

Atkinson Conservation Commission Minutes
Wednesday, December 23, 2020, 7:00 PM
Non-Public Session
Via Zoom (no physical venue)

Sealed in public session December 23, 2020

Approved January 27, 2021

Unsealed February 24, 2021

Members Present:

Paul Wainwright, Chair
Bill Steele, Vice Chair
Jeff Nenart
Denise Legault
Dennis Krause
Pete McVay
Scott Kukshel
Suzie Newman (Alternate)

Others Present:

Bob Worden, Selectmen Liaison

8. Non-public discussion under NH RSA 91-A:3 II(I) for consideration of legal advice

Chair Wainwright stated that he spoke with the Town's attorney and the recommendation was to continue surveying the area to ensure that the Town has a plan moving forward. According to surveyor Tim Lavelle, the markers have all been placed on the property lines but he is still documenting the boundaries on paper. Chair Wainwright stated that he found a paper in the files indicating that this was a bargain sale by Ruth Marshall. Ruth was offered \$105,500.00 for the land by the Commission but she accepted a price of \$52,750, which equates to half. When asked her reasoning for accepting just half the full amount, she responded that she "wants to see the land remain as open space." Since this was a bargain sale, the Charitable Trust Division of the Attorney General's office stated that the Commission has a fiduciary responsibility to preserve the land as initially intended – in this case, the land must remain as open space.

Chair Wainwright stated that his heart and his mind are conflicted in this case because the Bibeau family has lived here for so long but the land has been used and trees have certainly been cut during that time. Chair Wainwright continued that although his heart says to be lenient, his mind says that the Commission has a responsibility to carry out, both because of the Bargain Sale, and the language in the deed, which reads as follows:

The property herein described has been acquired with federal Land and Water Conservation Fund assistance under New Hampshire project number 3300363, and cannot be converted to other than public outdoor recreation use without the written approval of the Secretary of the U.S. Department of the Interior.

Chair Wainwright asked the Commission for comment. Member McVay asked if we should utilize the resources at the Commission's disposal such as our State Representatives to gain approval for converting the land, and Chair Wainwright stated that it's an option but it's not something he'd support. Vice Chair Steele reiterated the initial intention of the sale of the land (to remain as open space) and reminded the Commission that they are the guardians of trying to preserve the original owner's wishes. Member Krause reminded the Commission that this land has been this way for thirty years and the current owners were born into this situation. Member McVay asked if there was a statute of limitations on such situations to which Chair Wainwright responded that there is not because municipal land is not subject to laws of adverse possession. Vice Chair Steele stated that the most the Commission could legally do is to be lenient with the timeline of when the current owners need to vacate the land to let it return to its natural state. Member Nenart suggested planting a row of trees along the property line so proper boundaries are marked.

Member Krause asked about the taxes the Bibeaus have paid for their storage shed, and Vice Chair Steele stated that the homeowners pay taxes on the shed itself, which they use; they did not pay additional land taxes for the land where the shed sits. Member Legault asked if there was any new information on the location of the septic tank, and Chair Wainwright stated that it is still unclear where the tank sits. Chair Wainwright continued that whether the septic tank is on Town land or the Bibeau's land, its close proximity to the nearby lake is another issue entirely that will need to be resolved by the State.

Chair Wainwright stated that he is hoping to have all of the information together by the January Commission meeting in order to present it to the Selectmen for enforcement. Selectmen Liaison Worden stated that he agrees with that plan and stated the importance of resolving this matter because of the possible precedent it might set with other residents.

Chair Wainwright then shared a map of the Marshall Town Forest and highlighted the problem area. Chair Wainwright continued that the problem is bigger than they initially anticipated. For one thing, the Land and Water Conservation Fund examined aerial photographs of the area and inquired about the Foley family dock that has also been a long-standing encroachment issue because of its location.

