

Darby water easement causing council ripples

Councilors openly
hostile, question
motives

By David Still II

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An easement request to protect a potential public water supply on town-owned land in Osterville has turned low-level resentment to open hostility at the Barnstable Town Council.

The request, sponsored by Osterville Councilor Jim Crocker, seeks an easement on a circle of land 1,200 feet in diameter on the town-owned Darby property off Old Mill Road to protect an identified source of public water. The source, according to Centerville-Osterville-Marstons Mills Board of Water Commissioners environmental consultants Earth Tech, could supply upwards of 1.4 million gallons per day.

Concerns about the effect of such an easement on the town's previously-stated desire to develop affordable housing on the property have been raised by the town's housing committee, as well as other councilors who represent areas covered by COMM.

Opponents seeking more time say that there's no need to rush this request, as the land is already town-owned and not subject to development.

Council Vice President Janet Joakim is among those looking for more information. Joakim and Crocker have had a strained relationship since prior to his election to the council in 2003, all relating in some fashion to the Darby land.

Last week, the *Patriot* published a commentary by Joakim and Marstons Mills Councilor Leah Curtis supporting the defeat of the easement. The commentary prompted a lengthy response from Crocker (See page B:2), who said it was "riddled with

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4/7/2006

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inaccuracies.”

Crocker, Joakim and four other councilors walked the Darby property Monday and then attended a meeting of the Centerville Civic Association, at which a seventh member of the 13-member council, Tom Rugo, appeared. That resulted in an observation by Crocker that Joakim could be in violation of the Open Meeting Law for consensus-building prior to a scheduled meeting.

The Osterville councilor said that it appeared as if Joakim was attempting to find agreement among a majority of her council colleagues to put the matter off to a later date.

Crocker shared that observation, along with what Joakim characterized as “threats and intimidation,” in an e-mail copied to all councilors and members of the town administration Wednesday.

If there were a motion to continue or hold on the item, Crocker wrote, he was prepared to challenge the action as a violation of the open meeting law.

Crocker’s challenge may not stand, however, as there are specific exceptions to the open meeting law, including site visits.

According to guidelines prepared by the state Attorney General’s office, “Any on-site inspection of a project or program by a governmental body does not qualify as a meeting. A quorum is defined in the Law as a simple majority of the body unless otherwise defined by applicable constitution, charter, rule or law.”

In Barnstable, the charter defines a quorum of the council as “one half of the total membership of the town council plus two.” That places the quorum at 8.5 members, effectively nine.

Whether the item would end up with a vote or a continuance last night was uncertain at press time.

The easement does not require a formal public hearing and it was not advertised as such, but Council President Hank Farnham planned to treat it as such, with the council’s indulgence. Farnham expected a large turnout for the meeting, which also featured public hearings on the 2007 capital improvement plan, for which individual hearings on each of the 22 items will be held.

The Easement

The easement sought in the order now before the council would protect two potential sites, each with the DEP-required 400-foot radius. COMM’s consultant, Douglas DeNatale of Earth Tech in Concord, said that a two-well system would have the benefit of drawing the greatest amount of water from the site with the least effect.

Some of the protected area is underwater, taking some of the pond-area into consideration.

Crocker said Monday’s site visit was to show that the topography of the easement area would be difficult to develop because of the steep grades and the proximity to the ponds.

The easement request was supported by voters at last year’s COMM annual meeting, where \$133,000 over 10 years was approved for

maintenance and the creation of parking areas on the property to make it more accessible to the public.

The request now before the council is the follow-up step to that vote.

The COMM Board of Water Commissioners unanimously supports further testing of the Darby sites, as well as other sites in the district.

"We need to protect it," water board chairman Bill McIntyre said in an interview Thursday.

Crocker has also taken to recording all of his council correspondence on this matter with the town clerk's office, making it a public record.

In addition, Crocker has filed a Freedom of Information Act request of all councilors for their e-mail correspondence on the Darby easement issue.

Crocker said that Joakim and others are attempting to "triangulate" the discussion of well protection and open space into affordable housing.

The easements do not seek conservation restrictions for the remaining portion of the Darby property, a section of which would still be available for housing development.

