



CONSERVATION COMMISSION
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MINUTES OF THE CONSERVATION COMMISSION

Wednesday, November 12, 2015 – 7:00 p.m. – Town Hall Conference Room

Members Present: Chair Chip Hussey, Bill Bilodeau, Laura Byergo, Joe Fredericks, Kevin Lucey

Chair Hussey opened the Conservation Commission meeting at 7:00 p.m. A roll call was taken by the Chair; he announced a quorum was present and the meeting was being recorded.

1. Subdivision of Land: 90 Depot Road [Map R13, Lot 8]

Owner: Lynn Marsh Trust

Applicant: Michael Marsh

The owner and applicant are proposing to subdivide a 1.68 acre lot from the existing 6.6 acre parcel to create a single back lot.

Michael and Lynn Marsh addressed Commission members, reminding them they were before them three months ago with a similar plan. They went to the September ZBA meeting seeking a Variance, and were denied; the original plan was for a lot with no access. The plan being reviewed tonight, and going to the Planning Board on Thursday, November 19, included a 20' access road to a back lot.

M. Marsh told members the lot would not be developed, and no driveway access will be built to get to the lot. A deed restriction will be placed on the lot noting there can't be any further development. The potential buyer lives on the south side of the railroad tracks and wants to preserve his view; he's concerned that a future owner may want to build a structure that may obstruct his view.

Responding to a question from L. Byergo about a seasonal pier, M. Marsh stated there is a permanent dock on the property which would be included in the sale of the new lot. He explained the edge of wetland: from spring through June there is a small stream that runs underneath the railroad tracks and flows out to the Bay; in the summer it dries up.

K. Lucey stated that the last time this was before the Commission, there was interest among members to prevent "hard armoring" of the shoreline. M. Marsh noted that rip rap has already been added; they have gone to DES on two occasions. There is significant erosion beyond where the rip rap was added. K. Lucey added there are other alternatives to shoreline protection than hard armoring, which can propagate erosion. There was discussion regarding shoreline erosion over the years. L. Marsh added that DES told them the sand washing into the Bay wasn't healthy.

Chair Hussey asked if was going to be a right-of-way or deeded property; M. Marsh responded it was going to be deeded property. Chair Hussey reiterated that no permanent structure could be built on the property; he further clarified that statement be adding they could go up in the summer but had to come

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down in the fall. J. Frederick added that vehicles should not be crossing the wetland area. M. Marsh stated a deed restriction would prevent that.

K. Lucey clarified that the Marsh's weren't going to allow access through the right-of-way. M. Marsh responded that through deed restrictions, they weren't going to allow a driveway. They have discussed the deed restrictions with the potential buyer. L. Byergo suggested a conservation easement be added; that may provide relief from the pressure of developing the lot. She explained that a conservation easement is a legal document that prohibits land from being developed into perpetuity.

Chair Hussey noted that the parcel, if subdivided, will become a legal house lot. The lot, as it exists now, has a restriction prohibiting further development of the lot. He stated that he would be hesitant, sitting on the Conservation Commission and Planning Board, to approve a back lot without a conservation easement. J. Fredericks recommended they consult with an attorney about which easement would be the most restrictive, last the longest and the toughest to eliminate. He also agreed that by adding the driveway, they were creating a buildable lot; an easement would solve that problem.

M. Marsh's concern was that restrictions were being placed on the potential buyer that don't currently exist. The Commission agreed, stating they were asking for more restrictions because it will become a buildable lot. It was Chair Hussey's opinion they would have to assure the Planning Board that another structure would not be built on the proposed lot. M. Marsh stated that it was their intent, and that of the buyer, to preserve the land for its view. J. Fredericks responded that the Commission was asking him to honor that intent by putting a conservation easement on the parcel. The easement could be written allowing temporary structures. L. Byergo added that with a conservation easement, they wouldn't have to put restrictions not allowing motorized vehicles. Rather than having a deed with many restrictions, conservation easements are commonly understood; it may make the transfer process easier. K. Lucey noted that easements require a body to monitor them, which has been a problem in Town with other properties. A second party would have to monitor the easement to ensure it was being maintained.

DISCUSSION: It was clarified that motorized access did not include lawn mowers.

MOTION: *J. Fredericks moved to recommend that the Conservation Commission agree with the backlot as proposed, with the understanding that an easement be placed on the property that would prohibit all permanent structures as well as any motorized vehicle access to the property. Second – B. Bilodeau; all in favor. MOTION CARRIED*

2. Meeting Recordings on Website

Chair Hussey reminded members that at the March Town Meeting there was a warrant article for live streaming of all Board meetings. It has been proposed that recordings of meetings be added to the website the next day.

