

Attorney General Reviews Complaint of Easement Violation Lessons for Conservation Commissions

*By Reagan Bissonnette, Esq., Director of Easement Stewardship, Society for the Protection of
NH Forests*

Did you know that the Charitable Trusts Unit (the "CTU") of the Office of the NH Attorney General is responsible for the oversight of charitable trusts, which include donated conservation easements? Are you familiar with the process the CTU uses to review complaints of easement violations? Do you know what steps your conservation commission can take to help ensure its decisions will be upheld in the event of a complaint and review by the CTU?

The Attorney General recently issued a report in response to a complaint of a potential violation of an easement held by the Town of North Hampton. This report is instructive for conservation commissions because it outlines the process the CTU uses to respond to complaints of easement violations and explains how conservation commissions can uphold their fiduciary duties as holders of conservation easements.

Following is a summary of the facts of the situation and the CTU's conclusion, plus a summary of lessons that conservation commissions can take away from this report.

Facts and Attorney General's Conclusion

Facts: The Town of North Hampton Conservation Commission (the "Conservation Commission") holds a donated easement on property known as Lamprey Field. The three purposes of the easement are to retain open space, protect the salt marsh, and preserve scenic enjoyment of the salt marsh and farm land from two public roads. The easement prohibits commercial activities except for agriculture, which must not materially impair the scenic quality of the property viewed from public roads. Barns are permitted as necessary to support agriculture if sited to have minimal impact upon scenic views from public roads.

The landowners obtained a permit in October 2013 to move a barn from an adjoining lot onto a new concrete foundation built on the easement property at a high spot visible from a public road. The barn was moved around September 2014. A neighbor complained to the CTU in October 2014 that the relocation violated the terms of the easement.

The Conservation Commission became aware of the planned movement of the barn in June 2014, and the Chair apparently stated at that time that agricultural uses and barns were permitted. Later in December 2014, the Conservation Commission formally considered the barn relocation at a meeting where the neighbor had an opportunity to speak. The Conservation Commission subsequently consulted with the town administrator and town counsel, held a site walk on the property, and discussed and voted on the matter in March 2015. The Conservation Commission considered a number of factors, including alternative location options for the barn, that protected views are subject to change on a working farm, and a review of the neighbor's complaint. The Conservation Commission ultimately voted that the barn relocation did not violate the terms of the easement.

Attorney General Review: The CTU limited its review to the fiduciary duties the Conservation Commission owes as the holder of the easement. The CTU explained how the three fiduciary duties owed by holders of charitable trusts apply to holders of conservation easements. Under the duty of loyalty, conservation commissions may not engage in conflicts of interest transactions or related private inurement. The CTU found no evidence of this in this case. Under the duty of obedience, conservation commissions must adhere to the

conservation values set forth in the easement deed. The CTU found that the Conservation Commission carefully considered the easement language and conservation values of the easement. Under the duty of care, conservation commissions must actively monitor the activities on and changes to the conserved property to ensure compliance with the terms of the easement deed. The CTU noted that the Conservation Commission could have been more proactive with its review of the permit and the neighbor's complaint.

The CTU also explained that conservation commissions are public bodies subject to the Right to Know Law, RSA Chapter 91-A. Therefore, they must—with few exceptions—conduct their business before the public. That includes allowing their records to be inspected and copied by the public.

The CTU noted that while it has the power to take legal action against an easement holder that avoids or neglects its conservation easement enforcement responsibility, the CTU will not seek remedies against easement violators except in rare circumstances. The CTU also clarified that while organizations and interested citizens have the right to inform holders of conservation easements about alleged violations, those not a party to a conservation easement may have no independent standing to enforce a conservation easement.

The CTU concluded that the decision of the Conservation Commission was well supported by the language of the easement deed and that the Conservation Commission ultimately reviewed the matter with considerable care. Therefore, the CTU chose not to take any action with respect to the Conservation Commission's decision to permit the barn relocation.

Lessons for Conservation Commissions

Fiduciary Duties: The three fiduciary duties owed by conservation commissions that hold donated conservation easements are summarized below. Bullets indicate action items conservation commissions can take to help ensure they uphold each fiduciary duty.

Duty of Loyalty - Duty to avoid engaging in conflicts of interest transactions or related private inurement.

- Consider implementing a conflict of interest policy under which potential conflicts of interest, including financial conflicts, must be disclosed and discussed so actual conflicts can be avoided.

Duty of Obedience - Duty to adhere to conservation values set forth in the easement deed.

- When considering potential violations or planned activities on a conservation easement, carefully consider the language of the easement, the conservation values contained in the easement, and any reserved rights.
- When conflicts between easement terms arise, consider them carefully and document the decision-making process. The CTU acknowledges that easement holders must sometimes balance competing interests (in this case, promoting farming versus preserving a pristine landscape).
- If a violation is discovered, notify the possible responsible parties and ensure the violation is remedied. The seriousness and permanency of the violation should inform the nature of the remedy.

Duty of Care - Duty to actively monitor the activities on and changes to the conserved property to ensure compliance with the terms of the easement deed.

- Periodically inspect conservation easement properties.
- Establish a complaint intake process to promptly follow up with allegations of violations and carefully consider such complaints. The nature of the violation should

inform the scope of investigation, so a more serious allegation should result in a more thorough inquiry.

- Implement a system so that building inspectors, or other town officials, can identify land as subject to a conservation easement before any permits are issued.
- Commit to a review process when learning of substantial work planned for land subject to a conservation easement.

Right to Know Law: Since conservation commissions are public bodies subject to this law, decisions regarding alleged violations of easements should be made at meetings open to the public. With limited exceptions, documents related to alleged easement violations should be made available to the public for inspection and copying.

