

PEMBROKE CONSERVATION COMMISSION (CC)
Approved Minutes of February 8, 2010 Meeting

Present: Lea Anne Atwell; David Baril, Alternate; Carol Bertsimas, Vice-Chair; Ammy Heiser, Chair; Brian Mrazik, Secretary; and Ayn Whytemare.

Not Present: Stetson Heiser; Fred Kline, Board of Selectman (BOS) Representative.

Others Present: none.

1. **Call to Order** – Ammy called the meeting to order at 7:01 pm.
2. **Range Roads Discussion**

Brian reported that he has been collecting additional information regarding the Town's authorities to manage motorized vehicle use of Class VI range roads. He has also been obtaining information on approaches being used by other towns.

On January 13 an email was sent to the New Hampshire Local Government Center (LGC) to request further clarification on the legal feasibility of a permit system. The January 28 response (Attachment 1) reiterated the regulatory authorities of the BOS under various state statutes, but stated that towns have no power to regulate access on the basis of residence (i.e. road use cannot be limited to Pembroke residents). The LGC also concluded that towns have no power to charge fees (e.g. permit fees) for access to a Class VI highway. Further clarification from LGC on February 1 (Attachment 2) concluded that although towns can heavily regulate or prohibit OHRV and snowmobile use on Class VI highways, a broad permit system cannot be used to limit the number or types of vehicles. Brian handed out a summary of his findings to-date regarding legal authorities (Attachment 3).

The 'Plan-Link' list-server, maintained by the NH Office of Energy and Planning, was utilized in an attempt to obtain information on approaches used by other towns to manage Class VI road use. Plan-Link provides for on-line discussion and information sharing for planning and zoning officials. To-date, two towns have been identified that routinely close their Class VI roads during wet conditions when the roads are subject to erosion. The Town of Grantham closes its Class VI roads to motorized wheeled vehicles from March 1 through June 1 (Attachment 4). The Town of Hanover posts Class VI roads when they are too muddy to be used by motorized wheeled vehicles. This action is initiated by the Conservation Commission and implemented by the Public Works Department if the Director of Public Works approves.

ACTION ITEM: Ammy requested that Brian compile the email discussion, in response to the 'Plan-Link' list-server posting, for inclusion in the CC records on this subject. The CC agreed that Brian will draft a 'strawman' proposal regarding the management of motor vehicle use of Class VI range roads for discussion and mark-up at our March meeting.

3. **CTAP Open Space Planning Program** - The first meeting of the Open Space Committee was held on January 13. Ammy reported that only two volunteers attended, so the second meeting was cancelled. All 20 individuals who originally volunteered will be called to try to

generate more interest. Vanessa Bittermann has the lead in establishing the next meeting date.

- 4. Hillman Parcel Acquisition, 553 Buck St.** – Ammy reported that the date for the on-site visit by USDA-NRCS, the Five Rivers Conservation Land Trust (FRCLT), the property owners, and CC representatives will be held on Friday February 26 at 9:30 AM. The formal interview meeting will be held at Ammy’s house following the site visit. The appraiser, Sherry Browning, has promised to complete the opinion letter (preliminary appraisal) next week.
- 5. Review and Approve Minutes of January 11th Meeting** – Ayn motioned to approve the minutes with two minor corrections identified by Ammy. Carol seconded. Five voted in favor, none opposed. The motion passed.
- 6. Conservation Land Updates**
 - a. White Sands** – no new information.
 - b. Ames Brook** – Carol tried to contact Dennis Aubin by email to obtain information on the conservation easement boundary locations. She received a response from Mr. Aubin’s attorney who could not provide any new information. The map in the CC’s possession is dated 2007 and shows the boundary markers as ‘to be placed’. The easement was recorded on March 12, 2008. **ACTION ITEMS:** Carol will contact Elaine Wesson to obtain the latest map showing the easement boundaries.
 - c. Girard** – Ammy talked to Jocelyn Carlucci of the “Meet Me in Suncook Committee” (MMS) to determine the status of the commemorative plaque placement on this site. The future of the MMS is uncertain since the Chairperson is stepping down. Nevertheless, Jocelyn is taking the lead on continuing the Girard project. A meeting was held with the parcel abutters and the corner lines of the property have been determined. The Cemetery Commission has an assortment of granite slabs which can be used for the plaque.
 - d. Whittemore** – The CC agreed that David may proceed with trail maintenance work.
 - e. Belfry Court** – Ayn reviewed the planning board files on this site with Elaine Wesson and confirmed that the easement around the pond is not mentioned in the deeds for the two surrounding properties. However, a variance request in 2000 by one of the owners noted the existence of the conservation easement. Ayn contacted one of the property owners (O’Neal). They are aware of the easement, are supportive of an effort to locate spotted turtles, and would like to be involved this spring. **ACTION ITEMS:** Ayn will continue to research the easement, including making contact with the National Heritage Foundation. Ammy suggested that Ayn also talk to Gordon Riedesel, who was CC Chairman at the time the easement was created. Ayn will also contact the second property owner to secure permission for the turtle search.
- 7. NHDES Notices** – The CC received copies of three letters issued by NHDES. The first was relative to a wetlands violation at 162 Buck St. The second was requesting more information from Concord Sand and Gravel regarding their dredge & fill permit request. The third was

