

North Hampton Conservation Commission
Meeting Minutes
March 10, 2015
As Approved

Administrative

Roll Call

The meeting was called to order at 7:00pm. Present were Chris Ganotis (Chair), Lee Brooks (Vice Chair), Kathy Grant, Russell Jeppesen, Phil Thayer, Peter Robie, Lisa Wilson and Alternates Sally Bruce-Stoklosa and Andrew Vorkink. Members of the public included Atty Christopher Carter, Mr Casey O'Kane and Phil Wilson.

Consideration of Minutes

After review of the February 10, 2015 minutes, *a motion was made by Lee Brooks, duly seconded by Peter Robie, to accept the minutes as written, with two minor corrections.* The motion carried with a unanimous vote, with Sally Bruce-Stoklosa and Phil Thayer abstaining. After review of the February 24, 2015 Special Meeting minutes, *a motion was made by Lee Brooks, duly seconded by Kathy Grant, to accept the minutes as written.* The motion carried with a unanimous vote, with Russell Jeppesen, Phil Thayer, Peter Robie and Lisa Wilson abstaining.

New Business

Formation of Easement Oversight Sub-Committee

The Chair proposed to have a sub-committee to give oversight to easements: to assist in monitoring, assist in review and enforcement of easements and work on deeds that have no conservation restrictions so that they can be amended and recorded at the Rockingham Court House. Andrew Vorkink volunteered to oversee the sub-committee. Kathy Grant and Philip Thayer volunteered to serve on the sub-committee. Sally Bruce-Stoklosa will get volunteers from UNH who can assist with monitoring the sites at no charge.

Legal Council Session

The Commission voted to retain legal counsel in the procedures in the management and the oversight in trying to understand procedural requirements to enforce conservation easements. On March 5, a counsel session was held with Attorney Michelle Peckham who informed the Commission that the only entity which can enforce and oversee the easement is the Grantee, ie., the Commission. No third party or outside party can act or intervene in interpreting or in enforcing the easement. A future meeting may be held to clarify some of the history and issues of court cases for conservation easements. Andrew Vorkink reported that he has reviewed the enforcement of easements. (See "The Considerations Made by the Commission Regarding the Lamprey Farm Easement Decision" attached at the end of these minutes below).

Old Business

Boy Scout Eagle Project Updates

Phil Thayer reported that Ryan Rainford's project has been approved and he will begin in mid-April or early May, delayed because of the snow. Signs will be put up

(approximately 12"x18") to recognize the Eagle Scouts at their project sites, who completed their projects.

Lamprey Farm Easement Update

A site walk was held on March 9, 2015 on the Lamprey Farm to view the farm and make conclusions of what was seen and if there were any easement violations. The Commission found that the barn is being used for agriculture. Three members were unable to make the site walk and will make arrangements to go at a later date. Mr. Casey O'Kane thanked the Commission for all of their efforts and hard work with this easement. Atty Christopher Carter spoke on behalf of Mr. & Mrs. Perkins, whose intentions have been to use the property for agricultural purposes. Andrew Vorkink spoke with the Attorney General's office today regarding the easement and a possible No Action letter to close this matter

After some discussion, *a motion was made by Phil Thayer, duly seconded by Lee Brooks, that after careful review we have determined that the easement has not been violated and recommend to the Select Board that no action be taken.* The motion carried with a unanimous vote. (See "The Considerations Made by the Commission Regarding the Lamprey Farm Easement Decision" attached at the end of these minutes below for further clarification.)

Winnicutt River Watershed Initiative for developing Watershed Plan

The Chair and Kathy Grant have been communicating with the Watershed River Coalition and the DES. A meeting is scheduled for April 14 to take the initial steps for a pre-proposal for a proposal for funding for the Winnicutt River Watershed Management Plan. The Chair has been informed that the DES is interested in upgrading the culverts at river road crossings and possibly dredging part of the river. More testing is planned for this year.

Amendments to Deed Restrictions on Conservation Parcels

Michelle Peckham will provide recommended language for deed restrictions for conservation parcels, which currently have few or no recorded restrictions in their deeds.