Note: This article does not constitute an official legal opinion of the New Hampshire Association of Conservation Commissions, its members or the Society for the Protection of NH Forests

Re: Complaints against a Conservation Commission

Barbara Richter <barbara@nhacc.org>

Mon 4/15/2019 11:32 AM

To: Jim Maggiore <jmaggiore@northhampton-nh.gov>;

Hi Jim,

Is this a question about the Langly easement in North Hampton? I do recall 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.

The Select Board can request more information from the Conservation Commission if new information regarding this issue has come up. 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 commission's procedures and relationship with the select board. The select board has the authority to adopt codes and ordinances so local law can outline commission responsibilities in other town business if it is part of a local code or ordinance.

If you have any other questions or need more information please let me know. [I would be happy to give you a call to discuss this in more detail.](#)

Regards,

Barbara

On Mon, Apr 15, 2019 at 8:13 AM Jim Maggiore <jmaggiore@northhampton-nh.gov> wrote:

To the Executive Director of the NH Association of Conservation Commissions.

My name is Jim Maggiore and I am one of the members of the Select Board in North Hampton. I have a question about the rights and responsibilities of a member of a Select Board to investigate the actions of a Conservation Commission.

Recently a resident requested that the Select Board appoint one of its members to "investigate the theft of North Hampton's Conservation Easements". The request came as an appeal in a long line of appeals of the Morris Lamprey conservation easements. All accusations of violations of the easement have been reviewed by the Conservation Commission. The Commission has never found a violation. Appeals have escalated to the Attorney General's office. The Attorney General's office did not find violations of the easement or malfeasance by the Commission. The resident is convinced the Town and the owner have violated the terms of the easement.

Is the Select Board obligated by statute to appoint one of its members to investigate the claims of violations made by the resident? If yes, what are the role and responsibility of the member to conduct the investigation?

Thank you for your time and please feel free to contact me by email or phone if you have any questions or need any additional information.

Regards,

Jim Maggiore
603-556-0073

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Barbara Richter, Executive Director
NH Association of Conservation Commissions
54 Portsmouth Street

Concord, NH 03301

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RE: Complaint about Morris Lamprey easement in North Hampton

Knowles, Terry <Terry.Knowles@doj.nh.gov>

Mon 4/15/2019 1:44 PM

To: Jim Maggiore <jmaggiore@northhampton-nh.gov>;

Dear Mr. Maggiore,

Thank you for your email regarding conservation easements.

I am not sure what is meant by the "theft of. . . conservation easements." Conservation easements place certain restrictions on the use of real estate and, if those restrictions are not carried out, there may be a violation of the terms of the easement which should be brought to the attention of the easement holder.

The authority for investigating alleged violations of the terms of a conservation easement is bifurcated between the easement holder and the Attorney General. The Attorney General's authority is limited to investigating the alleged breach of fiduciary responsibilities by the easement holder.

Attorney Reagan Bissonnette of the Society for the Protection of New Hampshire Forests authored a paper on this bifurcation of duties which is based on the North Hampton easement:
http://www.nhacc.org/files/4914/4676/0002/NHACC_Article_08272015_RB.pdf

In this case the complaint should be brought to the attention of the easement holder - the Town of North Hampton Conservation Commission. The Conservation Commission will then take whatever action is appropriate to review the complaint.

It should be noted, however, the term "agriculture" has been amended significantly by the New Hampshire Legislature and could affect activities on the North Hampton easement. The statute follows:

21:34-a Farm, Agriculture, Farming. –

II. The words "**agriculture**" and "farming" mean all operations of a farm, including:

- (a)(1) The cultivation, conservation, and tillage of the soil.
- (2) The storage, use of, and spreading of commercial fertilizer, lime, wood ash, sawdust, compost, animal manure, septage, and, where permitted by municipal and state rules and regulations, other lawful soil amendments.
- (3) The use of and application of agricultural chemicals.
- (4) The raising and sale of livestock which shall include but not be limited to all beef and dairy cattle, steer, oxen, goats, sheep, swine, horses, mules or other equidae, as well as domesticated strains of buffalo, bison, llamas, alpacas, emus, ostriches, poultry, rabbits, yaks, elk (*Cervus canadensis*), fallow deer (*Dama dama*), red deer (*Cervus elephus*), and reindeer (*Rangifer tarandus*).
- (5) The breeding, boarding, raising, training, riding instruction, and selling of equines.
- (6) The commercial raising, harvesting, and sale of fresh water fish or other aquaculture products.
- (7) The raising, breeding, or sale of poultry or game birds.

