



**MILTON CONSERVATION COMMISSION PO BOX 310  
MILTON, NH 03851  
Wednesday, 1/10/2024**

**This is a special meeting with guests Joe and MaryBeth Gustitus.**

**NEW Milton Town Hall 55 Industrial  
Way**

**Meeting**

**ATTENDANCE:**

**Members:** Virginia Long (Chair), Steve Panish, Robert Weiss, Wayne Sylvester, Jeff LeClair

**Alternates:** Sharon Buttrick, Lee Pilkovsky

**Absent:**

**Public:** Joe Gustitus, Ryan Smead and Chief Kraus

1. Ascertain who is present and approve alternates to serves as full members as needed. All members are present.
2. Virginia called the meeting to order at 6 p.m.
3. Discuss plan to resolve encroachments of Gustitus family property from their parcel at Map 38 Lot 69 (end of Micah Terrace) onto town-owned Conservation Land known as the Ball Property, Map 38 Lot 68.

Virginia gave a summary on the history of the Ball property. The first monitoring possibly started in 2012. Darrel Detour was hired to monitor the property first complained of ambiguous boundary in this area between M38 L69 and the Ball property. The MCC hired Prospect Mountain Survey at that time to reestablish the boundary there. As a result of that survey, it was determined that the landowners at that time had some encroachments. There was litter and their dock. A letter was sent to them asking for the stuff to be removed. She replied saying that the litter was cleaned up but needed help moving the dock. It had somehow never been arranged. The MCC had a lot going on at that time and thinks the dock had been pulled up at the time that someone did go out there. The monitor went out and did a baseline addendum and more encroachments were found. The dock wasn't mentioned this time but found that an area was mowed, there was dog waste. A letter was drafted but by the time it was ready to be sent it was time for the property to be monitored again so they decided to wait. The monitor apparently didn't go out to the boundary between the two properties. He was looking at other things that year. No follow up had been set up at that time. Not sure if that letter had been sent. Gustitus bought the property in 2018 and it was monitored with a contracted monitor through 2021 and there were some complaints that the boundaries were ambiguous. The MCC took over monitoring the town owned conservation

lands in 2022 to save money and to get to know our lands. The easements are contracted. In 2022 the MCC couldn't find the boundary, so they decided to hire Norway Plains at that point. Will MacDuff went back out there, and he established the location of the pins. He took some photos and then it was determined that the shed and the RV was on the Ball property. There were some cut trees. He didn't specify the dock. The dock wasn't in the original documents or letters to Gustitus and Virginia apologized for the inconsistencies. The MCC offered to the BOS to follow up with him because it wasn't a priority to the BOS and then the TA was out of the office on leave, so they took over. Gustitus replied to the letter that had suggestions and proposals that Virginia felt like she couldn't answer herself so that is why she suggested the whole board to meet with him.

Gustitus talked about how he wasn't aware of how the boundary line angled in to only about two feet from the deck which was there prior to them purchasing the house. They knew that they had the RV and the shed on a part of the Ball land but didn't realize it was all the way on that property. They had intentions this summer to move everything. The RV isn't an issue moving. The shed is a little more difficult, they had somebody that was going to move it, but they didn't show up to do it. He had proposed a couple of things. He also reviewed the deed of the Ball property where he saw that the land couldn't be subdivided, which was one of his proposals. He proposed maybe doing some type of lot line adjustment. He doesn't know if that would be possible or not.

Virginia stated that if a lot line adjustment were to be done then the conservation value afterwards would have to be equal to or greater than the conservation value was before.

Gustitus said that they would consider letting the MCC keep the waterfront. All they are trying to do is avoid having to move the shed and the tiki bar.

Steve isn't quite as sanguine as Joe is about a lot line adjustment being totally different from a subdivision. The intent is to have the boundaries preserved and that area being left in a natural state. He thinks the offer is interesting. The most valuable part of that property, in terms of both the ecological value and the monetary value, is the shoreline. The town owns very little shoreline. It is mostly backland. He doesn't think a lot line adjustment is legal and they would have to consult a lawyer about it. The intent was for those boundaries to be inviolable. If it was legal then it would be worth considering but again there would need to be more conservation value. He has been on this commission longer than anyone at the meeting and this land has been a thorn in his side.

Joe cleaned up a lot of the land. He did research on the property before he bought it.

Steve said that they need to keep the use of that land for the creatures that need to use it. That they have essentially taken so much land from them. He does want to apologize because the previous homeowners were definitely a problem. Gustitus inherited a part of that problem and the MCC has inherited another part of that problem. They were never able to get through to the previous homeowners and that's why the problem still exists.

Virginia researched the deck and thinks it may be in violation (of setback requirements), but they aren't there to discuss that. They need to figure out about the encroachments because this land was given to them to manage, and they haven't been doing a very good job of that. They have tried though. They have put time and money into it.

Steve is looking past them owning the property. They need to do something that makes those borders so salient that no one violates them, which will be very difficult to do without putting a fence in. Steve doesn't want these issues to continue from owner to owner. Gustitus is very much against a fence.

Jeff has another angle to look at with the lot line adjustment potential. There really is no access along

Micah Terrace for people that aren't within walking distance. Virginia believes there is and it's through the Gustitus property. He is interested in possibly making more parking for public access. There is a public right of way down the street. The most essential thing now is to get everything off the Ball property. Steve is also concerned about the boardwalk that runs along the side of the house down to the water.

Lee asked if he put the tiki hut and the boardwalk in. Gustitus put those there. Gustitus said that they did have someone from the town go out to make sure everything they were doing was legal. He was told that it was but can't recall who it was that went out. Virginia asked if he had any record of anything and he said that he would go back and check. He hired Burkes Tree Service to take down the trees.

