

Peterborough Conservation Commission Meeting Minutes **DRAFT**
June 21, 2018, Peterborough Town House, 7 p.m.

Present: Jo Anne Carr, Bryn Dumas, John Kerrick, Matt Lundsted, John Patterson, Liz Thomas, Francie Von Mertens; Barbara Miller, Select Board Liaison
Guests: Dan Holmes, Ruth Holmes, Karen Kambol, Peter Kambol, Nadia MacStay, Bill Reinhardt, Libby Reinhardt, Amelia Tracy, Peggy Van Valkenburg, Alex Walker

(Note: Unable to attend, Robert Wood submitted written comment that was part of the packet sent to Commission members.)

Minutes for the May 17 regular meeting and May 22 field site visit were approved.

Cheney Field grazing proposal consideration

John Kerrick introduced the meeting as a continuation of the Commission's consideration of the Cheney Field lease proposal relating to cattle grazing. He asked that questions or comments from guests come later on.

Kerrick asked members for process steps needed. Bryn Dumas asked if there was a standard timeline for responding to a proposal, and Barbara Miller as Select Board Liaison suggested it could take as long as needed. Swift Corwin suggested a timeline would be helpful.

John Patterson suggested the Commission generate criteria or a checklist that would apply to all town-owned fields in the event of a lease proposal. As one consideration: the original intent of the land or easement donor, weighed against the proposed use.

He said the criteria also should reflect the Conservation Commission's charge. Francie Von Mertens said the relevant state RSA is broad, protection of a town's natural resources, but a fresh look at the statute would be helpful.

Swift Corwin said the checklist should include a list of information needed from the applicant relating to the proposed use, and it should be comprehensive—not added to ad hoc.

Von Mertens suggested the Cheney Field proposal at hand could be a case study that leads to the checklist, rather than establishing a theoretical checklist. Or perhaps be a hybrid, some back and forth between the specific field proposal process and a generic checklist.

Barbara Miller said the Land for Good checklist to help towns or land trusts considering agricultural leases is a good guide. The checklist was displayed on the screen. (It was part of the ConCom packet and is attached to minutes.)

Von Mertens added that a public record on the grazing proposal is available on the town website main page, and suggested the checklist be added to that record.

Dumas suggested we develop the checklist for all town land the ConCom stewards, forest as well as field.

Von Mertens added that a property's current management plan should be added to the checklist, and cited the four town fields—Burke Road, Fremont, Walcott and Cheney.

Corwin asked which experts should be consulted for creating a management plan, and Von Mertens suggested the ConCom has relevant expertise for a good start if the property is open field; and Corwin is a good start if the property is forested. Both agreed that NRCS is highly qualified. Von Mertens said that Matt Tarr at UNH Cooperative Extension has offered to assess the Cheney Field.

Bryn Dumas proposed that the ConCom contract for a Natural Resource Inventory on each parcel, agreed to by Carr who cited past discussions favoring NRIs. Members agreed that an NRI would logically inform a property's management plans and consideration of a lease proposal.

For the criteria checklist, Von Mertens mentioned neighbors' response to a proposed use, also mentioned on the Land for Good checklist. She said she leases two fields out Windy Row for cattle grazing, in the outlying rural zone with few neighbors—a different setting than a more residential zone. Neighbor support likely wouldn't be a factor in such a setting.

John Kerrick asked for other big issues to consider.

Von Mertens mentioned access to a property, also cited as a concern by the Agricultural Commission letter regarding the Cheney Field proposal. (Ag Commission letter is attached.)

Dumas suggested that the cattle lease details appear to shift over time, and Corwin suggested that the ConCom makes the general frame and the leasee fills in the picture. Regarding seasonal wet conditions at the field, details about grazing period on the west side need filling in. The proposal does fill that in, but Matt Lundsted said concerns about wet soils and wetland impacts remain.

Dumas said the lease proposal does mention fencing cattle off from wetlands with temporary fencing.

Patterson raised public benefit of leasing public land for private use as a consideration, the need for clear public benefit.

Von Mertens cited the lease term of 15 years, a major change in field use for a long time, understood from the leasee's perspective given considerable costs cited as \$50,000 for fencing and soil treatments like keylining and biochar, filling sinkholes, plus creating an access road.

Barbara Miller said that although 15 years has been mentioned, town counsel suggests a license, not a lease, easier to terminate if the licensee doesn't meet its terms.

Patterson asked if there was a way to scale back the cattle grazing scope to demonstrate its public benefits before expanding the use.

Kerrick brought the discussion back to donors' intent as a key consideration. He read from the Dick Fernald letter that addressed donors' intent:

"The overriding purpose was preservation, not cattle, corn, or any other crop. . . The proposal to lease the field for the grazing of cattle is inconsistent with the intent of the gift to the town. The neighbors bought the field, and gave it to the town, so that it would remain unchanged, and continue to be used for recreation by the neighborhood and the wider town."

(Fernald letter attached)

Kerrick suggested the session be opened to public comment; Corwin seconded, and all agreed.

Dan Holmes said that when Mark Fernald approached him years back about mowing the field, he responded that he'd rather graze the field. Assessing the field, its wet areas with unpalatable grasses, surrounded by suburban development, he changed his mind about grazing. He said that as someone who owns and uses a subsoil keyline plow, he questions its suitability and utility given Cheney Field conditions. As a farmer and advocate of local agriculture, he said appropriate agricultural uses for public fields like the Cheney Field include neighborhood community gardens, and fruit and berry crops. He also questioned fencing off access to neighbors who have been caring for the field for 30 years. Agriculture needs to be seen positively by the community, or it risks souring future opportunities.