- (8) The raising of bees.
- (9) The raising, breeding, or sale of domesticated strains of fur-bearing animals.
- (10) The production of greenhouse crops.
- (11) The production, cultivation, growing, harvesting, and sale of any agricultural, floricultural, viticultural, forestry, or horticultural crops including, but not limited to, berries, herbs, honey, maple syrup, fruit, vegetables, tree fruit, grapes, flowers, seeds, grasses, nursery stock, sod, trees and tree products, Christmas trees grown as part of a commercial Christmas tree operation, trees grown for short rotation tree fiber, compost, or any other plant that can be legally grown and harvested extensively for profit or subsistence.
- (b) Any practice on the farm incident to, or in conjunction with such farming operations, including, but not necessarily restricted to:
- (1) Preparation for market, delivery to storage or to market, or to carriers for transportation to market of any products or materials from the farm.
 - (2) The transportation to the farm of supplies and materials.
 - (3) The transportation of farm workers.
 - (4) Forestry or lumbering operations.
 - (5) The marketing or selling at wholesale or retail, of any products from the farm, on-site and off-site, where not prohibited by local regulations. Marketing includes agritourism, which means attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including, but not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.**
 - (6) Irrigation of growing crops from private water supplies or public water supplies where not prohibited by state or local rule or regulation.
 - (7) The use of dogs for herding, working, or guarding livestock, as defined in RSA 21:34-a, II(a)(4).
 - (8) The production and storage of compost and the materials necessary to produce compost, whether such materials originate, in whole or in part, from operations of the farm.
- III. A farm roadside stand shall remain an agricultural operation and not be considered commercial, provided that at least 35 percent of the product sales in dollar volume is attributable to products produced on the farm or farms of the stand owner.
- IV. Practices on the farm shall include technologies recommended from time to time by the university of New Hampshire cooperative extension, the New Hampshire department of agriculture, markets, and food, and appropriate agencies of the United States Department of Agriculture.
- V. The term "farmers' market" means an event or series of events at which 2 or more vendors of agricultural commodities gather for purposes of offering for sale such commodities to the public. Commodities offered for sale must include, but are not limited to, products of agriculture, as defined in paragraphs I-IV. "Farmers' market" shall not include any event held upon any premises owned, leased, or otherwise controlled by any individual vendor selling therein. (Emphasis added)

Towns cannot unreasonably limit agritourism activities in their zoning ordinances:

672:1 Declaration of Purpose. –

The general court hereby finds and declares that:

- I. Planning, zoning and related regulations have been and should continue to be the responsibility of municipal government;
- II. Zoning, subdivision regulations and related regulations are a legislative tool that enables municipal government to meet more effectively the demands of evolving and growing communities;
- III. Proper regulations enhance the public health, safety and general welfare and encourage the

appropriate and wise use of land;

III-a. Proper regulations encourage energy efficient patterns of development, the use of solar energy, including adequate access to direct sunlight for solar energy uses, and the use of other renewable forms of energy, and energy conservation. Therefore, the installation of solar, wind, or other renewable energy systems or the building of structures that facilitate the collection of renewable energy shall not be unreasonably limited by use of municipal zoning powers or by the unreasonable interpretation of such powers except where necessary to protect the public health, safety, and welfare;

III-b. Agriculture makes vital and significant contributions to the food supply, the economy, the environment and the aesthetic features of the state of New Hampshire, and the tradition of using the land resource for agricultural production is an essential factor in providing for the favorable quality of life in the state. Natural features, terrain and the pattern of geography of the state frequently place agricultural land in close proximity to other forms of development and commonly in small parcels. Agricultural activities are a beneficial and worthwhile feature of the New Hampshire landscape. Agritourism, as defined in RSA 21:34-a, is undertaken by farmers to contribute to both the economic viability and the long-term sustainability of the primary agricultural activities of New Hampshire farms.

Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;

III-d. For purposes of paragraphs III-a, III-b, III-c, and III-e, "unreasonable interpretation" includes the failure of local land use authorities to recognize that agriculture and **agritourism as defined in RSA 21:34-a**, forestry, renewable energy systems, and commercial and recreational fisheries, when practiced in accordance with applicable laws and regulations, are traditional, fundamental and accessory uses of land throughout New Hampshire, and that a prohibition upon these uses cannot necessarily be inferred from the failure of an ordinance or regulation to address them; (Emphasis added)

If there is a dispute over the definition of "agritourism" it is the Commissioner of Agriculture, Markets and Food who will make the determination:

425:4 Duties of the Commissioner. –

In addition to the powers, duties, and functions otherwise vested by law in the commissioner of agriculture, markets, and food, the commissioner shall:

IX. Adjudicate disputes concerning activities that constitute agritourism pursuant to RSA 21:34-

a. Prior to a party filing a land use application with a municipality, or after such land use application is denied, an applicant may petition the commissioner for a declaratory ruling regarding whether or not a municipality's ordinance, bylaw, definition, or policy regarding agritourism activities conflicts with RSA 21:34-a. The commissioner's jurisdiction shall be limited to the question of whether or not a municipality's ordinance, bylaw, definition, or policy on agritourism conflicts with RSA 21:34-a. The commissioner, or the commissioner's authorized representative, shall notify the parties, hold a hearing within 30 days of such request, and shall issue a declaratory ruling within 15 days of the hearing. The commissioner's declaratory ruling shall be dispositive, including in future land use applications with a municipality where such ordinance, bylaw, definition, or policy is at issue. A party aggrieved by the declaratory ruling may petition the commissioner for reconsideration within 20 days of the declaratory ruling, and thereafter, within 30 days of the decision on reconsideration, may appeal such decision to the New Hampshire supreme court. If the applicant petitions the commissioner for a declaratory ruling, all municipal appeal processes, including those defined in RSA 677:2 shall be stayed. The 30 day time period in which to request a rehearing shall begin on the next calendar day after the commissioner issues the declarative ruling, or after any appeal of the declarative ruling is complete. The commissioner shall adopt rules pursuant to RSA 541-A relative to the declaratory

ruling process, including, but not limited to, an allowance for timely intervention of an aggrieved party. A municipality shall furnish the commissioner with a copy of any non-confidential appeal decision on any land use application involving whether or not a municipality's definition or policy on agritourism conflicts with RSA 21:34-a. (Emphasis added)

If you have any questions please let me know.

Terry M. Knowles
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-----Original Message-----

From: Jim Maggiore [<mailto:jmaggiore@northhampton-nh.gov>]
Sent: Monday, April 15, 2019 11:23 AM
To: Knowles, Terry
Subject: Complaint about Morris Lamprey easement in North Hampton

Dear Ms. Knowles.

Thank you so much for your time today to explain the process for resolving complaints about conservation easements.

