

WEST WINDSOR SELECTBOARD

Draft Minutes

December 21, 2010

Present: Glenn Seward, Tom Kenyon, Bruce Boedtger, Cathy Boedtger, Jim Lyall, Erik Schutz, Dennis Lemire, Martha Harrison

- 1) Call to Order – Selectboard Chair Glenn Seward called the meeting to order at 6:00 PM.
- 2) Consider resignation of Town Forest Committee Chair – Tom said he thinks the point is moot because, even though the minutes of December 17, 2010 have not been approved, a motion was passed appointing someone else to fill Ken's position. Tom said Ken will serve until December 31st and then the new appointment will take his place. Glenn and Bruce agreed.
- 3) Greenall easement – Glenn said the Selectboard only received the information on the Greenall easement yesterday. Glenn said he spoke with Town Attorney Matt Birmingham about it and there are some things that the Selectboard needs to consider. **Glenn made a motion to table consideration of the Greenall easement until a future meeting, pending review of the documents. Tom seconded the motion, which passed unanimously.**
- 4) Bernatchez easement – Glenn said Matt has confirmed that the Bernatchez easement is okay but he doesn't have the original documents and a Mylar needs to be recorded. **Tom made a motion to authorize the Chair to sign the Bernatchez easement on behalf of the Town. Bruce seconded the motion, which passed unanimously.**
- 5) Pakenham license agreement – Jim said his concern is that we're trading a permanent road for something that is not permanent. Cathy said this license gives people permission to cross Ashley Pakenham's land to access three other trails but it's only good if Saunders, Alexander, and Lustberg allow people to cross their property as well. Likewise, Cathy said, if Ashley sells her land, this license is no good. Jim said an easement that went all the way through would be reasonable, but this is not an equal trade. Cathy said one would think that this license agreement would follow the land but it doesn't, it follows Ashley Pakenham. Cathy said she is against signing it. Cathy said it's her understanding that the ancient road is a factual thing and that we have until 2015 to pursue it, so she doesn't understand why we have to sign this agreement today. The Selectboard and those present discussed the requirement, specified in the License Agreement, that the town initiates discontinuance proceedings for any ancient roads on the Grantor's property. Jim said on the positive side, this agreement gives people the right to access the other trails. Jim said that's a nice thing but he'd like to see something more permanent. Glenn said he thinks everyone in the room would like something more permanent, but at what price? Do we want to get involved in court proceedings? Glenn said if we choose not to sign the agreement, the entire trail system up there will be shut down and he has concerns about the same thing happening on other trails, including the snowmobile trail. Cathy said there is no guarantee that the trail won't be shut down anyway. Tom said he is not aware of anyone wanting a road on the Pakenham property; people want a recreational trail. Tom said the Selectboard has received numerous letters of support from people who agree with Ashley Pakenham's position. Tom said he is not aware of anything that would prevent the town from acquiring a trail there in the future with a different property owner. Tom said he thinks the road on the Hale property is a different matter. Tom said he thinks having something in writing will allow the town to negotiate in the future. Glenn noted that the agreement does not address the issue of a trail connecting to Hale's at this time. Glenn said he thinks signing the agreement will be the first step in a positive constructive relationship with the landowner without a lot of expense to the town. Bruce said he agrees with the spirit of the agreement but he has concerns about the fact that it doesn't run with the land like the existing easement and therefore is inclined not to sign it. Bruce said the agreement is too temporary and too easily negated and, in exchange, we're agreeing to proceed with a permanent discontinuance of the road. Bruce said he would also like to see some checks and balances with regard to the conditions under which the trail could be closed. Jim said he thinks the idea behind the agreement is nice but it doesn't quite go far enough. Jim said he would like to see a long-term easement rather than a license.