A Request for Mediation

Councilor Curtis serves as liaison to the town's housing committee, which voted and sent a request, through Curtis, to have the agenda item postponed and moved into mediation to resolve land use issues.

That was brought to the council agenda meeting on March 27, where the issue was discussed, but no decision reached.

Crocker views the discussions of this item at the housing committee and the Centerville Civic Association as specifically excluding him, although he is the sponsor and could bring additional information to bear.

"At times, there's a real lack of cooperative spirit for the good of the council," Crocker said.

To some of his colleagues, Crocker is seen as a disruptive and bullying force, which they suggest is more to blame for his exclusion than anything else.

In her April 5 response to Crocker, Joakim wrote that there are residents who choose to say nothing "lest they be the subject of your wrath."

That comment came as part of a challenge to Crocker's dual role in the easement request as a town councilor and as an elected member of COMM's prudential committee. This has been raised as an area of potential conflict of interest.

"I have tried very hard to keep my composure with you Councilor/C-O-MM Prudential Committee member Crocker," Joakim wrote in response to one of Crocker's written inquiries "but you need to know that the majority of the concerns I have received, the ones that residents have been reluctant to share with you lest they be the subject of your wrath, is that whether or not it is legally unethical, the overlapping of your elected positions regarding this issue and others, is, at the very least, giving the appearance of a conflict of interest, if not such."

The Town Manager's Position

Town Manager John Klimm said that he would support whatever action the council takes on the easement. He does not see the easement as precluding other development options on the Darby parcel, or on other potential sites identified for affordable housing in Osterville.

Klimm said that he has not been asked directly for a recommendation on the deal, but “we certainly have made it very clear that we have recommendations that deal with Darby and other parcels.”

The town manager was among five people to sign an agreement sketching out a plan covering the development of housing and water production that allowed access to the Darby site by the COMM water department and its consultants for well testing.

Klimm said that the agreement, which speaks to the support of other affordable housing and ultimately a conservation restriction on the remainder of the Darby property if the village meets its housing goals, was done prior to the testing. He called the test result a “significant change in the universe” with respect to the public supply needs of the town.

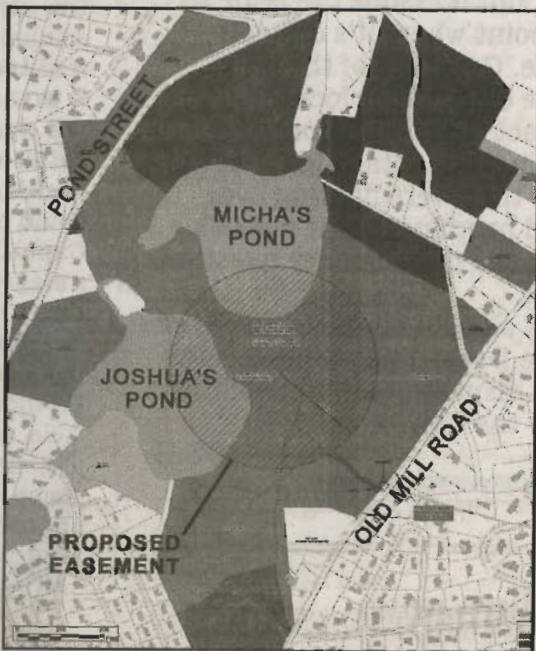
The easements sought this week do not seek any additional restrictions on the land.

“It’s still a sound document,” Klimm said of that agreement.

“That site will be used at some point in time and we can’t let it disappear on us,” McIntyre said. He was also a signer of the earlier agreement.

The issue of preserving is likely to resurface as the town council is presented with the re-drafted Local Comprehensive plan later this year. The Osterville Village Plan includes the following language: The Village desires that the Darby parcel be preserved. No land bank purchases for open space parcels occurred within the boundaries of the village. This raises the urgency to preserve the Darby parcel in its entirety.

The recommended strategy for accomplishing this includes “To impress upon our Town Manager and Town Councilor and remaining Town Council body of the need to preserve



THE EASEMENT – The proposed easement to protect a potential public water supply on the town-owned Darby property in Osterville is making waves.