The specific request of a town resident is for the Select Board to appoint one of its members to "investigate the theft of North Hampton's Conservation Easements". This request comes on the heels of a complaint about a possible violation on the Morris Lamprey easement. The complaint was investigated by the Conservation Commission. The Commission decided there was no violation of the terms of the easement.

My question is does the North Hampton Select Board have a responsibility to "investigate theft of North Hampton Conservation Easements"? Or, is there a specific process that a resident should follow that

falls outside the role and responsibility of the Select Board?

Thank you.

Jim Maggiore

----- Original Message -----From: WILLIAM GOSSELIN <bgosselin5@comcast.net>

To:

Date: March 10, 2019 at 5:37 PM

Subject: [Copy] Fwd: March 12, 2019 C.C. Meeting

Dear Conservation Commission,

I am asking the C.C. (Conservation Committee) for the opportunity to approach the C.C. at the Tuesday, March 12, 2019 meeting on the contents of this letter. If my request is rejected, I am asking for this letter to be read into the record at the meeting.

The attachments are two different parties that were held at the barn located on the Lamprey Conservation Property. The barn is being used for non agricultural use which is in violation of the Lamprey Deed.

1) On or about June 15, 2018 the first photo shows a forty-nine passenger coach bus, which is to right of the barn. The cars parked on the conservation property were overflows from the field for parking on the west side of 54 Atlantic Ave.

This is the June 15, 2018 party the conservation easement chairman, Mr. Vorkink, stated to Assistant Attorney General of Charitable Trusts, Mr. Donovan, did not happen.

The owners claimed the easements are not being violated because the violations are for agriculture. The eight or nine sheep have been leased during the summer months for the last two years, and Mr. Vorkink's satellite photo of corn to Mr. Donovan, is from 2016. There were no crops visible from Atlantis Ave. or Rt. 1A in 2018.

2) On or about October 11, 2018, the other photos show the interior of the barn during an event. The owner is visible in the third interior photo. One video spans the southern interior of the barn showing a band performing in front of three large glass garage doors overlooking the marsh and ocean. Candles are lit throughout this "agricultural barn" and an eight foot vertical gas fireplace is the forefront of pictures on the west side wall. The north side exposes large animal heads hanging on the wall and the northeast side of the barn, the toilet in the bathroom. Unless the sheep are pot-ti trained, the approved septic system was based on deceptive information (human waste could be considered "animal waste"). In the center, a long table under chandeliers being catered by professionals as depicted in the photos. The pictures prove that the description of the video is reliable. There is absolutely no doubt that the photos and video of the interior is in violation of the Lamprey Easements to barn and property and should be restored as per Sect. 6A, 6B & 6C of the Lamprey Deed.

At the 2017 Deliberative Session and the January 8, 2019 select board meeting, Mr. Perkins claimed to reside at 54 Atlantic Ave. The owners reside in a 7,550 square foot estate to the right of 54 Atlantic Ave. and are away during part of the winter. However, their adult son is around if an inspection is needed.

Two town officers, including the former Conservation Committee Chairman, violated state laws (RSA 91A:3, 91:2, and 91A:211(d) to cause the permanent forfeiture of this gift to the residents and visitors to North Hampton. During the April 10, 2017 select board meeting the town officers actions were brought to the attention of the select board. The C.C. Chairman resigned ten days after the select board meeting and shortly after the town administrator resigned.

The Lamprey Conservation Easements are intended for all residents and visitors in perpetuity, not for the benefit of two.

Based on the following:

• Residents statements that the barn was, and is intended for private parties.

• During the 2017 Deliberative Session, Mrs. Perkins stated that she told me it would be a great barn for parties.

• Residents complaints to the C.C. and Select Board.

• Photos of two private parties.

• Video of one of the parties in the hyper-link at the top of this page.

• There is no doubt that there are numerous violations to the Lamprey Conservation Easements and a ruling based on the facts is in order.

Please let me know the Commission's decision.

Regards,

William J. Gosselin



<https://www.facebook.com/renee.plummer.7/videos/10155797202371451/?t=18>





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April 5, 2019

Via Email and U.S. Mail

Andrew Vorkink
Chair, Subcommittee on Easements
North Hampton Conservation Commission
233 Atlantic Avenue
North Hampton, NH 03862

Re: 54 Atlantic Avenue; D. Morris Lamprey Conservation Easement

Dear Mr. Vorkink and Members of the Conservation Commission:

I write on behalf of Al and Donna Perkins, the owners of property at 54 Atlantic Avenue (the "Property" or "54 Atlantic Avenue") which is subject to the D. Morris Lamprey Conservation Easement (the "Easement"). I appreciate this opportunity to respond to disparaging allegations raised by William Gosselin in his March 10, 2019 email to the Commission, and by R. Casey O'Kane in a March 19, 2019 letter that appeared on SeacoastOnline.com. Those allegations concern the Perkins' generosity in allowing the UNH School of Agriculture, and a charity that provides suicide prevention services to war veterans, to use their barn to hold two small, private fundraising events.

To start, I feel compelled to observe that it is indeed unfortunate that Gosselin and O'Kane have chosen to renew the vindictive and self-serving course of conduct that they began over five years ago. Relying on the false premise that the Property must remain, in perpetuity, in an undisturbed and unimproved state, Gosselin and O'Kane have sought to denigrate the Commission and the Perkins for uses of the Property that are expressly allowed by the Easement.

The Property is a farm. It is and has been used by the Perkins to raise animals, grow crops, store farm equipment, and conduct other permitted agricultural and recreational uses. It cannot be emphasized enough that the Easement unequivocally permits a broad scope of commercial and non-commercial agricultural uses, as well as recreational activities and the construction of barns and other structures attendant to those uses. It also bears emphasis that this is private land; Gosselin and O'Kane have no grounds demand that the Perkins obtain prior approval before setting foot on their land.