Hampton Rod & Gun Club Update

More testing will be needed and it is reasonably likely that some significant remediation may be demanded by the DES because sample test results for lead appeared high.

Meeting with FB Environmental on March 5th re: 319 Grant Projects

The Chair met with Emily DeFranco, who is resigning from FB Environmental. The 319 Grant for the Little River Watershed is for the construction of mitigation projects to reduce surface water run off into the Watershed. These projects will be completed by the end of this year. Little River water quality sampling and testing will also be done.

NH ACC Handbooks

NH Association of Conservation Commissions' "*Handbook for New Hampshire's Municipal Conservation Commissions*", was given to members who did not have them.

Other Correspondence

Easement Letter

The Chair received an e-mail from Mr. Skowronski inquiring about placing his proposed Conservation Sub-Division easement into third party stewardship by a trust that doesn't charge a fee. The Chair suggested that he speak with the Southeast Land Trust.

Resignation Letter

The Chair read a resignation letter from Lee Brooks, Vice Chair of the Commission, who gave his resignation as of March 11, 2015 after ten years with the Commission. The Chair mentioned that Lee will be sorely missed and was thanked for his service.

NH Association of Conservation Commission – Legislative Bills SB 83 & SB 146

Lisa Wilson reported that some progress has been made on the SB 83 and SB 146 Bills. Amendments are being drafted by their respective Committees.

There being no further business to discuss, *a motion was made by Lee Brooks, duly seconded by Peter Robie, to adjourn the meeting.* The meeting was adjourned at 8:44pm.

Respectfully submitted,
Beverly Moore
Recording Secretary

“These minutes are prepared by the Recording Secretary within five (5) business days as required by NH RSA 2,11. They will not be finalized until approved by majority vote by the Conservation Commission.”

These minutes include "Considerations Made by the Commission Regarding the Lamprey Farm Easement Decision" and is shown below:

Attachment to and Part of Minutes of North Hampton Conservation Commission Meeting of March 10, 2015

Considerations Made by the Conservation Commission Regarding the Lamprey Farm Easement Decision

The North Hampton Conservation Commission met at its regularly scheduled business meeting on March 10, 2015. Among items on the Agenda was a discussion concerning the enforcement of the Lamprey Farm Easement of September, 1993. The meeting was attended by all voting members of the Commission and by two Alternates. Members of the public included Mr. Casey O'Kane and Mr. Christopher Carter.

During the meeting for the Lamprey Farm agenda item, a member of the public, Mr. Casey O'Kane, a neighbor living near the Conservation parcel, and the Owner's attorney, Mr. Christopher Carter, were allowed to make brief comments.

Subsequently, at the urging of several Commission members, the matter was deliberated. After lengthy deliberations, a member of the Commission, Philip Thayer made a motion, which was seconded by Lee Brooks, to pronounce that after long consideration, the Commission determined that there were no violations of the easement.

The Chair then called for any other deliberation before taking a vote. This resulted in the Commission agreeing that the reasons for how the vote was decided would be documented as part of the minutes. Mr. Thayer amended his motion to include such reasons in his original motion. Subsequently, the Chair asked the Commission whether any voting member either did not reach a conclusion on how they wished to vote or needed more time to make that decision. No members of the Commission responded to the Chair's question. Hearing no further discussion, the Chair called for the vote.

The vote was 7-0 in favor of the motion, having passed unanimously.

Reasons believed relevant to the decision included:

Barn

There was consensus of the Commission that the barn was agricultural, allowed in the easement and therefore not a violation.

The location of the barn was discussed. The site plan was reviewed and the barn was visited in the site walk on March 9 by a quorum of the Commission. At the site walk, Mr. Peter Kismet gave an overview of why the barn was located in the location.

In the meeting discussion on Tuesday, March 10, the Commission concluded that the location was the only reasonable and practical location for the barn because it met the criteria for view and preservation of conservation values at the site, most notably wetlands, wetland buffers and vernal pools in the front of the parcel. The Commission also concluded that the roadway to the barn and the excavation of an earthen ramp to approach the barn were all directly related to the placement of the barn, which the Commission deemed to be agricultural in purpose and consistent with the easement..