Chair Wainwright then shared a slideshow of photographs of the various property boundaries to illustrate the extent of the encroachments. These photographs are attached to these minutes. Chair Wainwright highlighted some issues on nearby lots of land that are also encroaching on Town land; a brush dump area that is located right on top of a seasonal stream, some junk and debris piles, a firearm shooting range, as well as some recreational vehicle & boat storage. Chair Wainwright continued by showing the firepit on the Bibeau's land which had an unattended smoldering fire the morning that he went out there to view the property. Chair Wainwright also showed photographs of recent tree cutting activity in this area. According to consulting forester Charlie Moreno, this

relatively recent tree cutting activity shows that the homeowners on these lots have continued to expand their backyards, and that absolutely needs to stop.

Chair Wainwright showed a photograph of the Foley family dock to illustrate their encroachment issues as well. The Foley's claim the dock is not moored to the land but the Land and Water Conservation Fund administrators have stated that regardless of mooring, it is placed in front of land that the Foley's do not own, which is against the law. Vice Chair Steele asked if the Commission had any markers that they could place to at least spread the awareness that what these handful of homeowners is doing is illegal, and Chair Wainwright agreed that it was a good start. Chair Wainwright continued that in January the Commission should approve a recommendation for the Selectmen to enforce.

Vice Chair Steele brought up the point that the Commission may want to look at the boundaries of other Town lands to see if there are any other encroachment issues that haven't yet come to light. Chair Wainwright stated that he isn't aware of any other similar issues but the Commission hasn't quite circumnavigated the Town lands as well as they should have; they are currently working on this effort. Member Krause stated that the Commission may want to look at the Stickney Land just based on the way it's laid out, and Chair Wainwright agreed. Member Krause suggested looking at the Sawyer Land as well, Chair Wainwright stated that they could take a look but the stone walls on the property would certainly make it more difficult to unknowingly encroach upon that Town land.

Member Krause asked if it is the Commission's responsibility to monitor property boundaries like this, and Chair Wainwright confirmed that it is. Member Krause then asked about the frequency with which this responsibility should be carried out, Chair Wainwright stated that the Land and Water Conservation Fund is tasked with monitoring these boundaries every five years, but the monitoring they normally do wouldn't necessarily pick up the issues the Commission is currently facing. Chair Wainwright stated that, ideally, he'd like the Commission to monitor these boundaries every two years.

Member McVay made a motion to exit the non-public session. Member Legault seconded the motion. Vote: 7/0/0. (The details of this roll-call vote can be found in Attachment B.)

The meeting continued in Public Session.

Respectfully Submitted,

Zachary Gilberti, Recording Clerk

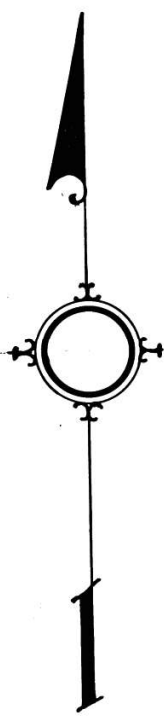
Attachments:

- a. Photographs on encroachments onto the Marshall Town Forest**

CHASE 60± 15± RD
DEAD HEMLOCK
STONE WALL
FRANCESCO J. VALENTE
1817 - 229
411.7±
485±
0.27 AC ±
33.6
152.9

GEORGE SCHWARTZ
1859 - 429
STONE WALL
1175.4±
1184.9

ATKINSON
HAMPSTEAD



ISLAND
POND

FRANK L. RONCHETTI
1220 - 223
19.3±
269.2±
19.3±
409.1

31.90 AC ±
TOTAL ATKINSON = 35.17 AC ±

RUTH L. MARSHALL
1485 - 256
TOTAL AREA = 53.33 AC ±

JOHN C. HANKUS
STEPHEN J. WOITKUN
GEORGE OLSON
R. O. W.
FRANK RINALDO
EDWIN BRIGGS
1682 - 326
TIMOTHY J. CREEDON
1870 - 40
JOHN HANKUS
1870 - 355

