

**PEMBROKE CONSERVATION COMMISSION (CC)**  
**Final Minutes of November 9, 2009 Meeting**

**Present:** Lea Anne Atwell; Carol Bertsimas, Vice-Chair; Ammy Heiser, Chair; Stetson Heiser; Brian Mrazik, Secretary; and Ayn Whytemare (until 9:00).

**Not Present:** Fred Kline, Board of Selectman (BOS) Representative; and Jeff White, Planning Board (PB) Representative.

**Others Present:** Vanessa Bittermann, Central New Hampshire Regional Planning Commission (CNHRPC); Kevin Krebs, Planning Board; Scott Lane, Chief, Pembroke Police Department; and Harold Thompson, Sewer Commission.

**1. Call to Order** – Ammy called the meeting to order at 7:03 pm.

**2. Ames Brook Monitoring Report** – The CC holds a conservation easement on property along Ames Brook that was set aside as part of the original development by Dennis Aubin. A citizen complaint was received by NHDES regarding apparent wetland encroachments in two areas of the easement. NHDES conducted a site inspection on May 22 and found that there were no violations in areas under State jurisdiction, but noted two areas of potential impact, including areas downslope of the cul-de-sac and downslope of permitted impact #5. Ammy advised Everett Hodge who contacted Dennis Aubin to get the violations addressed.

Kevin Krebs provided a summary of his monitoring activity at this site last spring. Kevin conducted a GPS survey and noted that most of the boundary markers were found except in the front section along the brook. Kevin provided a list of waypoints from the survey in ‘DNR Garmin’ format. Kevin noted that the primary concern was that 4-wheelers were crossing the brook in the vicinity of the bridge, since the bridge is too small to accommodate them. The crossing area has become rutted and subject to erosion. A snowmobile trail also goes through the area, but snowmobilers use the bridge when crossing the brook. Kevin stated that there were no CC signs or boundary markers in this area. Kevin also noted that an abutter expressed concern about ATV traffic in the area where the trail connects to 7<sup>th</sup> Range Road. However, damage was minimal in this area.

The CC agreed that, at a minimum, signs need to be placed near the stream crossing and where the trails enter the easement from roads. Carol agreed to check the Baseline Documentation Report for Ames Brook to see if signs were agreed upon and whose responsibility (CC vs. Aubin) it was to erect them. If it is the CC’s responsibility, Carol will put up the signs. Ammy will provide Kevin with a monitoring report form for him to complete.

**3. CTAP Open Space Planning Program.**

- a. Open Space Survey Update** – Vanessa provided copies of the Derry Open Space Plan. Vanessa also reported that 19 on-line survey responses had been received. Approximately 12 additional hard-copy forms were also mailed in or dropped off at the Town Hall. **ACTION ITEMS:** Vanessa will input data from the hard copies to consolidate them with those on the on-line system. As a ‘final reminder’ effort, Ammy will send a mass emailing to all Town committee members providing a link to the CNHRPC website.

Ammy will also leave copies of survey forms with Linda Williams and Jim Goff in the Town Hall. Ayn will bring a stack to the Department of Public Works.

- b. Open Space Committee** – The CC was impressed with the list of individuals who expressed an interest in participation on the OSC. The CC agreed that we should try to include, in some capacity, all those who responded. To date, the following candidates have been identified: Jeanne Byrne, Andrew Hiller, Molly Brown, Jason Dexter, Paul Cote, Avery Williams, Ann Williams, Janet Anderson, Norm Provencher, and Steve Fowler. **ACTION ITEM:** Ammy will email all selectmen and the Budget Committee members to encourage them to provide representatives on the OSC. The CC agreed that the first meeting of the OSC will be held in January. Two dates will be proposed, with the members selecting the preferred date through an email process.

**4. Range Roads Discussion** – Brian circulated copies of a proposal (Attachment 1) that the CC take the lead in an effort to restrict motorized vehicle access to Class VI range roads through a permit system. Some advantages of a permit system might include reduced environmental damages, avoiding conflicts between users, and providing a revenue source for the Town's conservation, recreation, and public safety objectives.

