

**MINUTES OF MEETING  
CONWAY CONSERVATION COMMISSION  
May 17, 2006**

A meeting of the Conway Conservation Commission convened at 6:31 p.m. at the Whitaker Homesite in North Conway, NH. Present were: Chair, Paul Pinkham; Phil Haynes, David Weathers, Rob Adair, Dan Lucy, and Alternates Linda Kearney and Connie Briggs. Also present were Forester, Don Johnson, and representative of TNC, Jeff Lougee.

The Chair appointed Ms. Kearney and Mr. Briggs as full voting members.

**Approval of Minutes (4/12/06):** Approval tabled until June Meeting.

**Public Comment:** None.

**Permit Application for Summer Races:** Members of White Mountain Milers, Maryanne Jackson, Paul Kirsch, Doug Armstrong and Steve Swenson, joined the meeting. The Milers have applied for a permit for the summer race series and are seeking final approval from CCC. Mr. Kirsch noted they have held the races for 29 years in Whitaker Woods; attendance had dwindled to 10 to 15 participants and they are trying to raise more interest community-wide. Last year they started the nine week race series and got about 60 people a week, ages 3 to 72, runners and walkers. Previously they have required that participants join the White Mt. Milers, but will not be asking that this year.

The series will start in June continuing for nine weeks except for July 4<sup>th</sup> week and Madison Old Home Week. They start at 5:30 p.m. and take from 15 to 45 minutes, all following the same marked trail.

**Motion was made by Mr. Briggs that the Commission approve the application for the nine week race program. Seconded by Mr. Adair.** Mr. Weathers questioned whether they have encountered any problems with others trying to use the trail. Mr. Kirsch stated parking was a challenge during softball games; however, they can encourage people to park at John Fuller School. On one occasion there were two people walking dogs who chose a different way around, so it has not really been a problem. This year they will use Wellinghurst Trail. For most runners it is 20 minutes or less, walkers 45 minutes to one hour.

Mr. Haynes noted if other groups are applying, we will have five or six days filled up, will be having to say yes to everyone. He said he would not necessarily be against it this year, but would not say it could happen every year. Mr. Armstrong noted that whenever there are ski races in Whitaker Woods they block it off – that is not an issue with the running. He noted that within three minutes sixty people are spread out, not running side by side.

Mr. Pinkham suggested to address Mr. Haynes' concern, it would not be inappropriate for the Commission to develop a long term policy to address the overuse of organized races versus casual - it could be managed with a policy. Mr. Haynes noted when it was a "Fun Run" it was a small run and was not intimidating, last year it got big. He is concerned about having any property which belongs to everyone being used by any one group all the time. Ms. Kearney pointed out we are only talking about 1-1/2 hours total time and she does not see it as a major impact, noting that if that many people show up, then there must be a lot of interest.

Mr. Swenson said he would assume that running and walking and fitness are very much a part of Whitaker Woods, adding they do request permission to use it. Mr. Weathers said it would help if they could require participants to park at John Fuller, that if all the parking spaces are taken up by one particular group, then it could cause problems later on. Mr. Kirsch agreed they would encourage people to park there through the use of flyers and email. Mr. Lucy said tonight we are talking about this year, we are not overcrowded this time, they come to us every year.

**Mr. Briggs' motion carried by unanimous vote.**

Mr. Pinkham asked that they police the area when finished. Mr. Kirsch said last year they put 20 white arrow signs for direction about 8' up on trees attached with screws. Mr. Pinkham advised those signs should be removed by November.

**Reports:**

**Conservation Easements** - Jeff Lougee explained Conservation easements which provide for a landowner to protect his land in perpetuity, but he can retain some use of the property. He noted the benefit of an easement to a conservation entity is that to acquire it, it is cheaper than buying the piece of property. The obligation is to maintain a relationship with the landowner, make sure the terms are being upheld, but do not have to post the land – you are not taking over the full stewardship of the property. It is a legally binding agreement and restricts certain future uses of the property. Mr. Lougee stated while there is some financial incentive to a conservation easement, the primary incentive is that the landowners care about the land and want to see it maintained as it is into the future.

Mr. Haynes questioned whether the conservation group determines what the land is going to be used for and whether there are court cases where that has been reversed. Mr. Lougee stated no, noting it just came into being in the last 15 to 20 years. Mr. Haynes stated it is still subject to eminent domain – what happens if there is no heir apparent? Mr. Lougee explained a conservation easement deed runs with the land; however, he is not sure who ends up with the property. Mr. Adair suggested it would be the State, the easement is in perpetuity. Mr. Weathers cited the scenario of working out an agreement, setting it up under an agricultural agreement, and 15 years down the road there is inquiry to change to a different land use but not subdivide it. Mr. Lougee said if there is any easement that is a prohibited use, the easement holder could say no; however, if the

easement holder feels it is compatible with the overall conservation goals for the property, it can be amended, but both parties have to be in agreement. There has to be long term vision, and IRS rules must be adhered to – there is no flexibility with those. Mr. Adair noted a lot depends on how the easement document is written; however, if you want to change the use, it is up to the easement holder to enforce the terms. Mr. Johnson commented that it is a risky situation for the easement holder if there are people who have an interest in the land and decide they want to force the issue.