Gosselin and O'Kane's past objections to uses that clearly comport with the Easement have been uniformly and emphatically rejected. In 2014, Gosselin and O'Kane publically condemned the Commission and other Town officials for allowing the erection of a small barn on the Property – a use clearly allowed under the plain language of the Easement. In March 2015, the Commission

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HINCKLEY, ALLEN & SNYDER LLP, ATTORNEYS AT LAW

appropriately rejected Gosselin and O’Kane’s objections and reaffirmed that the Perkins’ uses of the Property fall squarely within the scope of the Easement.

Undeterred, Gosselin and O’Kane next filed a complaint with the NH Attorney General’s Office to accuse the Commission of being derelict in its duty to enforce the Easement. On July 24, 2015, the Attorney General’s Office issued a detailed report which rejected that complaint and concluded, *inter alia*, that the Commission’s decision “*reflects a careful consideration of the language of the easement the conservation values contained therein and the Current Owner’s reserved rights to conduct agricultural activities.*” On November 25, 2015, after O’Kane and Gosselin continued to challenge the Commission’s conduct and motives, the Attorney General’s Office issued a second report that again upheld the Commission’s decisions and concluded, in equally emphatic terms, that all of the Perkins’ uses of the Easement, including the planting of trees and construction of a septic system for the barn, complied fully with the Easement. The Attorney General was clear that it would not entertain any further complaints from Gosselin and O’Kane, noting it had “reviewed and reported twice” on the matter and planned to “close [its] file.”

Still unwilling to stand down, in 2017, O’Kane and Gosselin advanced a warrant article that called for a vote to remove of the barn. They did this even after the Town’s counsel properly concluded that the requested relief was unlawful and unconstitutional. Not surprisingly, the warrant article failed.

Given these prior rulings, one might well question Gosselin and O’Kane’s motives in persisting with their public and personal attacks against the Commission and the Perkins. Perhaps they view these actions as sport. But for the Perkins – and, undoubtedly, the Commission, the Town, and its taxpayers – the time, money, and effort required to respond to this conduct has been enormous.

1. The Easement

I recognize that the Commission is familiar with 54 Atlantic Ave and the neighboring land, which historically has been used for farming, equestrian activities, dairy operations, and other agricultural and recreational purposes.

I also recognize that the Commission may be familiar with the Easement. There is no question that the Easement does not require or even contemplate that the Property be maintained in an unaltered and unused state. Instead, the Easement contemplates use of the Property for a broad range of agricultural, recreational, and horticultural activities.

In brief, the Easement:

- Expressly permits “agricultural” activities, defined to include “agriculture, animal husbandry, floricultural and horticultural activities; and the production of plant and animal products for domestic or commercial purposes.” See **Tab 1**, Easement, § 1(A)(i).

- Expressly allows for the construction of “ancillary structures or improvements,” to include a “a road, drainage ditch, dam, fence, culvert, barn, or shed,” as “necessary in the accomplishment of on-site, land based agricultural, conservation or non-commercial outdoor recreational uses of the Property,” provided such uses are “not detrimental” to the purposes of the easement. Id. at §1(C).
- Expressly allows for the removal, filling, or “other disturbances of the soil surface” when necessary “in the accomplishment of the agricultural ... uses of the Property.” Id., § 1(D)(i).

2. The Perkins’ Preservation and Use of the Property

Under the Perkins’ stewardship, the Property has been preserved as a beautiful working farm that is perfectly in keeping with the Easement and the historic uses of land in this area. As noted, in 2014 the Perkins relocated a 120 year old barn to the Property. They then fully restored the structure, for example by replacing aluminum siding with wooden clapboards and reconstructing horse stalls, while preserving its original timber beam construction.

The Perkins also have harrowed, fertilized, and reseeded the pastures, which have been harvested for hay and used to grow corn, millet, and pumpkins. The Property and barn also are and have been used to keep a variety of farm animals, including horses, goats, pigs, and sheep.

3. Groundless Complaints by Gosselin and O’Kane

The most recent allegations by Gosselin and O’Kane concern the Perkins’ donating use of the barn for two non-profit organizations to hold small fundraising events. In June 2018, the Perkins allowed the UNH School of Agriculture to use the barn to hold a dinner. Then, in October 2018, the Perkins allowed “Veterans Count,” an Easter Seals organization committed to providing support and suicide prevention services to returning war veterans, to use the barn host a second small fundraising dinner.

The Perkins received no payment of any kind in return for supporting these worthy organizations. Neither event harmed the Property, marred the land, or resulted in any activity that – to any reasonable person – could remotely be characterized as offensive or disruptive. Gosselin and O’Kane have badly (and, apparently, deliberately) mischaracterized the two charitable events held at the barn. Let me state in no uncertain terms: those non-commercial events were entirely in line with permitted agricultural and recreational uses of the Property as those uses are defined in the Easement and New Hampshire law.

The Easement states “[t]he Property shall be maintained in perpetuity without there being conducted thereon any industrial or commercial activities, except agriculture.” Under New Hampshire zoning and land use law, “[t]he word[] ‘agriculture’ . . . mean[s] all operations of a farm,” including “[a]ny practice on the farm incident to, or in conjunction with such farming operations.” RSA 21:34-a. Such farming operations include “attracting visitors to a farm to attend events and activities that are accessory uses to the primary farm operation, including but

not limited to, eating a meal, making overnight stays, enjoyment of the farm environment, education about farm operations, or active involvement in the activity of the farm.” Id.

