

**Town of North Yarmouth
Select Board Meeting Agenda
Thursday, June 23, 2022
Regular Business Meeting
11:00 AM
Wescustogo Hall & North Yarmouth Community Center**

Select Board Members

Brian Sites, Chairperson

James Moulton, Vice-Chairperson

David Reed, Board Member

Paul Hodgetts, Board Member

I. Call to Order

- Pledge of Allegiance

The format and structure for Select Board meetings are authorized and governed by our Town Charter and the Select Board Bylaws with overarching guidance from Maine Statutes. Select Board members are not collectively or individually allowed to speak about personnel matters and may only address personnel matters in an executive session per State Statute Title 1 § 401

II. Appointments

III. Special Presentations

IV. Announcements

V. Consent Agenda

Items under "Consent Agenda" are routine items that require Board action but typically do not contain much discussion. The consent agenda does not call for any discussion, but any Select Board member may request a particular item to be removed by a vote of the Select Board to be discussed further under "Old Business"

VI. Public Comment - Non-Agenda Items

Comments regarding non-agenda issues, concerns, commendations, or matters of general public information are welcome. The public is encouraged when commenting or expressing points of view about an individual(s) that they do so respectfully and constructively. Topics relating to personnel matters cannot be acknowledged.

Each individual must be recognized by the Chair and will have up to three (3) minutes to speak. The Chair may recognize members of the public at their discretion and will prioritize individuals who have not spoken more than once.

VII. Management Reports & Communications

VIII. Old Business

- Sharp's Field Restricted Covenant

IX. New Business

X. Any Other Business

XI. Adjournment

REMINDERS TO THE ATTENDING PUBLIC: Please mute all digital devices; Select Board meetings are open to the public, but the public may not speak unless recognized by the Chairperson first. **Workshops:** The public is welcome to attend workshops and listen to the discussion that takes place. The purpose of holding a workshop is to provide the Select Board with the opportunity to focus on specific town matters to later present at a regular business meeting. Therefore, public participation is limited to only regular business meetings of the Select Board.

Town of North Yarmouth Select Board Business

VIII. Old Business

June 23, 2022

Sharp's Field Restricted Covenant

SUGGESTED MOTIONS

Vote to Reconsider the June 21, 2022, Decision

Move to reconsider the vote taken on June 21, 2022, regular business meeting agenda item, "Sharp's Field Declaration of Restrictive Covenant". Second, discussion and vote follow.

Vote to Approve Included Corrections

Move that the Select Board approve the Declaration of Restrictive Covenant on Sharp's Field as amended on June 23, 2022. Second, discussion and vote follow.

RECORDING REQUESTED BY AND WHEN
RECORDED MAIL DOCUMENT TO:

Mark A. Bower, Esq.
Jensen Baird
Ten Free Street
P.O. Box 4510
Portland, Maine 04112-4510

Space above this line for recorder's use

DECLARATION OF RESTRICTIVE COVENANT

This Declaration of Restrictive Covenant (this "Declaration") is made as of this _____ day of June, 2022 (the "Effective Date"), by the Town of North Yarmouth, a municipality existing under the laws of the State of Maine (the "Town").

RECITALS

A. The Town is the fee simple owner of a certain parcel of land, approximately 11.81 total acres, located at 10 Village Square Road in North Yarmouth, Maine, being described in a deed from Mathew L. Sharp and Martha J. Sharp to the Town of North Yarmouth dated January 17, 2001 and recorded in the Cumberland County Registry of Deeds in Book 15964, Page 281.

B. This Declaration concerns an approximately 2.97-acre portion of the above-referenced parcel, and is more particularly described in Exhibit A and is depicted in the preliminary survey entitled "Boundary Survey, on Hallowell Road (Route 115) North Yarmouth, Maine, Made for Record Owner Town of North Yarmouth, 10 Village Square Road, North Yarmouth, Maine," dated January 30, 2020 by Owen Haskell, Inc., P.L.S. (Exhibit B) attached hereto and made part hereof (hereinafter referred to as the "Restricted Parcel").

C. The Town desires to record this Declaration of Restrictive Covenant in order to impose a permanent restriction on the Restricted Parcel as set forth in this Declaration.