Mr. Lougee said if the town were considering starting an easement program they would need to think about developing an easement base line documentation report, would have to visit the property annually to make sure the landowner is following the terms of the easement, and would need to maintain a relationship with that landowner. The town would also have to think about legal defense - \$2500 to \$3,000 for a stewardship endowment for typically 100 acres. Mr. Johnson questioned whether the easement holder can buy insurance for defense. Mr. Lougee did not know, but said they do not do that.

Incentives: Mr. Lougee pointed out that as opposed to donating or selling the property, the landowner can continue to use it. There are some tax benefits – charitable deduction for income tax purposes (up to 30% of adjusted gross income, and can be carried for six years). Value is determined by getting an appraisal done at fair market value and the market value of the easement, and the difference is the value of the conservation easement. He noted it does not help people who are land rich and cash poor.

Mr. Haynes questioned whether a person can include his home on the easement. Mr. Lougee said yes, they can either do an exclusionary easement to avoid going through subdivision, or can divide the property and take the house lot out. Mr. Lougee stated there is the issue with State death taxes – in that case the value of the estate could be so high they cannot afford the estate tax, also other property of the owner also has to be taken into account.

Examples of those who can hold easements: Government entities, Fish and Wildlife, town, etc., or a qualified conservation group. As to the question of when it might not be a good idea to do a conservation easement, Mr. Lougee said sometimes there is property with no conservation value. The easement holder is only responsible for enforcing the terms of the easement, if someone is donating the easement they have to pay for the appraisal.

Examples of funding programs for easements: Forest Legacy through the Dept. of Agriculture, Landowners Incentive Program through Fish & Game – closely tied to new wildlife action plan, LCHIP.

Mr. Pinkham noted in order to put conservation easements on town-owned land, we do not need to have a warrant article, it can be done through agreement of CCC, Selectmen, and Planning Board, especially when it is already considered conservation land.

**The Nature Conservancy Report:** Mr. Lougee provided copies of trail maps which will be supplied to Chamber booths.

Mr. Lougee stated he has gotten the work agreement between the town and TNC signed. TNC has hired a seasonal person, Peter Benson, whom they feel they are very lucky to have. TNC is still trying to formulate plans for Bear Paw. The Land Steward is working on the parking lot issue on Hurricane Mt. Road. Mr. Johnson said it would be handy if we could get some material out of the old pit to repair that, build it up and divert the water.

**Report by Forester:** Mr. Johnson reported that after the winter he had a list of projects to do. He went through Shedd Woods and got the brush out of the way; did everything down over the vista over the Moats -there was a need to get work done before leaves set on. They went up into Whitaker Woods and did a touch up on the white pine they had done release work on (about 2 to 3 acres) knocking the hardwood out. They covered areas on the Lucy Traverse, now it needs more sun so they need to get some more of the over story out and do more timber harvesting.

Next they went to Hubbard-Davis where there was an entirely different situation - the pines in there are now approaching 20' tall and it is time to start thinning them. They took out all the hardwood (had to leave some for the safety aspect). Mr. Johnson reported they did about 4 acres and the area is really looking good.

The next project was compartment #1 on the side of Hurricane Mt. They changed the clear cuts around a little, knocked all the hardwood out so there was growing space of about 5'. They did the first clear cut, skipped the 2<sup>nd</sup> did the 3<sup>rd</sup> and 4<sup>th</sup> – around 7 acres; then went to compartment #2 and did the wildlife opening. Mr. Johnson reported he got the town a grant for \$600 from Fish & Game to help cover the cost. He noted the next time it is done it will be done mechanically – it is slightly bigger than 7 acres. They then went to clear cut #2 to do release work (2 to 3 acres). This was planned from last year.

Mr. Johnson said he has reviewed the Schiavi timber estimate. He looked at the timber appraisal, reviewing with the Forester who prepared it; walked the land. A report was done outlining what a sustainable harvest over the next five years would take. Mr. Johnson also went to look at Armstrong Alley Trail and it is time to get it seeded. He reported also the gate is broken and needs to be rebuilt. Mr. Pinkham stated we have money in the budget for gates.

Mr. Johnson said the Schiavi piece is a tremendous piece of land and would fit together well with other parcels the town has acquired. It is a fascinating place. Part of the land is comprised of the old quarry. People have used the area as a dump and there is a lot of clean up to be done. He said access is an issue, and suggested Town Counsel be contacted as to the town's liability. Mr. Haynes said the town has to take a good look at trying to keep people out because of the liability issue. Mr. Adair pointed out if we do not charge money, we are not liable. It was noted vehicle access is an issue – there are three burned out vehicles in there.