In the same bill adopting the above statutory definition of “agriculture,” the legislature also effected a broad change to general court’s “Declaration of Purpose” in the statutory chapter pertaining to Planning and Zoning. See 2015 N.H. SB 345. In relevant part, the Declaration of Purpose now reads as follows:

Agritourism, as defined in RSA 21:34-a, is undertaken by farmers to contribute to both the economic viability and the long-term sustainability of the primary agricultural activities of New Hampshire farms. Agricultural activities and agritourism shall not be unreasonably limited by use of municipal planning and zoning powers or by the unreasonable interpretation of such powers;...

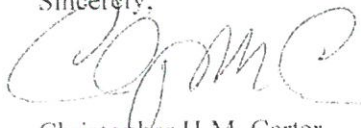
RSA 672:1, III-b. The section continues it would be “unreasonable” for local land use authorities to fail to “recognize that agriculture and agritourism as defined in RSA 21:34-a . . . are traditional, fundamental and accessory uses of land throughout New Hampshire.” Id. at III-d. Finally, in the portion of New Hampshire’s statutes addressing “Agricultural Uses of Land,” the legislature added a new provision, entitled “Agritourism Permitted,” which reads “Agritourism, as defined in RSA 21:34-a, shall not be prohibited on any property where the primary use is for agriculture. . . .” RSA 674:32-d.

The above legislative enactments make abundantly clear New Hampshire’s policy in favor of welcoming community members onto agricultural lands for the purposes of entertainment and education. Mr. Lamprey, perhaps ahead of his time in this regard, too appreciated the importance of agricultural land and thus dedicated the Property, in perpetuity, for the very same purposes. The events held on the Property were not only permitted under the Easement and New Hampshire law, but were consistent with the letter and spirit of Mr. Lamprey’s bequest.

In conclusion, the Perkins’ use of the Property comports with the Easement and, further, has greatly enhanced the community’s ability to appreciate the scenic quality and historical character of this land. I respectfully request that the Commission issue a finding that not only rejects the most recent allegations by Messrs. Gosselin and O’Kane in the most emphatic terms possible, but also will deter any continued attempt to use this Commission as a platform to air baseless and damaging allegations against the Perkins and Town Officials.

Should the Commission have any questions, please do not hesitate to contact me.

Sincerely,



Christopher H.M. Carter
CHMC/smc

1. of 7 PAGE **To Restore the Morris Lamprey Conservation Easement**

The purpose of this Article is to protect the gift made by Morris Lamprey to preserve in perpetuity the views of the general public.

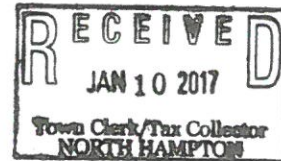
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Shall the Town of North Hampton vote that with respect to the ongoing development of the Morris Lamprey Conservation Easement that the decisions of the Conservation Commission and the Select Board be reversed and that the Conservation Commission and the Select Board shall cause the removal of structures, imported soil, sand, trees, septic system, artesian well, and restore the topographical state to the conditions that existed at the time of Morris Lamprey's gift to the Town. The corrections shall be the responsibility of the property owner as set forth in the Morris Lamprey Conservation Easement: Section 6, paragraph C.

By Petition, the undersigned approve this submission:

	Printed Name	Signature	Street Address in North Hampton, NH 03862	email
1	SUGAN LAWLOR	<i>[Signature]</i>	32 MAPLE Rd.	
2	Abigail Lawlor	<i>[Signature]</i>	32 Maple Rd	
3	Meredith Loyd Marshall	<i>[Signature]</i>	71 Woodland Rd	
4	Thomas A. Marshall	<i>[Signature]</i>	71 Woodland Rd	
5	BRENDON S. Mac MATTON	<i>[Signature]</i>	17 WALNUT AVE	
6	James P. Weldon	<i>[Signature]</i>	17 ATLANTIC AVE	
7	Ann Larkey	<i>[Signature]</i>	17 Atlantic Ave	

Signatures Continued on Back Side of this Page



2:45 pm



	Printed Name	Signature	Street Address in North Hampton, NH 03862	email
8	Virginia Weldon	<i>m v Weldon</i>	74 Atlantic Ave	
9	WALLACE KILGORE	<i>Wallace Kilgore</i>	220 ATLANTIC AVE	
10	KATHLEEN M KILGORE	<i>Kathleen M Kilgore</i>	2020 ATLANTIC AVE	
11	KRISTEN REINHARDT	<i>Kristen Reinhardt</i>	72 Exeter Road	
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3-25-97 1700

To Restore the Morris Lamprey Conservation Easement

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By Petition, the undersigned approve this submission:

	Printed Name	Signature	Street Address in North Hampton, NH 03862	email
1	William J. Gosselin	William J. Gosselin	2 MAPLE RD	
2	JOANT. JONES	Joan T. Jones	5 MAPLE Rd	
3	Teresa T Thomson	Teresa T Thomson	26 Ocean Blvd	
4	Sue P Ingram	Sue P. Ingram	42 Atlantic Ave.	
5	Brady Amerson	Brady Amerson	47 Atlantic Ave	
6	Jan Gosselin	Jan Gosselin	2 Maple Rd.	
7	Donald E. Worth	DONALD E. WORTH	57 ATLANTIC AVE	

