with Oak Point Associates for over a year and hope to go out to bid in the spring. The projected start date is the summer of 2023 and having it completed within a year. Everything may not be complete until 2025. They would like to have community involvement and plan to hold volunteer events to help with planting. A fund-raising campaign is currently being done by the Great Bay Stewards.

L. Byergo asked if there would be a trail on the 11-acre parcel. C. Riley stated she had the habitat team look at the parcel for how to handle the land portion of the 11 acres. There have been discussions about a mowed path throughout the 11 acres that will be restored to a meadow mix. C. Riley was also hoping a few educational kiosks would be placed along the path.

L. Ziel questioned potential traffic impact. C. Riley stated it has been discussed at Fish and Game. They do not think it will be a popular boat ramp; people may go there for a picnic. There will not be an extensive trail system to walk. C. Riley was confident there would be enough use of the property to make the investment worthwhile; she did not think it would be a traffic problem. L. Ziel questioned if there would be enough parking. C. Riley stated there would be more parking than at the Discovery Center. If there is an overflow, the field will be mowed. They wanted to minimize impervious surface on the site. C. Riley noted the parking areas on the plan.

C. Riley stated they are working on an overall plan to restore buffers and remove invasive species. Pollinator gardens are proposed. Snow removal was discussed. S. Smith stated that with the wind coming off the Bay, there usually is not a lot of snow in that area.

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There is currently a gate on the property and a conservation law officer also lives on the premises. C. Riley did not anticipate the property being gated when it was open to the public.

Steve Sargent, Oak Point Associates, reviewed the wetlands permit. Gove Environmental Services was hired as a subcontractor to do soil mapping, wetland delineation, and prepare the application. A shoreland application was submitted to DES and has been approved. The total impact area was approximately 2,157 square feet, requiring a minimum expedited permit application.

MOTION: C. Hussey moved to authorize the Chairman to sign Section 11 for the Conservation Commission. Second – L. Byergo; all in favor. MOTION CARRIED

L. Ziel offered Conservation Commission assistance where possible. C. Riley noted they would be using the cupola.

2. Town Administrator

Paul Sanderson, Town Administrator, addressed the Conservation Commission.

Falls Way: L. Ziel asked if the issue with the resident was resolved. TA Sanderson stated it was his understanding that the HOA was taking action. There was no pending enforcement action by the Town. TA Sanderson clarified that the conservation easement was conveyed to the Town. L. Byergo stated that trees had been removed on Town conservation land. The Code Enforcement Officer at the time was also involved. The Conservation Commission did not recommend fining the property owner. L. Byergo stated that the Conservation Commission did not receive any pictures that were taken by the Code Enforcement Officer, there was no documentation of the phone call with the property owner and there was no letter from the Code Enforcement Officer. L. Ziel asked what steps should be taken when something similar happens; L. Byergo has created a rough draft of the procedure. TA Sanderson would like to review the draft and will forward it to the Board of Selectmen.

TA Sanderson explained that when a piece of property is owned by the Town and is subjected to a conservation easement, it does not mean it has to be monitored by the Conservation Commission. L. Byergo stated that TA Sanderson may have been overlooking the last five years of experience the Conservation Commission has had with several different Boards of Selectmen. They have monitored and reported to the Board of Selectmen; the Board of Selectmen has approved their monitoring and hiring an intern to help with the monitoring. The properties they monitor are included in the Natural Resources Inventory, which is a Conservation Commission document. TA Sanderson responded that it does not equate to a legal duty on their part or that of the Selectmen. Property owned by the Town does not give an automatic relationship with the Conservation Commission to monitor a conservation easement. The Selectmen are responsible for Town property and may or may not choose to involve the Conservation Commission. State law indicates that town property is managed by the Selectmen. L. Ziel referred to the Conservation Commission by-laws, Duties and Functions. TA Sanderson noted that their by-laws are not the same as the State statute, which overrides the Town. L. Byergo stated that they have not heard from the Board of Selectmen that the Conservation Commission should not continue monitoring property. TA Sanderson stated that it should be on the Selectmen's agenda so it can be discussed. L. Byergo stated that if the Board of Selectmen wanted to change their by-laws, they should ask the Conservation Commission to attend a meeting.

TA Sanderson stated that he would work with the current Code Enforcement Officer about any records that may exist regarding Falls Way. S. Smith noted that there is a Falls Way file with the documents and

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pictures; S. Smith and L. Ziel met with the former Code Enforcement Officer. It was also noted by TA Sanderson that the current Code Enforcement Officer has not been involved with this issue.

L. Ziel was concerned about the status of the Conservation Commission by-laws in congruence with State law. TA Sanderson was not familiar with the by-laws and could not comment on them. He noted that they were not voted on by residents but adopted by the Conservation Commission. It is a document for self-governance and not the same as a State statute, Zoning Ordinance or administrative rule. It does not have the force and effect of law; it is a guidance document for the Conservation Commission. L. Ziel asked if the by-laws should be submitted to the Board of Selectmen for review; L. Byergo stated they had been seen by the Board of Selectmen. S. Toth did not see a problem. They could review the file for Falls Way. The Conservation Commission's authority had not changed. They serve at the pleasure of the Selectmen and are advisory to them. Through the by-laws, the Conservation Commission has been given permission to do this. If the Selectmen do not want the Conservation Commission to enforce something, they cannot argue due to the State statute.

Contracting Procedure: TA Sanderson stated that this issue was not just with the Conservation Commission; this message will go out to all of the Town's subordinate and coordinate bodies. When spending budget funds that require a contract that could potentially be legally enforceable, it needs to be coordinated through the Town Administrator's office and approved by the Selectmen so they are aware of the obligation, that funds are available, and they are sure it becomes a legally enforceable obligation of the Town.

