

Smyk Property Study Committee  
Meeting Minutes  
February 15, 2018  
6:00 PM

Members in attendance

Colin Laverty  
Paul Deschaine  
Jennifer Hubbell  
Roger Thompson  
Dick Swett  
Seth Hickey  
Pamela Hollasch  
Dan Crow  
Abby Sykas Karoutas

Dan Crow called the meeting to order at 6:05 PM.

Dan Crow introduced Attorney Abby Sykas Karoutas. Mr. Crow explained Ms. Karoutas role as the Town's Attorney as the Town considers the Smyk property request. Mr. Crow spoke to his personal experience with Ms. Karoutas when he worked with her to create the 501c3 Fire Department Association a number of years ago. Mr. Crow stated that "I worked with Abby for a number of months and she was great to deal with during that time."

Attorney Karoutas described her relationship to the Smyk's and the Smyk property as her parents were family friends of Walter and Mary Smyk and that she was very familiar with the Smyk Property. Ms. Karoutas also explained the role of the Trustees currently managing the Smyk Property from San Diego, California. She stated that the Trustees would like to see this process move forward as quickly as possible. Ms. Karoutas also explained the role of the State of New Hampshire Attorney General's office and their role to make sure that the Smyk's vision is upheld in the bequest. "Terry Knowles from the Attorney General's office will be working to see to it that the dead people's (Walter and Mary Smyk's) vision is upheld." Ms. Karoutas stated that "The Town may look at the bequest and say thank you however we are not interested at this time to maintain the Property. That's fine, Terry Knowles will then reach out to other nonprofits, etc. to find someone who is interested in maintaining the Smyk's bequest."

Paul Deschaine passed out an email to committee members between him and Diane Morgera, Trustees of the Trust Funds Chairwoman. This email has been attached to these minutes (Attachment A). The email discusses the possibilities if the Town invests the \$300,000.00 endowment into various financial portfolios and what the annual interest may look like. Committee members discussed what the annual interest would look like if we considered 8.5% (the low end projected) after being placed in a ten year portfolio. Colin Laverty stated that "The annual interest is approximately \$25,500.00 annually." Pamela Hollasch stated that "The Town

wouldn't be able to use these funds for potentially ten years. What will cover our maintenance costs in the meantime?"

Dick Swett and Pamela Hollasch discussed potentially doing the bare minimum for maintenance to the property until the Town comes up with a need for the property or the interest on the endowment accrues so that the Town may use those funds for maintenance. Attorney Karoutas cautioned the committee on minimal maintenance of the property. "If the property is unkempt to a certain degree, it may or may not look as though the property is being maintained as designed per the bequest of the Smyk's."

Dick Swett stated that "after the site walk and reviewing the restrictions of the bequest, a structure can't be within 400' of Bunker Hill Avenue and Portsmouth Avenue. I remember thinking that's a long ways." Mr. Swett is referring to letter m in the summary of the bequest restrictions drafted by Town Administrator Paul Deschaine. Colin Lavery stated that he had created a drawing showing the 400' distance off of Bunker Hill Avenue and Portsmouth Avenue in relation to the Smyk property. Mr. Lavery stated that he had forgotten to bring the drawing to the meeting however will include it in the meeting minutes. This drawing has been included with the meeting minutes, (Attachment B). Paul Deschaine drew a picture on the meeting rooms chalk board to give committee members a reference of the 400' distance off of Bunker Hill Avenue and Portsmouth Avenue during the meeting. Mr. Swett went on to say "I am in favor of the property, it will provide nice green space as the Town continues to develop with affordable housing, well more affordable then current prices, and commercial property. It will create a nice green space buffer between developments."

Pamela Hollasch was concerned that the existing house needed extensive updating to create something usable to meet the Town's needs as the house is very outdated. Ms. Hollasch asked the committee is there a possibility of tearing the house down. Committee members discussed the potential of tearing the house down to create a greater use for the Town. Dan Crow stated that "In my opinion, there is no benefit to keeping the house." Jennifer Hubbell stated that significant repairs and renovations would need to be made. She was concerned of the buildings structure and railing heights in various areas of the house. She stated that "There may be history in the house, but what will it cost for the Town to maintain." Dan Crow stated that "There is history there but it's from the 1970's and 1980's." Roger Thompson was concerned and stated "If the Town takes the property and renovates it, will we be held to current building codes? The pool does not currently have a fence around it, will the Town need to put a fence up amongst other things to be current with today's codes and regulations." Pamela Hollasch asked, "How much will it cost to tear down the house?" Dan Crow and Colin Lavery concurred with one another that it would cost anywhere from \$20,000.00 to \$40,000.00 Colin Lavery suggested tearing down the house, removing the foundation and filling the existing area with fill and gravel. The Town could decide to pave the area for additional parking. Mr. Lavery stated that "This will create additional parking without changing the existing grading or topography of the property. A pavilion could be built in the area as well if the Town chooses to."