View

- The Commission concluded that the view is both subjective and an ever-changing vista of a working farm and not a perpetual static vista of an open, unproductive field which had productive agricultural value. It further concluded that the view, as written in the easement, was from along the expanse of the parcel's frontage from Atlantic Avenue by the General Public, and not of a barren open field by neighbors from their homes, which may not be close enough to the parcel to see the entire landscape.

- The Commission both considered and rejected the assertion of a neighbor's interpretation of the easement regarding the view. Prior legal precedent in the court's decision in *Tallman vs. Outhouse* confirms and supports the Commission's finding. In that case, the Court clearly indicated that neighbors have no legal standing in interpretation of the easement nor in making assertions as to what constitutes an easement violation. Only the Grantee, i.e. the Conservation Commission and not any third party, has that authority and obligation.

Accordingly, the Commission concluded that the neighbor's interpretation of the easement and of his conclusions related to easement violations had to be questioned and challenged.

The Commission concluded that trees could be planted on the property provided that they did not materially obscure the view by the General Public from Atlantic Avenue. Moreover, this conclusion is supported by case law in *Libertyville vs. Continental Illinois Nat'l Bank & Trust Co.*, included with the easement owners' counsel's letter of March 8, 2015 where the court ruled that "an agricultural purpose has not been restricted to the growing of crops" in including the planting of trees for the purposes such as soil erosion." The agricultural purpose, therefore did not limit tree planting to the planting of fruit trees alone.

- The Commission concluded that a former tree line of mature maples on the rear of the property which were present when the easement was signed, represented the "view" which was cited in the easement. An obstruction of the view of the ocean and the salt marsh was therefore discounted. The Commission indicated that the view is not static, but changing with time.

Intent

The Commission discounted reports from third parties as to what Mr. Lamprey's intent was at the time he signed the easement, and confirmed that it is the language of the easement and not assertions regarding intent, which it must use in determining whether a violation in the easement has been made.

While it was reported by neighbors that Mr. Lamprey's intent was to preserve the view to be unobstructed by structures (including the barn) the Commission obtained first-hand evidence to support conclusions regarding intent.

Specifically, a witness, Mrs. Shirley Carter, served on the Conservation Commission when the easement was presented to the Town. Shirley and her husband Harlan were both very close friends of Mr. Lamprey. She and others on the Commission at the time were told by Mr. Lamprey directly that he intended to have a working farm on the property so as to leave a legacy in his name for the benefit of the Town. This statement from Mrs. Carter was confirmed by the Chair in a telephone discussion with her on March 11, 2015. Accordingly, the notion of obstruction of the view by agriculturally oriented structures on the farm was rejected from further consideration.

Case Law and applicable NH RSA's.

The owner's attorney, Mr. Christopher Carter (No relation to Shirley Carter mentioned above) delivered a ten-page letter to the Conservation Commission on March 9, 2015, which made compelling arguments which supported his opinion that no violations have been made in the easement. More specifically, this letter, now a public document, clearly laid out his case, showing case law and State RSA Law to support and defend the owners' and his position. The letter further dispelled the allegations made by the neighbor's alleged easement violations. Since the letter and associated photographs, site plan, supporting documents and court decisions and State Law references, had legal standing, the Conservation Commission took the letter under advisement in making its decision. Moreover, the Commission Site Walk on March 9, 2015 provided added perspective to the Commission in better understanding the significance of terminology such as "Open Space", "Agricultural Purpose:", "View" and "Conservation Value" of the parcel.

After due diligence of receiving and considering

- (a) a complaint from a neighboring resident with detailed concerns of why he believed the easement was violated and
- (b) after receiving and considering the owners' detailed response to allegations in the complaint and
- (c) after meeting with retained counsel to better understand the procedural process in enforcement of the easement and
- (d) after convening a site visit to better understand the agricultural purposes of the parcel in the context of the easement, the Commission made its decision.

On the basis of this attached summary of findings and considerations, the motion by Philip Thayer, seconded by Lee Brooks, was unanimously approved that the Commission found no violation of the conservation easement and decided that no further action is needed.

North Hampton Conservation Commission