

DRAFT MINUTES  
CONSERVATION COMMISSION  
DECEMBER 13, 2018

PRESENT: Bob Boynton, Chairman, Karen Miller, Lisa Oden, David McTigue, Michael Bara, Kleta Dudley (SoRLAC) Representative) Lori Rautiola, Secretary  
ABSENT: Matt Oliveira, Jack Messe

The meeting was called to order at the Town Office at 7:30 p.m.

**Committee Reports:**

The minutes from the November 8, 2017 meeting were reviewed and the following corrections made: last sentence under Communications change the word to landowners'. In the last sentence under New Business replace the word in with "is". Lisa made a motion to approve the minutes as amended. David seconded the motion and it passed unanimously.

**Communications:** Bob reported the Stoddard Conservation Commission is seeking the Commission's support on the HB1343 bill to strengthen the protection of beavers. Members conversed and agreed there is not enough information and decided no action was taken at this time.

**Lands:** Bob gave a PowerPoint presentation on Land Protection Criteria. (See attached)

David made a motion to pay two invoices from Upton & Hatfield, LLP for legal fees in the total amount of \$457.95 for Northeast Wilderness Trust. Karen seconded the motion and it passed unanimously.

The meeting adjourned at 8:45 p.m.

Respectfully submitted,

Lori Rautiola, Secretary

## Do You Know Where This Is?





## Land Protection Basics

### Our Purpose

- **36-A:2 Conservation Commission.** — A city or town which accepts the provisions of this chapter may establish a conservation commission, hereinafter called the commission, *for the proper utilization and protection of the natural resources and for the protection of watershed resources of said city or town*. Such commission shall conduct researches into its local land and water areas and shall seek to coordinate the activities of unofficial bodies organized for similar purposes, and may advertise, prepare, print and distribute books, maps, charts, plans and pamphlets which in its judgment it deems necessary for its work. It shall keep an index of all open space and natural, aesthetic or ecological areas within the city or town, as the case may be, with the plan of obtaining information pertinent to proper utilization of such areas, including lands owned by the state or lands owned by a town or city. It shall keep an index of all marshlands, swamps and all other wet lands in a like manner, and may recommend to the city council or selectmen or to the department of natural and cultural resources a program for the protection, development or better utilization of all such areas. It shall keep accurate records of its meetings and actions and shall file an annual report which shall be printed in the annual town or municipal report. The commission may appoint such clerks and other employees or subcommittees as it may from time to time require.
- Does NOT say authority and responsibility are based on the *interests of members*
- Does NOT mention *pipelines, solar panels, septic systems* or *private wells*
- RSA does NOT give us *authority* or *responsibility* over these man-made structures
- Simply put, they are *not natural resources*

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## Land Protection Basics

### Some Terminology

- **Conservation Easement**

- ✓ Sometimes called ***Conservation Covenant*** or ***Conservation Restriction***
- ✓ A power vested in federal and state government
- ✓ Must be held by ***qualified entity*** (land trust or government organizational)
- ✓ Has an overall ***purpose***: Protect Hoar Pond and its surrounding habitat
- ✓ Has ***restrictions***: No buildings, no commercial activity and no hunting
- ✓ May have ***reserved rights***: Owner may create 10-acre envelope for a camp
- ✓ Easement ***goes with the land*** (applicable to current and all future owners)
- ✓ Becomes part of the ***chain of title*** (recorded at registry)
- ✓ Enables owner to ***customize protection objectives*** and still keep ownership
- ✓ Land ***remains private*** (although public access usually allowed)
- ✓ Treated as a ***charitable deduction*** for tax purposes



## Land Protection Basics

### More Terminology

- **Grantor:** Individual (or organization) that conveys property rights to a third-party.
- **Grantee Easement Holder:**
  - Third-party to whom property rights are being conveyed to by the grantor
  - Has primary responsibility for upholding easement
- **Executory Easement Holder:**
  - ✓ Third-party to whom property rights are being conveyed to by the grantor
  - ✓ Has secondary (back-up) responsibility for upholding easement
  - ✓ Also ensures that Grantee is fulfilling its responsibilities as the primary easement (including monitoring and resolving violations)
  - ✓ If grantee ceases to exist, executory interest holder assumes role of grantee.

## Land Protection Basics

### More Terminology

- **Stewardship**

- ✓ Protecting land, by ***owning*** it or holding a ***conservation easement*** on it.
- ✓ It is a ***legal promise*** to care for the land ***in perpetuity*** (forever).
- ✓ Newly protected land is good reason for satisfaction and joy.
- ✓ Only by keeping the legal promise, ***through consistent, capable stewardship***, is the land truly protected.
- ✓ It is NOT practical for town to hold easements on private property.
  - ❖ Annual monitoring by Commissioners is often not done
  - ❖ Most Commissioners lack the skills and knowledge required
  - ❖ Town and/or Commission lack funds to enforce a violation
- ✓ Town-owned land may or may not need an easement to protect it.