D. The purpose of this Declaration of Restrictive Covenant is to protect in perpetuity the open outdoor recreational space that the Restricted Parcel provides for the general public. The Restricted Parcel is located at 10 Village Square Road in North Yarmouth, Maine, and largely consists of a sports and recreational field, which serves as game fields for lacrosse and other sports that require open field space. The Restricted Parcel is also used by the public for general recreation and activities including a variety of competitive and leisurely outdoor pastimes. The Restricted

Parcel is part of a larger parcel owned by the Town, and which is the location of the Town Hall, making the Restricted Parcel a natural dedication of land already associated with service and benefit to the public.

DECLARATION

NOW, THEREFORE, the Town declares that the Restricted Parcel and all portions thereof are and will be held, transferred, sold, conveyed, used, and occupied subject to the covenants set forth in this Declaration.

1. Recitals. The above recitals are true and correct and incorporated herein by reference as if set forth in full.

2. Land Use. The Restricted Parcel shall be used primarily for sports playing fields, and secondarily as open space for recreation and activities by the general public. For the purposes of this provision, the term “sports” includes, but is not limited to, those sports that require open fields, such as lacrosse and field hockey. The Restricted Parcel shall be open for use by the general public on such further terms and conditions, policies, rules and regulations as are set forth herein and as the Town may reasonably impose from time to time in the same manner by which the Town may establish them for other Town-owned and/or managed recreational properties including, without limitation, restrictions on hunting, shooting, trapping night use, fires, camping, and vehicular or motorized uses on the fields.

3. Management. The Restricted Parcel will be managed by the Town to protect its use by and accessibility to the public, including maintaining the fields and grass in a manner consistent with any other Town-owned and/or managed recreational fields. The Town may temporarily limit or restrict public recreational use while the Town performs its maintenance obligations set forth herein.

4. Division. For the purpose of the land uses permitted in Section 2 hereof, the Restricted Parcel must remain in its current configuration. While the Restricted Parcel is, as of the date hereof, a portion of a larger lot owned by the Town, only a portion of which is burdened hereby, any subdivision, partition or creation of other parcels or lots, whether by lot division, or other manner of ownership which creates discrete parcels or separate ownership or control of portions of the Restricted Parcel, shall be prohibited, except for boundary adjustments to resolve bona fide boundary disputes. Under no circumstances may the Restricted Parcel or any portion therefore be included as part of the gross tract area of other land not subject to this Declaration, for the purposes of determining density, lot coverage, or land area requirements, under otherwise applicable laws, regulations or ordinances controlling land use, building density or transfer for development rights.

5. Structures. As of the date of this Declaration, there are no structures on the Restricted Parcel except for a storage shed. The remainder of the Restricted Parcel is an undeveloped but maintained field. It is the intention of this Declaration that the Restricted Parcel be primarily used as for sports fields and secondarily used for other public recreation, and that uses and improvements be limited to the extent necessary or appropriate to facilitate these activities. The Town reserves the right to maintain and replace existing improvements with substantially

similar structures and improvements in substantially similar locations, unless another location is more beneficial to accommodate the open field and use by the public. No additional structures, temporary or permanent, are permitted on the Restricted Parcel without town meeting approval, except however, the Town reserves the right to locate, construct and maintain minor structures to accommodate outdoor recreation by the public, so long as such modifications do not interfere with the primary use of the field. Such minor structures may include, but are not limited to, the following: ~~permanent~~ bathrooms, storage sheds, lights (permanent or temporary) event tables and booths, unattached goals and game field equipment, low barriers to discourage unauthorized access to certain areas of the Restricted Parcel as needed; fencing to protect natural resources or for safety purposes; limited spectator seating; benches and picnic tables; portable sanitary structures; temporary and moveable/removable facilities such as tents or portable pavilions provided they do not remain in place beyond a reasonable time; and pet sanitation boxes.

6. Surface Alterations. No excavation, filling, dredging or grading or other alteration may be made to the surface of the Restricted Parcel except as necessary to maintain a level field or in connection with a properly permitted maintenance or improvement project. ~~The Town reserves the right to install, maintain, repair, replace or remove artificial/synthetic turf and associated infrastructure within the Restricted Parcel.~~ Any such activity must also secure and meet all applicable permitting requirements under local, state and federal law and regulations.

