

## MINUTES

### GREEN SPACE COMMITTEE

THURSDAY, MARCH 30, 2023

WILLIAM L. PULLEN MUNICIPAL BUILDING MEETING ROOM

ONLINE NON-INTERACTIVE AT TOWN HALL STREAMS

6:30 p.m.

**Committee members present:** Don Kleiner, Kathleen Thornton (Chair), Clairlynn Rountree, Heather Jackson, and Josh White

**Others present:** None.

1. **Meeting called to order:** 6:30 p.m. by Kathleen Thornton.
2. **Reading and approval of minutes from January 25, February 8, and February 22, 2023:**

Motion to approve minutes from January 25, 2023 as discussed and edited (as below) by:  
Heather Jackson  
2<sup>nd</sup> by: Josh White  
5-0

Heather said p. 1, #4: Don asked for acronyms to be “spelled out” not “read aloud.”  
Kathleen would like the part around the comprehensive plan quote to read “on preserving land for the enjoyment...” Strike sentence re: Clairlynn serving on the committee.

Motion to approve minutes from February 8, 2023 with whatever edits we decide (as below) by: Josh White  
2<sup>nd</sup> by: Heather Jackson  
5-0

Heather said on #5, strike “stupid.”

Motion to approve minutes from February 22, 2023 subsequent to discussion and edits made (as below) by: Heather Jackson  
2<sup>nd</sup> by: Kathleen Thornton  
5-0

Heather said on page 3, paragraph 5, “printable” not “printed” survey.

3. **Public comment:** None.

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### 4. Compile list of questions for town lawyer:

In Wendy's absence, Kathleen pulled up and projected what they had last time. After brief discussion, it was decided to go to #2.

Motion to take the previous motion from the January 25 meeting off the table as it was stated at the time by: Don Kleiner

2<sup>nd</sup> by: Kathleen Thornton

5-0

After more discussion on procedure, Heather noted that A all the way before #3 are all things they added, and on the original document all they had was question #2.

Motion to start with #2 and edit just this question #2 if need be and to accept with edits by: Clairlynn Rountree

2<sup>nd</sup> by: Josh White

Kathleen read aloud what they added. She raised the question, could the town vote that the select board could not sell the property without a town vote? Don said he assumed the answer was yes per the lawyer early on. If the town votes at town meeting to keep this property, the select board has to go back to the voters. Kathleen summarized that would override the select board's ability to handle tax-acquired property, because the vote supersedes it. Don found it nuanced and unclear. Kathleen provided the example what if we vote to keep it undeveloped in our town vote, and some tower operator offered 30 grand or as Don said someone wanted to put an outhouse up there.

Don also said he hated the word "enforcement" here. Clairlynn read aloud a solution from Heather: "... who has the legal authority to make sure the owner of the property abides by the terms of the deed restriction or easement." Kathleen said they will ask the lawyer if that is a good working description of "enforcement."

Motion passed (accept #2),

5-0

They then discussed "in either of the above arrangements, which parties could be held responsible for the violation..." Don preferred "would." After more discussion, Kathleen phrased it, "If the town places a deed restriction on the property, and there's a violation of that deed restriction, is the select board responsible?" Clairlynn asked if a violation by a citizen or by the town. Kathleen said we should ask both; obviously if the select board violates it, they're responsible. Josh asked if they're responsible through inaction. Kathleen concurred.

The role of the third party in third-party easement was discussed. Kathleen said they are the enforcer of the easement, echoed by Josh. If a violation occurs on a property with a third-party easement, the third party has a right to take them to court, but who would they

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take to court? Josh thought it should be stated that if there's a third-party easement placed on a property and a violation occurs not due to the select board – say it's a fourth party doing the thing. Kathleen said we could ask if the select board could be sued due to inaction, because they didn't prevent... It was concluded the select board would be responsible for a fourth party violation, because the third party is a watchdog as Kathleen said and the property management is still entirely in the town's hands. The third party is just sitting there watching the town do it, and they have a legal authority if the town violates the easement to do something, but everything is still the responsibility of the town. The topic of the select board being sued for inaction came up again.

Don said he thought Adam was trying to parse out if giving this to a third party would alleviate some of the liability of the select board. He thinks the short answer is no.

Clairlynn asked if the management plan is the same for both scenarios. Kathleen said it could be. Here we want to put the basics, not those details. She thinks Adam was also getting at are we responsible if somebody makes a bonfire, a mess, or tramples on the blueberries. Kathleen recapped if anybody goes up there and does anything to town property, the select board has the authority to call the police, etc. – they can enforce property rights that anybody would have. It's just the terms of the easement; when we say "enforcement," we're only talking about the terms of the deed restriction or easement – these really narrow provisions that are in either one of these documents, which can be confusing.

