

Office of the Selectmen
Town of Nelson
7 Nelson Common Road
Nelson, NH 03457

April 14, 2021

Dear Concerned about access to Partridge Woods,


We are writing to report on the progress that your Select Board has made in resolving the question of how best to provide public access to Partridge Woods from the Old Stoddard Road.

The Board has developed the attached Partridge Woods Access Plan 2021 which addresses the various elements of this topic. We are confident that our plan is reasonable and, more importantly, legally sound. We believe that its implementation will provide improved public access to Partridge Woods while at the same time protect the privacy and property rights of our neighbors who live on Homestead Lane without giving up the Town's rights of use for sanctioned activities.

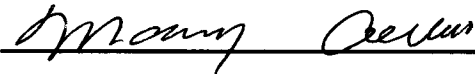
We have developed this plan as a result of in-depth legal research and counseling.

Sincerely,

Nelson Board of Selectmen



David Upton, Chair



Maury Collins, Selectman



Gary Robinson, Selectman

Attachment: Partridge Woods Access Plan 2021

Partridge Woods Access Plan 2021

Overview:

Following Legal advice, the Position of the Nelson Select Board is as follows:

- Homestead lane is a private access easement created by a deed for the benefit of specific parties – namely, the owners of certain parcels of land and certain utilities. Homestead Lane is not a public way and the general public has not been granted an access easement by deed or any other means. This includes both vehicle and pedestrian traffic.
- Homestead Lane could not have become a public road by prescription (20 years of public use) because that would have had to occur before 1968.
- The public (collectively or any particular person) cannot obtain property rights to any property owned by a municipality by adverse possession. RSA 477:34
- Any private parties seeking to obtain a prescriptive easement by adverse possession over Homestead lane would need to establish 20 years of continuous use, open and under a claim of right, however, that would have to be decided in court by action brought by the claimant and not by the Town of Nelson on any claimant's behalf.
- The Conservation Commission does not have the authority to turn a private access easement into a public road. The Select Board can only turn a private access easement into a public road through the formal eminent domain layout process, which has not and will not occur with respect to Homestead Lane.
- Only those with the permission of those who hold rights-of-way to pass and repass over Homestead Lane may travel over Homestead Lane. However, such permission cannot be given to the general public because that goes beyond the scope of the easement rights that were originally granted.
- No party can use Homestead Lane (even for sanctioned uses) in a way that unreasonably restricts or prevents other parties, with equal access rights, from their use of Homestead Lane to access their property.
- We have the fortunate opportunity to provide improved public access directly into Partridge Woods while at the same time respecting the rights of our neighbors who live on Homestead Lane.
- Our plan achieves all of our goals. It describes both an improved alternative access to Partridge Woods and identifies the limited authorized uses of Homestead Lane.

Goals:

1. Protect the privacy and property rights of our neighbors who live on Homestead Lane.
2. Preserve and protect the Town's rights of use on Homestead Lane for sanctioned access based on legal precedent.
3. Comply with the terms and conditions of our LWCF grant and our Conservation Easement with the Harris Center for Conservation Education.
4. Avoid litigation by finding a workable solution to the present conflict.

The Solution:

Develop an alternate parking lot, off of the Old Stoddard Road, that is located totally within the boundaries of town owned property.

1. Conservation Commission meets with the Road Agent to locate and layout a new parking lot that will accommodate 12 to 15 vehicles.
2. Conservation Commission develops a drawing showing the location and layout of the new parking lot and obtains a cost estimate for the work.
3. Conservation Commission and the Select Board approve the plan.
4. Conservation Commission and the Select Board submit the locally approved drawing to N.H. Parks and Recreation LWCF Administration for its approval as an alternative to the use of the Homestead Lane access to Partridge Woods, thereby maintaining compliance with the terms and conditions of the LWCF grant.
5. Complete construction of the new parking lot by May 15, 2021. The cost of construction to be borne by the Conservation Commission.
6. Not exercise, extend, or offer the Town's rights, related to the use of Homestead Lane, to the general Public for access to Partridge Woods.
7. Continue to use Homestead Lane and the parking lot off of Homestead Lane for the following town sanctioned purposes: Search and Rescue, Fire Fighting, Logging, Trail and Property Development and Maintenance. Note: The list of sanctioned uses of Homestead Lane and the parking lot may be modified from time to time by the Nelson Select Board, in consultation with the Nelson Conservation Commission, when doing so is deemed to be in the best interest of the Town of Nelson.
8. Develop appropriate "No Public Access" signage for use at the entrance to Homestead Lane.
9. Conservation Commission and the Select Board develop regulations for the use of the new parking lot.


Notice:

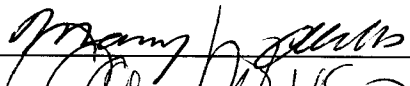
Website and social media content, maps, and signage, that support and reinforce regulations for the use of new parking lot shall be developed, produced and installed by the Nelson Conservation Commission.

**Short Term Regulations if needed prior to a completion date
no later than July 1, 2021:**

1. There shall be no parking on any portion of Homestead Lane at any time.
2. The Partridge Woods parking lot is designed to accommodate the parking of a single row of vehicles. Vehicles must not be parked in ways that block the comings and goings of others, and must not overflow out onto Homestead Lane.
3. There shall be no vehicular traffic on Homestead Lane, at any time, beyond the entrance to the Partridge Woods parking lot, other than that permitted by the owners of private property, and that used for Town sanctioned activities.
4. There shall be no pedestrian traffic on Homestead Lane, at any time, beyond the entrance to the Partridge Woods parking lot, other than that permitted by the owners of private property, and that used for Town sanctioned activities.
5. The Partridge Woods parking lot will be closed from December 1 until May 15. No vehicular or pedestrian traffic, other than that permitted by the owners of private property, and that used for Town sanctioned activities, shall be permitted anywhere on Homestead Lane during this period.

Select Board Approved on April 7, 2021

David Upton, Chair 

Maury Collins, Selectman 

Gary Robinson, Selectman 