The committee collectively agreed that the house brings no value to the Town and needs to be demolished at some point if the Town moves forward with accepting the bequest. Paul Deschaine stated that “The Town should consider saving the existing well and septic system.” Coin Laverty replied to Mr. Deschaine stating “I agree with saving the well however, we do not know the age of the septic system and it may not fit the Town’s needs in the future.

Dick Swett asked the committee and Attorney Karoutas “if the Town accepts the bequests and finds that the property is too much to maintain, can Town get rid of the property?” Ms. Karoutas explained that “There are doctrines and something known as a non-judicial settlement agreement.” A non-judicial settlement agreement is a valuable tool for modifying trusts and addressing construction of provisions when a trust is silent or unclear. Attorney Karoutas continued explaining, that a restriction may be able to be modified to meet the needs of the Town presently or in the future. If the Town chooses that the property is too much of a burden in the future, the property can go back to the Attorney General’s office where they will find another entity to manage the property under the bequest originally drafted by the Smyk’s. Ms. Karoutas stated that the Town cannot sell the property. Pamela Hollasch questioned “What would happen to funds used for maintenance of the property by the Town, if the Town decided the property was too much of a burden.” Ms. Karoutas replied by saying, “That money would be lost and could not be recouped.”

Attorney Karoutas stated that things can change in the bequest, Terry Knowles from the Attorney General’s office is reasonable and wants to make the bequest reasonable for the Town to maintain within reason. Terry Knowles’ priority is the Smyk’s and their bequest. Colin Laverty brought up concern with restrictions within the bequest summary. Defined under letter e, The Trustees of the Trust Funds will make all decisions regarding management and use of the park. Mr. Laverty was also concerned with restriction l, any changes or additional structures need approval of the Trustees of the Trust funds and the majority of the Selectmen. Mr. Laverty stated to Ms. Karoutas, “This is not common practice for the Trustees of the Trust Funds to manage property that typically falls under the management of the Board of Selectmen. Is this something that can be changed?” Ms. Karoutas replied by saying “Yes, in fact, I have been in discussion with Terry Knowles and she has stated that Trustees of the Trust funds cannot manage property and this will need to change.” Dick Swett asked Attorney Karoutas “As time goes on and things evolve, is it possible to make changes to the bequest to meet the Town’s needs?” Ms. Karoutas replied by saying “Yes that’s why the non-judicial settlement agreement is in place. As things evolve and time goes on, the settlement agreement is in place for this reason.”

Seth Hickey asked the committee to look towards the future. “We need to consider the future recreation needs of Stratham. We need to look beyond traditional recreation. We know we can’t change the topography. I think we are getting hung up on the idea of athletic fields and things of that nature. I know of various Towns who have taken on properties such as these and created disc golf courses and other non-traditional recreational activities.” Mr. Hickey continued describing disc golf as one example which generates revenue in equipment rental and the sale of beer. Mr. Hickey described Sawyer and Side Park in Kensington, NH of which was similar in

nature, as the Town of Kensington received a donation for the parks. Mr. Hickey stated that “We should consider a three season pavilion that can generate revenue.” Dan Crow asked Attorney Karoutas if she thought the bequest could be changed to allow for potential future revenues such as a pavilion. Attorney Karoutas stated that “Yes, I think it’s a reasonable request”. Ms. Karoutas suggested coming up with a list of potential changes to the bequest and bringing them for consideration of Terry Knowles at the Attorney General’s office. Pamela Hollasch stated to the committee, “We need to come up with a list of items that we want for the property to work.”