## Land Protection Basics Even More Terminology

- **Protected Land**
  - ✓ Collective term for generic terms like ***Conservation Land, Conservation Property***
  - ✓ Land which is legally recognized, dedicated and managed for the purpose of protecting its natural resources.
  - ✓ Land protected can be public or private
- **Public Land:** Land owned by a Government Organization (GO)
- **Private Land:** Land owned by a Non-Government Organization (NGO)
- **Gift of Land**
  - ✓ Voluntary transfer of land or an interest in land from one individual or organization to another
  - ✓ Individual or organization who makes the gift is known as the ***donor***
  - ✓ individual to whom the gift is made is called the ***donee***

## Land Protection Basics And Finally ...

- **Gift of Land cont'd ...**

- ✓ Federal tax code allows individuals and businesses to make land contributions to qualifying land trusts and governmental organizations and charities
- ✓ The donor can claim deductions for these contributions on their tax returns.
- ✓ Gifts of donated land have been a popular deduction for taxpayers.
- ✓ Gifts are rare in this era
- ✓ Land owners are now selling the land to be protected
- ✓ New Ipswich has four (4) parcels of conservation land which were donated:
  - ❖ Johnson Property
  - ❖ Nussdorfer Nature Area
  - ❖ Stone Landing
  - ❖ Williams Property



## Land Protection Basics

### Conservation Lands Which Town Has Legal Interest In

Conservation Land Name	How Town Acquired Interest	Year Interest Acquired	Town			Third-Party		
			Owns Property	Holds Grantee	Holds Executory	Owns Property	Holds Grantee	Holds Executory
Currier Easement	Easement	1992		YES				
Rhoads Easement	Easement	1992		YES				
Gibson Four Corners	Tax Lien	N/A		YES				
Kellogg Property	Easement	1992						
Johnson Property	Donation	1991	YES				YES	
Nussdorfer Nature Area	See Below	See Below					YES	
»Kinney Easement	Easement	1992		YES				
»Potter Property	Donation	2009	YES				YES	
Stone Landing	Donation	1998	YES					
Tophet Swamp	Purchase	N/A	YES					
Williams Property	Donation	2001	YES				YES	
New Ipswich Mt.	Purchase	2014	YES				YES	
Binney Hill Waypoint	Purchase	2015	YES					
Wapack Wilderness	Easement	2011			YES	YES		

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## Land Protection Basics

### Which Lands Should We Protect?

- Identifying what lands to protect is intuitive to most people.
- Most people know whether a land parcel should be protected?
- However, most people **CANNOT** always tell you why they feel this way!
- They unable to ***qualify and/or quantify*** their feelings.

## Land Protection Basics

### Conservation Commission's Role

- It is **Responsibility** of Conservation Commission to **qualify and quantify**.
- Why spend the time and effort to qualify and quantify?
- Isn't identifying lands to protect almost intuitive?
- Qualifying and quantifying goes beyond our intuition.
- Qualification and quantification ...
  - ✓ Aids us in applying **due diligence** in our decision making.
  - ✓ Helps ensure that our decision making process is **unbiased**.
  - ✓ Identifies which **natural resources** we are trying to protect.
  - ✓ Documents the **reasons and benefits** of [not] protecting the land.
  - ✓ Provides an outline for the important **conservation easement language**.
  - ✓ Prioritizes the use of our **limited funds**.



## Land Protection Basics

### Transaction Types

<b>Assist with Easement</b>	CC assists land owner with land protection costs.
<b>Town Purchases Land</b>	Town acquires fee interest in private parcel of land.
<b>CC Receives Land Gift</b>	CC receives donation of land from private landowner.
<b>CC Contribution</b>	CC gives funds to land protection campaign of third-party.
<b>Execution of Tax Lien</b>	Town acquires land through execution of a tax lien.

## Land Protection Basics Transaction Costs

	Survey Costs	Phase I Costs	Legal Costs	Back Taxes	Donation Amount
Assist with Easement	MAYBE	MAYBE	MAYBE	NO	NO
Town Purchases Land	YES	YES	YES	MAYBE	NO
CC Receives Land Gift	YES	YES	YES	MAYBE	NO
CC Contribution	NO	NO	YES	NO	YES
Execution of Tax Lien	YES	YES	YES	YES	NO

## Land Protection Basics

### Transaction Qualifiers/Quantifiers

- What are the objectives of the property owner?
- Would some of their objectives be impossible to meet?
- Do we have the necessary funds available?
- Does size and location of land warrant protection?
- Does land need protecting (in danger of impact?)
- Would land be problematic to own and/or monitor ?
- Would protection of land enhance protection linkage?
- What is the history of the property?
- Who are the current abutters?
- Who might the *future* abutters be?



