

DEERFIELD CONSERVATION COMMISSION

Meeting Minutes – December 10, 2012

Members Present: Erick Berglund, Serita Frey, Wes Golomb, Kate Hartnett, Dave Linden, Herb McKinney
Members Absent: None
Guests: Dan Kern and Frank Mitchell

Approval of Minutes: The minutes of the November 12th meeting were approved with one correction/addition. Kate Hartnett noted that the AmeriCorps update only indicated that “*A high water trail was made on the Chase Lot*” when in fact this was an addition to the re-cutting and blazing of the *entire trail* on the Chase Lot.

Financial Officer’s Report: There was no updated financial or budgetary information available for Erick Berglund to report.

Town Forest Protection Project: Serita Frey summarized Jim Raymond’s written response to their previous phone and email conversations; however due to the length of the correspondence, she will e-mail a copy to all for review. **His comments included his belief that there were advantages to using a standard form** but that a number of portions that deal with tax provisions could be excluded since they don’t apply to the Town. It was previously felt that fewer details and a more standardized format would make it easier to make sense of the document in the future; however, **DCC’s recent experience in interpreting the Williams easement** because of its general wording may suggest the need for being more specific. Frank Mitchell agreed that anything not specific to this particular situation be eliminated (i.e. taxes), but noted that although taxes may not be relevant now, they could become so if the parcel were ever to be sold to a private individual.

Serita Frey felt that a single document was acceptable as long as the **differences among the parcels were made apparent in the appendix**, but expressed her concern that making the deed too vague would render it difficult to restrict. Dan Kern noted that most of the differences lay within the surveys and the easement deeds’ reserved rights, and that with vagueness and looser definitions comes flexibility to allow uses not envisioned at the time the deed was written, for example cultivating it as a town Christmas tree plantation. Dave Linden added that allowed uses based on what the donor’s perception of an allowed use (such as forestry) at the time the deed was written could differ from uses allowed in the future based on a change in the definition of the use. Serita Frey noted that **changes in definitions and their interpretation** have the potential to fundamentally alter an easement, as in the case of the Williams easement. Dan Kern further stated that although the Town has a responsibility to the donors, Bear-Paw does not impose itself into the position of the donor and that its focus is enforcement of the conservation aspects of the deed. Kate Hartnett felt that a parcel such as the Weiss property, conveyed as a *Town Forest*, was never intended to become a tree plantation and that a matrix would provide guidance as to the donor’s intent. Wes Golomb felt that decisions need to be made on a case-by-case, parcel-by-parcel basis. Serita Frey and Erick Berglund believed that once an easement, forever an easement and that a Town Forest could never be sold if protected with an easement. Dan Kern posited that, although an unlikely scenario, a property could be re-deeded (by vote of the town) from the town back to the town as a means of changing restrictions. Frank Mitchell added that the **easement binds the town and protects the parcel, but not who owns it**. The deed can specify Forestry and/or Agriculture or neither.

Erick Berglund questioned what the difference was in **using an appendix as opposed to statements** made within the deed. Dan Kern explained it was for ease of enforcement. He further suggested that there could be different terms for each easement; that language from the original deeds could be included and the town can decide to add restrictions on top of the deed, referencing “known intent of

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donor” in a **separate, recorded letter from the DCC**. Frank Mitchell questioned **whether donor intent could be included in the Purposes section** of the deed and Dan Kern responded that it would be done by reference. Herb McKinney questioned the **consequences of Bear-Paw dissolving**. Dan Kern stated that the easement could be conveyed to another organization or, since the State Attorney General’s Office has an interest, they might step in and find other organization. Dan Kern felt there could be widespread interest and that if a potential executory interest holder could be found, it would require their acceptance. Serita Frey felt someone from the town might take it up. Asked if it were mandatory, Frank Mitchell responded that **they were required to transfer the easement by the Attorney General’s Office**.