Colin Lavery agreed with Pamela Hollasch that the committee needs to come up with needs for the Smyk property. Mr. Lavery stated “I am in favor of maintaining a park and preventing future development of the site. In my opinion, the Town needs to demonstrate a need for what the park will be used for today. If we cannot demonstrate a need today, there are significant costs that the Town will inherit to go along with the property including the loss of \$20,000.00 in tax revenue.” Dick Swett questioned Mr. Lavery stating “I’m confused you’re in favor of green space but you’re against the Town taking the property”? Mr. Lavery replied by saying “I am in favor of green space and the idea of the park however, if we cannot demonstrate a need today why should we take on the burden of the maintenance costs.”

Dan Crow stated that “the committee should not get focused on the loss of the \$20,000.00 in tax revenue. If the Town of Stratham does not accept the property, another nonprofit will. That money is gone one way or another.” Paul Deschaine stated, “I was speaking to someone, I can’t remember who it was that said maybe the property could be used as a dog park and all the problems of the current dog park at Stratham Hill Park would go away.” Colin Lavery replied to Mr. Deschaine, “I said that. I spoke to Police Chief John Scippa and Seth Hickey today and we were discussing the problems with the dog park at Stratham Hill Park. If you moved it to the Smyk property you wouldn’t have people complaining about the parking lot being closed during the mud season and that they have to walk an extra 200’ from another parking lot when they are there to walk their dog. There wouldn’t be dogs biting bike riders or biting horses, causing a girl to get thrown off a horse and injured two years ago” Roger Thompson asked, “Would we have to put up a fence around the property to keep the dogs in?” Mr. Lavery replied, “I don’t think so, it’s the dog owners responsibility to care for their dog.” Dan Crow stated that “I think we can agree that no one wants to make the Smyk property a dog park.” Pamela Hollasch agreed. Mr. Lavery stated “I’m not saying we should make the Smyk property a dog park, we have a problem at Stratham Hill Park and a current need of a dog park. I am not suggesting moving a problem from one area to another. In my opinion I don’t think the dog park belongs at either location.” Paul Deschaine stated, “Maybe this can be a different and quieter park for more enjoyment and relaxation. A place to get away from the dog walkers, bikers, and other activities currently held at Stratham Hill Park.” Roger Thompson asked Seth Hickey, “How would you get the dog owners to change the location where they walk their dog if the new park became the Smyk Park?” Seth Hickey stated, “There is a definite problem with the dog park at Stratham Hill Park. A problem which I am going to address. Enough is enough.”

Roger Thompson brought up concerns regarding a restriction of the bequest, letter I in the summary of bequest restrictions that states no trees can be removed unless they are dead, dying, or decayed. Any removed trees must be replaced with "reasonable mature trees" of similar species. "I think this will be a problem for Colin and his crew. Colin may need to remove trees in the future to allow sunlight in to benefit other trees to ensure healthy trees." Colin Lavery agreed with Mr. Thompson. "This will be a problem for us." Attorney Karoutas stated "this may be another item you want to bring for the Attorney General's office consideration." Paul Deschaine stated that "Terry Knowles did respond to my request having her come to a meeting. She will be here on March 22<sup>nd</sup>. I would suggest coming up with options for her to review during that meeting." The committee agreed with Mr. Deschaine's remarks and plan on coming up with an outline to review when they meet with Terry Knowles on March 22, 2018.

Dan Crow stated "I think we need to come up with a collective agreement of best use ideas and bring them to The Board of Selectmen's consideration and then later to the Attorney General's office. We might find that when looking into pavilions we may want to consider different options and what roof heights to consider if we are going to request a change in restrictions. We may think 25' or 30' is more desirable. I will look at the Stratham Hill Park main pavilion in the meantime to get a better idea." Seth Hickey asked committee members to take a look at what other parks are doing who have properties like these. "I will try to find some examples before our next meeting".

Dan Crow told the committee, "We should not feel reduced to costs and restrictions within the bequests. We can seek out donations from many of our corporate sponsors here in Town such as Bauer, Lindt, and Timberland. We should think of creating a potential vacation space for the residents of Stratham and maybe have someone else manage it."

Dan Crow along with the other committee members thanked Attorney Karoutas for her time and agreed what a big help it was having her at the meeting. Attorney Karoutas stated "If the group has any questions please ask, just get in touch with Paul and he will get a hold of me."

Dan Crow made a motion to adjourn the meeting at 7:24 PM. Dick Swett seconded the motion.

The committee will meet again at 6:00 PM Thursday February 22, 2018.