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To: Colchester Planning Commission  
From: Sarah Hadd, Director of Planning and Zoning  
Re: June 18th Land Conservation Work Session  
Date: June 12, 2019

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**Land Conservation Option Work Session:** One of the identified solutions for addressing human wastewater pollution of the Inner Bay is to purchase and conserve property. There were varying proposals from voluntary buy-outs of property owners to purchasing properties as they went on the market at the May 20<sup>th</sup> forum. Questions were raised about the Town's history of land acquisition funding. The following overview attempts to address these questions and provide a land acquisition solution that would specifically address wastewater pollution for consideration by the Planning Commission.

#### **Prior Conservation Efforts**

The Town of Colchester does not have an active land acquisition fund or agency. In 1988, the Town voted on the March ballot to “levy a tax for the purpose of acquiring Lakeshore Properties along Rt. 127 and the Lakeshore by the assessment of one (.01) cent per one hundred (100.00) dollars in real property assessment(s) in Fiscal 1988/89.” This action was also approved on the March 1989 ballot. As the ballot items were for just these two years, the authorization has expired and no subsequent funds were collected. The funds collected were spent (most probably in the purchase of the Rossetti Natural Area). There was discussion as late as 1994 about conserving the lakeside portion of East Lakeshore Drive. The last iteration of this discussion was a recommendation of the Village on Malletts Bay committee in December 1994 to allow larger housing projects on the non-lakeside of East Lakeshore Drive if developers would pay to remove the residences on the lakeside. No changes to zoning or other regulations were done to enact this concept.

A Colchester Land Trust was also established and active in past decades to assist with the purchase and conservation of properties. This separate organization was a not-for-profit that has ceased action and lacks funding. There is only one known member remaining: Brian Costello. No other land conservation groups are known in Colchester. Purchases of properties by the Town in recent years have been through ballot item and bonds. The Bayside Hazelett Property was purchased by the Town in 2004 following a March bond vote. The exception to this was the purchase of the land for the Village Park in 2007 that was completed with recreation impact fees. These fees were established on new development specifically to increase recreational opportunities for residents. With a constant need for new fields and park improvements, the fund is not significant enough or

broad enough in scope to be used for additional land purchases. **The Town currently does not have a conservation fund or a funding source.**

**What would a land conservation project look like?**

A project scope and purpose would need to be defined. As the Commission has been tasked with solutions for wastewater pollution, properties with wastewater problems should be a priority for purchase. While all the land in the previously proposed sewer service area (298 parcels) could be considered, lakeside properties (126 parcels) would have the highest benefit to conserve and could be the initial focus of a conservation project.

**How would properties with wastewater pollution be identified for conservation?**

The 2013 water quality study conducted by the Town analyzed the Inner Bay area and requested access to private properties to evaluate the soils and septic systems. Distance to surface waters, soils and groundwater assessments were done to provide an overall rating for septic feasibility. In the Goodsell Point area, 13 of the 49 sites were evaluated and it was concluded from this sampling that individual on site systems cannot adequately protect public health and the environment even with I/A systems (innovative alternative systems such as bottomless sand filters). The East Lakeshore Drive area was split into lakeside (62 properties) and non-lakeside (94 properties). Thirteen sites were inspected similarly. The lakeside ranked as severe due to area and distance to surface water while the non-lakeside ranked as medium risk with severe area limitations but improved distance to surface water and somewhat better soils. For the non-lakeside, cluster systems would be viable albeit for the lack of area. For the lakeside, even the placement of advance treatment systems would not provide complying septic. The West Lakeshore Drive area was categorized as high risk with 14 of the 43 properties investigated. There are severe area and distance to ground water limitations. Improvements to onsite systems may cost over one million dollars. No good cluster system options were identified by the field work.

It is improbable to consider a full inventory of existing septic systems. The Town can not legally require or perform inspections of each property and assessments. Owners of properties with the most septic issues are likely to challenge or shun any voluntary measures. From the known data such as septic permits, the 2013 study and inspections, as well as the current State wastewater rules it can be concluded that all septic systems within these areas are subject to premature failure and do not work efficiently at treating wastewater. More specific detail of individual site risk is improbable to develop, would take significant time and funds, and would not yield specific sites to target conservation or enforcement efforts on. Creating a priority list of parcels for purchase based upon wastewater risk is not feasible therefore a generalized area for conservation efforts would need to be established.

### **How could land be conserved?**

If an area was identified for conservation based upon higher probability of wastewater pollution, such as lakefront properties in the Inner Bay, these properties could be acquired through donation, consensual purchase, or eminent domain.

#### **Donation**

While it is not likely that all 126 lakefront properties would be gifted to the Town, a few property owners may consider donating or willing properties for conservation. For donations, a program would need to be established to remove structures and stabilize the land. Along the lakeshore, stabilization can often require seawalls or other structure solutions. Using recent demolition permit and seawall permit data, costs to demolish a building would be expected to average \$25,000 a piece depending on the size of the structure, necessary environmental remediation (such as asbestos removal), capping of existing septic systems, etc. Seawall cost for lakeside properties could range from \$10,000 for fixing an existing wall to \$100,000 for properties that have substantially deteriorated and do not have a wall. Maintenance funds to mow, prune, or remove rubbish would also need to be programmed for and raised. It should be noted that as properties are conserved, taxable property is removed from the Town's Grand List resulting in less tax money collected. If the lakefront properties were conserved, \$207,489 in annual tax revenue would be lost. If the lands were to be transitioned into another purpose such as a linear park, costs to establish and maintain the park would also need to be considered.