Ruth Holmes suggested setting aside the lease proposal to further develop the checklist process.

Libby Reinhardt cited the Master Plan as guidance relevant to access to open space, as well as determining townspeople support, and carefully weighing public costs against benefits.

Peter Kambol suggested the Land for Good checklist displayed on the screen as a good guide to follow. He also expressed concern about licensing. After considerable financial investments have been made by a licensee, it would difficult to revoke.

Kerrick thanked the public for comments and returned to Commission deliberations, citing the conservation easement language as a guide to field management.

Von Mertens said she would like the meeting to resolve apparent disagreement over the easement's intent or lack of intent regarding agriculture. She said easement purposes language is largely boilerplate, reflecting IRS-determined conservation values. To qualify for a federal tax deduction you have to prove public value by citing conservation values. Agriculture is one of the standard values, as are forest resources, recreation including trails, scenic from a public road or trail, and wildlife. Because the land is field, soils and agriculture were cited in the easement purposes section. Had it been forested, forest resources would be cited. She said that doesn't mean you have to cut down the trees. And it doesn't mean you have to practice agriculture.

She quoted from the Forest Society letter confirming that:

"We understand that it has been suggested that the Fernald conservation easement requires that the property be managed for agriculture. That is not the case. . .

"In preserving the field as open space, the complete absence of agricultural management would not be considered a violation of the easement because the easement does not prescribe the need for affirmative agricultural practices."
(Forest Society letter attached)

Von Mertens added that with a view to the future, a hypothetical famine, uses that degrade field soils are to be avoided, and Corwin agreed that the easement cites the importance of protecting the land for future agricultural use.

Kerrick asked for a motion confirming clarity on the easement intent and Von Mertens moved that

"The Commission agrees that the easement says 'could' rather than 'should' regarding agricultural uses of the Cheney Field." (Bryn Dumas second)

The motion passed unanimously.

Kerrick questioned conservation easement language that cites scenic value following IRS guidelines, and consensus was quick that "scenic" is too subjective a concept to offer guidance in Commission considerations.

Von Mertens cited level of human activity relating to a proposed town land use. Regarding the cattle proposal, there is the scenic value to some people or many people of cows grazing lush grassland, but then there's the daily motorized human traffic of filling water tanks, moving cattle and their temporary fencing every few days, applying soil amendments—all activities that likely detract from a bucolic scene.

Liz Thomas cited pollinators and their importance to agricultural crops, and that the field managed as meadow supports pollinators more than grassland does. Grasses are wind pollinated, and don't provide nectar or pollen for native bees. She said pollinators are in steep decline.

Kerrick said he had trouble moving beyond the Richard Fernald letter citing the overriding donor intent to preserve open space and stating that grazing cattle on the field is contrary to that clear intent.

Patterson agreed, but as "we own it" there is flexibility. Von Mertens agreed that in 50 years, given different circumstances and community support, the Conservation Commission could change the use. Dumas added that ag people see the need at hand, not 50 years off. Von Mertens said she has talked with Ruth Holmes about the Ag Commission, with ConCom assistance, doing a survey of public and private land in town with ag potential, working to match farmers with willing landowners.

Barbara Miller wondered if surviving land donors could confirm the Fernald letter's statement of donor intent. Given passage of time few remain. It was agreed that Dick Fernald as organizer of the donors is a credible assessor of their intent.

There was general consensus that continued annual field mowing maintains general soils health, but the NH trend towards acidic soils was noted by Dumas. An NRI might give helpful management direction regarding soils.

Kerrick said he sensed a decision was near, and asked for a straw poll.
Corwin said he thought it a noble offer, cattle grazing, but that he leans towards the Fernald letter and donor intent.

Dumas said he supports appropriate agriculture on public lands, but thinks cattle grazing is the wrong use on the wrong land.

Patterson said he is sympathetic to the proposal, but not here and not now.

Thomas said once a lease is signed, you lose control; and she can't ignore donors' intent.

Lundsted agreed with both points.

Barbara Miller said that although she is not a ConCom voting member, she would like to see agriculture close to the downtown, but this is not an easy decision.

Carr said she supports a working landscape and the Commission should work in good faith to inventory local ag lands—but can't support this field for this use.

Von Mertens said that leasing public land for private use has to ring all the bells, be a poster child, and this has been divisive. It's too intensive a use for this field.

Deliberation continued after the straw poll, with members citing the Land for Good "A Checklist for Land Trusts, Institutions and Municipalities" that reflected concerns stated during the meeting. They cited, from the checklist:

Current Management

Existing fencing and stone walls (lacking)

Recreational Uses

Access for the Farmer (existing, or with constraints)

Neighbor support

History of public access or use for recreation

Non-Agricultural resources; compatibility with wetlands, wildlife

Donor's Intent

Zoning limitations

Citing what he considered conclusive discussion including the straw poll, Kerrick motioned and Dumas seconded:

While the Conservation Commission supports working landscapes, both public and private across town, and will act in good faith to support the Agricultural Commission in inventorying potential parcels for future agricultural uses, it finds the proposal as submitted by Stan Fry dated May 18, 2018 to graze cattle on parcel U002-040-000 is incongruent with the intent of the donors of the field. For that and other considerations raised in deliberations, we therefore do not support the proposed change in use.

The motion passed unanimously.

After a brief discussion of the Cranberry Meadow Trail signs and a replacement boardwalk John Patterson moved adjournment at 9:07 p.m.

Attachments:

Land for Good checklist for towns considering an agricultural lease

Richard Fernald Letter / Agricultural Commission letter attached /

Forest Society Letter

/jc;fvm