Chief Lane was supportive of a more active role in the management of range roads by the Town. He noted that the BOS reviewed the status of range roads five years ago and decided that no new actions would be taken at that time. He made reference to a September 2008 article on range road law by David Connell, Legal Services Counsel with the New Hampshire Local Government Center (LGC) (Attachment 2). Ammy suggested that the LGC be contacted regarding the legality of an access-by-permit approach. **ACTION ITEM:** Brian agreed to contact the LGC.

Chief Lane also expressed concern that funding sources for law enforcement in these areas have been drying up. Beginning in 2002, the Pembroke Police Department received grants of \$6,000 per year from the New Hampshire Department of Fish and Game for Off-highway Recreational Vehicle (OHRV) law-enforcement activities. In 2005, this funding decreased to \$2,500. Complaints received by the Department regarding range road activities peaked at 57 in 2005 and have been declining due to increased enforcement efforts. Two of the biggest problems are damages caused by 4x4 'monster' trucks and increased access to private lands via the range roads. Chief Lane cited the Town of Freemont and its rail-trail system as an example of a successful local enforcement program. Chief Lane emphasized the need to develop relationships and work with local ATV and snowmobile clubs to gain support for programs of mutual interest.

Ayn raised the question of the appropriateness of the CC taking on this issue. The perception of the CC as an advocate for restricting usage of these roads may jeopardize our more traditional long-term objectives, such as land acquisition. Ayn suggested that CC consider an independent coalition of volunteers to pursue the issue. The CC decided to continue this discussion after obtaining input from the LGC regarding the legal feasibility of a permit system and then take the issue to the BOS through Fred Kline, if appropriate.

**5. Hillman Parcel Acquisition, 553 Buck St.** - The next steps in the acquisition process are to finalize easement language, acceptable to both NRCS and the Five Rivers Conservation Land Trust (FRCLT), and to obtain an appraisal of the 42-acre parcel using an appraiser approved by USDA-NRCS. Ammy stated that Jodi Walker of NRCS sent an October 21 letter with a CD containing 100+ pages of procedural requirements for completing the funding agreement,

including 35 pages of easement language. The FRCLT also wants their easement language merged with the NRCS document. Ammy is concerned that completing these requirements will be time consuming and extend well beyond the end of the current purchase and sales agreement (November 15) with the property owner (Marilyn Bergevin). Although Marilyn has indicated a willingness to extend the agreement, she is also concerned about the complexity and lengthy timeframe of the process. Brian questioned whether hiring a consultant would be helpful. Ayn motioned that the CC authorize Ammy to secure the services of a consultant, if necessary, with funding not to exceed \$4999, to assist in preparation of easement language and other acquisition processes and procedures. Lea Ann seconded. Six voted in favor, none opposed. The motion passed. **ACTION ITEM:** Stetson has the lead on finding an appraiser for the property.

#### **6. Review and Approve Minutes – Meetings of September 14<sup>th</sup> and October 12<sup>th</sup> & 31<sup>st</sup>**

A quorum of members present at the September 14<sup>th</sup> meeting was not available to approve the draft minutes. Lea Anne is still in the process of preparing the draft minutes of the October 12<sup>th</sup> meeting. Lea Anne motioned that the draft minutes of the October 31<sup>st</sup> field trip be approved. Carol seconded. Five votes in favor. None opposed. The motion passed.

