

SB and CC questions from October 23, 2017 regular SB meeting:

1. What is the relationship between the conservation committee and the select board?
2. When does the select board give precise direction to the conservation committee on:
 - a. how to conduct its meetings;
 - b. what legal conclusions to reach;
 - c. what procedures to follow?

Janet Facella

From: Barbara Richter [barbara@nhacc.org]
Sent: Wednesday, November 08, 2017 10:54 AM
To: Maggiore
Subject: Re: Town of North Hampton in re: Morris Lamprey CC easement LampreyAGreport.pdf [1/3]

Hi Jim,

Thank you for sending along the background information on the Langly easement in North Hampton. The AG's decision that found the relocation of the barn did not violate the terms of the easement seems to be well-supported by the easement and the activity of the conservation commission. The decision of the conservation commission seems appropriate to me and it sounds like they have acted in accordance with the purposes of the easement since barns are permitted for agricultural purposes and the general public views are preserved from Atlantic Ave. The commission conducted a site visit of the property, reviewed the easement terms, spoke with an attorney and the neighbors and the vote to permit the barn was unanimous. It seems clear to me that the CC did their due diligence in this matter and they are supported by the AGs office in their decision.

While I can understand that the neighbors have concerns and they did ask some valid questions, third parties do not have the right to enforce conservation easements. I would encourage the neighbors to accept the decision of the AG and the Rockingham superior court. I hope this disagreement does not continue to drag on in North Hampton as it will be an excessive waste of resources to continue this discussion.

You also requested guidance on the relationship of CC and town select boards. As you know, conservation commissions established under RSA 36-A, once adopted by the governing body, do function independently from the select board. Generally, once a commission is established at town meeting, the commission can create their own bylaws and procedures. It is only necessary to go back to the governing body (town meeting) if the commission proposes the purchase of land, or designates prime wetlands or recommends a parcel be designated as a town forest. **NHACC always recommends that commissions work closely with other town boards and I would suggest that after the commission creates their bylaws and procedures that they then present this information to the board of selectmen for agreement before implementation.** The state law is silent on the preparation of CC procedures but most towns do have the selectmen/city council review and approval all CC bylaws and procedures. RSA 36-A does not go into detail regarding the operation of the CC or any specifics regarding the commissions procedures and relationship with the select board. I always encourage commissions to create procedures that work best to protect natural resources in their towns, and that make the best use of the talent and expertise of the commission. The select board has authority to adopt codes and ordinances so local law can outline commission responsibilities in other town business. I believe that several seacoast towns allow the commission to review site plans and prepare comments for subdivision and other building permits, so I am sure you are aware of this practice. I can provide you with samples if you would like to review local ordinances that refer to conservation commission responsibilities.

If you have any other questions or need more information please let me know. Keep up the good work.

Regards,

Barbara

See below for reference to RSA 36-A

36-A:3 Composition of Commission. – The commission shall consist of not less than 3 nor more than 7 members. In a town which has a planning board, one member of the commission may also be on the planning board. In a city which has a planning board, one member of the commission may be on the planning board. In cities, the members of the commission shall be appointed by the mayor subject to the provisions of the city charter, and **in towns the members of the commission shall be appointed by the selectmen.** Alternate members may be appointed in a like manner and when the alternate serves in the absence or disqualification of a regular member, the alternate shall have full voting powers. When a commission is first established, terms of the members shall be for one, 2, or 3 years, and so arranged that the terms of approximately 1/3 of the members will expire each year, and their successors shall be appointed for terms of 3 years each. Any member of a commission so appointed may, after a public hearing, if requested, be removed for cause by the appointing authority. A vacancy occurring otherwise than by expiration of a term shall be filled for the unexpired term in the same manner as an original appointment. Members of a conservation commission shall be residents of the city or town which they represent. Members of a conservation commission also may serve on other municipal boards and commissions, including, but not limited to a historic district commission established under RSA 673:4, and a heritage commission established under RSA 673:4-a.

36-A:4 Powers. –

I. Said commission may receive gifts of money, personal property, real property, and water rights, either within or outside the boundaries of the municipality, by gift, grant, bequest, or devise, subject to the approval of the local governing body, such gifts to be managed and controlled by the commission for the purposes of this section. Said commission may acquire in the name of the city or town, subject to the approval of the local governing body, by purchase, the fee in such land or water rights within the boundaries of the municipality, or any lesser interest, development right, easement, covenant, or other contractual right including conveyances with conditions, limitations, or reversions, as may be necessary to acquire, maintain, improve, protect, or limit the future use of or otherwise conserve and properly utilize open spaces and other land and water areas within their city or town, and shall manage and control the same, but the city or town or commission shall not have the right to condemn property for these purposes.

On Tue, Oct 24, 2017 at 12:20 PM, Jim Maggiore <mjmaggiore@comcast.net> wrote:
Hello Barbara.

Thank you so much for taking the time so speak with me today about this issue, especially the relationship between the Select Board and the Conservation Commission as outlined by state statutes.

Attached is the Morris Lamprey easement and the response from the Attorney General regarding accusations of violations of the easement.

I look forward hearing from you again soon.

Regards.