Glenn said he has received letters from Ashley Pakenham, Jim Curry, Leone Bushkin, Jack Schofield, Bob Joyal, and Peter Campot (Green Mountain Horse Association), and a petition from Ann Niles, Keith Niles, Lee Alexander, Charlie Saunders, Joel Hale, Mariah Hale, Pat Lucarelli and others stating their opposition to the town pursuing an ancient road on the Pakenham property. Jim said he would defer to the opinions of the area property owners. Tom said the town has to go through a process to discontinue a road and it is his understanding that if any one person objects, you can't do it. Glenn said there is a procedure outlined in statute. Tom said just because the town pursues discontinuance doesn't mean that the road is going to be discontinued. Bruce said it's up to the Selectboard to make the final decision. Tom said it can be a complicated process. Glenn said Matt is aware of the agreement and the potential for discontinuance proceedings. Glenn noted the phrase "in good faith" and said that, if the agreement is signed, he would move forward with discontinuance proceedings. Tom said the presence of the paragraph about discontinuance is an acknowledgement that there is an ancient road on the property. Cathy agreed. Dennis Lemire arrived and Glenn filled him in on the discussion so far. Dennis asked if the trail from Ashley's split rail fence to the property of Carlos Dunn is included in the agreement. Jim said no. Dennis asked how good the agreement is. Glenn said he thinks the license was offered in good faith and Ashley has every intention of fulfilling her obligation and she views it as a first step towards other license agreements. Dennis asked if the trail to Carlos Dunn's property was discussed. Glenn said no; this agreement was offered to the town after considerable effort to establish or extend an easement. Glenn said the easement concept was unacceptable to the landowner. Cathy asked who Ashley has been meeting with and noted that she has not been talking to the Conservation Commission. Glenn said the agreement gives us more than we currently have. Dennis said it appears that we're giving up more than we're getting. Dennis asked if Ashley has said, "This is it." Glenn said yes. According to Glenn, Ashley wants to be a good host but is not willing to relinquish control of the trails. Glenn said Ashley has indicated that if the agreement is not accepted all trails and access will be shut down. The Selectboard members reiterated their feelings about signing the agreement with Bruce opposed and Tom and Glenn in favor. Bruce noted that there is an existing easement in place with the Vermont Land Trust so the portion of the trail covered by that easement cannot be closed. Glenn said the question is, "At what cost does that agreement get honored?" Dennis said the snowmobile club could go up Queen Victoria and down Bryant Road with the Selectboard's permission. Tom asked where it indicates that the agreement does not run with the land. Cathy said the language refers to the "grantor" and not to her heirs and assigns. Jim said fighting this could be expensive and contentious. Glenn expressed appreciation for the Conservation Commission's work on ancient roads. Glenn reiterated that the license agreement is more than the town has now. Glenn added that Ashley supports public recreational access to private property and will further that cause if this works out. Glenn acknowledged that the town is taking the chance of losing something considerable but added that the town also has a lot to gain. With the increased interest in recreational activities on private property, if we choose the wrong approach here, it could have a serious negative effect. Tom said it can be difficult to find an alternate route when a landowner shuts down access to their property. Dennis agreed and gave some examples. Martha said if the ancient road on Ashley's property is in a different location from the trails connecting to Saunders, Alexander and Lustberg, is she asking the town to throw it up so she doesn't have to deal with this issue in the future. Glenn said yes. Tom said he saw a map showing the road on Hale's property going up to a residence and ending. Glenn said Mariah Hale maintains that the cellar hole of that house is on the Hale property. Martha asked if there is a down side to doing nothing; if the trails will be closed. Glenn said yes, Ashley is motivated to resolve this issue now. Bruce praised the intent of the landowner but added that the town is giving up an ancient road and getting nothing in return but an agreement with one person for as long as they see fit. Jim said if there is no ancient road there, this is a wonderful thing and it would be a wonderful thing for other people to do as well. Jim noted an anti-government sentiment in the country right now. Tom asked if there are any other ancient roads that the town should be pursuing. Those present agreed that the road off Churchill Road is not worth pursuing because Reading is not interested in claiming their end of it. Glenn said Rad Dike is supportive of the Conservation Commission's efforts regarding the old road on his property. Dennis

said when the ancient roads legislation was passed, he thought the town would get some permanent trail corridors, but it hasn't worked out that way. There was discussion about how confident the town is about the presence of an ancient road on the Pakenham property. There was general agreement that confidence is high about the existence of the road but the exact location of the road is less clear. Bruce said he doesn't want the town to pursue an ancient road but he would prefer an easement to a license. Tom said there's nothing in the agreement that would prevent the town from pursuing an easement with a future owner. Cathy asked if the Selectboard could add anything to the agreement. Glenn said no. Tom said it can be noted in the minutes that if the Selectboard signs the agreement, they do so with the hope that it can be converted from a license to an easement at some point in the future. Glenn said Ashley has indicated that she hopes this is a first step toward a more cooperative and friendly relationship with the town. Glenn said, "After carefully considering the thoughts of the Conservation Commission and the opinions of many residents, I truly feel it is in the best interest of the Town of West Windsor to sign the agreement with Ashley Pakenham." **Glenn made a motion to sign the agreement and instruct the town attorney to initiate discontinuance proceedings as indicated in the agreement. Tom seconded the motion, which passed with Bruce opposed.** Bruce said he assumes that the discontinuance is going to take some time and, because the Selectboard has the potential for new members every March, what happens if new members have different feelings. Glenn said that is not clear to him. Tom said the agreement is binding. Bruce said the agreement only says that the Selectboard will pursue discontinuance in good faith. Tom said now we need to check with the Town Attorney to find out what's involved. Glenn said discontinuance proceedings would be done in a public setting so people will have the opportunity to voice their opinions on it. Glenn said he hopes it is not a long drawn-out proceeding. Erik asked about the existing easement on Ashley's property. Bruce explained that the agreement is for trails that extend off the end of the easement.

