

MEMORANDUM

TO: Town Council

FROM: David Sherman, Chair

DATE: June 20, 2011

RE: Acquisition of "Robinson Woods II";
Follow-up meeting with the Cape Elizabeth Land Trust ("CELT")

During the Town Council's meeting on June 13, 2011, we voted 7-0 in favor of contributing \$350,000 to CELT's acquisition of property referred to as "Robinson Woods II," which consists of about 65 acres. As you know, this parcel abuts an 82-acre parcel known as "Robinson Woods I," which CELT owns and which is subject to a Conservation Easement held by the Maine Coast Heritage Trust.

Also during our June 13th meeting, we made a "respectful request" to CELT regarding the possible relocation of the Shore Road Pathway from the right-of-way along Shore Road to the interior of Robinson Woods I. The Town had previously asked CELT for permission to locate a portion of the Pathway on this property to avoid the need to remove trees on that stretch of Shore Road and to save money. I also believe that members of the Pathway Committee preferred that option as it would preserve the current look and feel of that stretch of Shore Road. CELT declined the request in 2009 because its board concluded that such approval would not be compliant with the Conservation Easement.

On June 20, 2011, Mike McGovern and I met with CELT's Executive Director, Chris Franklin, and its President, Ted Darling. The purpose of this meeting was to explore the Council's request regarding the possible relocation of the Shore Road Pathway on Robinson Woods I. Mike provided copies of the earlier plan for the Pathway, the location of which was within Robinson Woods for that particular stretch. The focus of our meeting was to determine whether CELT would reconsider its earlier decision.

By way of background, I asked Chris and Ted to explain the original decision made in 2009. They gave the following information:

- In October of 2008, a member of the Pathway Committee approached CELT about locating a portion of the Pathway in the interior of Robinson Woods I.
- CELT was provided with a diagram showing the proposed location as it traveled through Robinson Woods I.
- CELT's board deliberated over this issue for about nine months.
- There were 17 members on its board at the time. Some were personally in favor of the path; some opposed it; some served on the Shore Road Pathway Committee.

- All of the board members agreed that they could not let their personal views on the merits of the Pathway project dictate their decision on the request to locate a portion of it within Robinson Woods I. Rather, their decision had to be governed by the Conservation Easement.
- In addition, the board members were concerned that if they were to allow an incompatible use to occur on this property, that may deter other landowners from allowing CELT to acquire their property in the future.
- The board unanimously decided that the proposed location of the Pathway was not compatible with the terms of the Conservation Easement. They viewed the Pathway as a thoroughfare, to allow people to pass through the property, rather than an enhancement of one's experience at Robinson Woods.
- By declining this request, CELT did not intend to block the Pathway; rather they felt that if it were to move forward, it belonged within the Town's right of way and not within Robinson Woods I.
- Other considerations leading the board to conclude that the Pathway was not compatible included (i) that it could be used at night (in contravention of a day-time use restriction) and (ii) motorized equipment would remove snow (in contravention of a non-motorized vehicle restriction).

Admittedly, CELT took a very conservative view of the Conservation Easement. I think we are all capable of reading this document and reasonable minds can disagree. That being said, the Board took the Town's earlier request seriously, deliberated for months, and concluded unanimously that CELT should not allow this use of Robinson Woods I.

I asked Chris and Ted whether anything has changed since CELT's decision in 2009 to today. By way of example, did the Board believe in 2009 that the Pathway was to be paved within Robinson Woods I? If that were a basis for its decision, then would the fact that the path was to be built with stone dust cause CELT's board to change its mind?¹

Both Ted and Chris responded emphatically (and respectfully) that there have been no changes from 2009 to today that would cause CELT to reverse its decision.

I then asked whether there was a way to modify the Pathway design (as to location, design or materials) to cause CELT to reconsider its earlier decision. Again, the response was the same. CELT's concern and the basis for its decision is that the Pathway is inconsistent with the Conservation Easement. In addition, CELT remains concerned that if it allowed a use that was or appeared incompatible, landowners in the future may not trust the organization or be willing to convey property to it.

Finally, I asked Ted and Chris if they had already polled their board members to see if there was a willingness to reconsider the Town's request. Their response was that they had polled many of their board members and none of them was interested in revisiting this issue. In short, they devoted a lot of time and energy to this issue already and, with all due respect, the landscape has not changed since 2009.

¹ For everyone's information, the plan as presented to CELT in 2008 and 2009 called for stone dust, not asphalt. The materials for the Pathway did not play a role in CELT's decision.

I want to tell you that our conversation lasted about an hour and was a respectful and cordial one. Both Chris and Ted did not want CELT to come off as the “bad guy” (in that they were declining the Council’s request which may result in more cost for the project). They value CELT’s partnership with the Town and are obviously pleased that the Council voted to contribute \$350,000 to the acquisition of Robinson Woods II. That being said, they did not believe that CELT could be swayed by dollars to do something that the organization did not believe was compatible with the Conservation Easement or its mission.

Mike and I discussed the importance (and the *requirement*) of public access to Robinson Woods II as a condition of the Town’s contribution of \$350,000. We are expecting a draft Memorandum of Understanding from CELT on this issue shortly. We also discussed the possibility of CELT creating more links from the trail systems on Robinson Woods (I and II) to encourage public access, and they expressed a willingness to pursue more connectivity.

If you have further questions about this matter, please feel free to contact me. Notwithstanding the result of our meeting today, I remain pleased with the Council’s decision to help fund the acquisition and preservation of Robinson Woods II.