Virginia stated that whether it was done with or without permission it was done inappropriately because those trees are on town land according to the survey. Which means the tiki hut is on town land. The committee would like to revert it back to nature as it is supposed to be according to the donation deed.

Steve is sympathetic to his plight, but their job is to preserve the ecological value of the Ball property and the shoreline itself is just like a little access to the land behind it and to give wildlife 10 feet along the shoreline but nothing behind it then he just doesn't see the merit. He doesn't think it serves the conservation goal. He doesn't think that with where the septic is and the configuration with the rest of the lot then he isn't sure that they could even get enough land to do any kind of ecologically increased value. They want him to keep the benefit of having the conservation land next door with no fence but really just want him to get his stuff off. That's Steve's position. It's just that simple. No matter how much the stuff was screwed up in the past and we can get it to the point where it's right without making any changes then he thinks that will do it. He will have a nice view and will be able to look into that conservation land re-naturalizing. He will have to move the dock and the boardwalk.

Gustitus asked if the RV and the shed would get moved then what is the harm of leaving the tiki hut, and boardwalk where it is. The tiki hut has sentimental value with the piece of granite going across was in his house that burned down.

Steve said the harm has already been done. He's cut those trees, and the walk is covering areas that shouldn't be covered. We are not interested in further harm. They are interested in letting it all go back to nature. It can not be mowed. It needs to revegetate. Gustitus asked if the statement he read about mowing not being allowed was true. The board stated that yes that it true. It needs to revegetate. The first condition on the transfer deed was that the land stay in its natural state. That isn't a yard. This means that you would have woods there. If Gustitus wants trees to grow there faster than he can get seed stock that would be natural for a wet land area, or he could buy trees that are native to the area. Gustitus said the other problem with that area is that it becomes a swimming hole with any amount of rain. He has water that goes into his crawl space because of that area. That was one of the things he was hoping to take care of with some sort of drainage. In the back of his lot there is an area that is called a forested wetland and the area that he is mowing would be that also. If he stays out of the conservation area, then it will do what they want it to do naturally.

Ryan Smead asked the committee if this property was for public use.

The donation deed does not specify one way or the other whether there has to be public access. It is not guaranteed or prohibited. It is up to the CC to decide. There was awhile that there were no trespassing signs that were posted.

Ryan brought up that the rules of no trespassing/no ATV's are being broken and says that if you are going to enforce one then you have to enforce them all.

Lee asked Gustitus and Smead if your neighbors showed up and put a shed on their property or built a

Tiki Bar on their property what would they do? Gustitus said that he would be against it. Lee's point was no matter what it is still encroachment, and it needs to be fixed.

Steve said that the CC wants people to use the conserved lands, they want the people that live in this town to appreciate nature. He also explained that there are all kinds of conservation land, and they all have different rules.

Virginia would like to hear everyone's perspective on what they think they might do.

Wayne doesn't think they have many choices. He agrees with Steve and unfortunately sympathizes with Gustitus, but everything needs to be moved. He doesn't see that there is too much financial gain for the CC to do a lot line adjustment. There is a lot of things on that pond that they can't fix but what they try to do is uphold what the intent was for the Ball property. He wishes that he had a better solution, but he doesn't see what it is.

Ryan asked if the CC would be interested in looking at a survey to see if Gustitus paid someone to come in and get the parcel surveyed to see exactly where the septic is for a more possible lot line adjustment.

Sharon says the cost would be prohibitive for him. Virginia would want a professional opinion from a conservation professional. She wants to know what the tradeoff is in terms of conservation value and that person would need to be hired. It's very expensive to have a surveyor and the landowner would have to foot the bill. There is no guarantee that the committee will except it either.

Lee says that if his septic system wasn't where it was then he would be more open to looking at the lot line adjustment but with the septic being there he doesn't think it's a possibility.

Jeff doesn't think there is much we can gain from a conservation value. He thinks Steve is right about there being narrow opportunities for aquatic life to come ashore. He feels terrible about the situation that they are in. He doesn't think as a commission they can do anything but enforce what they are supposed to do.

Bob says he is with everyone else and agrees with everything Steve has said. He doesn't think they have a choice.

Virginia has thought a lot about this and also agrees with everyone else. She thinks the cost for legal/professional conservationist, and a surveyor would be too high for the homeowner for there not to be a guarantee that the CC would accept anything.

Gustitus hears what everyone is saying. He wouldn't invest any money in a lot line adjustment. He would have liked to keep the tiki hut. They did get permission to cut the trees down. He doesn't see the harm in leaving the hut or the boardwalk. It's not like it's harming anything like if there were neighbors there.

Animals would use it if it were naturalized, which is the goal.

Virginia said that the CC will get a few more granite posts put in. They will be at ground level, so people won't trip over them. They won't put up a fence as long as he's there if he is honoring the boundary and not mowing, not storing anything, not littering, and not planting non native plants. If he wants it to look better, then he could talk to them about planting native plants that would be appropriate. The committee agrees with Virginia.

Virginia wants to coordinate a time for when he can move the boardwalk to have the surveyor go in to mark the boundary. Gustitus said the camper is easily fixed, the shed is going to be the issue. Virginia would like for him to make use of the frozen ground, when it finally freezes, to move the shed. He will keep them posted on moving the shed.

In closing Virginia said he will make his best effort for the tiki bar, the walkway, and the RV to be moved by March 31st, and he is going to try hard to get the shed moved by March 31<sup>st</sup> also if he can. The committee will get the granite posts flush, so no one trips over them.

Virginia thanked Gustitus for meeting with them and being amenable and calm.

They all decided and agreed that the Gustitus's will move everything by March 31, 2024

4. Adjourn: *Wayne made a motion to adjourn at 7:37 pm . Steve seconded. All were in favor.*