Signatures Continued on Back Side of this Page

	Printed Name	Signature	Street Address in North Hampton, NH 03862	email
8	BARBARA WORTH	<i>Barbara Worth</i>	57 Atlantic Ave	
9	Angus Gorman	<i>Angus Gorman</i>	41 Atlantic Ave	
10	NICHELE COUGHLIN	<i>Nichile Coughlin</i>	79 SOUTH ROAD	
11	JOHN F. COUGHLIN	<i>John F. Coughlin</i>	79 SOUTH ROAD	
12	TOM MORSE	<i>Tom Morse</i>	8 SYLVAN RD.	
13	JANE MORSE	<i>Jane Morse</i>	8 SYLVAN RD.	
14	G. Fogwell	<i>G. Fogwell</i>	3 SPRUCE MEADOW DR	
15	MARK HANSON	<i>Mark O. Hanson</i>	98 ATLANTIC AVE	
16	VICKI HANSON	<i>Vicki O. Hanson</i>	98 ATLANTIC AVE	
17	CARDINE FIELD	<i>Cardine Field</i>	40 ATLANTIC AVE	
18	RIVALDO PONDORACE	<i>Rivaldo Pondorace</i>	8 MURPHY RD.	
19	RICHARD CASEY O'KANE	<i>R. Casey O'Kane</i>	47 ATLANTIC AVE	
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1 OF 3 PAGES To Control Development of Conservation Land

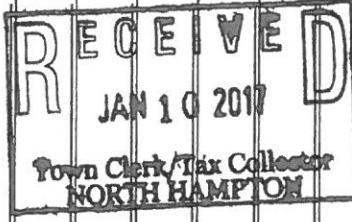
The purpose of this Article is to protect Conservation Land by respecting the intent of grantors thereof, if any, and the interests of the citizens of North Hampton.

On petition of 25 registered voters of North Hampton, shall North Hampton vote that any development of or changes to any Conservation Land owned or controlled by North Hampton or otherwise designated by North Hampton as Conservation Land be subject to all of the following provisions:

1. said development or changes shall be reviewed by a Review Board for ultimate approval;
2. said Review Board shall consist of 1 member from each of the Planning Board, Zoning Board of Adjustment, and Conservation Commission as well as 1 member from the Select Board and the Building Inspector;
3. notices of all Review Board meetings shall be posted at the Town Offices, the Town Clerk's office, the Town Hall, the Town Library and the Town website, and sent by US Registered Mail to all abutters to the Conservation Land, at least 5 days before said meeting;
4. said notices shall describe the development or changes and the Conservation Land by its location, commonly known address or name as well as its tax map designation;
5. all meetings shall be open to the public allowing public participation and be broadcast live on Channel 22, recorded and preserved as required by statute;
6. all meetings minutes shall be taken by a duly appointed secretary and be available for public review within 5 business days of the meeting;
7. there shall be no closed door meetings, private understandings or private deliberations;

By Petition, the undersigned approve this submission:

Printed Name	Signature	Street Address in North Hampton, NH 03862	email
William J. Gosselin	<i>William J. Gosselin</i>	2 MARPLE RD	
Teresa Thomson	<i>Teresa Thomson</i>	20 Ocean Blvd.	
Sue P. Ingram	<i>Sue P. Ingram</i>	42 Atlantic Ave.	
Emily Ann	<i>Emily Ann</i>	47 GRANITE AVE	
Jan Gosselin	<i>Jan Gosselin</i>	2 Maple Rd.	
BARBARA L WORTH	<i>Barbara L Worth</i>	57 Atlantic Ave.	
DONALD E. WORTH	<i>Donald E. Worth</i>	57 ATLANTIC AVE.	
Angus Gorman	<i>Angus Gorman</i>	41 Atlantic Ave	
MICHELE COUGHLIN	<i>Michele Coughlin</i>	79 SOUTH ROAD	
JOHN F. COUGHLIN	<i>John F. Coughlin</i>	79 SOUTH ROAD	
Tom Morse	<i>Tom Morse</i>	8 Sycamore St	
Jane Morse	<i>Jane Morse</i>	8 GYLAN RD.	
B. Feagwell	<i>B. Feagwell</i>	3 Spruce Meadow Ln	



Signatures Continued on Back Side of this Page

3 OF 3 PAGES (To Control Development of Conservation Land)

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By Petition, the undersigned approve this submission:

Printed Name	Signature	Street Address in North Hampton, NH 03862	email
1 Suzanne Lawlor	<i>Suzanne Lawlor</i>	32 MAPLE RD	
2 Abigail Lawlor	<i>Abigail Lawlor</i>	32 Maple Rd	
3 Meredith Boyd Marshall	<i>Meredith Boyd Marshall</i>	21 Woodland Rd	
4 Thomas A. Marshall	<i>Thomas A. Marshall</i>	71 Woodland Rd	
5 Brendan S. MacMaffon	<i>Brendan S. MacMaffon</i>	17 Walnut Ave	
6 Drew P. Wagon	<i>Drew P. Wagon</i>	17 Atlantic Ave	
7 Ann Larkey	<i>Ann Larkey</i>	17 Atlantic Ave	
8 Virginia Weldon	<i>Virginia Weldon</i>	14 Atlantic Ave	
9 WALIA KECOME	<i>Walia Kecome</i>	220 ATLANTIC AVE	
10 KATHLEEN M. KILGORE	<i>Kathleen M. Kilgore</i>	220 ATLANTIC AVE	
11 Melissa Winder	<i>Melissa Winder</i>	25 Atlantic Ave	
12 KRISTEN REINHARDT	<i>Kristen Reinhardt</i>	72 Exeter Road	
13			

1 of 4 PAGES

To Make the Conservation Commission an Elected Rather Than Appointed Body

The purpose of this Article is to protect the public by making the Conservation Commission an Elected Rather than Appointed Body.

On petition of 25 registered voters of North Hampton, shall North Hampton vote that the members of the Conservation Commission be elected by the public rather than appointed by the Select Board.

