

NON-PUBLIC SESSION MINUTES

SELECTMEN'S MEETING
TOWN HALL

September 20, 2021

ATTENDEES:

Leon Rideout, Selectboard Chair Shane Beattie, Selectman Troy Merner, Selectman
Town Manager, Benjamin Gaetjens-Oleson Charity Baker, clerk

The Board entered Non-Public Session at 7:30PM

The Board discussed the legal opinion of Attorney Jon Frizzell on whether Arlene and William Allin have the right to use certain land deeded to the Town by Florence Allin in 1971; and whether the Town is limited to using the same property only for town lagoons. (See attached opinion).

Motion made by Troy and seconded by Shane to leave Non-Public Session and return to Public Session. Roll Call Vote.

Shane Beattie: Yes

Troy Merner: Yes

Leon Rideout: Yes

Motion carried.

The Board left Non-Public at 7:47PM.

Respectfully submitted,

Charity Baker
Charity Baker

Board of Selectmen

Date: 10/4/2021

Leon Rideout

Leon Rideout

Shane Beattie

Shane Beattie

Troy Merner

Troy Merner



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PHILIP R. WAYSTACK
JONATHAN S. FRIZZELL
SANDRA L. CABRERA
REBECCA A. WITMON

Via email only to: townmanager@lancasternh.org

August 12, 2021

Benjamin Gaetjens-Oleson, Town Manager
Town of Lancaster
25 Main Street
Lancaster, NH 03584

Re: Legal Opinion on Allin deed(s)

Dear Ben:

At your request, I have reviewed the following documents to issue a legal opinion as to whether Arlene and William ("Billy") Allin have the right to use certain land deeded to the Town by Florence Allin in 1971; and whether the Town is limited to using the same property only for town lagoons:

- (a) Option to Purchase Real Estate agreement between Florence Allin and the Town of Lancaster dated June 25, 1970, and recorded in the Coös County Registry of Deeds in Book 528, Page 398;
- (b) Warranty Deed from Florence Allin to the Town of Lancaster dated June 18, 1971, and recorded in the Coös County Registry of Deeds in Book 537, Page 113;
- (c) Quitclaim Deed from Florence Allin to the Town of Lancaster dated June 18, 1971, and recorded in the Coös County Registry of Deeds in Book ____, Page 253 (recorded with the Plan referenced below); and,
- (d) Plan of Land dated December 1970 / July 1971, and recorded in the Coös County Registry of Deeds as Plan P-1F-4PI.-2.

Do Arlene and Billy Allin have the right to use any lands of the Town not being currently used for the lagoons?

The answer to the Town's first question is no. Regardless of any language contained in the Option Agreement dated June 25, 1970, no language as to retained usage was included within the Warranty Deed to the Town dated June 18, 1971. Under New Hampshire case law, any prior

agreements, oral or written, are merged into the deed, unless either specifically included in the deed or specifically identified in the contract to "survive" the closing." Russell v. Hixon, 117 N.H. 35 (1977). This means that "the conclusive presumption [is] that the whole engagement of the parties, and the extent and manner of it," were reduced to writing in the Warranty Deed. Wells v. Jackson Iron Mfg. Co., 47 N.H. 235, 253 (1866). Because no language as to retained usage was included within the Deed and because the Option Agreement did not specify that the Agreement was to survive closing, no right to use of the land by Optioner survived.

Additionally, because Florence (the "Optioner") is deceased, any arguable right to use would have passed with her. The Option Agreement reserved the right to usage to Florence herself until she "sells or otherwise disposes of the property which abuts the tract of land" that was the subject of the Option Agreement. Florence's transfer of the land to Billy was a disposition that took effect upon her later death.

Furthermore, any arguable right to usage is also subject to whether the Town "requires" the land. Any arguable right to usage terminates when the Town notifies them that the land is "required," even as a formal open space if the Board is so directed or inclined.

Is the Town of Lancaster limited to using the same land for town lagoons only?

The answer to the Town's second questions is also no. There are no restrictions in the Warranty Deed from Florence Allin to the Town of Lancaster that limits the Town's use. Further, nothing in the Option Agreement limited the scope of the conveyance to the Town to a specified purpose to the exclusion of others. In fact, the Option Agreement by its very terms contemplates that the Town may ultimately use the land for "any" purpose.

Please advise if anything further is needed.

Sincerely,



Jonathan S. Frizzell

JSF/raw