ESTHER M. WALKER
1161 - 99
675.7
STONE WALL
292

DONALD L. MURPHY, JR.
2249 - 1993
1102±
TOWN LINE

TOWN LINE BOUND

BOULDER
192.1

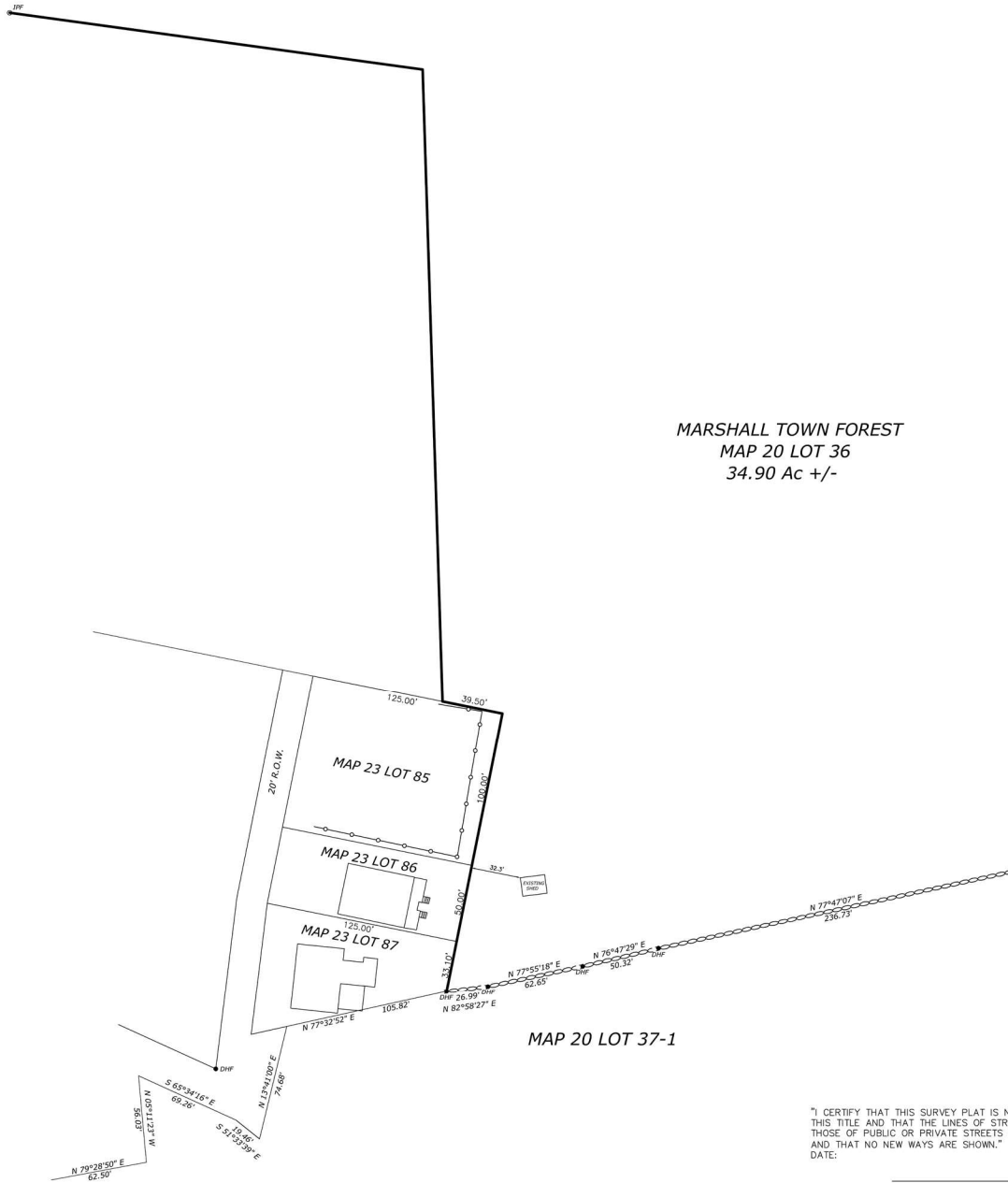
BOULDER COVE ROAD
392.1±
STONE WALL
566.1
174.0±

APPROVED FOR RECORDING
ATKINSON, N. H.
PLANNING BOARD

PLANS OF REFERENCE
 1. "PLAN OF LAND IN ATKINSON, NH AND HAMPSTEAD, NH OWNED BY RUTH MARSHALL."