#### **Consensual Purchase**

For consensual purchase of properties, fair market values of land would need to be paid in addition to the costs mentioned above. The Colchester Grand List provides the assessed values of property which is approximately 91% of market value. Using just lakefront properties as an example of an area that could be focused on, the lakefront properties on West Lakeshore Drive are \$14,949,050 and on the lakefront of East Lakeshore Drive and Goodsell Point are \$23,311,925. These assessed values should be increased 9% and closing costs for real estate transactions included that could range from \$1,000 to \$2,000 per property.

#### **Eminent Domain**

It is probable that not all properties could be voluntarily conserved. Even if a purchase program was instituted over time or as properties became available, several properties may never be offered for consensual purchase. As properties are returned to a natural state and only a few homes remain, the value of these remaining homes may increase. If the goal is to limit wastewater pollution, some of the worst situations could continue to exist and be used. Under State wastewater rules, all property owners have a right to continue using their homes or businesses even with failed septic systems. An example is

755 East Lakeshore Drive. This seasonal residence was condemned by the Town as it was falling into the lake. The septic was unknown as it predated zoning and was likely a cesspool. The owner challenged the condemnation and through litigation the new owner will be allowed to rebuild on the site with a “best fix” system and possibly go to year-round use with a legally allowed inadequate system.

Legal means such as condemnation would need to be used to acquire and conserve properties not willingly offered. The cost of legal action and the increased value of homes over time are also not factored into the costs considered at this time but could substantially increase the price paid for properties well beyond the current fair market values.

### **Could a conservation program be implemented gradually?**

A time horizon to purchase and restore the properties would need to be provided that would realize water quality improvement. Without a timeline to complete conservation of the properties, wastewater pollution problems would increase as additional systems fail and new legally allowed inadequate systems installed. With legal issues likely in land conservation efforts, even a well-funded program is unlikely to yield complete conservation of the project area within the near term. A fifty year time horizon would be comparable to a larger infrastructure project’s life cycle or funding horizon. Using a fifty year time horizon and 126 lakefront properties along West Lakeshore, East Lakeshore, and Goodsell Point approximately two and a half properties would have to be purchased and restored each year. Using an average property value of the 126 properties (\$303,658), an annual purchase fund approximating \$759,146 would be needed as well as demolition, site restoration, and legal fees of approximately \$150,000 totaling \$909,146 in total conservation funds annually. Contested sales, such as eminent domain cases, and increases to property value over time would increase required funds needed substantially. The shorter the time period is to acquire properties, the less the property values are inflated in cost.

### **What are possible funding sources for conservation?**

Included in the packet is a summary of known land conservation funding sources noting some of the opportunities and challenges. The funding varies substantially and most of the organizations assist in funding land conservation and are usually engaged as part of a team of funding sources. While some of these sources could be tapped for one or two parcels, using these funding sources for existing developed properties that may not always be conserved as a donation or by otherwise willing partners is unlikely. In order to match outside funding sources and purchase properties, the Town would need to establish a regular funding source of its own. The Town is limited in funding to property taxes and fees for services (such as permits and programs). As the conservation of properties could not be a fee for service, a new obligation on property taxes would need to be created for funding. This would increase taxes for funding land conservation while

land conservation decreases the assessed values resulting in higher taxes on parcels not conserved.

**How would a conservation program impact the character of the area?**

The impact of conserving land on the character of the neighborhood should also be considered. There would be positive impacts to adjacent properties as lake views are opened up and green areas created. There would also be negative impacts for residences and businesses in the area as relocations outside the area occur and long term family occupancies of properties removed. The properties could be redeveloped into a passive park that could be a draw for tourists and the community however a lack of parking and amenities would prove problematic in considering the area as a destination. Residents may not want a higher influx of tourists and possible increases in traffic. The relocation of long term residents and lack of seasonal influx would also have a lasting impact on the community.

**What would be the effect on water quality?**

If a strategic plan to purchase, conserve, and restore properties with wastewater pollution concerns were fully implemented, it would likely have the highest impact on water quality of the three solutions currently under consideration. Buildings, parking, and other impervious could be removed and septic system abandoned decreasing stormwater runoff as well as wastewater pollution. Conserved lands could be used for revegetation with natural land cover and plantings improving the shoreline environmentally as well as aesthetically. The more land conserved and restored, the greater the impact on water quality.

**Staff Summary:** As the Planning Commission looks to evaluate possible solutions for wastewater pollution, it should look to quantify each concept in the enclosed draft matrix. The Commission should consider the information presented as well as any public ideas or comments presented. Enclosed in the packet are comments from resident Jack Scully. The Commission may wish to modify the matrix or use the information provided to evaluate the conservation option in the matrix. Please let staff know if there is additional information or materials requested for the work session on this option. Staff, including Planning and Zoning Intern Marty Gillies, will be present at the meeting to answer questions as well.