advising that the Town should be receiving a copy of the alteration-of-terrain-permit application and plans from Dennison Cabinets.

8. Application Reviews for Planning Board (PB)

a. Silver Hill Development Corporation Business Park, N. Pembroke Road – The PB received a copy of the stormwater management report submitted to NHDES by the developer and requested comments from the CC by tomorrow. Ayn noted that the plan called for development of an 85% vegetative cover as a means of erosion control on lot 12. Since seeding took place so late in the fall, that cover has not been achieved. Ayn suggested that the back-up plan, involving erosion-control mats, be implemented. The CC concurred.

b. Concord Sand & Gravel, N. Pembroke Road – In response to comments by the PB and CC, Nobis Engineering submitted a groundwater monitoring plan as part of the alteration-of-terrain-permit application for this site. The plan will include sampling for blasting residues. Nobis requested a written response from the CC. **ACTION ITEM:** Lea Anne will send a response on Town letterhead.

c. New England Flower Farms – N. Pembroke Road – The PB requested a review of this site plan by tomorrow. Ayn noted that the site is in a wellhead protection zone and an aquifer district. She suggested that the developer be requested to provide an irrigation water-recycling plan or other plan to avoid contamination of groundwater from fertilizers or pesticides. The CC concurred.

9. Green Gold Farm Map 266, Lot 144 – Ammy contacted Dave Jodoin and Rose Galligan (Recreation Commission (RC)) regarding Keith Richard's proposal to sell a conservation easement on 43 of the 47 acres in this parcel. Only 20 acres of the parcel are suitable for a conservation easement because the remainder has been or will be developed for recreational fields and ancillary structures. The possibility of a joint conservation/recreation purchase was discussed. However, the RC currently has no funding for this purpose. Rose forwarded the information to Suncook Youth Soccer for their consideration. Brian suggested that the CC respond to Keith requesting that he reconsider splitting up the tract and offering the 20-acre portion, including riverfront, for a conservation easement. Ammy noted that the appraisal being developed for the nearby Hillman parcel would provide a good indication of the value of the Green Gold parcel. **ACTION ITEM:** Ammy will respond to Keith Richard advising him that the CC is only interested in the 20-acre portion of the parcel and the likely value of a conservation easement based on the Hillman appraisal.

10. Other Business

a. Ammy provided copies of the CC Report that she developed and submitted for inclusion in the Town Annual Report (Attachment 5).

b. April 11 Monitoring Day – Ayn suggested that each of the larger sites be assigned to an individual for monitoring. Ammy requested that a pre-meeting be held with CC members to review the site folders to ensure that any activities undertaken for the site during the past year have been recorded.

c. LSIP/Bragfield Pond - **ACTION ITEMS:** Lea-Anne has completed the LSIP report forms for Bragfield and will transmit them to Steve Anderson. Ammy will contact Steve to advise him of the April 11 monitoring plans.

11. Adjournment: Carol made a motion to adjourn the meeting at 9:30 PM. Ayn seconded. Five voted in favor, none opposed. The motion carried.

Submitted by Brian Mrazik, Secretary.

Next Meeting – March 8, 2010

Attachment 1



VIA E-MAIL

ATTORNEY-CLIENT PRIVILEGED INFORMATION

January 28, 2010

Brian Mrazik
Conservation Commission
Town of Pembroke

Re: Regulation of Use of Class VI Highways

Dear Mr. Mrazik,

This is in response to your email inquiry dated January 13, 2010, in which you pose several questions about the authority to limit use of Class VI highways by means of a permit system, which would restrict use and charge fees on the basis of criteria such as residence or type of vehicle, and might also deposit fees in a special fund to be expended for costs of administration, enforcement, repair, etc. associated with use of Class VI highways.