Erick Berglund inquired about the language of **the Weiss deed relative to remaining always a Town Forest**. Dan Kern clarified that *Town Forest* is a classification, and does not refer to ownership and the town can, by vote, rescind town forest status. The only entities able to enforce the deed are the donors unless it is written into the deed restrictions. Frank Mitchell stated that although the Weiss’ family may have assumed the property would always be a town forest and owned by the town, it is not stated in the deed restrictions, and suggested that DCC might want to lock in on that now based on current DCC intent and perceived donor intent. Dan Kern also noted that re-deeding would not be precluded by the easement but that **perpetual ownership by the town could be enforced if it is in the deed restrictions**. Serita Frey asked if Kate Hartnett was suggesting that it never be sold by the town and Kate Hartnett clarified that the commission had a moral and ethical **responsibility to implement the wishes of the donor** otherwise potential donors would have no motivation to gift a parcel with a particular goal in mind. Serita Frey surmised that the conservation easement could specify that the parcel *never be sold by the town*, but it was acknowledged that the **town could remove a parcel from Town Forest status by vote**. She also noted that a donor might not have been given “good advice” when wording the document and may not have been as specific as they needed to be for their wishes to be legally binding. Ms. Frey also questioned whether we should be re-interpreting intent if not clear in the deed, and it was determined that these **interpretations of intended uses could be referenced in the appendices and the matrix of uses, but not as enforceable statements in the text of the deed**.

Frank Mitchell brought up the **Lindsay easement** and said he had spoken with Fran Menard regarding Madeleine Lindsay’s wishes. Ms. Menard was not in favor of re-writing the donor’s intent but stated that Madeline Lindsay wanted “big old trees” and supported responsible forest management but no clear-cutting or vehicles. Kate Hartnett stated that this was an example of information that provided clarity and a level of comfort that the donor’s wishes were being preserved. Dan Kern noted that prohibiting roads, other than for forestry or agriculture, was enforceable but not vehicles. Regarding Kate Hartnett’s questions regarding the consistency of *Purposes, Goals, Use Limitations, Reserved Rights and Discretionary Consent*, Dan Kern offered the following explanation:

- **PURPOSES** - The particular characteristics of the easement that helped meet, and were consistent with the goals.
- **GOALS** - The framework representing the goals of the various organizations (Town, Bear-Paw, the IRS the RSA’s) in section II. Kate Hartnett added Conservation Goals of New Hampshire, Deerfield (Master Plan-Open Space Plan), and DCC (Strategic Plan)
- **USE LIMITATIONS** - The only restrictions on the property. These are monitored
- **RESERVED RIGHTS** - Exceptions to the Use Limitations, such as construction of parking areas, kiosks and similar types of recreational structures, also monitored.

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Mr. Kern further noted that the easement deed is a contract between the holder and the donor who need to agree on interpretation. **Everything not limited in the easement is allowed**; there is not unlimited room for interpretation. As this relates to the subject of scientific research/archeology, although not expressly allowed or prohibited in the deed, as long as the activity does not negatively impact the property, it could be allowed. Serita Frey read a portion of the letter from Attorney Raymond in which he suggests paying particular attention to **Use Limitations and Reserved rights** and cautions against assuming “greater reserved rights than are expressly stated”. Kate Hartnett asked if the Stewardship Plan, addressed in section IV, governs Use Limitations or Reserved Rights and Dan Kern explained that it governs management activities by requiring a forestry plan by a licensed forester if forestry is an allowed use.

With respect to the appendices, Dan Kern explained that **Appendix A** is the property description. It contains the deed references, and for those with good surveys, metes and bounds, and donor intent that is referenced in the deeds. **Decisions need to be made as to the differences among the properties**. Mr. Kern has included allowance for a structure which could be located in the vicinity of a 5000 Sq. Ft. parking area on all but Wells, but may include, in the event of future improvements in accessibility.

All of the parcels have surveys except Hart. The only part of Hart that is surveyed well results from a recorded plan with an accurately surveyed common property line to the East, which was performed as part of a subdivision of their land in which the easement property was broken off and donated to the town. The rest is **only a perimeter survey based on deed references** and the work of past surveyors. Mr. Brouillette, Bear-Paw’s contracted surveyor, has blazed along the perimeter as well as the surveyed section. A full survey of the property could be done if DCC would prefer **but monitoring will only be done on the areas within the blazing**. Oddly, the Hart property line does not abut the town line and Dan Kern surmised that the Hart property could conceivably extend into land appearing to belong to the town of Deerfield, but that a survey based upon the Hart deed description would likely only yield the same results as the perimeter survey. The Deerfield/Epsom line was mutually established by the towns of Deerfield and Epsom and is adjacent to a section of the Epsom Town Forest. Tom Brouillette was able to locate previous monuments on the Hart property, felt this was sufficient, as did Bear-Paw, and blazed accordingly. It was informally decided that the benefits of a full survey would not justify the approximate cost of 3-5K. Frank Mitchell offered to contact Tom Brouillette to look into the existence of surveys for abutting properties to gain additional clarity.

