

DEERFIELD CONSERVATION COMMISSION

Meeting Minutes – October 8, 2012

Members Present: Erick Berglund, Serita Frey, Wes Golomb,
Kate Hartnett (by phone), Dave Linden, Herb McKinney
Guests: Americorps Volunteers, Frank Mitchell and Dan Kern (Bear-Paw)
Visitors: Albert & Elizabeth Garlo, Williams Family members Sharon & Julie,
Charlie Bouchard, Kathleen Sullivan and Jared Thistle, Jeanne Menard

The first order of business was a roll call vote on a motion by Serita Frey, to allow member Kate Hartnett to participate by speaker phone, per **RSA 91-A:2 Meetings Open to Public** which states in part that a *member of the public body may participate in a meeting other than by attendance in person at the location of the meeting only when such attendance is not reasonably practical and that a member participating in a meeting by the means described in this paragraph is deemed to be present at the meeting for purposes of voting. All votes taken during such a meeting shall be by roll call vote.* Ms. Hartnett was prohibited from attending due to constraints of her employment in Berlin. Members in favor of the motion to allow were Erick Berglund, Serita Frey, Wes Golomb, Dave Linden and Herb McKinney (second).

Albert and Elizabeth Garlo, owners of property at **4 Dukes Lane (Map 207 Lot 68)**, approached DCC members with concerns regarding an abutter's request for a zoning variance (due to hardship) to construct a 24'x 24' garage within 10 feet of their property line, as opposed to adhering to the required 37.5 foot setback. The Garlos' expressed concern that the resulting increase to the impervious surface area of the ½ acre lot (currently featuring a house, driveway and septic field), the disturbance of vegetation and forest soil, and the increased, unfiltered runoff, would be detrimental to the water quality and fragile nature of Loon Cove.

Serita Frey questioned whether the Garlos' primary concern was the exception to the setback, or the project's impact based on the *Pleasant Lake Watershed Protection Overlay*. Mrs. Garlo responded that she was not familiar with the town's watershed overlay, but that the project's potential impairment of water quality was detrimental to the public interest. Mr. Garlo felt the project was being professionally done but that the variance to the setback was objectionable. Ms. Frey noted other instances of variance from the watershed protection overlay having been previously overlooked by the Zoning Board, due to its lack of familiarity with the ordinance. Kate Hartnett directed Mrs. Garlo to pages 73 and 74 of the ordinance, specifically section 330.8 which addresses *buffer requirements* and placement of buildings. Mrs. Garlo requested the support of the DCC either by their attendance at the October 24th ZBA meeting or in a letter objecting to the reductions in setbacks, especially in the cove areas. Erick Berglund questioned if the Garlos' only case is the setback or rather that there may be an increase greater than 15% to the impervious area of the lot, in which case there was a need for further analysis. Kate Hartnett felt it was appropriate for the DCC to submit a letter supporting the Garlos' concerns, referencing the five tests that the ZBA uses to evaluate a variance: 1. *Contrary to the public interest*, 2. *In the spirit of the ordinance*, 3. *Substantial justice*, 4. *Diminished value*, 5. *Unnecessary hardship*. It was moved by Serita Frey for Kate Hartnett to craft the above-referenced letter before the October 24th ZBA meeting. The motion passed with Erick Berglund (second), Serita Frey, Wes Golomb, Kate Hartnett, Dave Linden and Herb McKinney voting in favor of the motion.

Kay Williams Property-Map 405 Lot 84: Charlie Bouchard, Kathleen Sullivan and Jared Thistle summarized their plans to operate a therapeutic horse farm on conservation land currently owned by the Katherine Williams Trust. The conservation easement is held by the Town of Deerfield with an executory interest held by Bear-Paw Regional Greenways (*See Rockingham County Deeds - Book 3400 Page 39 – nhdeeds.com*). Per the referenced deed, the primary burden of enforcing the easement lies with the town, by and through the DCC, with oversight by Bear-Paw. As such, the DCC along with Bear-Paw, are concerned with how the proposed facility, (anticipated to include three paddocks for 10 horses, a barn, run-in sheds, both an indoor and an outdoor arena, structures to house other small animals, compost/mulch storage areas and small trails), fits the purposes and limitations set forth in the conservation easement deed. Information about *Touchstone Farm*

DEERFIELD CONSERVATION COMMISSION
Meeting Minutes – October 8, 2012

(www.touchstone-farm.org) in Temple, N.H. where Ms. Sullivan is employed was offered as an example of an organization with a similar purpose. Questions posed as a result of a recent site visit to the Williams property addressed the size of the barns, whether there had been any environmental impact studies done, potential detriment due to *disturbance of soil surface* or *changes in topography* as noted in section **2 D.** of the deed, the impact on the 10 acres not under conservation easement, whether there was a manure management plan, run-off in wetlands, impermeable surfaces/drainage and the non-profit status of the endeavor.

