

Peterborough Open Space Committee Minutes
April 11, 2016 Meeting
Harlow's Pub 5 p.m.

Present: Ed Henault, Debby Kaiser, Francie Von Mertens

February's minutes were approved.

Ed Henault and Francie Von Mertens attended the annual Saving Special Places conference on Saturday and reported on their sessions.

Of interest is the Forest Society's updating of its boilerplate conservation easement language to reflect changing realities. The Forest Society pioneered conservation easements in 1971 even before the state's enabling legislation, and updates its model easement every 5-7 years.

Three motivators in the changes: effort to help make agriculture viable; climate change; and IRS/court decisions. Clarity also was a goal as terms like "grantor" and "grantee" are being changed to "landowner" and "easement holder"; "The Property" is being changed to "Conservation Area." And so on.

There's increased emphasis on easement land being open to the public, but when questioned Tom Howard said the old standard right of the property owners to post their land will be upheld if that is the owner's desire. Public benefit is one IRS criterion, and public access would meet it. There are other criteria, however, including wildlife habitat, and only one criterion needs to be met for an IRS charitable donation write-off.

To clarify the standard "No commercial operations other than forestry and agriculture," there's a greatly expanded definition of agriculture. Commercial activities like festivals, farm tours and stays, raising dogs bred for herding livestock (not other breeds), etc. Events have to relate to agriculture and be ancillary to agriculture, however, and cannot impair the purposes of the easement (ex. forestry, wildlife habitat).

The easement holder has to give written permission for events (which appears to put the easement holder in a difficult position, especially if a landowner wants to sue the easement holder's interpretation).

Excluded are renting a scenic or productive field for a wedding or other uses intended to generate income but are not inherently agricultural.

Additionally, the prior outright ban on commercial uses other than forestry and ag is being changed to allow "de minimus commercial uses" with the goal of not tying landowners' hands financially. Commercial uses can't negatively impact the purposes of the easement (scenic, farm or forestry, wildlife habitat, a town's master plan regarding natural resources) – all the reasons a landowner qualifies for an IRS deduction when conserving certain natural resource values. The entity holding the easement apparently is put in the position of judging whether a commercial use follows the easement purposes—a good reminder that Peterborough should never take on a conservation easement.

The Forest Society expects to wrap up the revisions soon.

/fvm