

Dear KP Law,

The Rights of Public Access Committee is working to secure permanent public access to Blackfish Creek from the North side of Lieutenant Island. We have an offer from the private owners of Lot 41-178-1 to sell the lot or an easement over it. For over 20 years, commercial and recreational shellfishermen, fishermen, beachgoers, and local homeowners alike have been using the dune trail through this property with verbal permission from the owners, David & Sharon Agger. The Massachusetts Audubon Society historically has given the public verbal permission to drive on the dirt road and park in a dirt lot just South of the paper cul-de-sac, on what would be their land in Lot 41-178. See Exhibit A.

The Town would like to move forward with the offer from the Aggers and establish a Town Landing, but first needs to secure permanent access across the paper road in order to ensure the public's right to pass by vehicle, park, and travel by foot up the dune trail that begins in the paper cul-de-sac. Our questions for you are as follows:

1. Is Heron Point Rd a town way, given the vote that the Town accept it in Article #39 of the 1963 Town Meeting, and the absence of a vote for the Town to discontinue the way at any of the Town Meetings thereafter, as described in MGL Ch. 82 Sections 21-23? We have no evidence that the attached plan (Exhibit B) was filed at Town Hall, nor that the Town acquired any property rights to the land laid out in question.

If the road is private:

2. Can we purchase Lot 41-178.1 and give an easement to the shellfishermen that use the boathouse to release the Town of liability for its use? Does the Town become an abutter to the paper road with rights to use it, effectively making this a public way? If we can't put this lot into conservation, are there other ways we can prevent the Town from selling the lot in the future?
3. Is there an advantage or disadvantage to formally accepting the road as a town way after purchasing Lot 41-178.1 or an easement over it? Would we need to obtain permission from and give fair compensation to all of the abutters, including the Audubon, even though the latest subdivision plan excludes Lot 41-178? Do we have rights to take it by eminent domain or adverse possession, should any of the abutters refuse to give or sell the Town their rights to it?
4. Does the public have a right to pass over the beginning half of the dune trail located in the paper cul-de-sac by way of the Derelict Fee Statute of MGL Ch. 183 Section 58, given that the two abutters to the cul-de-sac on either side (the Aggers and the Audubon) both give verbal permission?
5. Can we purchase an easement from the Aggers to use Lot 41-178.1 and an easement from the two abutters to the cul-de-sac in order to secure permanent public foot access to both halves of the dune trail, or would we need to purchase it from all abutters to the road?

Foreseeable complications:

6. If ever necessary, would the Town have the ability to claim a prescriptive easement through Lot 41-178 if the Audubon were to rescind its verbal permission for the public to park in the dirt lot and pass on the parts of the dirt road that lie on its property? Are there other ways we can secure our rights to use their land if permission were withdrawn in the future?
7. The deed to Lot 41-178 identifies the northwest boundary as the “edge of the upland of Lieutenant Island.” If the upland edge is the mean high tide mark, and sea level rise has moved that line further up, does the lot boundary move with it?
8. We understand satellite imagery can be an inaccurate representation of the land, with up to 80 feet in error. The latest survey from 2002 shown on the attached satellite map shows the dirt road passing through Lot 41-178. If sea level rise and marsh accretion have moved the dirt road into land considered to be the paper road, are there any additional implications we should consider?

We would prefer to discuss the answers to these questions with you in a virtual meeting with our members, if possible. Please coordinate with our Town Administrator to schedule one. Thank you for your time.

Regards,

The Rights of Public Access Committee
Town of Wellfleet

Exhibit A:
Wellfleet Assessor's Maps & 2002 Land Survey overlaid on 2019 GIS Satellite Imagery



**Exhibit B:
1962 Plan for Town Landing**