Mr. Adair pointed out we had 16 people show up two Sundays ago to work on maintenance of the Red Tail Trail. Parts of the trail were reworked around and a fallen tree was turned into a bench. Over 50 man hours were put in.

**Treasurer's Report:** Ms. Lyman could not be present, but sent financials. It was reported that of our \$21,800 budget, we have spent \$5,900 so far.

**Selectmen's Report:** Mr. Weathers reported on the activity between NHDOT, the Town and Schiavi on the Schiavi property. He noted the goal is to try to acquire the land without Schiavi doing any more cutting as it is not a desirable situation if we own the land and have someone else cutting on it. Schiavi is claiming he currently is not interested in selling the property to anyone else.

Mr. Briggs questioned whether it would be worthwhile for the Commission to authorize Messrs. Weathers and Pinkham to put "X" amount of dollars from our fund toward it, if need be, to make an offer. Mr. Weathers said the State has a certain limit they can offer. The question is then with the State's figure in there, what is the value of the timber he would harvest? The State does not want, nor does the town want, to offer too much over the appraisal just to set a precedent. We are fairly close, it is progressing, but will take 2 to 3 months more to do it.

#### Dredge & Fill Applications –

Burke - Mr. Weathers has correspondence regarding Curt Burke's application to put in a culvert. The State is asking for more delineation of wetlands because it is considered a subdivision.

Campbell – Two culverts on Stritch Road - minimum impact to gain access into the lot.

East Conway Road – Daniel Bacon has put up a new home about 1-1/2 miles beyond the town's transfer station. That home is now surrounded by water. The DES has issued a cease and desist order and Mr. Bacon cannot proceed with any more work until he comes up with a plan. He is now considering putting in a pond there and would have to do a standard Dredge & Fill, considered an "after the fact application." Several items are missing on the application. Mr. Weathers will draft a letter citing the violations, as we should go on record with the State as to what is lacking on the permit. He will not recommend any fire pond in there.

Bergeron – Application for a wildlife pond on West Side Road by Ed & Kathy Bergeron is lacking information. Mr. Weathers will request additional information and will notify the State of items lacking.

Mr. Weathers noted there is some confusion at the town office as regards the handling of the applications - minimum impacts have to be signed (Mr. Weathers will sign), we have ten days to sign them. He will review them and if there is any discrepancy he will notify the State. He noted what happens to those copies is critical. The CCC copy should

remain in the town office and any correspondence we get from the State should be put with that. It should stay with the office indefinitely.

**Appointments:** Mr. Pinkham said he has requested reappointment of members; however, we are required to advertise to fill any vacancies.

**Election of Officers: Motion was made by Mr. Weathers, seconded by Mr. Haynes, that the present slate of officers remain as is. Motion carried by unanimous vote.**  
[Chairman – Paul Pinkham, Vice Chair – Dan Lucy, Treasurer – Carol Lyman]

**Shedd Woods:** Mr. Pinkham noted we drafted a letter stating we wanted the place restored, now the State has brought in an excavator and materials to be stored there. Mr. Lyford's response is that pipe stored there is going to be used to extend drainage, and they will then clean up the site. Seeding and mulching will be done. Because they always need access to the pipe, they do not want to plant any trees. He suggested the area where the pipe is now be used for parking. Mr. Weathers stated there will be more done there than just grass seed.

**Whitaker Woods Trail Plan:** Mr. Adair stated he will have to step down as he does not feel he can get around in there with his recent heel injury. Mr. Pinkham said we have a pretty good draft of things to do; it is matter of refining that, prioritizing it, and pricing it out. Mr. Adair said it is a matter of taking the wish list and going out with Don Johnson and seeing what we can get done this year. Messrs. Lucy and Adair are to get together with Mr. Broomhall to define what it is we want to do and get Don Johnson committed to it.

**Railroad Crossings:** Mr. Pinkham said the railroad crossings are done; however, he received a call from Russ Seybold saying that they extend above the rails and need to be repaired or removed. The plan shows them being level with the rails. He has notified the Public Works Director. Mr. Adair said the plans that DOT sent show 6x6 timbers sitting on the ties, but also show them flush with the rail. Mr. Weathers questioned whether we could shave what's there without removing them. Mr. Adair said maybe we could take a chain saw and bevel it back. Mr. Pinkham will contact Mr. Seybold and explain the town has not responded yet because of people being out of town. Mr. Weathers commented also that construction is taking priority.

Mr. Pinkham noted the need for establishing criteria for conservation land acquisition or easements. He will attempt the first draft.

**Next Meeting Date:** The next regular meeting will be held on June 14th at 6:30 p.m.

**Motion was made by Mr. Weathers, seconded by Mr. Haynes and carried, that the meeting be adjourned at 8:25 p.m.**

Respectfully submitted,

Gail Carrier, Recording Secretary