

Selectmen Quiz Officials On High Meadow Open Space Status

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First Selectman Pat Llodra invited several local officials to the February 16 Board of Selectmen meeting with the hope of clearing up any confusion resulting from conversations occurring with the Sandy Hook Permanent Memorial Commission five days earlier.

Those conversations arose from the memorial panel's selection of the High Meadow at Fairfield Hills as the preferred location for siting a permanent memorial to honor those lost on 12/14. Town Attorney David Grogins, Director of Planning George Benson, and Memorial Commission Chairman Kyle Lyddy were in attendance.

Since that proposed site was announced, a growing number of townspeople have opposed the idea, saying both the High and East Meadow parcels at Fairfield Hills were officially designated as open space, and therefore were protected from the type of development that would be required to locate a memorial site there.

Mr Grogins told *The Newtown Bee* after the February 11 meeting that he was asked to determine the legality of a memorial being placed on that property, and determined that the town had not completed the process by which the High Meadow would be properly declared open space.

(Click here to see more of Mr Grogins and Mr Benson's comments in a related story about the February 11 Memorial Commission meeting.)

What he referred to, and what may have been previously unclear, is that Planning & Zoning failed to file a "restrictive covenant." A restrictive covenant, he said, is a declaration of how a particular piece of open property is used.

During the selectmen's meeting February 16, Mr Benson repeated much of what he had previously told *The Bee*. The land use and planning official said confusion arose because the town attorney was talking about a restrictive covenant or simply a "covenant," and not a declaration.

"We did a declaration," Mr Benson said, "of what that open space at Fairfield Hills should be. The Board of Selectmen voted on it and agreed." That policy statement included in part the allowance of passive recreation, he noted, "Which I consider this memorial to be."

The reason it can all be confusing, explained Mr Benson, is that there was not a transfer of property. Because it was the town giving land to the town, Mr Benson said he "didn't think of doing a restrictive covenant — because there was no deed transfer. To be one hundred percent legal, I should have done that. It's all on me."

Ann Astarita, former chair of the Conservation Commission, has been in attendance at many of the meetings since the High Meadow proposal was floated as a preferred memorial site. She told *The Bee* after this week's selectmen meeting that on May 19, 2014, she had sent George Benson an e-mail with a proposed declaration saying: "Please let me know if you'd like me to prepare it for filing on the land records."

“At a subsequent meeting, I gave him a hard copy of the declaration,” Ms Astarita said. “I also called and reminded him. The ‘declaration’ issue began because the Conservation Commission was told we needed to create one in order to proceed with the open space designation.”

Ms Astarita recalled that “the declaration went back and forth with changes from the land use office several times.” She said the final draft was presented on July 28, 2015, but it was not voted on by Conservation Commission to her knowledge.

She said, “Case law indicates that dedication doesn’t necessarily have to be filed to make property open space.

“Public acceptance and town encouragement can also make a property open space,” Ms Astarita added, referencing a prior state legal ruling involving a similar issue in Stratford.

January 28

Memorandum

During this week’s selectmen’s meeting, Mr Benson submitted a January 28 memorandum regarding the High and East Meadows Open Space which reads: “The High and East Meadows have been designated as open space at the request of the Planning and Zoning Commission. This designated open space at the Fairfield Hills Campus is unique when compared with other town open space. It is not a separate parcel of land as it remains within the Fairfield Hills Campus.

“The High and East Meadows Open Space contains trails maintained by the Newtown Parks and Recreation, structures maintained by Public Works, and allows active and passive recreational uses as permitted by the open space definition contained in the Newtown Zoning Regulations,” Mr Benson’s memo continues.

“The designation of open space can include stipulations allowing uses requested by the donors of the land. The town being the ‘donor’ of the High and East Meadows open space has specified via the zoning regulations that the land be utilized for passive and active recreation.

“The Land Use Agency has the final permit approval for Fairfield Hills Special Events under Newtown Zoning Regulation, 6.03.300 (27). The final approval is based on comments from all pertinent agencies including the Police Department, Fire Marshal, Health District, Parks and Recreation, Fairfield Hills and the Conservation Commission,” Mr Benson’s memo continues..

“Any proposed active or passive recreation beyond a special event would have to be authorized by the Board of Selectmen. Any proposed activity including the construction of a structure greater than 1,500 square feet would require a site development plan approval by the Planning and Zoning Commission. The Land Use Agency would review any site development plans with no structures or structures less than 1,500 square feet.

“To comply with the Newtown Zoning Regulations, to be in accordance with the Fairfield Hills Master Plan and facilitate the management of the open space, the following ‘Declaration Document Concerning the High and East Meadows’ is submitted,” the memo concludes.

Mr Benson said the final proposal from the memorial commission will dictate whether the memorial falls under the definition of passive recreation use.

“It’s not...black and white,” he said. “This use is so extraordinary for the town. We have to be flexible, but we don’t want the High Meadow developed into a 100-car parking lot. We just have to look at it and see what the [memorial] commission has in mind. It has to not impact the environment to a degree that it would be impaired.”

Latest Declaration Language

Mr Benson’s declaration document states: “The Town of Newtown agrees to perpetually preserve, protect, limit, conserve and maintain the land hereinafter described in its natural condition. Any proposed uses of the Town Open Space, (as defined below) shall be contingent upon receipt of a Fairfield Hills Special Event Permit with review and recommendations submitted by the Police Department, Fire Marshal, Health District,

Parks and Recreation, Land Use Agency, Fairfield Hills and the Newtown Conservation Commission. Any such use shall in no way endanger the conservation of the High and East Meadows.”

The declaration goes on to state: “The areas referenced are designated as ‘The High and East Meadows’ (hereinafter referred to as ‘the Meadows’) containing 65.46 acres located on a certain map entitled ‘Limited Property survey Prepared for the Town of Newtown, Wasserman Way, Newtown, Connecticut,’ dated November 1, 2013 by Brautigam Land Surveyors, PC which was filed on the Newtown Land Records as Map 8194 on March 11, 2014.

“It is the purpose of this Declaration to ensure that the Meadows remain in their present, natural and open condition, and to prevent any activity or use of the area that is inconsistent with that condition or that will significantly impair or interfere with the ecological, conservation or open space values of the area, notwithstanding normal passive recreational purposes,” the declaration concludes.

Mr Benson also included a copy of Article 1 Section 2 from local Zoning Regulations, which defines open space as “land or water areas which include but are not limited to: areas left in their existing natural state; agricultural land for which development rights have been assigned or otherwise alienated in perpetuity; areas and facilities for non-commercial, non-profit passive and active recreation; areas for wildlife habitat, groundwater recharge, scenic preservation, and other lands accomplishing the purposes set forth in Section 8.15.100 of these regulations.”

“I didn’t feel a declaration had to be put on the deed,” Mr Benson told selectmen February 16. “We knew this was a little different than normal open space, because there was no deed transferred because it was our land to deal with.”

Mr Grogins said he concurred with Mr Benson’s timeline of activities related to securing the site as designated open space.

“It is unusual,” he said. “When we own the property we normally don’t put those restrictions on.”

The town attorney said the final requirement is a “simple step.”

“It doesn’t take away the concept that the Board of Selectmen is the body that has control over this — to dedicate it as open space, or putting restrictions on here of your own making. The process is only technically incomplete.”