

Town of Wellfleet
Wellfleet, Massachusetts

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Coastal and Pond Access Committee

TOWN CLERK

Meeting February 6, 2007
Accepted Minutes

Members present: Tom Flynn (Chairman), Jim Falcone, Tom Peters (clerk), Sylvia Smith (member *ex officio*). Also present was Mr. Ben Zehnder, Esq.

The Chairman called the meeting to order at 2:03 PM.

OLD BUSINESS

1. The members discussed the public landings on Lt. Island. First, comments focused on the landings at the NE & SW corner of the island. Evidently, there was a survey of the site by the firm of Nickerson & Berger, and there was a 1963 Town Meeting vote to accept a road to this site.
2. While some members mulled over documentation, members also reviewed draft minutes from months ago that the clerk failed to bring to the Committee's attention earlier. Upon review, the members voted unanimously (3-0) to accept the draft minutes for our meeting of May 2, 2006 as presented.

CORRESPONDENCE

3. The Chairman shared a memo from the Town's Conservation Commission dated October 31, 2006 concerning a proposed article about Drummer Cove for the next Town Meeting. Members decided that the subject matter was not within the Committee's purview.
4. The Chairman counseled members to fill out and file a "member profile update" form requested by Town Hall Staff. The Chairman distributed response forms to all members present.

5. Finally, the Chairman apprised the members of a determination that the Town Charter precludes appointing Ms. Sylvia Smith to resume her active voting membership on this committee.

OLD BUSINESS (Continued)

6. The Town's DPW corresponded on Nov. 21, 2006 about the project to stabilize access to the Town's properties and landing on the Southwest corner of Lieutenant Island. The access is known as Meadow Avenue. DPW projects the cost to accomplish this Committee's recommendation at \$20K - \$30K. A *caveat* is that both Wellfleet CONSCOM and State MESA reviews must be accomplished. Basically, CONSCOM review is local and involves the application of Wetlands Protection Act standards. On the other hand, MESA review invokes still another "environmental" gauntlet: endangered, threatened, and rare species of plant and animal life –all as determined by the State of Massachusetts.
7. Mr. Zehnder apprised the members of several aspects of the law of real property, specifically, adverse possession and prescriptive easements. Both concepts are ancient and well established in the law of this Commonwealth. Both, however, continue to evolve. Basically, it is possible for normal citizens to establish either a prescriptive easement or to perfect adverse possession of private property on behalf of the general public. What is required is "merely" the proof that all traditional elements of prescription or adversity are present: (a) open and notorious use, (b) adverse use under a claim of right to do so and without express or implied permission of the owner, and (c) continuity of adverse/prescriptive uses over time, usually 20 years. The Doctrine is known as the "Doctrine of Adverse Public Use."
8. Why was Ben Zehnder addressing the Committee? The answers are: (a) Rex Peterson, Assistant Town Administrator, advised him to do so, (b) he has a personal, longstanding interest in the area, grew up in Wellfleet, enjoys fishing in the area, and (c) he has clients who own property in this vicinity of Lieutenant Island.
9. Upon reflection, the members acknowledged and reviewed a letter from Town Counsel dated March 8, 2006, which acknowledges the

possibility of a Town-owned landing at the NE & SW corners of the island.

10. After much discussion, the members voted unanimously to solicit a meeting with the Town's Selectmen, preferably in late April or early May. That meeting would discuss access to the SW corner of Lt. Island. The members are of the mind that this request should be in writing, and that it should include (A) Town Counsel's letter of March 8, 2006, (B) Ben Zehnder's letter of about December 11, 2006 to the Town (Rex Peterson), and (C) a good map of the immediate area.

NEXT MEETING: Tuesday, February 20, 2007 at 2 PM, somewhere in Town Hall.

WHEREUPON, the members unanimously voted to adjourn.

Thomas Peters, Clerk

Approved by a vote of 2-0-1 at the Committee's posted, regular meeting of Tuesday, March 6, 2007. T.H.P.