MOTION: *J. Fredericks moved that recordings of the Conservation Commission meetings be added to the Town website as well as posting a PDF copy of the agenda and any presentation materials. Second – L. Byergo; all in favor. MOTION CARRIED*

3. Trail Update

Chair Hussey reported that the individual from UNH was unable to help with the trails; the project didn't get assigned to him as he was hoping. Chair Hussey has spoken to the original surveyor of the property and has received a price of \$1,500 to locate the property monuments on the rear of Coastal Way and

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those on the right-of-way between properties. That money would be taken from the warrant article fund that will be revised to include education, etc. The expenditure will need to be approved by the Board of Selectmen.

A surveyor will be able to locate the boundaries and the problems with the trail can be resolved. Plans are available; however, the Planning Board required the granite markers to be flush mounted. Laser sighting will be needed to find any iron pins, and that equipment is not available. The surveyor will mark the trail from Meghan Way to Cushman Way, locating the monuments at Coastal Way during the process. He will not be surveying the entire trail, only the portion from Meghan to Cushman, which is the incomplete portion.

L. Byergo asked that the entire trail be surveyed from beginning to end; Chair Hussey responded that it would cost more. She continued that the flagging is very rough; the beginning and end of the trail are unclear. Chair Hussey stated that the portion on Van Etten was approved by the Planning Board and was engineered. He added that the purpose of the surveyor was to fix the error with the GPS on the trail and stay on Town property.

L. Byergo felt that if someone was going to do surveying, it wouldn't hurt to research the cost of doing the entire trail and flag the portions that haven't been completed. Chair Hussey responded that it may be a possibility next year, but the priority was appeasing the abutters where there was encroachment on their property. Although L. Byergo understood his position, she didn't feel they needed to be driven by that problem. J. Fredericks stated that there is a problem that needs to be solved.

L. Byergo stated that when the walk-through was done with the Appalachian Mountain Club, very scattered flagging was done. If they were in a situation where they had to back track and bog bridges may have to be added, they needed to know where they were going to be located. In addition, the beginning and end of the trail needed to be marked. The next volunteer helping to do the cut through would have a much better delineated trail than the first volunteer so there wouldn't be any further unforeseen problems.

J. Fredericks suggested dividing the issue into two parts. L. Byergo stated that if it was divided, the second part would not get done. She insisted that it didn't need to be rushed to simply respond to the current problem. Chair Hussey responded that the first part needed to be dealt with; the property owners had been waiting for the foliage to drop so the survey could be done.

A property owner that was present agreed with L. Byergo about surveying the entire trail. One of his concerns was trespassing not only on the trail but also his property. Chair Hussey stated his goal this fall was to move the trail away from the property. Chair Hussey was asked if it was possible to close the trail until it could be done properly. L. Byergo agreed, adding she wasn't sure the trail should be officially open because it was not solidified. There was further discussion about the property owners concerns of the trail. L. Byergo realized that people would not respect that 100%, but it may discourage some people from accessing the trail. She continued that the trail could be walked with the surveyor to do the entire trail.

MOTION: *L. Byergo moved to close the trail and to add signage stating the trail was not finished and was closed to the public. Second – J. Fredericks*

DISCUSSION: There was discussion about the abutters helping locate the boundaries and markers. J. Fredericks stated that the surveyor needed to make the property markers visible. Chair Hussey stated that the trails would be marked and moved away from private property; people could still use the trails

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because they were going to use them even if they were closed. The surveying could be done within the next two weeks if funding is approved by the Selectmen. Signage will be added to indicate which parts of the trails are accessible. Fencing is also a possibility. A hunter safety zone is still to be added. Chair Hussey explained that the hunter safety zone delineates the no hunting zone. Fish and Game will be called to help delineate that zone.

AMENDED MOTION: *L. Byergo moved to close the trail, cover the existing sign and to add signage stating the trail was not finished and was closed to the public. Further, to research the cost of surveying the entire trail. Second – J. Fredericks*

DISCUSSION: J. Fredericks stated that covering the signs would not be a problem. However, the motion was for an estimate to survey the trail. J. Fredericks suggested again it be divided into two portions: the first, to approve the \$1,500 for the surveying of the first segment; the second, an estimate for surveying the remainder of the trail to be marked. The need for a surveyor was discussed; K. Lucey questioned why a surveyor would be hired when there were wetlands involved. He suggested setting perimeters for a surveyor. L. Byergo pointed out that the wetlands were not delineated when the original volunteer started the trail. J. Fredericks stated that if the goal was to find the wetlands and crossing the wetlands, a wetlands scientist would be needed. L. Byergo reiterated that the goal was there be a trail that avoids or identifies the wetlands, avoids property lines and follows the route it should. None of those things were done because the trail was not properly flagged.