Class VI highways, like Class V highways, are open to travel by the general public. Travel is at the traveler's risk because there is no municipal duty to maintain Class VI highways. The board of selectmen may regulate many features of use, as with Class V highways (see RSA 231:21-a):

- Snowmobile use. RSA 215-C:8, IX, :31.
- OHRV use. RSA 215-A:15, I.
- Load limits. RSA 231:91.
- Disturbance of the surface. RSA 236:9 - :11.
- Driveway permits. RSA 236:13
- Various motor vehicle restrictions, including parking and traffic regulation. RSA 41:11, 47:17, VII, VIII, XVIII.

Towns, however, have no power to regulate access on the basis of residence. Nor is there power to charge fees for access to a Class VI highway from another highway.

I hope you find this information helpful. Please do not hesitate to contact me if you have further questions.

Sincerely,

David R. Connell
Legal Services Counsel

NH Municipal Association
Fax: 603.224.5406

Workers' Compensation Trust
Fax: 603.226.2322

Property Liability Trust
Fax: 603.226.2322

HealthTrust
Fax: 603.226.2988

Attachment 2

SmartZone Communications Center Collaboration Suite

bmrazik@comcast.net

Pembroke's Range Roads - 01/13/10 Follow Up
Questions 01/28/10 DC

Monday, February 01, 2010
12:48:42 PM

From: legal_inquiries@nhlgc.org

To: bmrazik@comcast.net

The following is Attorney Connell's response to your inquiry earlier today:

There cannot be a broad permit system to limit, per se, the number and types of vehicles that can use Class VI highways. OHRVs and snowmobiles can be heavily regulated or prohibited, but motor vehicles cannot be prohibited outright. The board of selectmen has the various statutory tools I listed that can reasonably regulate motor vehicle weights; parking, speed limits and the like; and disturbance of the surface of the highway.

David R. Connell
Staff Attorney

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Attachment 3

Summary of Legal Authorities Relative to Town Regulation of Class VI Range Roads
2/8/10

<p>The Board of Selectmen of a municipality has the power to regulate local highways without requiring any action at a town meeting. “Unless regulated by the commissioner of the department of transportation as provided in RSA 236:1, the selectmen may regulate the use of all public highways, sidewalks, and commons in their respective towns and for this purpose may exercise all the powers conferred on city councils by RSA 47:17, VII, VIII, and XVIII, and by any other provisions of the laws upon the subject. “</p>	<p>RSA 41:11</p>
<p>Regarding Class VI roads, “...the municipality shall have the same regulatory authority over such highways as is the case with class V highways, including but not limited to the authority to regulate their use pursuant to RSA 41:11 and RSA 47:17, VII, VIII and XVIII, to regulate the excavation or disturbance of such highways pursuant to RSA 236:9 through 236:11, to regulate driveways and other access pursuant to RSA 236:13, and to establish weight limits pursuant to RSA 231:191.”</p>	<p>RSA 231:21-a II</p>
<p>Class VI highways are defined as: “... all other existing public ways, and shall include all highways discontinued as open highways and made subject to gates and bars, except as provided in paragraph III-a [boating access highway], and all highways which have not been maintained and repaired by the town in suitable condition for travel thereon for 5 successive years or more except as restricted by RSA 231:3, II.”</p>	<p>RSA 229:5, VII</p>
<p>“...the classification as a Range Road does not alter the status of a Class VI road as a public highway under RSA 231:21-a.”</p>	<p>NHLGS Legal Opinion</p>
<p>“With bylaws or ordinances city or town councils and boards of selectmen may regulate the operation of OHRVs within city or town limits, providing they do not conflict with provisions of this chapter.”</p>	<p>RSA 215-A:15 I</p>
<p>"Off highway recreational vehicle" means any mechanically propelled vehicle used for pleasure or recreational purposes running on rubber tires, belts, cleats, tracks, skis or cushion of air and dependent on the ground or surface for travel, or other unimproved terrain whether covered by ice or snow or not, where the operator sits in or on the vehicle.”</p>	<p>RSA 215-A:15 I</p>
<p>There is no automatic right for OHRVs to travel on Class VI Roads: “Pursuant to RSA 215-A:15, city or town councils and boards of selectmen may authorize the use of sidewalks and class IV, class V or class VI highways and bridges, or portions thereof, for use by OHRVs.”</p>	<p>RSA 215-A:6 IX</p>

Attachment 3 (continued)