7. Vegetation Management. It is the intention of this Declaration to facilitate the maintenance of the Restricted Parcel so that it continues to be a useable sports field, in keeping with the standard of maintenance for any other sports and recreational fields managed by the Town. The Town reserves the right to alter or remove vegetation as necessary to install, establish and maintain the structures and surface alterations permitted under this Declaration; to reduce safety hazards for the uses permitted herein; to remove invasive plant species; to prevent fire and spread of disease or non-native insects; and to mow the grass areas to enhance recreational enjoyment.

8. Enforcement Against Violations. The Town and its successors and assigns shall have the right to enforce the covenants contained herein in a court of law or equity (including, without limitation, the right to specific performance and injunctive relief), against any owner, tenant, occupant, user, licensee, assignee, or subtenant of, or any other party utilizing, all or any portion of the Restricted Parcel in violation of the terms hereof, and in such action, the non-prevailing party shall pay the reasonable attorneys' fees of the prevailing party. Any failure to enforce any covenants contained herein shall in no event be deemed to be a waiver of the right thereafter to enforce such covenants, nor of any right to enforce any other covenant hereof. All remedies provided for herein or at law or in equity shall be cumulative and not exclusive.

9. Covenants Running With the Land. The covenants contained in this Declaration shall be covenants running with the title to the Restricted Parcel in perpetuity, and shall burden the Restricted Parcel and the owner or owner(s) of all or any portion of the Restricted Parcel and its/their successors and/or assigns, and shall run to the benefit of the Town and its successors and/or assigns. This Declaration must be incorporated by reference in any deed or other legal instrument by which the Town conveys any interest in the Restricted Parcel, including, without limitation, a leasehold or mortgage interest. The failure of the Town to perform any act required by this Section shall not impair the validity of this Declaration or limit its enforceability in any way.

10. Miscellaneous.

a. This Declaration will be governed in accordance with the laws of the State of Maine.

b. The section headings in this Declaration are for convenience only, will in no way define or limit the scope or content of this Declaration, and will not be considered in any construction or interpretation of this Declaration or any part hereof.

c. In case any one or more of the provisions of this Declaration shall be invalid, illegal or unenforceable in any respect, the validity of this Declaration and the remaining provisions thereof shall be in no way affected, prejudiced or disturbed thereby.

Executed as a sealed instrument as of the Effective Date.

TOWN OF NORTH YARMOUTH,

By: _____

Name: Diane Barnes

Its: Town Manager, duly authorized

STATE OF MAINE

COUNTY OF CUMBERLAND, ss.

_____, 2022

Then personally appeared the above-named Diane Barnes, Town Manager for the Town of North Yarmouth, and acknowledged the foregoing instrument to be her free act and deed in his/her said capacity, and the free act and deed of the Town of North Yarmouth.

Notary Public

Printed Name:

My Commission Expires: _____

Exhibit A

Legal Description of the Restricted Parcel

A certain lot or parcel of land situated westerly of but not adjacent to Hallowell Road in the Town of North Yarmouth, County of Cumberland and State of Maine bounded and described as follows:

Beginning at an iron pipe at the southwesterly corner of land now or formerly of Tristan R. and Mary Elizabeth Ingram as described in deed book 32232, page 240;

Thence, N 77°09'51" E along land of said Ingram and land now or formerly of John E. Farrell Jr. and Heather A. Elliott as described in deed book 31480, page 166 a distance of 333.26 feet;

Thence, the following courses and distances across land of the Town of North Yarmouth:

S 26°11'06" E a distance of 315.00 feet;

S 76°39'25" W a distance of 53.76 feet;

S 58°08'21" W a distance of 288.00 feet;

N 43°13'55" W a distance of 137.00 feet to a capped iron rod at the southeasterly corner of land now or formerly of Robert C. and Karen L. Bruder as described in deed book 22367, page 110;

Thence, N 33°21'41" W along land of said Bruder 150.00 feet to land now or formerly of Alicia S. and Sol Dostilio as described in deed book 34522, page 143;

Thence, N 56°38'19" E along land of said Dostilio and the end of a 50-foot-wide access easement 71.06 feet;

Thence, N 24°40'54" W along land of said Dostilio and the easterly sideline of said access easement 119.84 feet to the point of beginning containing 2.97 acres more or less.