AMENDED MOTION: *J. Fredericks moved to approve \$1,500 for a surveyor to identify and mark the rear boundaries for 33-35 Coastal Way and 34-36 Coastal Way. Further, to identify and flag the existing trail connecting Van Etten Drive to Cushman Way. Second – B. Bilodeau*

DISCUSSION: An abutter from Coastal Way requested that that trail not be 30' wide to match the right-of-way.

AMENDED MOTION: *J. Fredericks moved to approve \$1,500 for a surveyor to identify and mark the rear boundaries for 33-35 Coastal Way and 34-36 Coastal Way. Further, to identify and flag the existing trail connecting Van Etten Drive to Cushman Way. Second – B. Bilodeau; all in favor. MOTION CARRIED*

One of the abutters mentioned that all the debris from the trail was never removed. Chair Hussey responded that they were waiting for the first snow to burn the brush. Another concern from an abutter was that the path was 40' from their well, and they have a 100' protective radius; excavating was done 8" to 10" into the ground. Chair Hussey told them there should be a sanitary cap on their well, adding that they didn't come across anything that would facilitate the need to require testing. Treating the invasive species with herbicides was discussed; Chair Hussey assured the that their property was not affected (he had placed yellow caution tape around the area not to be treated).

MOTION: *J. Fredericks moved to cover the signs currently marking the trail. Further, that they explore temporarily closing the trail on the back of the lots at Coastal Way. There was no second; all in favor. MOTION CARRIED*

L. Byergo stated that no more work should be done until the complete trail was properly flagged. Chair Hussey reminded her that the trail behind Coastal Way was going to be moved. L. Byergo continued that the trail should be finished by next spring. K. Lucey suggested not using heavy equipment; Chair Hussey responded it would be tough not to use heavy equipment. K. Lucey stated the work that was done was not what was intended in the proposal by AMC; Chair Hussey pointed out that they didn't go with AMC—the cost would have been a minimum of \$40,000. Trail construction was discussed further.

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Property owners speaking at this meeting were: Brad Krick, 34 Coastal Way; Alexander Bouzakine, 35 Coastal Way; and Sean Conway, 36 Coastal Way.

MOTION: *L. Byergo moved that before more work is done on the trail, other than erosion prevention or clean-up of the existing cut area, no more cutting be done until the complete trail is properly flagged. Further, the trail should be completed by the spring. Second – K. Lucey; all in favor. MOTION CARRIED*

4. Approval of Minutes: Wednesday, October 14, 2015

MOTION: *J. Fredericks moved to approve the minutes of Wednesday, October 14, 2015. Second – B. Bilodeau; four in favor, one abstain (L. Byergo). MOTION CARRIED*

5. Other Business

K. Lucey told members that the land stewardship plan developed by Ellen Schneider in 2008 indicated the Thompson Brook area was environmentally sensitive. It was further recommended it not be open to trails until the evasive pressure was put down. He continued it was also his opinion and added there should not be heavy equipment in that area. Chair Hussey stated it looked like most of the trail would be a single track trail through that area. There is a section of 100' where equipment may be needed to remove the evasives.

Debra Luchsinger, 47 Park Avenue: Her concern was about the Tractor Supply development and that vegetation up to the wetlands was removed. Chair Hussey explained that they have a Conditional Use Permit to build structures within the wetlands setbacks. Those structures are designed to treat stormwater that would normally run into the wetlands. He continued that the Conservation Commission doesn't have the power or authority to oversee the construction; however, there is a Town Engineer who does that. J. Fredericks added that the Conservation Commission's role was advisory only. Formal approvals are made by the Planning Board. There are ordinances that regulate lighting, signage and noise. D. Luchsinger stated that there is now an "echo chamber" that has been created due to the removal of trees and leveling of land.

6. Adjournment

MOTION: *Chair Hussey moved to adjourn at 8:42 p.m. Second – B. Bilodeau; all in favor. MOTION CARRIED*

NEXT MEETING

Wednesday, December 09, 2015 – 7:00 p.m., Town Hall Conference Room

Respectfully Submitted: Charlotte Hussey, Secretary to the Boards

Approved: