

# Smyk Property Discussion: Updated for March 12, 2018 Meeting with Board of Selectmen

## 1. A POSSIBLE VISION

The Mary and Walt Smyk Park would be a 10.78 acre nature park located in the heart of Stratham with plans for a 3 season pavilion and future improvements to host recreational, social and cultural events. The Park's theme would embody the Smyk's lifestyle of simplicity, their dedication to the environment, and respect their wishes to maintain the rural appearance of the property. The property's Location is a gateway for access to an additional 30.76 acres of undeveloped Town lands.

## 2. GATEWAY LOCATION TO ADDITIONAL TOWN LANDS

Smyk Park is Parcel 90 (10.78 acres). Abutting Smyk Park is 2.23 acres of Town Property (parcel 96). Crossing Trisha's Way the Town owns 28.550 acres following the power line easement and ending at the 28.53 acres Rockingham Conservation District conservation easement. Also abutting Smyk Park is 226 foot wide power line easement consisting of approximately 2.77 acres of open land. Smyk Park is the gateway for easy access to explore and enjoy the Town's land consisting of 59 acres of scenic open space. (Reference Exhibit A)

### EXHIBIT A

Smyk Property in grey.

Town owned/open space properties in green. Green hash mark represents easements.

Red hash mark is a powerline easement.



## 3. \$300,000 ENDOWMENT TO MAINTAIN SMYK PARK

Diane Morgera, Chair of the Trustees of the Trust Funds Town of Stratham, opined that over a 10 year period the original \$300,000 (reinvesting capital gains and dividends with a small annual withdrawal for paying bills) the property could be self-sustaining within 10 years. The growth of \$300,000 at the end of a 10 year period for growth rates (without annual withdrawals) of 5%, 8.5% and 12.5% is detailed in Exhibit B.

|          |  |           |         |  |  |
|----------|--|-----------|---------|--|--|
|          |  | Exhibit B |         |  |  |
|          |  |           |         |  |  |
|          | Smyk Endowment of                              | \$300,000 |         |  |  |
|          | Assume conservative portfolio of mutual funds  |           |         |  |  |
|          | 10 year time period without withdrawals        |           |         |  |  |
|          | Possible Smyk Endowment Value at end of Period |           |         |  |  |
|          |  |           |         |  |  |
| End Year | 5.00%  | 8.50%     | 12.50%  |  |  |
| 1        | 315,000  | 325,500   | 337,500 |  |  |
| 2        | 330,750  | 353,168   | 379,688 |  |  |
| 3        | 347,288  | 383,187   | 427,148 |  |  |
| 4        | 364,652  | 415,758   | 480,542 |  |  |
| 5        | 382,884  | 451,097   | 540,610 |  |  |
| 6        | 402,029  | 489,440   | 608,186 |  |  |
| 7        | 422,130  | 531,043   | 684,209 |  |  |
| 8        | 443,237  | 576,181   | 769,735 |  |  |
| 9        | 465,398  | 625,157   | 865,952 |  |  |
| 10       | 488,668  | 678,295   | 974,196 |  |  |

#### 4. POTENTIAL DEVELOPMENT OPTIONS AS OF 3/8/2018

Blue indicates additional information post 3/22 meeting with Terry Knowles and Tom Donovan

OPTION 1 - raze house, barn and pool and...

- 1a. Develop a picnic area and playground along with parking capability from Bunker Hill Ave.
- 1b. 1a plus construct access from Portsmouth Ave to develop additional parking
- 1c. 1b plus build three-season pavilion
- 1d. 1c plus develop improvements to support future activities **as long as for recreation**
- 1e. Develop park for specific use such as
  - 1ei. Cemetery **(not an option per TK)**
  - 1eii. Skatepark
  - 1eiii. Gymnasium -----
  - 1eiv. Senior center | **bound by footprint and square footage designated**
  - 1ev. Cultural center ----- **as long as for recreation**

OPTION 2 - keep structures intact and...

- 2a. Renovate in order to (with the purpose of generating income to pay for improvements and maintenance):
  - 2ai. Rent to individual(s)
  - 2aii. Rent as studio/office space
  - 2aiii. Rent as an airbnb-style option
  - 2aiv. Rent and pursue an option from above (1a-1e)
- 2b. Maintain as is and pursue an option from above (1a-1e)

## 5. SUMMARY OF TERMS OF THE SMYK BEQUEST THAT MUST BE ADDRESSED

(at 3/22/18 meeting with Ms Terry Knowles, Attorney General)

*\*please reference the Trust document for item number references\**

**Blue indicates additional information post 3/22 meeting with Terry Knowles and Tom Donovan**

Paragraph g of the Trust: The Trust (Smyk Family Trust) will give the property to the Town "upon the following terms and conditions which shall be inserted as restrictive covenants into the Trust's deed of conveyance as well as any other documents necessary to carry out these distributions, **the breach of which will result in a reversion to the Grantors' Trust**"

→ The Town accepts the property with restrictive covenants (original or modified). The Director of Charitable Trusts monitors Town's compliance with the donors' intent, in conjunction with the Trustee of the Smyk Family Trust. The office of the Director of Charitable Trusts concludes that the Town has violated the covenants. What happens to the property if the covenant violations are not remedied? Does the property revert back to the Grantor's Trust? **Yes, it would go back to the Smyk trustees.**

→ The Town declines to accept the property. The Smyk Family Trust retains ownership of the property. How do we know that there is not another provision in the Family Trust that provides for the event that Stratham declines the bequest? If a secondary Trust beneficiary is designated, would that beneficiary have similar restrictive covenants? **No, it would be sold on the open market, most likely to maximize profits.**

→ What authority does the office of the Director of Charitable Trusts have if the property reverts back to the Smyk Family Trust in the event of a covenant violation or declination of the bequest?  
**They continue to oversee the trust as written by the Smyk's.**

g(ii)

Regarding income from the endowment used to maintain the Park:

→ Can this income be used to pay for expenses from the rental of the house? By this way, rental income could be maximized thereby increasing downstream revenue flow which could then be used for the Park. **Yes.**

→ Are there limitations on the use of the endowment income? **No.**

g(iii)

→ In Stratham, the Trustees of the Trust Funds do not manage property; can this be modified to reflect that the Board of Selectmen would make all decisions regarding the property whereas the ToTF would manage endowment? **As this is legally impossible, can assume meant to be correctly so would be adjusted so that the Trustees of the Trusts manage the funds and the Board of Selectmen the property.**

g(iv)

Please clarify “uses of the Park shall be limited to recreational and cultural purposes for residents of the Town of Stratham”

→ solely residents? **Yes.**

→ do the following uses qualify under this deed?

Cemetery - **no**

Skatepark - **yes**

Gymnasium - **yes as long as within footprint**

Senior center - **yes as long as within footprint**

Cultural center - **yes as long as within footprint**

Rent to individual(s) - **potential if “cultural/recreational”**

Rent as studio/office space - **potential if “cultural/recreational”**

Rent as an airbnb-style option - **potential if “cultural/recreational”**

→ If renters were not Stratham residents but the proceeds were donated or dedicated or earmarked for cultural and/or recreational purposes for the people of Stratham, would this be satisfactory? **Terry and Tom not sure on this aspect.**

→ Regarding playground equipment, could we modify so that is made not of wood but of the current standard material (molded plastic)? **Would need to go to court to adjust.**

Regarding any removed trees, the deed states they “must be replaced, on any area of the property, with reasonably mature trees of a similar species”.

→ Would the Trustees consider modifying this to apply to those trees visible from Bunker Hill Ave and Portsmouth Ave and trees on the backside of the property abutting the power lines and Trisha's Way (which are in a less manicured and visible area) would be exempt?

→ Through consultation with an arborist, some removal of trees may be recommended in order to assure the continued growth of other trees. Is this in-line with the deed?

→ Please clarify- “reasonably mature trees of a similar species” when some of the trees on the property are likely 80+ years old.

→ Can the Town of Stratham remove trees to make improvements to Smyk Park as provided for in subparagraph vii to allow for construction of storage shed, restroom facility, with associated well and septic systems, and/or a 3,000 sq. ft. pavilion) and for parking facilities?

→ **would need to talk to Trustees of the Smyk trust about these issues.**

Regarding topography:

→ Please define “significant”. In order to create a park that would be beneficial to many, there is a possibility that leveling in some areas may be required.

g(v)

Regarding “new building or structure .. may not exceed the footprint of the building or structure it replaces”:

The current footprint of the house is in the shape of an inverted capital L. The total square feet of the finished first floor of the existing residential structure is: 4,043 sq. ft. and the barn total 720 sq. ft., plus the pool area (pool (800 sq. ft.), deck and grassy border (700 sq. ft.) which is 800 sq. ft. along with a deck and grassy area around the pool which increases this area to approximately 1,500 sq. ft. for a combined total of 5,563 (not including apron) -6,263 sq. ft (including border).

→ To accommodate future structural improvements promoting recreational and cultural activities in Smyk Park, can the maximum square footage of replacement structures exceed 6,263 sq. ft.?

Through combination with additional square footage described in 4vii., the total is 10,513 sq ft. [see below, 4vii] **New construction bound by footprint of the current house. Cannot combine square footages if beyond that footprint and height restriction so not practical option.**

→ Does the Trust allow for the inclusion/construction of walkways and benches to allow full utilization of the Park? **Yes - as long as no change to topography.**

g(vii)

Regarding other structures:

→ Can these footprints be added together so that one larger facility could be constructed?

Thinking in particular of a gymnasium, senior center, or cultural center. To be most effective, a larger size would be recommended. [see above 4v.] **No.**

Shed - 750 ft<sup>2</sup>

Restroom - 500 ft<sup>2</sup>

Pavilion - 3,000 ft<sup>2</sup>

*Additional structure ft<sup>2</sup> equals 4,250 ft<sup>2</sup>*

→ Articles g(v) and g(vi) provide for replacing the existing building but restrict its replacement beyond 400 feet of Portsmouth Avenue. Article g(vii) separately provides for construction of a pavilion and other ancillary structures. There are specifications for such structures but no 400

foot distance requirement. Can a pavilion be located closer than 400 feet from Portsmouth Avenue? **Possible - unsure at this point.**

→ How can parking needs be addressed? Using parking space standards, we estimate that 2-3 handicapped parking spaces could be situated in front of the garage entrance. In the turnaround area in front of the house the dead tree, shrubs, and flag pole could be removed while leaving the picturesque stone walls and stairs. This area would provide parking for 30 vehicles for a total of 32-33 parking spaces. There is potential for developing parking on the north side of the property where the power line right of way exists and connects with Portsmouth Ave. (refer to Exhibit A). This might allow ~50 spaces for a grand total of ~83 parking spots. **This was not addressed in the trust. There may be room for negotiation on this point.**

g(viii)

Regarding “may not exceed 20 feet in height”

→ The existing residential structure is greater than 20 feet above ground level. Can we amend to reflect no more than 25 ft high? The additional 5 feet would not be noticeable due to the property’s topography, trees and vegetation and would provide flexibility and options for a functional space for Stratham. For reference, two pictures of the Front Pavilion located in Stratham Hill Park are shown in Exhibit C-1 and C-2. The Pavilion is 35 Ft x 85 Ft (2,975 Sq. Ft.) and the height is 21 ft. 9 inches. **No - 20 ft is the max.**

Exhibit C-1



Exhibit C-2





#### Additional Questions:

→ what happens if Stratham does not accept this offer? **It reverts to the trustees and most likely sold for maximum profit to beneficiaries.**

→ if we accept and discover in the future we cannot maintain this Park, what happens, what is the process? **Pursue reversion clause**

→ If Stratham declines and no non-profit organizations accepts, what happens then? **Property sold.**

→ Once the trust is dissolved, with whom does the Town work with on amendments in the future? **Office of Charitable Trusts.**

→ Are there secondary beneficiaries? **No**

→ Is there a list of potential non-profits to which the Smyk property would be offered if Stratham declines? **No.**

#### **6. PROPOSAL TO MINIMIZE MAINTENANCE AND DEVELOPMENT COST AT SMYK PARK**

a. Refer to Exhibit D and E below.

Exhibit D- Borrow \$100,000 at 3% for 10 years:

|      |           |          | Principal |             |
|------|-----------|----------|-----------|-------------|
| Year | Principal | Interest | Payment   | Total P & I |

|    |           |          |           |           |
|----|-----------|----------|-----------|-----------|
| 1  | \$100,000 | \$3,250  | \$10,000  | \$13,250  |
| 2  | \$90,000  | \$2,925  | \$10,000  | \$12,925  |
| 3  | \$80,000  | \$2,600  | \$10,000  | \$12,600  |
| 4  | \$70,000  | \$2,275  | \$10,000  | \$12,275  |
| 5  | \$60,000  | \$1,950  | \$10,000  | \$11,950  |
| 6  | \$50,000  | \$1,625  | \$10,000  | \$11,625  |
| 7  | \$40,000  | \$1,300  | \$10,000  | \$11,300  |
| 8  | \$30,000  | \$975    | \$10,000  | \$10,975  |
| 9  | \$20,000  | \$650    | \$10,000  | \$10,650  |
| 10 | \$10,000  | \$325    | \$10,000  | \$10,325  |
|    |           | \$17,875 | \$100,000 | \$117,875 |

Exhibit E- Borrow \$150,000 at 3.25% for 15 years:

|      |           |          | Principal |             |
|------|-----------|----------|-----------|-------------|
| Year | Principal | Interest | Payment   | Total P & I |
| 1    | \$150,000 | \$4,875  | \$10,000  | \$14,875    |
| 2    | \$140,000 | \$4,550  | \$10,000  | \$14,550    |
| 3    | \$130,000 | \$4,225  | \$10,000  | \$14,225    |
| 4    | \$120,000 | \$3,900  | \$10,000  | \$13,900    |
| 5    | \$110,000 | \$3,575  | \$10,000  | \$13,575    |
| 6    | \$100,000 | \$3,250  | \$10,000  | \$13,250    |
| 7    | \$90,000  | \$2,925  | \$10,000  | \$12,925    |
| 8    | \$80,000  | \$2,600  | \$10,000  | \$12,600    |
| 9    | \$70,000  | \$2,275  | \$10,000  | \$12,275    |
| 10   | \$60,000  | \$1,950  | \$10,000  | \$11,950    |
| 11   | \$50,000  | \$1,625  | \$10,000  | \$11,625    |
| 12   | \$40,000  | \$1,300  | \$10,000  | \$11,300    |
| 13   | \$30,000  | \$975    | \$10,000  | \$10,975    |
| 14   | \$20,000  | \$650    | \$10,000  | \$10,650    |
| 15   | \$10,000  | \$325    | \$10,000  | \$10,325    |
|      |           | \$39,000 | \$150,000 | \$189,000   |



b. Assume a conservative 5% annual return on the \$300,000 Endowment Fund, annual dividend and interest income would total \$15,000. This cash flow would support borrowings of \$100,000 for 10 years at 3% or borrowings of \$150,000 for 15 years at 3.25%. The Annual Endowment Fund Income would cover the annual P&I payments on the borrowing.

c. The Borrowing proceeds would jump start the process for designing landscaping with minimal maintenance, site plans for parking and needed topographical changes and the architectural concepts for future improvements to support the park's recreational and cultural activities.

d. After the conceptual designs have been accepted, funding for the development of Smyk Park can proceed with the borrowed funds. A fundraising campaign to raise construction funds from corporate sponsors and Stratham residents could begin.

e. If Endowment Fund returns are greater than debt service requirements, the additional income would be available to support maintenance expenses and development costs.

## 7. BENEFITS OF ACCEPTING THE SMYK BEQUEST

a. The Town retains control over 10.78 acres of property in the heart of Stratham.

b. Smyk Park would be a perpetual green space maintaining the rural image as Portsmouth Avenue commercial and residential development occurs.

c. Smyk Park becomes the gateway for easy access to explore and enjoy the Town's land consisting of 55 acres of scenic open space.

c. Future Park improvements may be a source of rental income to support park maintenance and development.

d. As the Park developments over time, additional revenue source may be identified.

e. The \$300,000 Endowment Fund may grow to the size where income is more than sufficient to support Park maintenance and expenses.

f. Comparison of Smyk Property Tax Revenues to the annual return on the \$300,000 Endowment Fund.

| Property Taxes | 2017     | 2016     | 2015     | 2014     |
|----------------|----------|----------|----------|----------|
|                | \$19,453 | \$19,549 | \$19,070 | \$21,427 |

Estimated annual return on \$300,000 Endowment Fund at the reasonable growth rates suggested by the Trustees of the Trust Funds.

|                       |                 |                  |
|-----------------------|-----------------|------------------|
| Rate of Annual Return | 8.5% → \$25,500 | 12.5% → \$37,500 |
|-----------------------|-----------------|------------------|

However, to note that since the property will go to a non-profit, tax revenue would be lost under any scenario.

g. As a non-profit property Smyk Park land is valued at a discount to surrounding property values. As the area surrounding Smyk Park develops, the intrinsic and aesthetic qualities of Smyk Park will experience a commensurate increase in value.

h. The property has a septic system and well.

i. Stratham would control the entire Bunker Hill Ave/Portsmouth Avenue intersection. This would be a major benefit when Stratham (and/or the State) reconfigure and signalize the intersection.

## **8. REASONS TO DECLINE THE BEQUEST**

a. Cost of maintaining the property “as is”

b. The existing residential structure would be very costly to refurbish and to maintain.

c. Revenue from the \$300,000 Endowment Fund would not be sufficient to cover the yearly maintenance costs.

d. Does the Town need another park?

e. Uncertainty of the response of Terry Knowles from the Attorney General’s Office regarding request to modify Bequest conditions.

f. Is the governance process for managing the park and/or it’s future development too cumbersome?