Frank Mitchell addressed the results of his research on donor intent as follows:

- Freese – Complete
- Chase – Taken by Tax Deed
- Dowst-Cate – Gilbert Knowles request to take wood for his personal use
- Lindsay-Flanders – No Clear-cutting and no Vehicles or Vehicular roadways
- Weiss – To be owned by the town as a town forest
- Wells – Taken by Tax Deed (Abandoned)
- Hart –

Dan Kern will complete the draft including the appendix and circulate to the members by e-mail so everyone will be prepared to review at the January 14th meeting. Serita Frey will also send Attorney Raymond’s recommendations. A motion by Serita Frey with a second from Dave Linden *to allow Erick Berglund to approve payment of Upton and Hatfield invoices for services rendered on the Town Forest Protection project, and the Williams property proposal for a Therapeutic Horse Riding Facility, not to exceed \$1500.00*, passed unanimously.

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Therapeutic Horse Riding Facility Proposal for William’s Property: After reviewing Attorney Raymond’s recommendations, Serita Frey e-mailed comments on Best Management Practices to Mr. Bouchard but to date has received no response. The conclusions drawn from Attorney Raymond’s letter were that “*The deed’s definition of agriculture, in §2.A.i., is not terribly specific*” and although the applicant has cited RSA 21:34-a (riding instruction) and RSA 21:34-a II(a)(2) and (4) (storage of compost) in support of his facility as an agricultural endeavor, the DCC is not required to “*adopt this definition in interpreting the easement deed.*” since the statutory definition does not appear in the deed, either expressly or by reference. He does, however, suggest that the commission could be guided by the statute in interpreting the deed. Serita Frey noted that the deed does, however specify the need for a “management plan”, and feels that one should be on record in the town. Discussion followed suggesting the need for a professionally prepared plan or at least one that has been guided by discussion with professionals in order to attain a goal of a quality outcome. A motion requiring a professional plan was withdrawn and it was informally decided that DCC could review their plan with the assistance of professionals in order to arrive at a comfort level prior to giving its approval, and as part of its due diligence in protection of the easement. Ongoing monitoring of the project would also provide an opportunity for guidance as it progressed. Kate Hartnett noted that it was unprecedented that Mr. Bouchard and his associates had sought the approval of the commission, and expressed the need for collaboration with them. It was suggested that this could be an opportunity for the applicants to set a standard for the state, and as such, reap the benefits of doing it right.

Regulated Wetlands: DCC is in receipt of a *Shoreland Impact Permit #2012-02889* for 255 North Road-Map 208 Lot 33 (removal and reconstruction of a more conforming house and septic within woodland buffer) and of a *Wetland Application* for 35 Baker Ave, Map 202 Lot 10 (replacement of stone retaining wall-installation of patio).

Erick Berglund has been following up on his concerns regarding the wetland disturbance on Parade Road where an excavator was used to remove a beaver dam. Additionally, he has presented concerns regarding the dredging of a fire hole in the same vicinity and questions whether proper procedures and permitting were followed prior to these undertakings by the town. Mr. Berglund is addressing the issues with DES but to date has not had a response to his correspondence. It was further suggested that DCC should either meet with or correspond with both the highway and fire departments regarding the need to give the DCC a “heads up” in the future.

Announcements: Kate Hartnett made note of the fact that volunteers from the DCC and the town had completed the blazing of the trails at Peg King Park.

Serita Frey suggested DCC plan a field trip to view the new improvements. Ms. Frey will also forward an e-mail from Kate Hartnett regarding the creation, by the Southern New Hampshire Planning Commission, of a scenic by-way through the four towns in the Upper Lamprey River Watershed.

Adjournment: 9:58 PM

The draft minutes were prepared and submitted by Judy Marshall. Final revisions to these minutes will be contained in the minutes of the following meeting, after approval by the Deerfield Conservation Commission