

Open Space Committee notes, 3-22-2006 approved 5-3-06

Attendees

Anne Madden (chair)	Dawne Fusco
Don Bourquard	Jean Lambert
Patricia Reeser	Mike Mokrzycki

Topics:

- Berkenbush conservation restriction
- Next meeting

Berkenbush conservation restriction

Dick Berkenbush appeared before the OSC to describe the proposed conservation restriction on his property and to answer questions.

The proposal is for the town to buy the development rights to the property for \$200,000 and to accept Farm Lane and another right-of-way to the property as town roads. (The roads were approved as part of a subdivision approval around 1970 but the town never accepted the roads as public ways). Berkenbush said Gary Bill has estimated the cost to grind the surface and rebuild Farm Lane at \$42,000; the other ROW is hot-topped already.

The property would continue to be used for farming, which would keep the land clear from being grown in.

Trails would be maintained for public access for passive recreation. Berkenbush showed proposed trails on a plot plan. Most of the trails exist; a new one would be built in the lower meadow by the Merrimack River bank. The CR would include 800-900' of river frontage, which is considered bald eagle habitat (eagles nested last year about 500' away near Rivercrest Drive).

Berkenbush showed an alternate conceptual plan by Woody Cammett that would subdivide the property into seven building lots. He said the lawyers doing estate planning for his family estimate the property is worth \$3-5 million. He said the family wishes to settle this matter as quickly as possible for estate planning purposes and to avoid a forced sale.

Annie Madden asked where parking would be for the CR area. Berkenbush said parking is possible along the sides of Farm Lane, with more parking available nearby at the Pentucket schools and on Rivercrest Drive.

A member of the public asked about the status of early planning for potential development of the property. Berkenbush said no percs have been done yet but wetlands have been flagged. He said there is some question about whether a brook on the property might be considered a stream.

Berkenbush said his daughter, part owner of the property, has hired a professional land planner to do an in-depth plan to determine for federal tax purposes the value of the property if it were to be fully developed. Rob Philips asked Berkenbush if the Cammett has indicated if the property is *not* developable and Berkenbush said not only does Cammett see it as developable but several developers have approached Berkenbush since the potential CR became public and have told him that as riverfront property, it could be worth as much as \$1 million a lot.

Berkenbush estimated that if the property were subdivided to seven house lots and if taxes were \$7-8,000 per lot, the town would break even if there were an average of one child per property but it would cost the town \$50,000 per year in school costs if there were an average of two children per house.

Patricia Reeser asked whether in light of the situation with the school budget, would Berkenbush be open to a mortgage from the town so the payout would be spread over a period of years. Berkenbush said he is not opposed to that but that Tracy Blais wants to finance the purchase out of free cash.

There was discussion of the restrictions within the CR. Berkenbush said the main restrictions are that the property could be used only for passive recreation, scenic preservation of natural resources and for continued agriculture. He said he also insisted that there be a picnic area on the knoll. Motorized vehicles would be prohibited except for agricultural or emergency purposes. No structures could be built on the property.

Annie noted that as a hiking destination the property is an enormous resource. She called the CR a remarkable opportunity for the town. Don Bourquard noted how trails from the property would link to other trails in the area.

Berkenbush noted that Essex County Greenbelt is quite interested in this CR and there is language in the draft that would give the town the flexibility to turn the CR over to Greenbelt.

John McGrath asked if the CR requires the property to be kept in agriculture. He said he believed the Gowen CR requires the field to be kept open and mowed by the landowner. Rob Philips said the CR seems to give the grantor the right to farm but not to require it. Patricia Reeser asked to consider ways to provide incentives for future owners of the property to keep the land in agriculture or otherwise prevent it from being grown in – perhaps by giving the town the right to create additional trails if the fields aren't used for farming anymore. Berkenbush noted that the CR allows the grantor and grantee to amend the document at any time.

In response to a question about potential liability, Berkenbush noted that state law provides an exemption from liability for open space covered by a CR.

Next meeting

The committee scheduled the next meeting for Monday, March 27, at 8 p.m. (After the meeting this subsequently was revised to and posted for a 7:45 p.m. start so the committee could attend the 8 p.m. Board of Selectmen meeting re the Berkenbush CR.