Jim Maggiore

603-556-0073

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Janet Facella

From: Legal Inquiries [legalinquiries@nhmunicipal.org]
Sent: Tuesday, October 24, 2017 3:42 PM
To: Maggiore
Subject: Town of North Hampton in re resident aggrieved by select board, town administrator, and conservation commission

Hi Jim:

It sounds to me like you and the other officials involved in this situation have done all you can. I simply don't think there is any more assistance you can offer this individual, particularly given the fact that the attorney general has investigated and determined that everything is proper.

I suppose if he wanted to be very aggressive, he could make allegations of various crimes related to improper conduct in office, including corrupt practices (RSA 640), falsification of official matters (RSA 641), obstructing governmental operations (RSA 642), or abuse of office (RSA 643). Beyond that, I do not see what further recourse he has, or what more the town can (or should) do.

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From: Jim Maggiore [mailto:mjmaggiore@comcast.net]
Sent: Tuesday, October 24, 2017 2:18 PM
To: Legal Inquiries
Subject: Town of North Hampton in re resident aggrieved by select board, town administrator, and conservation commission

Hello Stephen and Margaret.

We have a resident in town who feels aggrieved by what he claims is collaboration on the part of the town administrator ("TA"), chair of the select board (your truly), and the chair of the conservation commission ("CC") against a particular issue in town. The question: what recourse does he have against the parties?

Some background:

A resident felt the conservation commission allowed a land owner to violate the terms of a conservation easement. The resident raised his concern to the select board ("SB") and outside the 30 day window for appeals of CC decisions. The resident came before the SB in a regular meeting on Monday, October 13, 2014 to voice his concern and ask for advice. The chair of the select board (yours truly) and our TA (who is no longer employed by the town) offered to review the easement, try to find out what happened in the case and suggested to the resident that he request to be placed on the next CC public meeting agenda.

I did review the easement and spoke with the CC chair to get some background into the case. The TA also spoke with the CC chair to get some background. The resident was allowed to speak at a regular public meeting of the CC. The resident was not satisfied with the discussion at the CC meeting; moreover, the resident claimed, and still claims to this day, that the TA, CC chair, and I orchestrated and rehearsed a plot to steer the CC discussion in favor of the Town.

The resident filed a complaint with the Attorney General against the CC for violating terms of an easement. The Attorney General concluded that the CC did not violate the terms of the agreement and took no further action against the CC or Town.

The resident placed a warrant on the official ballot to change the terms of seating a CC. The warrant was deemed illegal by town counsel, but it was placed on the ballot. The warrant was defeated.

Last night at our regular SB meeting the resident acknowledged the vote of the town on the official ballot, but claimed, again, maleficence on behalf of the TA, CC chair, yours truly.

It is given that:

- the decision of the CC is more than 3 years old;
- the decision of the CC has been upheld by the Attorney General;
- the TA is no longer employed by the Town;
- the chair of the CC is no longer on the CC;
- the warrant article attempting to change the terms of the CC was deemed illegal by counsel and rejected on the official ballot.

If the resident feels maleficence has occurred, what recourse does he have?

Thanks!

Jim Maggiore
Chair, North Hampton Select Board
603-556-0073

Janet Facella

From: Legal Inquiries [legalinquiries@nhmunicipal.org]
Sent: Wednesday, October 25, 2017 9:26 AM
To: Maggiore
Subject: North Hampton: Limits of conversation between TA and board chairs

Hi Jim:

There's no general statute that governs the extent to which a select board can consult with and advise all boards. It's a good practice for the select board to communicate with the other boards and commissions of the town and to try to promote boards working together and communicating with each other. I also don't think it's wrong for the conservation commission, for example, to discuss or ask for advice from the select board on a difficult issue. Of course, if the issue falls within the conservation commission's authority, and not the select board's, the select board just needs to realize that any "advice" it gives is merely advisory and to not overstep into the statutory authority of the conservation commission (or any other board). Furthermore, if a resident comes to the select board with an issue that really belongs with another board or commission, then the board can hear out the resident, but should also make it clear that the select board has no specific authority to act in this particular situation. In addition, there is the basic concept of "noninterference"—usually codified in town and city charters—that prohibits the governing body from interfering with the statutory duties of other officials.

So, ultimately, when the board is concerned about its authority or whether it is overstepping with regard to another board/commission in town, the select board must look to the particular statute governing that board/commission, and what authority is given to the particular board/commission by statute—and then ask whether the select board is overstepping or interfering with the statutory authority of the other board. For example, a conservation commission has the authority to expend money from its conservation fund for conservation purposes without further approval of the legislative body (or select board). The conservation commission may decide to spend some its money on an environmental study that the select board thinks is a waste. The select board could "voice" its concerns that this is not the most efficient expenditure of money, but it is not within the select board's jurisdiction, or they should not try to influence or interfere with the conservation commission's decision.

I hope that helps a little.

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From: Jim Maggiore [<mailto:mjmaggiore@comcast.net>]
Sent: Tuesday, October 24, 2017 2:41 PM
To: Legal Inquiries
Subject: Limits of conversation between TA and board chairs

Stephen and Margaret.

This is a follow-up to my last email about the conservation commission.

Are the state statutes that govern the extent to which a town administrator can consult and/or advise any board or commission chair?

Thanks.

Jim Maggiore
Chair, North Hampton Select Board
603-556-0073