#### **7. Conservation Land Updates**

- a. **White Sands** – Harold Thompson reported that vehicles were still causing problems in at the pumping station near the access gate to this property.
- b. **Belfry Court** – Ayn reported that there was a spotted turtle sighting in the vicinity of the pond near Belfry Court. A 100-foot conservation easement is recorded around the pond that is not listed on the tax map or on the property deeds. Access to the easement is by permission of the landowners only. Two owners are involved. Since the spotted turtle is protected in New Hampshire, Ayn would like to confirm the sighting and invite David Carroll, author of the Swampwalker's Journal, who lives in Warner. The CC endorsed this effort and concurred with Ayn contacting Mr. Carroll.
- c. **Bragfield** – **ACTION ITEM:** Lea Ann is completing paperwork for submission to NCIP.
- d. **Girard** – The “Meet Me in Suncook” Committee would like to place a bolder with plaque on this site to recognize an association with Robert Frost. They have invited a representative of the CC to listen to their proposal at a meeting on the first Tuesday of January.
- e. **Associated Grocers** – NHDES sent a letter to Associated Grocers of New England citing AGNE for failure to file required paperwork since the recording of the conservation easement. The CC still needs to complete a 2009 monitoring report for this property. **ACTION ITEM:** Brian and Stetson agreed to do a site visit on November 10. Stetson will contact AG for permission to enter the property.

**8. Site Walk of Cavallaro Property on October 31<sup>st</sup>.** - A special meeting of the CC was held in the field to view this property, located at 221-243 Fifth Range Road. The property consists of 105 acres of land between Fifth and Sixth Range Roads. The Cavallaros expressed an interest in selling this piece, in part or in total, to the Town. Ammy and Stetson completed a Land Protection Criteria Rating Sheet for this property. Following discussion by the CC, assigned

values to each of the criteria were amended as follows: Aquifer/Watershed - 2, Size/Accessibility - 3, Wildlife/Plants – 2, Trails/Class VI Roads – 3, Cultural/Archeological/Historical – 1, Scenic Vistas – 2, all other criteria - 0. Total score = 13/33. Stetson motioned that the CC adopt this rating. Lea Anne seconded. Five voted in favor, none opposed. The motion passed. Ammy expressed concern about the number of potential subdivision scenarios that the owners were considering in conjunction with a potential sale to the Town. **ACTION ITEM:** Stetson will contact the owners to request that they define exactly what parts of the property they wish sell prior to any further action by the CC.

## **9. Mail and Correspondence**

- a.** Concord Sand and Gravel – A copy of the permit application was received by the CC.
- b.** Forest Notes Magazine contained a write-up of Pembroke’s successful grant application for Farm and Ranch Protection Program funding for the Hillman property purchase.

**10. Adjournment:** Lea Anne made a motion to adjourn the meeting at 9:55 PM. Carol seconded. Five voted in favor, none opposed. The motion carried.

Submitted by Brian Mrazik, Secretary.  
Next Meeting – December 14, 2009

## Attachment 1

### Management of Class 6 Roads for Town Conservation and Recreation Objectives

1. Class 6 roads are a very important recreational and open-space resource for the Town of Pembroke. Collectively, these roads are probably the most utilized resource in the Town for these purposes.
2. Utilization of this resource is increasing rapidly as the region grows, including use by out-of-towners and even out-of-staters.
3. Environmental damage associated with increased vehicular use is also rapidly increasing, including erosion of roadways, embankments and stream crossings. Sediment from this erosion is entering into and adversely impacting streambeds and wetlands. Littering and dumping are also increasing problems.
4. Conflicts between uses, including hiking, biking, horseback riding, snowmobiling, cross-country skiing, ATV use, 4-wheeling, and hunting are becoming more frequent.
5. Pembroke needs to be proactive in managing the Class 6 roads to ensure a safe, quality, environmental and recreational experience for all its citizens. The current 'do-nothing' policy will not be successful in the future due to increasing pressures on this resource.
6. Perhaps the most important initial step in managing and protecting this resource is controlling access by motorized vehicles. This can be accomplished by adopting and enforcing a permit system. Advantages of a permit system include the following:
  - a. Restricting access as necessary to avoid over-utilization of the resource. This could be accomplished by limiting numbers of vehicles by type, setting seasonal timeframes for usage, limiting access to particular sections of roads, limiting or denying access to out-of-town vehicles, etc.
  - b. Provides opportunities to educate users and establish policies, procedures, and conditions for use that would help to minimize conflicts between users and avoid environmental damage.
  - c. Provides a potential revenue source (permit fees) that could be utilized to promote open-space objectives, enhance recreational opportunities, educate users, mitigate environmental damages, and enforce usage rules and regulations.

