



TOWN OF CUMBERLAND, MAINE
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Ocean Access Committee
Meeting Minutes
October 15, 2014
Town Hall
7:00 P.M.

Present: Maureen Connolly, Denny Gallaudet, C. Ingrid Parkin, Jeff Perry, Sandra Gorsuch-Plummer, Elizabeth Riotte, Penny Asherman, Charles Adams, Lew Incze, Councilor George Turner, and Councilor Tom Gruber

Staff: Bill Shane, Town Manager, Anne Brushwein, Recording Secretary

I. Call to order: The meeting was called to order at 7:00 p.m.

II. Welcome and Introduction of Committee Members

After the Committee members introduced themselves, Bill noted that he would only be facilitating this first meeting of the Committee as the Committee would be electing a Chairperson and Co-Chair at the next meeting.

III. Review of Conservation Easement with Town Attorney

Town Attorney Alyssa Tibbetts presented a power point overview of the Conservation Easement.



Committee's Mission

- Understand Conservation Easement & related conservation values for Payson property
- Explore opportunities for passive recreation on Town's portion of Payson property
- Establish plan for access to Town's portion of Payson property
- Create facility use plan for ongoing operations and maintenance of Town's portion of Payson property



Conservation Easement

- Recitals – “Whereas...”
 - Sets the stage and provides background information to the agreement, but generally not considered operative language
 - “Grantor herein declares that the Property shall be held, transferred, sold, conveyed, used, and occupied subject to the covenants, conditions, restrictions, and easements hereinafter set forth...”



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Conservation Easement

- Purpose
 - “...to assure that the Property will be retained forever predominantly in its scenic, natural, and open space condition for conservation purposes and to prevent any use of the Property that will significantly impair or interfere with the conservation values of the Property and the Property's natural resources and associated ecosystems.”



“The Payson easement allows for limited development and the owners reserved an extensive number of very broad rights. The easement was not intended to create an untouchable, pristine nature preserve, but to minimize the potential for extensive development on a mostly private parcel, conserve natural and scenic resources and provide a public trail in the woods along Route 88. Because conservation easements run with the land, any new owner of the property has the ability to exercise all of the reserved rights.” - CCLT Response 09/30/14



Conservation Easement

- Grantee's Rights (CCLT)
 - Section 2, pp. 6 – 8
- Prohibited Uses
 - Section 3, pp. 9 – 10
- Grantor's Rights (Town)
 - Section 4, pp. 10 – 14
- Access (Grantee)
 - Section 7, p. 23
 - See Section 2 and Section 8, pp. 24 – 31



Conservation Easement

- Notice and Approval (Section 10, pp. 31 – 35)
 - Grantee's approval of Uses or Activities (10.2)
 - Any use or activity permitted under 3(i)
 - Any proposed alteration of wetlands per 4(k)
 - Any Forest Management Plan per 6.3(a)
 - Grantee's approval of Sites (10.3)
 - Gazebo, tent platform or roofed structure per 5.6
 - Roads, driveways, parking areas per 4(l) and 5
 - Windmill or commercial activity per 4(j)
 - Locate residences per 4(c), 4 (d) and 5



Town's Request

- Letter dated August 5, 2014
- Request for review of Uses per 10.2
 - The Town did not propose any uses or activities subject to review under this Section.
- Request for review of Sites per 10.3
 - The Town proposed to relocate a portion of the existing road, add parking areas to the existing road and develop new parking areas, including a drop-off area that is handicap-accessible as permitted under 4(l).



Town's Request

- Although not required and not subject to review by the CCLT, the Town included proposals to construct, locate and maintain benches, walkways, non-illuminated directional signs, minor temporary structures necessary to accomplish permitted recreational activities and wells and fresh water apparatus to serve the property per 5.6, as well as to repair and replace the existing boat shed with a substantially similar structure as permitted under 4(p).



CCLT's Response

- Roads & Parking
 - Road improvements and creation of new roads and parking areas are allowed if reasonably necessary in connection with allowed uses of the property, provided they are designed and constructed to minimize erosion and disturbance of wetlands.
 - CCLT must approve sites for parking, but cannot impose size limitations – recommendations made



CCLT's Response

- Minor Structures
 - Approval not required, but will offer recommendations so that structures do not materially alter the traditional and scenic appearance of property or have an adverse impact on conservation values.
- Boat Shed
 - Bathroom use not considered "human habitation"
 - Waste disposal allowed, but encourage modern composting
 - CCLT approval required for site only, not use
 - CCLT supports location further upland on flatter terrain and out of immediate shore area for environmental and conservation purposes.