<p>“Towns shall be relieved of all obligation to maintain, and all liability for damages incurred in the use of, discontinued highways or highways discontinued as open highways and made subject to gates and bars.”</p>	<p>RSA 231:50</p>
<p>Limited maintenance or repair of Class VI roads is authorized by the NH emergency lane statute which provides that such repairs may include “removal of brush, repair of washouts or culverts, or any other work deemed necessary to render such way passable by firefighting equipment and rescue or other emergency vehicles.” The municipality can establish a capital reserve or trust fund for this purpose. Maintenance or repair of Class VI roads undertaken in accordance with the emergency lane statute does not create any duty or liability for the municipality.</p>	<p>RSA 231:59-a</p>
<p>“There cannot be a broad permit system to limit, per se, the number and types of vehicles that can use Class VI highways. OHRVs and snowmobiles can be heavily regulated or prohibited, but motor vehicles cannot be prohibited outright.”</p>	<p>NHLGS Legal Opinion</p>
<p>“Towns...have no power to regulate access [to Class VI highways] on the basis of residence.”</p>	<p>NHLGS Legal Opinion</p>
<p>“Nor is there power to charge fees for access to a Class VI highway from another highway”</p>	<p>NHLGS Legal Opinion</p>

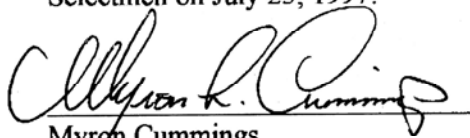
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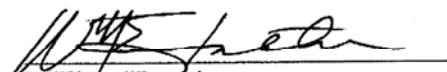


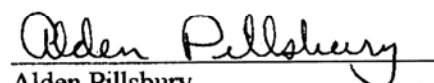
REVISED ORDINANCE
CLOSURE OF CLASS VI HIGHWAYS

Having followed due process by holding a public hearing on July 23, 1997, and by order of the Grantham Board of Selectmen, under authority granted to them by RSA 41:11 and RSA 47:17 section VII, all unmaintained portions of Class VI highways within the Town of Grantham are closed to all motorized wheeled vehicles from **March 1 to June 1**. Violators will be fined up to \$1,000 and may be held liable for damages to the highway under RSA 236:38 and RSA 236:39. There will be no Class VI Highway Usage Permit from the Grantham Road Agent during the time aforementioned.

This Ordinance was revised and adopted by the Grantham Board of Selectmen on July 23, 1997.


Myron Cummings


William Hutchins


Alden Pillsbury

Board of Selectmen
Grantham, N.H.

clviord

TOWN CLERK
863-5608

POLICE DEPARTMENT
NON-EMERGENCY 863-6844
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ROAD AGENT
863-9156

Attachment 5

The Conservation Commission is continuing in the stewardship of the town's 330+ acres of Conservation Lands. We are actively seeking new Pembroke lands, which are considered a priority for protection based on the Natural Resources contained within. This spring the CC submitted an application to the US Government Farm and Ranch Protection Program to help purchase the Hillman Farm on 553 Buck St. This parcel has been leased and farmed by the Grimes Family for 50+ years and is their prime cornfield for their dairy cattle. The USDA granted approval for this parcel based on the soil quality, historical significance, and the threat of development. The Government will contribute matching funds to place this parcel in permanent protection and insure it continues to be farmed. The remainder of the cost will be paid with Pembroke Conservation Funds. We are still in the process of negotiations and paperwork with the Natural Resource Conservation Services (NRCS) as well as the landowners and the selectmen. We are hopeful that we will succeed in this endeavor. If we do succeed, the Grimes family will continue to farm it and the people of Pembroke will benefit from the open space.

The Conservation Commission is presently working with Central New Hampshire Regional Planning Commission (CNHRPC) to set up an Open Space Committee made up of a diverse group of Pembroke citizens to create a green infrastructure within the town by identifying high value natural resources and map their location within the town to prioritize land parcels for protection and possible acquisition. Our first meeting was in January and we will continue to meet for the next few months.

The Commission meets the second Monday of each month for its monthly meeting at the Town Hall at 7pm. Our agenda is full of various tasks ranging from potential purchases for review, Planning Board Applications, Dept of Environmental Services (DES) concerns as well as public issues presented and the monitoring of our Town Conservation lands. It is difficult to achieve all of the conservation goals we desire for our town. More volunteers are needed to really make a difference. If anyone has time, ideas, and the desire to be involved, we would like you to come to a meeting and share your ideas. We now have a facebook page, Pembroke, NH Conservation Commission. Please visit it and become a fan. We will be adding more photos and conservation updates and activities of interest. Our next scheduled date to remember is our 2nd annual monitoring day on Sunday, April 11th with a rain date of April 18th. All are welcome.

I want to thank all of you who attended our Public Hearing in favor of the purchase of the Hillman property. It is great to see so many people give up their evening to support our town. Many who could not attend sent letters of encouragement.

Respectfully Submitted,

Ammy Heiser, Chairperson