## Attachment 2

### So, Who Owns the Rangeways, Anyway?

*By David R. Connell, Esq.*

An ancient controversy resurfaced during the 2008 session of the General Court in House Bill 1491, “Establishing a committee to study the ownership and disposition of rangeways.” “Rangeways” are the long, straight strips of land reserved for roads on the plans produced by the Colonial-era “proprietors” of the newly created townships to subdivide all the land in the townships. The lots were laid out in uniform rectangular rows, or “ranges,” between parallel rangeways. (Pembroke is often cited as a town whose map today shows the layout of many of its highways along rangeways.) Due to topography and settlement patterns, many miles of rangeways in most towns never became highways. As Attorney Peter Loughlin summarizes it in his treatise on municipal highways:

[t]heir chief significance today ... is the ownership question which they present to developers of tracts of land bisected by them. There seems to be little consensus on the ownership of these strips of land which were once owned by the proprietors. It is not even clear that the incorporation of the proprietors into a town caused the common lands to change from the proprietary to the town unless the act of incorporation specifically provided for such a change. Loughlin, 16 New Hampshire Practice: Municipal Law and Taxation sec. 44.14, p. 420-21. Following a legislative hearing, the Municipal and County Government Committee reported to the House of Representatives that excellent sources on the subject of rangeways exist; no further studies are necessary; and current laws address the problem. (Two excellent law journal articles on the topic are: *New Hampshire’s Rangeways*, 42 *New Hampshire Bar Journal* #4, p. 44 (2001), by Attorney Stephan T. Nix, LLS; and *Ancient New England Highways: The Hanover “Greenways” Controversy*, 9 *Vermont Law Review* 373 (1984), by Edward D. Sutton.) The House voted HB 1491 “inexpedient to legislate,” but the debate will no doubt continue among interested surveyors, real estate lawyers and history buffs. This article will provide an overview of the rangeway ownership controversy as it evolved historically and point out how, under certain circumstances, the issue can become relevant to municipal officials today as they seek to establish municipal trail systems.

When the royal Province of New Hampshire was created by King James II in 1679, the provincial governors were delegated the power to grant ownership of land in the Province. Lands were typically disposed of by creation of a township and simultaneous grant of all the land in the township to a group of individuals, often relatives and associates of the governor in Portsmouth. In each township the group of owners, the “proprietors,” initially owned all the township land in common. The proprietors engaged surveyors to prepare a plan of the township, depicting numbered lots and rangeways (called “allotments” in more northerly and westerly townships). The proprietors then, by vote, not deed, granted specific lots to individual owners for settlement or speculation, reserving certain lots for the ministry and other common purposes, and reserving the rangeways as potential roads.

The townships were largely confined to the southeasterly parts of the Province until after the French and Indian War, when the newly safe and secure frontier regions were rapidly carved into townships and granted by Governor Wentworth. It should be noted that the four towns settled before creation of the Province—Portsmouth, Dover, Hampton and Exeter—did not have proprietary lands. Those towns, themselves, claimed original ownership of lands. *Willey v.*

*Portsmouth*, 35 N.H. 303, 310 (1857); see Loughlin, 14 New Hampshire Practice: Local Government Law, sec. 864, pp. 110-12.

At first the proprietors governed the township, but, as settlement gradually increased, the inhabitants of the town assumed control over the town government through town meeting and the selectmen, while the proprietors maintained ownership and control of the residual land in the township. In 1766 the Provincial Assembly passed a statute authorizing selectmen “to exchange any lands left for highways, or any highways or any Part of them where a way is not necessary to be Continued, for other lands more suitable therefor . . .” 3 Laws of New Hampshire, Province Period 1745-74, p. 382 (1915). This language implies that the town owned the “lands left for highways” (that is, the rangeways) in order to “exchange” them. In 1791 the New Hampshire General Court enacted a statute to allow towns to “sell or exchange any land left or appropriated in such town for highways tho’ not actually improved for that purpose . . . .” 5 Laws of New Hampshire 1784-92, p. 577 (1916). This language, too, suggests town ownership of the rangeways.