MARSHALL TOWN FOREST
 MAP 20 LOT 36
 34.90 Ac +/-



**ENCROACHMENT PLAN
 OF LAND IN
 ATKINSON, NH
 MAP 20 LOT 36**

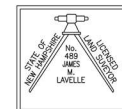
DRAWN FOR

TOWN OF ATKINSON
 19 ACADEMY AVE
 ATKINSON, NH 03811

PREPARED BY

JAMES M. LAVELLE ASSOCIATES
 2 STARWOOD DRIVE
 HAMPSTEAD, NH 03841
 TEL 329-6851

"I CERTIFY THAT THIS SURVEY PLAT IS NOT A SUBDIVISION PURSUANT TO THIS TITLE AND THAT THE LINES OF STREETS AND WAYS SHOWN ARE THOSE OF PUBLIC OR PRIVATE STREETS OR WAYS ALREADY ESTABLISHED AND THAT NO NEW WAYS ARE SHOWN."
 DATE: _____



DATE 11/19/2020
 SCALE 1"=40'

PREPARED BY:
 JAMES M. LAVELLE, LLS
 LICENSED LAND SURVEYOR
 2 STARWOOD DRIVE
 HAMPSTEAD, NH 03841
 TEL(603)329-6851

Map 23 Lot 84
(48 Boulder cove road)



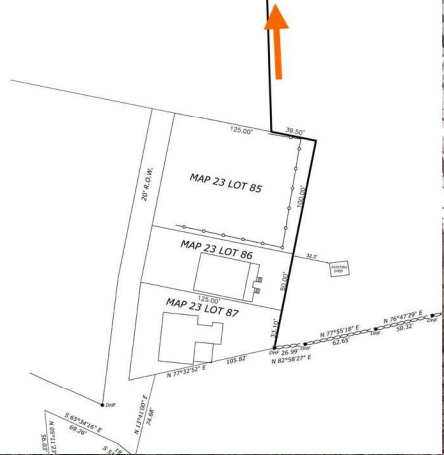
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(48 Boulder cove road)



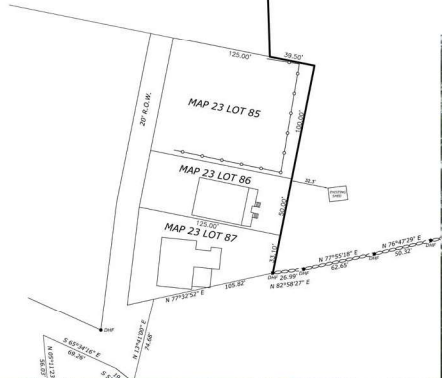
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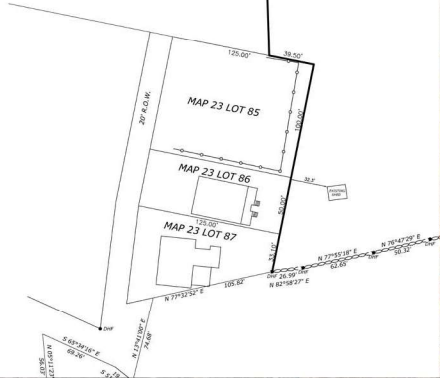
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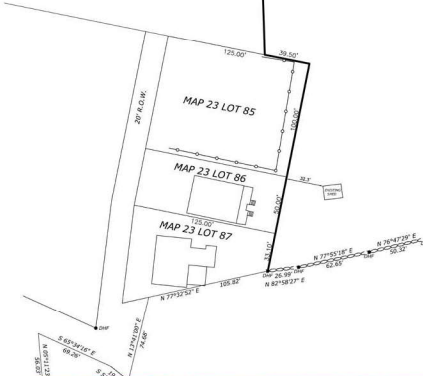
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Map 23 Lot 84
(48 Boulder cove road)



Map 23 Lot 84
(48 Boulder cover road)





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PLANNING BOARD