- 6) Other Business – Personal time: **Tom made a motion that the Selectboard grant Martha an additional 22.5 hours of personal time for 2011 to make up for the fact that she may not be able to use the hours in 2010.** Tom said the policy has always been that you have to use it but there's always that gap. Bruce asked if there is a written policy. Tom said if it isn't written, it has always been the policy that the pay for the last week is part of the pay period for the following year. Glenn said his view is that the employee's benefits extend through December 31st. Glenn said as long as the end result is the same, he has no problem with it. Martha said she has no problem with it but she asked if the town uses cash basis accounting. Tom said it's when the bill is paid that's important. Martha asked if payroll for the week ending December 31st becomes payable on December 31st. Glenn said he researched the highway employee guidelines and there's no clear description of how this is to be handled. Tom said the policy is that you can't carry over personal time. Bruce said anyone who reads that, unless it's clearly stated otherwise, is going to assume that they have until the end of the year to use up their personal time. Bruce said it's a disservice to interject something contrary to that unless it's really clear in black and white. Glenn said there need to be guidelines for administrative employees. Tom said Dartmouth used to allow five days to be carried over. Bruce said his company also allows that. Martha said she doesn't know the exact number of hours that she has to use but the motion could refer to personal time not used in 2010. **Tom amended the motion to allow Martha to use any unused personal time from 2010 in 2011. Glenn seconded the motion, which passed unanimously.** Duling Road: Tom noted the request from Patrick Bartlett to use Duling Road for a lumber operation and added that there is a logging operation going on right now involving Morrison Road. Bruce said permission should be requested and granted on a case-by-case basis, possibly with conditions. Tom and Glenn agreed. Tom said regarding Duling Road, he thinks that any gates, bars or fences taken down should be put back. **Tom made a motion to authorize the use of Duling Road provided that it is restored to its original condition when the logging operation is over. Glenn seconded the motion.** Bruce said he thinks the logging operation should be completed before the ground thaws. **The motion was amended to include a provision that the operation be completed by March 1, 2011. Glenn called for a vote on the amended motion, which passed unanimously.** Dog Ordinance: Glenn asked if we have to have a public hearing if we're going to change the dog ordinance. Tom said yes. Glenn suggested scheduling it for the next regular

Selectboard meeting. Tom and Bruce agreed. Tom asked how long before it would go into effect. Martha said she thinks ordinances go into effect 60 days after they're adopted, which is prior to the April 1st dog registration deadline. Glenn said that will throw a kink in Cathy Archibald's plans to send out a postcard about the proposed \$50 penalty. Dennis asked if this is something new. Tom said the problem is that people don't register their dogs so the Selectboard is considering a \$50 penalty for dogs not registered by April 1st. Dennis said he doesn't think that's right; we're already being regulated to death. There was discussion about the rabies issue and the possibility of holding a rabies clinic. Martha said Bruce mentioned the possibility of having a graduated fine at the last meeting, which would not be overwhelming if it started off at \$10 and went up by \$10 every month. Martha said she thinks a gradually increasing fine would provide more incentive for people to come in. Martha said if it goes up to \$50 whether you come in on April 2nd or December 2nd, you might as well wait until December. All agreed that a graduated fine is reasonable. Tom suggested \$10 per month. Martha said she thinks the wording has to be worked out before the public hearing but she will research the adoption process. Glenn suggested that the postcard say that unregistered dogs "may be subject to increased fines."

- 7) Adjourn – **Glenn moved to adjourn at 7:25 PM. Bruce seconded the motion, which passed unanimously.**

Respectfully submitted,

Martha Harrison