The 1791 statute was involved in *Copp v. Neal*, 7 N.H. 275 (1834). A highway abutting land of Neal’s predecessor in title, one Furnald, was discontinued and relocated across land of Copp. The Town of Tuftonborough voted to award the land underlying the discontinued highway to Copp in exchange for the new layout. Years later Neal claimed ownership under the common law rule that the public has only an easement in a highway, and title reverts to the abutter upon discontinuance. The New Hampshire Supreme Court acknowledged the general rule but went on to make the following observation: “There is nothing however to preclude a town from holding the title to land over which highways are laid, and they have frequently claimed the title in cases of ancient rangeways laid out by the original proprietors.” 7 N.H. at 276-77. In fact, Neal’s deed from Furnald conceded the point, referring to the discontinued highway boundary as land “voted by the town to William H. Copp.” Under the circumstances Copp’s right of possession was ruled superior to Neal’s.

Records of various town votes and conveyances from the period confirm the apparent belief that towns owned rangeways and could convey title to rangeway land. Within a few decades, however, assumptions about ownership of rangeways evidently changed. In 1829 the 1791 statute regarding exchange or sale of rangeways was repealed. Laws 1829, Chapter 52. Then, in a major revision of highway statutes, the legislature in 1842 abolished the dedication and acceptance method of creating highways (it was restored in 1945) and released all outstanding dedications of land for highway purposes, which presumably included the dedication of all rangeways not already used as highways. Revised Statutes, 53:7; *State v. Atherton*, 16 N.H. 203, 213 (1844). Finally, in *Morgan v. Palmer*, 48 N.H. 336, 337 (1869), the Court observed that “these rangeways were reserved and designated by the proprietors in their original allotments, for public highways if needed . . . ; practically . . . these rangeways, when not converted into public highways by the towns, have been treated as a part of one or both of the adjoining lots.” If the statement in *Morgan v. Palmer* describes all rangeways, then they probably ceased to exist legally in 1842. If, on the other hand, ownership of the rangeways was reserved by the proprietors and transferred by some means to the towns themselves, as widely believed by those who lived during the relevant period, then the 1842 statute has not eliminated them, and they survive as separate parcels.

The trouble with the theory that towns own the rangeways is that there is little or no direct documentary evidence for it. Towns did not acquire title to proprietary lands automatically. *South Hampton v. Fowler*, 52 N.H. 225, 228 (1872). Proprietors could transfer title either by vote or deed, *Atkinson v. Bemis*, 11 N.H. 44 (1840), but no such records seem to exist for rangeways. On the other hand, early municipal titles have been established without proof of a conveyance. In *Baptist Society in Wilton v. Wilton*, 2 N.H. 508 (1822), the town’s title to land

was recognized chiefly because it was originally reserved by the proprietors for the ministry. In the modern case of *Moultonboro v. Bissonette*, 105 N.H. 210 (1963), the town's title to a public landing was established through language in the 1763 town charter, "... at the end of the highways at the Pond suitable Lots or Parcels of land shall be left for landing places ...", and town meeting votes indicating town possession of a certain area in subsequent years. The Court noted the special difficulties in determining early town land titles and recognized the validity of establishing such titles on the basis of ancient documents and municipal activity.

The Hanover "greenways" controversy of the late 1970s and early 1980s shows that, under the right circumstances, ownership of rangeways ("allotments") can be important to a town. The Town of Hanover sought to establish a network of recreational trails on a series of paths that were rangeways or had been exchanged for rangeways. (See the Vermont Law Review article cited above.) Both the Town and opposing landowners, who denied the Town's claims, did a great deal of historical and legal research and analysis. Litigation was averted when a town meeting in 1983 narrowly voted to relinquish the Town's claims to the greenways.

As in Hanover, towns seeking to establish public trail systems nowadays may find that an ancient rangeway can provide a key link. In such a case, if there is sufficient historic documentation for a town claim, it could be well worthwhile to find out who owns the rangeway.

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*September 2008, New Hampshire Town and City*