By Petition, the undersigned approve this submission:



Printed Name	Signature	Street Address in North Hampton, NH 03862	email
1 RICHARD CASEY O'KANE	<i>[Signature]</i>	47 APRANTIC AVE	caseyokane@gmail.com
2 WALLACE KILGORE	<i>[Signature]</i>	220 ATLANTIC AVE	WALLY.KILGORE@gmail.com
3 DANIEL KILGORE	<i>[Signature]</i>	220 ATLANTIC AVE	Dan.kilgore@gmail.com
4 MATHEW KILGORE	<i>[Signature]</i>	220 ATLANTIC AVE	
5 ALANNA BOYD	<i>[Signature]</i>	9 Pine Road	
6 DONALD WIRTHAM	<i>[Signature]</i>	9 Pine Road	
7 MICHAEL KOTZEN	<i>[Signature]</i>	180 ATLANTIC AVE	MIKOTZEN@COMCAST
8 JENNIFER KOTZEN	<i>[Signature]</i>	180 Atlantic Ave	kotzenj@comcast.net
9 CHRISTINE LAMBERT	<i>[Signature]</i>	151 SO. Rd.	
10 ANNE LAVERGNE	<i>[Signature]</i>	151 So. Rd	
11 DELBRES CHASE	<i>[Signature]</i>	32 Pine Road	
12 GEORGE CHASE	<i>[Signature]</i>	32 Pine Road	
13 ADRIAN CHIMNEY	<i>[Signature]</i>	28 Hobbs Rd	George 28@comcast.net
14 ADRIAN CHIMNEY	<i>[Signature]</i>	28 Hobbs Rd	

(over)

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1 DONALD E. WERTH		57 ATLANTIC AVE.	
2 BARBARA L. WERTH		57 ATLANTIC AVE	
3 SUSAN LAMMOR		32 MAPLE RD	
4 ABIGAIL LAMMOR		30 MAPLE RD	
5 Meredith Boyd Marshall		71 Woodland Rd.	
6 Thomas A. Marshall		71 Woodland Rd.	
7 James P. C. O'Dea Jr		17 Atlantic Ave	
8 Ann Parker		17 Atlantic Ave	
9 Virginia Weldon		34 Atlantic Ave	
10 William Wether		20 Atlantic Ave	
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4 of 4 PAGES (35 SIGNATURES)

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1	Barbara Anderson		47 Amherst Ave	
2	Jan Gosselin		2 Maple Rd.	
3	Donald E. North		57 ASPEN AVE.	
4	Rebecca North		57 Atlantic Ave.	
5	Scott Gorman		41 Atlantic Ave.	
6	Angus Gorman		41 Atlantic Ave	
7	William T. Gosselin		2 Maple Rd.	
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Re: North Hampton: SB member serving on the Conservation Commission

Jim Maggiore

Tue 4/2/2019 2:35 PM

To: Legal Inquiries <legalinquiries@nhmunicipal.org>;

Perfect. Thank you. I should have thought to check *Robert's Rules* first.

Jim

From: Legal Inquiries <legalinquiries@nhmunicipal.org>
Sent: Tuesday, April 2, 2019 2:32:46 PM
To: Jim Maggiore
Subject: North Hampton: SB member serving on the Conservation Commission

Good Afternoon Jim:

In order to provide general guidance only, and not to state binding legal principles, the time for making a motion to reconsider in a Standing Committee (such as the Select Board) is addressed in *Robert's Rules of Order* (11th Edition) pp 329 ll. 30-35:

A motion to reconsider a vote in the committee can be made and taken up regardless of the time that has elapsed since the vote was taken, and there is no limit to the number of times a question can be reconsidered.

Stephen C. Buckley
Legal Services Counsel
NH Municipal Association

From: Jim Maggiore <jmaggiore@northhampton-nh.gov>
Sent: Tuesday, April 2, 2019 1:40 PM
To: Legal Inquiries <legalinquiries@nhmunicipal.org>
Subject: Re: North Hampton: SB member serving on the Conservation Commission

Last question. I think.

If a motion made at a selectboard meeting happened more than one fiscal year and calendar year prior, does the select board need a motion to reconsider or can a new motion simply be made?

Thanks so much.

Jim Maggiore

From: Legal Inquiries <legalinquiries@nhmunicipal.org>
Sent: Tuesday, April 2, 2019 1:33:02 PM
To: Jim Maggiore
Subject: North Hampton: SB member serving on the Conservation Commission

Good Afternoon Jim:

RSA Chapter 36-A, Conservation Commissions, is silent on whether a Select Board member can be appointed to the Commission. Since the Select Board is the appointing authority, the Select Board could appoint one of its own to the Commission if it wanted to. The person so appointed would be a full member of the Conservation Commission. On the other hand, if the Select Board just wanted to appoint a liaison to the Conservation Commission, the liaison appointee from the Select Board would not be a full voting member of the Commission.

Stephen C. Buckley, Legal Services Counsel

NH Municipal Association
25 Triangle Park Drive
Concord NH 03301
Tel: (603) 224-7447 or
1-800-852-3358
Email: legalinquiries@nhmunicipal.org

From: Jim Maggiore <jmaggiore@northhampton-nh.gov>
Sent: Tuesday, April 2, 2019 12:36 PM
To: Legal Inquiries <legalinquiries@nhmunicipal.org>
Subject: SB member serving on the Conservation Commission

Hello again.

If an SB member elects to serve as a representative to the Conservation Commission, is that member automatically an *ex officio* member of the Commission? Of can the SB representative be designated to serve in a non-voting capacity?

Thanks.

Jim Maggiore
Chair, North Hampton Select Board

North Hampton: SB member serving on the Conservation Commission

Legal Inquiries <legalinquiries@nhmunicipal.org>

Tue 4/2/2019 2:32 PM

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Tel: (603) 224-7447 or
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