## Land Protection Basics

### Transaction Qualifiers/Quantifiers ... cont'd

- Would land provide any revenue (e.g. timber)?
- What are the public benefits of protecting the land?
- What natural resources are we trying to protect?
- How difficult will it be to protect those resources?
- What are access points to the land?
- Would land maintenance become onerous? (Johnson)
- Is land in Current Use?
- Is there a Tax Lien on the property?
- Is there a Financial Lien on the property?

## Land Protection Basics

### Assessment of Natural Resources

- Assessment of natural resources is an important step in the evaluation process
- Research into the property's natural resources is accomplished through:
  - ✓ Institutional knowledge
  - ✓ Town and State records (DES)
  - ✓ Research on the web
  - ✓ Use of GIS Tools
  - ✓ Site Visits
  - ✓ Hiring professionals (e.g. wetlands scientist)
- The following natural resources, if present, should be assessed:

✓ Wetlands	✓ Watersheds	✓ Aquifers	✓ Unfragmented Space
✓ Streams & Rivers	✓ Habitat	✓ Trails	✓ Scenic Outlook
✓ Ponds & Lakes	✓ Forests	✓ Summits	✓ Scenic Viewshed

## Land Protection Basics

### Property Visit(s)

- What is quality and extent of timber (species/volume/age) [revenue]
- Visit natural resources highlighted in natural resource assessment
- What wildlife signs or species did you observe?
- What bird activity or nests did you see?
- What activities did you see on abutting properties?
- Are the boundaries clearly marked (could reduce survey costs)?
- Are there any foot trails or logging roads present?
- Any indication of OHRV traffic?
- How accessible would the property be to the public?
- What was general steepness of the property (could it be developed?)
- At end of the visit, note your *visceral feeling* about the property.



## Land Protection Basics

### Make a Decision

- Have final discussions about the candidate property
- Raise any final questions you may have
- Discuss the Pros and Cons of ...
  - ✓ Protecting the property
  - ✓ NOT Protecting the property
- Inform BOS of Commission's intent to protect the land.
- Has Commission found grantee easement holder (purchase only)?
- Does Commission and Town Attorney agree with easement language?
- Take a vote!

## Land Protection Basics

### Stewardship

- Stewardship is a ***promise*** made to:
  - ✓ *Past owners*
  - ✓ Present owners
  - ✓ Future owners
- Stewardship is a ***promise*** to:
  - ✓ Monitor the protected land ***forever!***
  - ✓ Provide monitoring reports ***forever!***
  - ✓ Ensure easement is not violated ***forever!***
  - ✓ Enforce *violations* ***forever!***
  - ✓ Fund enforcement ***forever!***
- Stewardship is ***forever!***

## Land Protection Basics

### Stewardship: Town Land under Third-Party Easement

- Town is **Grantor**
- **Grantee Easement** held by third-party
- **Executory Easement**
  - ✓ Can be held by third-party
  - ✓ If no third-party, Commission assumes the responsibility
- **Grantee Easement Holder** responsible for ...
  - ✓ Boundary markers
  - ✓ Field monitoring and reports
  - ✓ Enforcement of violations
  - ✓ Funding of enforcement
- **Conservation Commission** responsible for ...
  - ✓ Reviewing monitoring reports
  - ✓ Ensuring **Grantee Easement holder** upholds easement

## Land Protection Basics

### Stewardship: Grantee Easements Held by Town

- Third-party is **Grantor** (proposed LCIP project which was not selected)
- **Grantee Easement holder** is town
- **Commission Commission** responsible for ...
  - ✓ Boundary markers
  - ✓ Field monitoring and reports
  - ✓ Enforcement of violations
  - ✓ Funding of enforcement (from where?)
- Town holds easements on five (5) properties:

❖ Currier Easement (Dam Site #14)	Last monitored: 2008
❖ Gibson Four Corners Easement	Last monitored: Never
❖ Kellogg Easement	Last monitored: 2011
❖ Kinney Easement	Last monitored: Never
❖ Rhoads Easement (Furnace Brook)	Last monitored: 2001



## Land Protection Basic Stewardship: Executory Easements Held by Town

- Third-party is **Grantor**
  - ✓ Northeast Wilderness Trust: Hampshire Country School
  - ✓ Northeast Wilderness Trust: Binney Hill Preserve
- **Executory Easement** held by town
- **Grantor** responsible for ...
  - ✓ Boundary markers
  - ✓ Field monitoring and reports
  - ✓ Enforcement of violations
  - ✓ Funding of enforcement
- **Conservation Commission** responsible for ...
  - ✓ *Reviewing* monitoring reports
  - ✓ Ensuring **Grantee Easement holder** upholds easement

## ***Promises Broken ...***



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## More Promises Broken ...



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