Motion passed (accept #3),  
5-0

Don recommended having a lawyer present to answer their nuanced questions, a good use of budget money. Kathleen suggested sending the questions to him, then she will ask Jay about having a short session with the lawyer after getting his answers back. Don suggested Kathleen ask Jay about committee members meeting or zoom with MMA lawyers. Budget requests will have to be done soon. Kathleen will approach Jay re: meeting with the lawyer or MMA lawyer.

Motion to do the same with question #4, talk about the language then vote after we've finished the discussion by: Don Kleiner  
2<sup>nd</sup> by: Heather Jackson

Moving on, Kathleen thought they'd already talked about the deed restriction: the town could vote into the deed restriction that the property could not be sold unless the town voted to sell it. For the third-party easement, that would not be in there; it could be in the management plan but would not be in the easement.

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Heather recalled this question came from Martha primarily who was wondering about selling part of it. She read Martha's question as transcribed: "Let's say a future select board decides they want to sell the woodlot portion of it to reduce taxes. They would then need to go to a town wide vote to make the change. If the property is under a third-party easement, would that be an option?" Kathleen said that would totally depend, which Heather noted is how she'd answered Martha.

Motion passed (accept #4),  
5-0

Don had gone through the transcription and pulled out the questions. They went over the projected information.

Motion to build the table in #1 and simply send that table to the lawyer for review, because we have already asked those questions and have a pretty good grasp of how it works, by: Don Kleiner  
2<sup>nd</sup> by: Kathleen Thornton

Heather felt like they wanted to know the actual process, not just what we just what we had gathered. Don agreed and said we could outline that. Kathleen said we have the steps outlined.

Motion passed,  
5-0

### **5. Discuss and formulate plans for the next two months:**

Kathleen said there are things that need to be planned out, like asking for money. Heather said reading the minutes, the request for money had to be in by tomorrow.

Kathleen wrote to Jay as a citizen, not a CHPA or Green Space Committee member. At the meeting, he had said you couldn't have two options on the ballot, but that's actually not true. Her overall goal is that this property be protected for the people, however we do that. There are passionate people on both sides of this issue, deed restriction, third party easement. One of her concerns is if there is only one option on the ballot, people who are passionate about the other option may oppose it causing it to fail. Personally she would rather have the voters decide. If we have one option on the ballot it can fail. If we have two, they have to pick one.

Don went back to what he views as the committee's responsibility: to make a recommendation to the select board. Heather said our task was to come up with options for preserving and protecting the property. We ask the voters to decide which way they want to do this. Don said that could be our recommendation to the select board: we think these two options are pretty good (Heather said viable); they each have positives and negatives; we think you should ask the voters to decide.

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Josh said we could say here are two viable options. Do you want to pick one and put that on (the ballot), or put two on?

Kathleen said Adam specifically said he wants the committee to recommend. She thinks we're pretty much split and would be happy with whatever is voted in. Don concurred. Kathleen suggested recommending both options to the select board, since the committee is split. Don concurred. Clairlynn said we have to convince the select board to have two options. Don noted on a referendum no is easier than yes.

Clairlynn said we have to trust that we have an educated community and that they will make the decision from the two options, instead of a non-option and an option. Heather said even if not educated on this, if we give them both options, they'll pick one; we'll have some protection. Don said we'll do our best efforts to educate. Kathleen thinks people are upset in these situations when these decisions get made and they don't feel they have had a choice, or something is being forced on them.

Kathleen suggested talking more and voting on this at the next meeting, as we have a split committee, and the select board wants one option. The only other option she came up with was putting an easement on the hilltop and exempting part of the property, but that's even more complicated.

Kathleen noted this decision will drive where we head. Josh thought it should happen a little more organically: have the full committee here, have someone make the motion "Do you vote for the third-party easement?" and if three vote yes and three votes no, then you make the next one, then we are doing our due diligence. It's come organically to a split committee and bring it to the board with due diligence done. Both things are good, we're split, these are your options. Don said then we recommend you take them both to the town. Heather suggested agreeing not to vote unless the full committee is here for this question. Clairlynn brought up timeframe. Don said his impression from the select board is we have time. Kathleen noted the importance of everyone attending the next meeting for an official vote on record.

The next issue was money. Josh didn't think there would be an issue with the lawyer. Don suggested emailing Jay saying we'd like \$2,000.

Motion to request \$2,500 in the current budget process for the town, in light of what we see as legal expenses and we talked about doing some survey work both of which will cost a little money by: Don Kleiner

2<sup>nd</sup> by: Heather Jackson

5-0

### **6. Discussion of future agenda items/next steps:**

Two sets of minutes – January 11 and February 2 – need to be approved.

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**7. Set date for next meeting:** April 20 at 6:30 p.m.

**8. Adjourn:**

Motion by: Don Kleiner

2<sup>nd</sup> by: Heather Jackson

5-0

Meeting adjourned at 7:54 p.m.

Respectfully submitted,

Sherry Abaldo  
Secretary