Alyssa concluded by noting that, moving forward, the Committee will be looking to explore opportunities for passive recreation, and, with the Land Trust's guidance, developing a plan for public access, as well as creating a facility use plan.

After Alyssa's slide presentation, Bill asked for questions and comments from the Committee members. The questions and answers are summarized below:

- **What is the vision for establishing access?** To use the existing gravel way, have a couple of handicap spaces, a drop-off area, and eight parking spaces close to the shore, with a larger parking area closer to Route 88. Parking areas would be mowed grass.
- **If the relationship between the Town and the Lands Trust should become adversarial, who would have the last word?** According to Alyssa, a stalemate would have to be resolved in court, but it would depend on the issue. Lands Trust approval is required on items in Sections 10.2 and 10.3 in the Easement, and according to the Easement, approval shall not be unreasonably withheld.

- **Once the Committee makes a decision on an issue, what happens next?** The Ocean Access Committee is an advisory committee to the Town Council, and would make its recommendations to the Town Council, which would, in turn, send it on to the Lands Trust for review.
- **What does the Easement say about motorized vehicles?** There is no language in the Conservation Easement regarding motorized vehicles. In Section 8.1 there is a reference only to non-motorized vehicles and says that the Grantee has the right to permit non-motorized vehicles access to the portion of the property that is within 100 feet of the rock wall that bounds the property.
- **Is any part of the access to the potential Town property going to be shared by future homeowners in the Bateman development?** Yes, it will be public land that will be shared by the homeowners, and they, as well as the general public will have to follow the Facility Use Rules established by the Committee and adopted by the Town Council.
- **Will there be gates, and where would they be located?** This would have to be decided by the Committee.
- **Is the Lands Trust also working with the property developers?** The developers have put forward a plan for subdivision approval, which includes establishing a Homeowners Association. Because the Conservation Easement covers the entire property, Lands Trust will be working with the Homeowners Association.
- **Will dogs be allowed on the Town's part of the property?** It is the Lands Trust's recommendation that dogs not be allowed. There are fragile grasses, nesting birds, and water quality that need to be protected. This is an issue that will need further discussion.
- **It has been recommended that the public cannot leave dinghies and small boats on the shore of the property. What about the homeowners who will have a mooring as part of their purchase?** This is an issue that will have to be dealt with by the Committee, but due to the shallowness of the water and the size of the mudflat area at low tide, many homeowners may not end up using their mooring rights.
- **Why eight parking spaces close to shore?** This is just conceptual but the thought was for clammers, so they could get closer to the flats, and for people dropping off kayaks and canoes.
- **Will the access road be a Town road?** It will be a Town-owned road but not built to Town road standards.
- **What is passive recreation?** The term "passive recreation" is a concept that the Town proposes to apply to the use of the property, but is not found in the Conservation Easement. It will be the Committee's responsibility to define passive recreation in the Facility Use Plan.
- **Will the stone wall trail remain?** The stone wall trail can never be taken away.
- **Has the Town received any letters from any other law firms that disagree with the Town's legal interpretation of the Conservation Easement?** No, other than the Wildwood Association's letters, which are posted on the Town's website.
- **Why isn't Section 8, concerning access, part of the Town attorney's presentation?** The town's legal interpretation of Section 8 is that it references specifically the grant of an easement for a trail to the Lands Trust (grantee), and does not relate to the Town's (grantor) use of the property.

- **After the Bateman Group sells their property to the Town, will the town become a grantor, and will all subsequent purchasers also become grantors?** Any new owner who has purchased property subsequent to Marion Payson's ownership becomes a grantor. Conceivably there may be 11 grantors after Bateman sells the property, and they will be subject to the rights and restrictions of the Conservation Easement.
- **Who owns the remainder of the open space?** That will be owned by the Homeowners Association.
- **Who regulates the water near the shore?** The town will work closely with the Lands Trust to regulate activities in the intertidal zone. The Lands Trust would intervene only if an activity was significantly impairing a conservation value. The Town would determine the use of the wharf.

After thanking everyone for their input, Bill set out a tentative agenda for the next meeting, which includes a presentation from a Wildwood Association representative, other questions the Committee members may have, and setting short term and long term goals.

IV. New Business: Dates for upcoming Ocean Access Committee meetings will be October 29th, November 12th, November 19th, December 10th, January 14th and January 28th.

V. Meeting adjourned at 8:37 pm.

Respectfully submitted,

Anne L. Brushwein, Recording Secretary