The definition of agriculture was debated, with Mr. Bouchard citing **RSA Title I, Chapter 21:34a Farm, Agriculture, Farming**, and the manner in which he feels it relates to the agricultural and structural improvement limitations of the Williams' easement deed. Erick Berglund noted that the definition of agriculture as stated in the easement deed was much narrower than the state definition and needs clarification. Both Frank Mitchell and Kate Hartnett questioned the construction of a riding arena from the standpoint of being a structure, not an activity, and whether it was in keeping with section **2 (Use Limitations) C.** Dan Kern noted that a management plan, per section **2 A ii**, would be required before approval could be given and referred Mr. Bouchard to the *U.S.D.A. Natural Resources Conservation Service* for assistance in its development. Mr. Bouchard agreed to forward a copy of a proposed management plan to Serita Frey when it was available. Serita Frey noted that the DCC was not opposed to the plan but cautioned that the actions it takes with respect to this request would set a precedent for interpretation of what can take place on conservation easements in the future. As such, the DCC needs to question, understand and ensure that the plan is environmentally sound, and the petitioner must prove and document the soundness of its plan, to convince the DCC in formulating its decision.

Kate Hartnett noted that the Planning Board supports the concept of a “*working landscape*” with respect to conservation land but she raised questions as to the intensity of use and whether construction of arenas and paddocks were a more intense use than was intended by the spirit, intent and requirements of the easement deed. It was agreed that Frank Mitchell would look to Bear-Paw's experience or precedent in easement interpretation, and that of other land trusts as it relates to the limits set forth in **2 C.** Serita Frey expressed the need for legal counsel with respect to structures and stated that additional information on the environmental impacts of the project was required. Ms. Frey further questioned how best to assess whether the proposal was in keeping with the spirit of the easement. Dave Linden shared his knowledge of Kay Williams' enthusiasm for horses which was confirmed by Williams' family members. In addition to the definition of agriculture, Jeanne Menard requested clarification of commercial vs. non-commercial vs. non-profit to be addressed along with the previously posed questions for counsel.

Americorps Volunteers: Serita Frey warmly thanked the Americorps volunteers for the tremendous contributions they have made on behalf of the town and the DCC in particular. In addition to brush cutting and clean-up of the cemeteries, the group created a trail at Deerfield Community School leading to a cliff and a wetland. To date, volunteers have completed trail bridge work on the Great Brook Corridor and on the Arthur Chase Town Forest and will be working on Peg King in the near future.

Town Forest Protection Project: Dan Kern had no objection to the modifications suggested by Kate Hartnett last month which were primarily a rearrangement of the sections. A more complete document will depend on the decision to either create one easement deed covering all the parcels with appendices, or multiple deeds to be recorded individually, the latter of which is the preference of Attorney Raymond. Serita Frey will follow up with counsel on a final recommendation. Erik Berglund felt creating individual documents was a cleaner approach while Dan Kern argued that a single document would facilitate consolidation of parcels with similarities as well as aid in comparison of parcels, however Mr. Kern agreed to defer to Attorney Raymond. It was decided that the DCC should have counsel's decision for its next meeting in order to finalize the deed.

A discussion of the various points included the following key issues to address:

DEERFIELD CONSERVATION COMMISSION
Meeting Minutes – October 8, 2012

- **Reserved Rights – 5B:** Needs to be more generic; can remove specific references and cover under allowed activities.
- **Posting – 5F:** Should be more generic; prohibit “*activities inconsistent with conservation purposes*”.
- **Archaeology – 5G:** Left over from LCHIP and should be removed.
- **Discretionary Consent – 7:** Questioned if this could be used in lieu of *Reserved Rights*; the placement of the *Use Limits, Discretionary Consent* and *Reserved Rights* together could add clarity; concern this could open the door for extreme limits by the donor; there must be clear donor intent which must come first.
- **Uses and Activities:** How similar are the uses among the 7 parcels and should these uses be addressed in a separate document? looking to the future, how restrictive or flexible do we want the deed to be; Freese’s uses were separate from the easement deed; a separate use document could be subject to change; look to the Kay Williams easement as an example of interpretation problems and the importance of knowing donor intent; take some of the more specific language out of the deed.
- **Benefits, Burdens and Access – 6A & B:** These are relevant, relating to the rights of Bear-Paw in their management role.
- **Merger – 6H:** Easement remains in force in the event of conveyance of the ownership to another entity.

Based on the above discussion, Dan Kern will work on a modified draft of the deed for review by Jim Raymond.

Serita Frey moved to give the Financial Officer, Erick Berglund, authority to approve for payment from conservation funds, at his discretion, anticipated billing from Upton and Hatfield for legal services related to the Town Forest Protection and Kay Williams projects. Voting in favor of the motion were Erick Berglund, Serita Frey, Wes Golomb, Kate Hartnett, Dave Linden and Herb McKinney (second).

Financial Officer’s Report: There was no report; however Erick Berglund moved to reimburse Jack Hutchinson for lumber and materials purchased for the Americorps bridge repairs at Great Brook. The amount of \$205.83 was approved for payment from the general fund by Erick Berglund, Serita Frey (second), Wes Golomb, Kate Hartnett, Dave Linden and Herb McKinney.

Approval of Minutes: In the absence of a quorum at the September 10th meeting, approval of the minutes of the August 20th and September 10th meetings was given as follows: Erick Berglund, Serita Frey, Wes Golomb (second), Kate Hartnett (abstain), Dave Linden (abstain) and Herb McKinney (motion).

Adjournment: At 9:30 PM, a motion to adjourn the meeting by Serita Frey was approved by Erick Berglund, Serita Frey, Wes Golomb, Kate Hartnett, Dave Linden (second) and Herb McKinney.

The Next Meeting is presently scheduled for November 12th.

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