Natural Resources Inventory: TA Sanderson explained that in a public contracting process done by a sealed bid, State requirements must be followed. A Request for Proposal must be made available to the public. Bids that were received for the NRI ranged from \$20,000 to \$27,000. It was TA Sanderson's understanding that funds were to be used from the warrant article, which was \$17,000; there is approximately \$15,000 remaining. All of the bids exceeded the funds available in the warrant article. TA Sanderson continued that the bids would have to be rejected because funds were not available. The NRI would have to be rebid using a different set of specs. TA Sanderson noted that they could not negotiate with anyone responding to the bid to provide something less than what was within the limits of their funding. L. Byergo stated that they were going to discuss how to remove their request because the bids had come in much higher than anticipated.

L. Ziel questioned if the Conservation Commission should be sending out an RFP or if it should be done by the Town. TA Sanderson responded that he would try to help them follow other procedures to ensure they were in compliance with purchasing procedures. They are the agents to expend their warrant article. TA Sanderson would like to work with the Conservation Commission to send out the RFP. Responding to S. Toth, TA Sanderson stated that the Selectmen do not have to approve the purpose because the Conservation Commission are the agents to expend; however, the Selectmen need to know it is coming, make sure the resources are available and that procedures are being followed that are in compliance with the Town purchasing policy and State law. When the bid is awarded and the work is done, it needs to be auditable. L. Byergo explained the process they used for the RFP. TA Sanderson explained the next step would be to make the finding that none of the bids are within the Conservation Commission's resources and the bids were rejected; that would close the RFP. They would need to decide if the RFP would be sent out with new specifications.

MOTION: C. Hussey moved to reject any and all bids for the Natural Resources Inventory. There was no second.

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The Conservation Commission would need to decide if they continued with the contracting process within the existing set of resources and change the specifications or did they want more resources. L. Ziel agreed with TA Sanderson and appreciated him reaching out to the Conservation Commission.

Right-to-Know Law: The New Hampshire Municipal Association has been doing publications on the Right-to-Know law for years and training materials are available. Emails: Deliberations are prohibited by serial email. Social interactions are fine as long as business is not discussed. Posting requirements were discussed. L. Ziel encouraged members to review the Right-to-Know Law. Quorum: If a subcommittee is appointed and a quorum is present, it is subject to the Right-to-Know Law and minutes must be kept. A quorum is based on the assigned number of members (example: the Conservation Commission consists of seven members; four would be a quorum). S. Smith stated he has a good NHMA article on the Right-to-Know Law and will send it out.

3. Old Business

Natural Resources Inventory: S. Toth questioned approaching the Board of Selectmen for additional funding or rejecting the bids that were received and resubmit the RFP. L. Ziel asked for a consensus from members on the bids that were received.

MOTION: K. Babin-Johnson moved to continue further discussion of the Natural Resources Inventory RFP to the January meeting. Second – S. Toth; five in favor, one against (C. Hussey). MOTION CARRIED

Discussion: K. Babin-Johnson clarified that she wanted to discuss whether the specifications should be trimmed down and what should be cut. L. Byergo stated that she would check to see if they could tell all bidders that they were reconsidering the RFP and they continued discussion to the January meeting. C. Hussey stated that due to budget constraints, he did not think the Conservation Commission could get additional funding.

If required, L. Byergo will send a letter to the bidders informing them that further discussion was continued to the January meeting. L. Byergo noted that there was no deadline date on the RFP.

RFP – Trails: C. Hussey reported that he had received permission from the Board of Selectmen to enter into a mowing contract. Due to a death in the family, the contract may not be done in time for this year. The cost was \$950 for one mowing of the trails and fields. C. Hussey recommended encumbering the funds. He explained that a contract would be needed to encumber the funds. The cost of mowing the field will be \$700 and the trails will be \$250.

MOTION: L. Byergo moved to approve C. Hussey going to the Board of Selectmen with a written contract to encumber funds up to \$950 for the mowing of one trail and the Van Etten meadow. The meadow will be mowed in late August after the nesting season. Second – S. Toth; all in favor. MOTION CARRIED

Discussion: B. Bilodeau suggested a time not be specified but rather mow the field some time in the coming year.

Green SnowPro Certification: S. Toth attended a Board of Selectmen meeting and questioned if the Town contractor was Green SnowPro certified. The snowplow contractor is Green SnowPro certified. Funding has been included in the budget for training.

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Trail Clean Up: B. Lajoie stated it probably would not happen until after a thaw. L. Byergo stated that Larry Day, volunteer extraordinaire, cleared several trees that were blocking the path.

GPS Unit: B. Lajoie has looked at the GPS that was given to the Conservation Commission from the Town. It does not receive any satellite signals. L. Ziel will let the Town Administrator know it does not work.

Trash Removal: Will happen at the same time as trail clean up.

4. Approval of Minutes

November minutes were not available and will be approved in January.

5. New Business

PDA Update: K. Babin-Johnson updated members on the proposal from Million Air for a 90,000 gallon fuel farm. Their application has been approved by NHDES. The proposal is to locate it 100 feet from the wetland area where funding has been spent to mitigate the Air Force PFAS problem. She brought the issue to the Conservation Commission as a matter of awareness.

6. Adjournment

MOTION: C. Hussey moved to adjourn at 9:05 p.m. Second – K. Babin-Johnson; all in favor. MOTION CARRIED

NEXT MEETING

Wednesday, January 11, 2023 – 6:30 p.m., Town Hall Conference Room

Submitted By: Charlotte Hussey, Administrative Assistant